IN THE SUPREME COURT OF

THE STATE OF NEVADA

****

DEFENDANT FREEMAN EXPOSITIONS, LLC (improperly named THE FREEMAN COMPANY, LLC),

Petitioner,

v.

The EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, In and For the COUNTY OF CLARK, the Honorable TREVOR ATKIN, District Judge, Department VIII

Respondent,

and

JAMES ROUSHKOLB

Real Party in Interest.

Supreme Court Case No.:

District Court Case No.: A-19-805268-C

Trial Date: August 2, 2021
(Five-Week Stack)

PETITIONERS' APPENDIX TO FREEMAN EXPOSITIONS, LLC'S PETITION FOR A WRIT OF MANDAMUS (VOLUME 1 OF 2)

JACKSON LEWIS P.C.

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INDEX (APPENDIX VOLUME I)

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Jackson Lewis P.C. and that on this 8th day of July, 2021, I caused to be served a true and correct copy of **PETITIONER'S APPENDIX TO FREEMAN EXPOSITIONS, LLC'S PETITION FOR A WRIT OF MANDAMUS (VOLUME 1 OF 2)** to the following:

Via Electronic Mail Christian Gabroy GABROY LAW OFFICES The District at Green Valley Ranch 170 South Green Valley Parkway Suite 280 Henderson, Nevada 89012 *Attorneys for Plaintiff/Real Party in Interest*	***Via Hand Delivery*** Hon. Veronica M. Barisich Eighth Judicial District Court Department V Regional Justice Center 200 Lewis Avenue Las Vegas, Nevada 89155 *Respondent*

/s/ Wende Hughey
Employee of Jackson Lewis, P.C.

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CASE NO: A-19-805268-C
Department 8

DISTRICT COURT
EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY NEVADA

JAMES ROUSHKOLB, an individual;

Plaintiff,

vs.

THE FREEMAN COMPANY, LLC, a Domestic Corporation; EMPLOYEE(S)/AGENT(S) DOES I-X; and ROE CORPORATIONS XI-XX, inclusive;

Defendant.

Case No.:
Dept.:

COMPLAINT WITH JURY DEMAND

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COMES NOW Plaintiff James Roushkolb ("Plaintiff" or "Roushkolb") by and through his attorneys, Christian Gabroy, Esq. and Justin A. Shiroff, Esq. of Gabroy Law Offices, and hereby alleges and complains against The Freeman Company, LLC ("Defendant" or "Freeman") as follows:

JURISDICTION AND VENUE

1. This is a civil action for damages under state laws prohibiting unlawful employment actions and to secure the protection of and to redress deprivation of rights under these laws.

2. This Court has jurisdiction over all claims arising under Nevada law.

3. Jurisdiction is based upon the Nevada State Constitution Article 4 and NRS Chapters 453, 598, and 613.

4. Venue is proper because the Plaintiff is a resident of Clark County, Nevada, and the acts complained of took place in Clark County, Nevada.

5. Plaintiff demands a jury trial on all triable issues.

THE PARTIES

6. At all relevant times, Roushkolb was an individual residing in Clark County, Nevada.

7. On or about the winter of 1995, Roushkolb, a former corrections officer with the Cuyahoga County Sheriff's Department, was ambushed, assaulted, and nearly killed by a dangerous inmate who is currently incarcerated at the Marion Correctional Institution.

8. As a result of this brutal physical assault, Roushkolb was diagnosed with post-traumatic stress disorder ("PTSD") and severe pain.

9. PTSD qualifies as a mental disability under Title 20 of the Code of Federal Regulations. 20 C.F.R. § Pt. 404, Subpt. P, App. 1.

10. Despite his disability, Roushkolb still acts as a primary caregiver for his 92-year old father, a veteran of World War II.

11. In connection with his disability, Roushkolb was recommended treatment with medical marijuana by his doctor, Carmen Jones M.D. A true and correct copy of Dr. Jones' Attending Healthcare Provider Statement, dated May 12, 2018 is attached here as Exhibit 1.

12. Roushkolb's normal practice for taking his recommended medical marijuana is to consume the proper amount of edible THC products before bed.

13. Roushkolb would ingest the edibles no later than 10 p.m. on any given evening.

14. The effects of edible THC products wear off after approximately five (5) hours.

15. Upon information and belief, at all relevant times, Defendant was a Domestic Limited Liability Company that is registered with the Nevada Secretary of State to conduct business within the State of Nevada.

16. At all times relevant, Defendant was conducting business in Clark County, Nevada.

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17. At all times relevant, Roushkolb was a "person with a disability" as that term is defined in NRS § 598.0936.

18. Defendant "employed" Roushkolb as that term is defined in NRS Chapters 453 and 613.

19. At all relevant times, Defendant was an "employer" as defined by NRS § 613.310(2) in that Defendant had 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

20. At all relevant times, Defendant had custody or control over Roushkolb and his employment, and was responsible for Roushkolb's labor and employment matters when Defendant employed Roushkolb.

21. DOE DEFENDANTS I-X, inclusive, are persons and ROE DEFENDANTS XI-XX, inclusive, are corporations or business entities (collectively referred to as "DOE/ROE DEFENDANTS"), whose true identities are unknown to Roushkolb at this time. These DOE/ROE DEFENDANTS may be parent companies, subsidiary companies, owners, predecessor or successor entities, or business advisors, de facto partners, Roushkolb's employer, or joint venturers of Defendant. Individual DOE DEFENDANTS are persons acting on behalf of or at the direction of any Defendant or who may be officers, employees, or agents of Defendant and/or a ROE CORPORATION or a related business entity. These DOE/ROE DEFENDANTS were Plaintiff's employer(s) and/or individuals and are liable for Roushkolb's damages alleged herein for their unlawful employment actions/omissions. Roushkolb will seek leave to amend this Complaint as soon as the true identities of DOE/ROE DEFENDANTS are revealed to Roushkolb.

FACTUAL ALLEGATIONS

Marijuana Legalization in Nevada

22. In the 1998 and 2000 general election, Nevada voters approved of an initiative petition for the use of marijuana for medical purposes by Nevadans, and the amendment was added to Nevada's Constitution in 2000.

23. It is clear and explicit public policy of the State of Nevada as embodied in

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our state constitutional framework and other laws that the people of Nevada, including but not limited to Plaintiff, shall have the right to medical marijuana as directed, conditioned, or restricted by the Legislature.

24. Nev. Const. art. IV, § 38 provides the "legislature shall provide by law for the use by a patient, upon the advice of his physician, of a plant of the genus Cannabis for the treatment or alleviation of severe, persistent...chronic or debilitating medical conditions."

25. Since 2001, the Nevada legislature has approved the medical use of marijuana, expressing: "...the State of Nevada as a sovereign state has the duty to carry out the will of the people of this state and to regulate the health, medical practices and well-being of those people in a manner that respects their personal decisions concerning the relief of suffering through the medical use of marijuana..."

26. In 2001, the legislature exercised its power under the initiative by passing A.B. 453 which established Nevada's laws, codified in NRS Chapter 453A, regulating the use of medical marijuana. A.B. 453, 2001 Nev. Stat., ch. 592, §§ 2-33, at 3053-66.

27. When the Legislature passed A.B. 453, it explained in the preamble that it intended for the bill to "carry out the will of the people of this state and to regulate the health, medical practices and well-being of those people in a manner that respects their personal decisions concerning the relief of suffering through the medical use of marijuana." A.B. 453, 2001 Nev. Stat., ch. 592, preamble, at 3053.

28. NRS § 453A.120 provides the statutory definition for the medical use of marijuana, stating:

> The 'medical use of marijuana' means: (1) the possession, delivery, production or use of marijuana; (2) the possession, delivery or use of paraphernalia used to administer marijuana; or (3) any combination of the acts described in subsections 1 and 2, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her chronic or debilitating medical condition.

29. Nevada began offering medical marijuana registration cards to identify patients using medical marijuana, such as Roushkolb treating his chronic medical condition.

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30. NRS § 453A.800(3) states the employers are required to provide medical marijuana patients such as Roushkolb with a reasonable accommodation pursuant to his statutory rights to treatment with medical marijuana, stating in pertinent part:

> "...the employer must attempt to make reasonable accommodations for the medical needs of an employee who engages in the medical use of marijuana if the employee holds a valid registry identification card, provided that such reasonable accommodation would not: (a) Pose a threat of harm or danger to persons or property or impose an undue hardship on the employer; or (b) Prohibit the employee from fulfilling any and all of his or her job responsibilities."

31. Pursuant to NRS § 453A.800(3), employers must attempt to make reasonable accommodations for the medical needs of medical marijuana patients such as Roushkolb.

32. There are no Nevada laws regulating the use of drug and alcohol testing by private employers currently in effect.

33. Thus, the Defendant is the exclusive author of all policies and procedures regarding its pre-employment drug screenings and drug testing.

34. In 2016, the sale and consumption of marijuana for recreational use was legalized in Nevada.

35. NRS § 453D.110 codified the legalization of recreational marijuana within Nevada.

36. Pursuant to NRS § 453D.110 and Nev. Const. art. IV, § 38, the consumption of marijuana products (especially those consumed under a medical marijuana card), is legal and exempt from prosecution.

Roushkolb's Employment with Freeman

37. At all times relevant to this dispute, Roushkolb suffered from PTSD, a disability that substantially limits one or more of his major life activities.

38. At all relevant times, Roushkolb was a properly-credentialed Nevada medical marijuana patient.

39. In accordance with Nevada law, the State of Nevada reissued Roushkolb's

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Medical Marijuana Patient Identification Card on or about May 14, 2018.

40. Roushkolb accepted the available Journeyman position with the Defendant.

41. Defendant hired Roushkolb in or around January 2018.

42. Roushkolb was provided a Job Description, issued by the Defendant, for employment as a Journeyman in the Defendant's facility.

43. Through his nonworking hours, off-site medical marijuana treatments, Roushkolb was able to complete all necessary job functions of his position with Defendant.

44. In or around June 2018, Roushkolb, in his capacity as Defendant's employee, was working to 'tear down', or systematically dismantle and put away exhibits and rigging, following the close of a convention.

45. Roushkolb's work was initially led by a Freeman employee named "JR" (full name unknown).

46. On the relevant day, Roushkolb thought that JR smelled strongly of alcohol.

47. That same day, JR went to see the manager about purportedly not feeling well.

48. JR was subsequently sent home from the job by Freeman management.

49. In JR's absence, Roushkolb took on duties as lead for tear down on the exhibit in question.

50. As Roushkolb was short-handed tearing down the exhibit he was working on, Darren (last name unknown) – another Freeman employee – came over to assist.

51. Despite not having a scissor lift or other proper equipment, Freeman management ordered Roushkolb to tear down a large piece of plexiglass suspended approximately fifteen feet off the ground.

52. Roushkolb and Darren were forced to use a single, two-sided, twelve-foot high ladder to try and lower the plexiglass.

53. Darren ascended the ladder first and began to loosen the fasteners holding the plexiglass up.

54. Before Roushkolb could get into position and get a grip on his side of the

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glass, Darren let go, causing the glass to fall to the floor and shatter.

55. No one, including Roushkolb and Darren, was injured in any way by the plexiglass falling to the floor.

56. Roushkolb was not impaired in any way the time of the incident.

57. Roushkolb took a break following the incident, though he did not leave the worksite.

58. Upon returning from his break, two Freeman safety officers were stationed at the location where the plexiglass fell.

59. The Freeman safety officers insisted that Roushkolb take a drug test following the incident.

60. Initially, Freeman representatives indicated that following the accident, they contacted the exhibit's owner and the exhibit's owner requested the drug test.

61. Upon information and belief, the exhibit's owner later refuted this, indicating that they did not request a drug test.

62. Upon information and belief, Roushkolb's coworker Darren was the one who demanded a drug test for Roushkolb.

63. Roushkolb underwent a drug test as directed by the Defendant.

64. Roushkolb tested positive only for THC, consistent with his medical marijuana usage.

65. As a result of the positive test outcome, the Defendant terminated Roushkolb on or about July 11, 2018.

66. Defendant terminated Roushkolb because he tested positive for marijuana use consistent with his physician-recommended usage.

67. Defendant never offered Roushkolb any reasonable accommodation for his medical marijuana usage as required by NRS § 453A.800(3).

68. Defendant failed to engage in any interactive process with Roushkolb concerning his use of medical marijuana, away from Defendant's work site and during his non-working hours.

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COUNT I
UNLAWFUL EMPLOYMENT PRACTICES: DISCRIMINATION FOR LAWFUL USE OF ANY PRODUCT OUTSIDE PREMISES OF EMPLOYER WHICH DOES NOT ADVERSELY AFFECT JOB PERFORMANCE OR SAFETY OF OTHER EMPLOYEES NRS § 613.333, *et. seq.*

69. Roushkolb hereby realleges and incorporates every allegation of this Complaint as though fully set forth herein.

70. At all times relevant, the parties herein are subject to the provisions of NRS § 613.333, *et seq.*, entitled "Unlawful Employment Practices: Discrimination For Lawful Use Of Any Product Outside Premises Of Employer Which Does Not Adversely Affect Job Performance Or Safety Of Other Employees."

71. Defendant discriminatorily terminated Roushkolb, because Roushkolb engaged in the lawful use of medical marijuana outside the premises of the Defendant during his non-working hours.

72. Such non-working hours/offsite use of medical marijuana does not adversely affect either Roushkolb's ability to perform his job or the safety of other employees.

73. At no time did Roushkolb work for Defendant under the influence of marijuana.

74. By engaging in the practices mentioned herein, Defendant violated NRS § 613.333, *et. seq.*

75. Pursuant to NRS § 613.333(2), Roushkolb is entitled to any wages and benefits lost as a result of the Defendant terminating Roushkolb and an order directing the employer to reinstate Roushkolb's employment.

76. Additionally, pursuant to NRS § 613.333(3), Roushkolb is entitled to reasonable costs, including court costs and attorneys' fees.

COUNT II
TORTIOUS DISCHARGE – VIOLATION OF PUBLIC POLICY NEVADA'S PUBLIC POLICY FOR THE RIGHTS OF USE OF MEDICAL MARIJUANA

77. Roushkolb hereby realleges and incorporates every allegation of this Complaint as though fully set forth herein.

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78. Defendant terminated Roushkolb for reasons which violate public policy including, but not limited to, Nevada's public policy against terminating an employee for the lawful use of medical marijuana outside of an employer's place of business during the employee's non-working hours.

79. As a proximate result of Defendant's tortious discharge of Ms. Roushkolb, Roushkolb has suffered general, special, and consequential damages in an amount in excess of Fifteen Thousand Dollars ($15,000.00).

80. The acts and/or omissions of Defendant were fraudulent, malicious, or oppressive under NRS § 42.005.

81. Pursuant to NRS § 42.005, Roushkolb is entitled to an award of punitive damages in excess of Fifteen Thousand Dollars ($15,000.00).

82. It was necessary for Roushkolb to retain the services of an attorney to file this action, which entitles Roushkolb to an award of reasonable attorney's fees and costs in this suit.

COUNT III
DECEPTIVE TRADE PRACTICES
NRS § 598, *et. seq.*

83. Roushkolb hereby realleges and incorporates every allegation of this Complaint as though fully set forth herein.

84. At all times relevant, there was a statute provided in Title 52, Chapter 598 of the Nevada Revised Statutes entitled "Deceptive Trade Practices." NRS § 598.0903, *et. seq.*

85. The Parties herein are subject to the provisions of the Nevada Deceptive Trade Practices Act.

86. In or around June 2018, Plaintiff accepted a job working for Defendant pursuant to a job vacancy posting.

87. This job posting constituted an "advertisement" as defined in NRS § 598.0905 providing for dates, base salary, benefits and other tangible and intangible property interests in exchange for Roushkolb to enter into an employment obligation with

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the Defendant.

88. NRS § 598.092, *et. seq.* defines a person engages in a "deceptive trade practice "when in the course of his or her business or occupation he or she: "knowingly misrepresents the legal rights, obligations or remedies of a party to a transaction" or "[k]nowingly takes advantage of another person's inability to reasonably protect his or her own rights or interests in a consumer transaction when such an inability is due to illiteracy, or to a mental or physical infirmity or another similar condition which manifests itself as an incapability to understand the language or terms of any agreement."

89. By engaging in the practices mentioned herein, and otherwise acting in a deceitful and fraudulent manner, Defendant violated the Nevada's Deceptive Trade Practices Act and damaged Roushkolb.

90. Further in violation of NRS § 598, *et. seq.*, Defendant did one or more of the following acts and/or omissions:

a. Knowingly made a false representation as to the source, sponsorship, approval or certification of goods or services for sale or lease;
b. Used deceptive representations or designations of geographic origin in connection with goods or services for sale or lease;
c. Knowingly made a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith;
d. Represented that goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he knows or should know that they are of another standard, quality, grade, style or model;
e. Advertised goods or services with intent not to sell or lease them as advertised;
f. Made false or misleading statements of fact concerning the price of goods or services for sale or lease, or the reasons for, existence of or amounts of price reductions;
g. Fraudulently altered any contract, written estimate of repair, written statement of charges or other document in connection with the sale or lease of goods or services;
h. Knowingly made any other false representation in a transaction;
i. Failed to disclose a material fact in connection with the sale or lease of goods or services

91. NRS § 598.0923 states in relevant part:

> Deceptive trade practice defined. A person engages in a "deceptive trade practice" when in the course of his or her business or occupation he or she knowingly: (1) Conducts the

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> business or occupation without all required state, county or city licenses. (2) Fails to disclose a material fact in connection with the sale or lease of goods or services. (3) Violates a state or federal statute or regulation relating to the sale or lease of goods or services. (4) Uses coercion, duress or intimidation in a transaction.

92. In addition to the aforementioned acts/omissions and the knowing violations of statutes herein, Defendant further knowingly violated NRS § 613.333, *et. seq.* and terminated Roushkolb.

93. The aforementioned conduct was in violation of the Nevada's Deceptive Trade Practices Act.

94. As a result of the aforementioned acts and/or omissions of Defendant, Roushkolb was damaged.

95. As stated, NRS § 598.0923(4) defines a person engages in a "deceptive trade practice" when "in the course of his or her business or occupation he or she: "knowingly [u]ses coercion, duress or intimidation in a transaction."

96. Defendant terminated Roushkolb's employment on or about July 11, 2018, and informed Roushkolb there would be no reconsideration of his employment.

97. By engaging in the practices mentioned herein including but not limited to engaging in conduct with disregard of the rights of a person with a disability, the Defendant violated the Nevada Deceptive Trade Practices Act.

98. NRS § 598.0973 states, in pertinent part:

> ...if the court finds that a person has engaged in a deceptive trade practice directed toward...a person with a disability, the court may, in addition to any other civil or criminal penalty, impose a civil penalty of not more than $12,500 for each violation. In determining whether to impose a civil penalty...the court shall consider whether:...[t]he conduct of the person was in disregard of the rights of the...person with a disability;[t]he person knew or should have known that his or her conduct was directed toward...a person with a disability;[t]he...person with a disability was more vulnerable to the conduct of the person because of the...health, infirmity, impaired understanding,

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> restricted mobility or disability of the...person with a disability; [t]he conduct of the person caused the...person with a disability to suffer actual and substantial physical, emotional or economic damage; [t]he conduct of the person caused the...person with a disability to suffer: (1) Mental or emotional anguish; (2) The loss of the primary residence of the elderly person or person with a disability; (3) The loss of the principal employment or source of income of the...person with a disability; (4) The loss of money received from a pension, retirement plan or governmental program; (5) The loss of property that had been set aside for retirement or for personal or family care and maintenance; (6) The loss of assets which are essential to the health and welfare of the...person with a disability; or (7) Any other interference with the economic well-being of the...person with a disability, including the encumbrance of his or her primary residence or principal source of income; or (f) Any other factors that the court deems to be appropriate.

99. The aforementioned conduct of the Defendant was in violation of Nevada's Deceptive Trade Practices Act.

100. As a result of the aforementioned acts and/or omissions of the Defendant, Roushkolb was damaged.

101. Pursuant to NRS § 598.0973 and NRS § 598.0977, Roushkolb is entitled to recover actual damages, punitive damages, if appropriate, and reasonable attorney fees. The collection of any restitution awarded pursuant to this section has a priority over the collection of any civil penalty imposed pursuant to NRS § 598.0973.

102. Pursuant to NRS § 598, *et. seq.*, and NRS § 41.600, *et. seq.*, Roushkolb is entitled to all reasonable attorneys' fees, costs, injunctive relief and all damages sustained by them.

COUNT IV
NEGLIGENT HIRING, TRAINING, AND SUPERVISION

103. Roushkolb hereby realleges and incorporates every allegation of this Complaint as though fully set forth herein.

104. Defendant had a duty to exercise reasonable care to protect Roushkolb from negligent and/or careless actions of Defendant's own agents, officers, employees, and others.

105. Defendant owed a duty to Roushkolb to not hire individuals with a propensity towards committing unlawful acts against Roushkolb.

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106. Defendant owed a duty to Roushkolb to adequately train and supervise its employees in regards to all correct policies and procedures relating to medical marijuana laws and/or termination policies and procedures.

107. Defendant breached its duty to protect Roushkolb by failing to properly hire, train, and/or supervise its employees, whereby a reasonable person could have foreseen the injuries of the type Roushkolb suffered would likely occur under the circumstances.

108. As a direct and proximate cause of the foregoing conduct, Roushkolb suffered harm including loss of income and benefits, severe emotional distress including but not limited to great mental and emotional harm, anguish, anxiety, insecurity, damage to self-esteem and self-worth, shame and humiliation, lack of appetite, and loss of sleep and/or anxiety.

COUNT V
VIOLATION OF THE MEDICAL NEEDS OF EMPLOYEE WHO ENGAGES IN MEDICAL USE OF MARIJUANA TO BE ACCOMMODATED BY EMPLOYER
NRS § 453A.010, *et. seq.*

109. Roushkolb hereby realleges and incorporates every allegation of this Complaint as though fully set forth herein.

110. As per NRS § 453A.810, Roushkolb's treating physician provided the Nevada Medical Marijuana Registry with an Attending Physician's Statement prior to reissuing his medical marijuana card on May 14, 2018.

111. Such statement provided that Roushkolb suffered from his chronic medical condition – his PTSD and severe pain.

112. At all times relevant, Roushkolb used medical marijuana in accordance with the provisions of NRS Chapter 453A to mitigate the symptoms or effects of his chronic or debilitating medical condition.

113. Roushkolb did not work for Defendant under the influence of marijuana.

114. Pursuant to NRS § 453A.800(3), Defendant is required to provide Roushkolb with a reasonable accommodation pursuant to his statutory rights to treatment with medical marijuana.

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115. Roushkolb's use of medical marijuana outside of working hours and not on Defendant's premises did not pose a threat of harm or danger to the Defendant.

116. Roushkolb's use of medical marijuana outside of working hours and not on Defendant's premises would not pose a threat of harm or danger to the Defendant.

117. Roushkolb's use of medical marijuana outside of working hours and not on Defendant's premises did not cause undue hardship to the Defendant.

118. Roushkolb's use of medical marijuana outside of working hours and not on Defendant's premises would not cause undue hardship to the Defendant.

119. Roushkolb's use of medical marijuana outside of working hours and not on Defendant's premises did not prevent other employees of the Defendant from fulfilling job responsibilities.

120. Roushkolb's use of medical marijuana outside of working hours and not on Defendant's premises would not prevent other employees of the Defendant from fulfilling job responsibilities.

121. Roushkolb's use of medical marijuana outside of working hours and not on Defendant's premises did not prevent Roushkolb from fulfilling his job responsibilities as provided by the Defendant.

122. Roushkolb's use of medical marijuana outside of working hours and not on Defendant's premises would not have prevented Roushkolb from fulfilling his job responsibilities as provided by the Defendant.

123. Roushkolb never requested or needed accommodation other than a reasonable accommodation not to terminate him, despite a positive indication for medical marijuana consistent with the recommended therapeutic usage for his serious medical condition.

124. Roushkolb engaged in activity protected under Nevada law when Roushkolb requested a reasonable accommodation pursuant to his rights provided by NRS § 453A.800(3).

125. At no time did Plaintiff violate any lawful requirement regarding the

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possession, use, and or control of medical marijuana in Nevada.

126. At all times relevant, Plaintiff was in compliance with all laws regarding the use, possession, or control of medical marijuana in Nevada.

127. The Defendant failed to provide Roushkolb with a reasonable accommodation and subjected Roushkolb to adverse employment actions, including terminating Roushkolb.

128. As a result of the Defendant's conduct, as set forth herein, Roushkolb has been required to retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof, has been damaged thereby, and is entitled to reasonable attorney's fees and costs.

129. The conduct of Defendant has been malicious, fraudulent, or oppressive and was designed to vex, annoy, harass, or humiliate Roushkolb. Thus, Roushkolb is entitled to punitive damages with respect to his claim against Defendant.

WHEREFORE, Plaintiff prays for a judgment against Defendant as follows:

A. All damages and penalties allowed under NRS § 453A, *et. seq.*;

B. All damages and penalties allowed under Nev. Const. art. IV, § 38;

C. All damages and penalties allowed under NRS § 598, *et. seq.*;

D. All damages and penalties allowed under NRS § 613.333, *et. seq.*;

E. For general damages in excess of $15,000.00;

F. Liquidated damages in an amount equal to the amount of lost or unpaid compensation found due;

G. For special damages, where applicable, in excess of $15,000.00;

H. For compensatory damages in excess of $15,000.00;

I. Prejudgment and Post-Judgement Interest;

J. For reasonable attorney's fees and costs incurred in filing this action;

K. For punitive damages on claims warranting such damages; and

L. Such other and further relief, including all equitable and declaratory relief, as this Honorable Court deems appropriate and just.

Dated this 12th day of November, 2019.

GABROY LAW OFFICES
170 S. Green Valley Pkwy., Suite 280
Henderson, Nevada 89012
(702) 259-7777 FAX: (702) 259-7704

Respectfully submitted,

GABROY LAW OFFICES

By: _/s/ Christian Gabroy_____
Christian Gabroy (#8805)
Justin A. Shiroff (#12869)
The District at Green Valley Ranch
170 South Green Valley Parkway,
Suite 280
Henderson, Nevada 89012
Tel: (702) 259-7777
Fax: (702) 259-7704
christian@gabroy.com
jshiroff@gabroy.com
Attorneys for Plaintiff

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EXHIBIT I

Nevada Medical Marijuana Registry

Attending Healthcare Provider Statement

Issuance of a State of Nevada Medical Marijuana Card does not exempt the holder from prosecution under federal law. Per NRS 453A.810 "The State must not be held responsible for any deleterious outcomes from the medical use of marijuana by any person".

Instructions

Please complete all information in order to comply with the registration requirements of NRS 453A. This form does not constitute a prescription for marijuana.

Applicant

NAME (First, Middle, Last)	CARDHOLDER BIRTH DATE
JAMES ARTHUR ROUSHKOLB	[redacted]
CAREGIVER (if there is one) (First, Middle, Last)	**CAREGIVER BIRTH DATE**

Healthcare Provider

NAME (First, Middle, Last)	LICENSE/CERTIFICATION NUMBER
Carmen Jones MD	[redacted]
OFFICE ADDRESS	**OFFICE PHONE NUMBER**
601 Whitney Ranch Dr Ste C-13	702-800-7479
OFFICE CITY, STATE, ZIPCODE	**HEALTHCARE PROVIDER TYPE**
Henderson, NV 89014	☒ MD ☐ DO ☐ OTHER
REGISTRATION TERM (default is 1 year) Select the length of the cardholder application ☒ 1 Year ☐ 2 Years	**IF OTHER, PROVIDE TYPE**
PHYSICIAN NAME (if provider is a Physician Assistant) (First, Middle, Last)	**PHYSICIAN LICENSE NUMBER**

Healthcare Provider's Statement

☐ Acquired Immune Deficiency Syndrome (AIDS)	☒ Post-Traumatic Stress Disorder (PTSD)	☐ Cancer	☐ Glaucoma
COMMENTS	☐ Cachexia	☒ Severe pain	
	☐ Severe nausea	☐ Seizures, including without limitation, seizures caused by epilepsy	
	☐ Persistent muscle spasms, including, but not limited to, spasms caused by multiple sclerosis		

Signature and Date

I hereby certify that I, a healthcare provider licensed/certified to practice in Nevada under NRS 629, 630 or 633, have primary responsibility for the care and treatment of the above-named patient. I am authorized to write a prescription for a medication to treat a chronic or debilitating medical condition.

The above-named patient has been diagnosed with a debilitating medical condition. Marijuana may mitigate the symptoms or effects of this patient's condition.

I approve of the above-named caregiver (if there is one). I have explained to the above-named patient and the above named caregiver (if any named) the possible risks and benefits of the medical use of marijuana. I also certify that I have seen a photo identification of this patient and caregiver (if there is one) verifying that he/she is the patient or caregiver (if there is one) named on this "Attending Healthcare Provider Statement."

I will keep and maintain valid written documentation to support everything I am affirming in this statement in my files for the applicant.

I have obtained the consent from the above-named patient to make such written documentation available to the Division of Public and Behavioral Health and I will make such records available to the Division upon request.

This is not a prescription for the use of medical marijuana.

HEALTHCARE PROVIDER SIGNATURE (sign in blue ink only)	DATE
PHYSICIAN SIGNATURE (if provider is a Physician Assistant) (sign in blue ink only)	**DATE**
	5/12/18

Paul T. Trimmer
Nevada State Bar No. 9291
Lynne K. McChrystal
Nevada State Bar No. 14739
JACKSON LEWIS P.C.
300 S. Fourth Street, Suite 900
Las Vegas, Nevada 89101
Tel: (702) 921-2460
Email: paul.trimmer@jacksonlewis.com
lynne.mcchrystal@jacksonlewis.com

Attorneys for Defendant
Freeman Expositions, LLC
Improperly Named The Freeman Company, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JAMES ROUSHKOLB, Plaintiff, vs. THE FREEMAN COMPANY, LLC, a Domestic Corporation; EMPLOYEE(S)/AGENT(S) DOES I-X; and ROE CORPORATIONS XI-XX, Inclusive, Defendants.	Case No. **NOTICE OF REMOVAL OF ACTION TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA PURSUANT TO 28 U.S.C. §§ 1331 and 1441(a)** [Filed concurrently with Civil Cover Sheet and Certificate of Interested Parties]

Pursuant to 28 U.S.C. §§ 1331 and 1441(a), Defendant FREEMAN EXPOSITIONS, LLC improperly named as THE FREEMAN COMPANY, LLC ("Defendant") hereby notifies the Court of the removal of *JAMES ROUSHKOLB v. THE FREEMAN COMPANY, LLC, a Domestic Corporation; EMPLOYEE(S)/AGENT(S) DOE I-X, and ROE CORPORATIONS XI-SS, Inclusive*, Case No. A-19-805268-C, which was filed in the Eighth Judicial District Court in Clark County, Nevada. In support of said removal, Defendant states as follows:

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SERVICE AND PLEADINGS FILED IN STATE COURT

1. The Plaintiff, James Roushkolb, commenced this action in the Eighth Judicial District Court of Clark County, Nevada, entitled *JAMES ROUSHKOLB v. THE FREEMAN COMPANY, LLC, a Domestic Corporation; EMPLOYEE(S)/AGENT(S) DOE I-X, and ROE CORPORATIONS XI-XX, Inclusive.* A copy of the Complaint ("Compl.") that he filed on November 12, 2019 is attached hereto as **Exhibit A**.

2. Plaintiff served Defendant with a copy of the Complaint and a Summons on November 14, 2019. The Summons is attached hereto as **Exhibit B.**

3. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. §1331, because, as described in more detail below, Plaintiff's First (Compl. ¶¶ 69-76), Second (Compl. ¶¶ 77-82), and Fourth claims (Compl. ¶¶ 103-108) are preempted by Section 301 of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.SC. § 185(a).

4. In his Complaint, Plaintiff names The Freeman Company, LLC as his employer and the defendant. This is incorrect. Plaintiff was employed by Freeman Expositions, LLC ("Freeman Expositions"), which is a foreign limited liability company, organized under the law of Texas. Freeman Expositions is currently, and at the time of Roushkolb's employment, party to a collective bargaining agreement[1] with Plaintiff's collective bargaining representative, Teamsters Local 631.)[2]

5. The terms and conditions of Roushkolb's employment were governed by the collective bargaining agreement. That agreement contains an extensively negotiated drug and alcohol provision which prohibits employees, including Plaintiff, from using, possessing, or otherwise being under the influence of drugs at a job site. (**Ex. C** at Article 15.) The collective bargaining agreement also contains provisions which govern both the discipline, discharge, or issuance of a letter of no dispatch to employees (**Ex. C** at Article 14), as well as a dispute

---

[1] A true and correct copy of the applicable collective bargaining agreement is attached as **Exhibit C**.

[2] Unless otherwise noted, the allegations contained herein are taken from Plaintiff's Complaint. Defendant's use of Plaintiff's allegations for that purpose is not an admission that one or any of them are true.

resolution provision which requires employees to challenge such adverse action by filing a grievance with the union and pursuing that claim through arbitration. (**Ex. C** at Article 13).

6. Plaintiff's First (Compl. ¶¶ 69-76), Second (Compl. ¶¶ 77-82), and Fourth claims (Compl. ¶¶ 103-108), concern Plaintiff's alleged right to use medical marijuana and the propriety of his discharge for such use under the collective bargaining agreement. Their resolution would require the Court to interpret, among others, Articles 13, 14 and 15 of the collective bargaining agreement. They are therefore completely preempted Section 301 of the LMRA, 29 U.S.C. § 185(a). *See Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 403-04 (1988); *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 211 (1985); *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 451 (1957); *Young v. Anthony's Fish Grottos*, 830 F.2d 993, 997 (9th Cir. 1987)).

7. The Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a) because those allegations are related to Plaintiff's First, Second and Fourth claims and are part of the same case or controversy.

TIMELINESS OF REMOVAL

8. This Notice of Removal is being filed within thirty (30) days of receipt of any pleadings setting forth the claim for relief upon which the action is based and is, therefore, timely under 28 U.S.C. § 1331 and § 1446(b).

NOTICE TO ALL PARTIES AND STATE COURT

9. In accordance with 28 U.S.C. § 1446(d), the undersigned counsel certifies that a copy of this Notice of Removal and all supporting papers promptly will be served on Plaintiff's counsel and filed with the Clerk of the Eighth Judicial District Court of Clark County, Nevada. Therefore, all procedural requirements under 28 U.S.C. § 1446 have been satisfied.

VENUE

10. Venue is proper in this Court as this is the court for the district and division embracing the place where the action is pending in state court. 28 U.S.C. § 1391.

WHEREFORE, Defendant prays that the above-referenced action now pending in the Eighth Judicial District Court of the State of Nevada in and for the County of Clark be removed therefrom to this Court.

Dated this 5th day of December, 2019.

JACKSON LEWIS P.C.

/s/ Paul T. Trimmer
Paul T. Trimmer, Bar #9291
Lynne K. McChrystal, Bar #14739
300 S. Fourth Street, Suite 900
Las Vegas, Nevada 89101

Attorneys for Defendant
Freeman Expositions, LLC
Improperly Named The Freeman Company, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Jackson Lewis P.C., and that on this 5th day of December, 2019, I caused to be served via the Court's CM/ECF, a true and correct copy of the above foregoing **NOTICE TO FEDERAL COURT OF REMOVAL OF CIVIL ACTION FROM STATE COURT** properly addressed to the following:

Christian Gabroy
Justin A. Shiroff
GABROY LAW OFFICES
The District at Green Valley Ranch
170 South Green Valley Parkway, Suite 280
Henderson, Nevada 89012

Attorney for Plaintiff James Roushkolb

/s/ Mayela E. McArthur
Employee of Jackson Lewis P.C.

4835-7522-5774, v. 1

EXHIBIT A

Electronically Filed
11/12/2019 2:48 PM
Steven D. Grierson
CLERK OF THE COURT

COMJD
GABROY LAW OFFICES
Christian Gabroy (#8805)
Justin A. Shiroff (#12869)
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jshiroff@gabroy.com
Attorneys for Plaintiff

CASE NO: A-19-805268-C
Department 8

DISTRICT COURT
EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY NEVADA

JAMES ROUSHKOLB, an individual;

Plaintiff,

vs.

THE FREEMAN COMPANY, LLC, a Domestic Corporation; EMPLOYEE(S)/AGENT(S) DOES I-X; and ROE CORPORATIONS XI-XX, inclusive;

Defendant.

Case No.:
Dept.:

COMPLAINT WITH JURY DEMAND

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Henderson, Nevada 89012
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COMES NOW Plaintiff James Roushkolb ("Plaintiff" or "Roushkolb") by and through his attorneys, Christian Gabroy, Esq. and Justin A. Shiroff, Esq. of Gabroy Law Offices, and hereby alleges and complains against The Freeman Company, LLC ("Defendant" or "Freeman") as follows:

JURISDICTION AND VENUE

1. This is a civil action for damages under state laws prohibiting unlawful employment actions and to secure the protection of and to redress deprivation of rights under these laws.

2. This Court has jurisdiction over all claims arising under Nevada law.

3. Jurisdiction is based upon the Nevada State Constitution Article 4 and NRS Chapters 453, 598, and 613.

4. Venue is proper because the Plaintiff is a resident of Clark County, Nevada, and the acts complained of took place in Clark County, Nevada.

5. Plaintiff demands a jury trial on all triable issues.

THE PARTIES

6. At all relevant times, Roushkolb was an individual residing in Clark County, Nevada.

7. On or about the winter of 1995, Roushkolb, a former corrections officer with the Cuyahoga County Sheriff's Department, was ambushed, assaulted, and nearly killed by a dangerous inmate who is currently incarcerated at the Marion Correctional Institution.

8. As a result of this brutal physical assault, Roushkolb was diagnosed with post-traumatic stress disorder ("PTSD") and severe pain.

9. PTSD qualifies as a mental disability under Title 20 of the Code of Federal Regulations. 20 C.F.R. § Pt. 404, Subpt. P, App. 1.

10. Despite his disability, Roushkolb still acts as a primary caregiver for his 92-year old father, a veteran of World War II.

11. In connection with his disability, Roushkolb was recommended treatment with medical marijuana by his doctor, Carmen Jones M.D. A true and correct copy of Dr. Jones' Attending Healthcare Provider Statement, dated May 12, 2018 is attached here as Exhibit 1.

12. Roushkolb's normal practice for taking his recommended medical marijuana is to consume the proper amount of edible THC products before bed.

13. Roushkolb would ingest the edibles no later than 10 p.m. on any given evening.

14. The effects of edible THC products wear off after approximately five (5) hours.

15. Upon information and belief, at all relevant times, Defendant was a Domestic Limited Liability Company that is registered with the Nevada Secretary of State to conduct business within the State of Nevada.

16. At all times relevant, Defendant was conducting business in Clark County, Nevada.

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17. At all times relevant, Roushkolb was a "person with a disability" as that term is defined in NRS § 598.0936.

18. Defendant "employed" Roushkolb as that term is defined in NRS Chapters 453 and 613.

19. At all relevant times, Defendant was an "employer" as defined by NRS § 613.310(2) in that Defendant had 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

20. At all relevant times, Defendant had custody or control over Roushkolb and his employment, and was responsible for Roushkolb's labor and employment matters when Defendant employed Roushkolb.

21. DOE DEFENDANTS I-X, inclusive, are persons and ROE DEFENDANTS XI-XX, inclusive, are corporations or business entities (collectively referred to as "DOE/ROE DEFENDANTS"), whose true identities are unknown to Roushkolb at this time. These DOE/ROE DEFENDANTS may be parent companies, subsidiary companies, owners, predecessor or successor entities, or business advisors, de facto partners, Roushkolb's employer, or joint venturers of Defendant. Individual DOE DEFENDANTS are persons acting on behalf of or at the direction of any Defendant or who may be officers, employees, or agents of Defendant and/or a ROE CORPORATION or a related business entity. These DOE/ROE DEFENDANTS were Plaintiff's employer(s) and/or individuals and are liable for Roushkolb's damages alleged herein for their unlawful employment actions/omissions. Roushkolb will seek leave to amend this Complaint as soon as the true identities of DOE/ROE DEFENDANTS are revealed to Roushkolb.

FACTUAL ALLEGATIONS

Marijuana Legalization in Nevada

22. In the 1998 and 2000 general election, Nevada voters approved of an initiative petition for the use of marijuana for medical purposes by Nevadans, and the amendment was added to Nevada's Constitution in 2000.

23. It is clear and explicit public policy of the State of Nevada as embodied in

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our state constitutional framework and other laws that the people of Nevada, including but not limited to Plaintiff, shall have the right to medical marijuana as directed, conditioned, or restricted by the Legislature.

24. Nev. Const. art. IV, § 38 provides the "legislature shall provide by law for the use by a patient, upon the advice of his physician, of a plant of the genus Cannabis for the treatment or alleviation of severe, persistent...chronic or debilitating medical conditions."

25. Since 2001, the Nevada legislature has approved the medical use of marijuana, expressing: "...the State of Nevada as a sovereign state has the duty to carry out the will of the people of this state and to regulate the health, medical practices and well-being of those people in a manner that respects their personal decisions concerning the relief of suffering through the medical use of marijuana..."

26. In 2001, the legislature exercised its power under the initiative by passing A.B. 453 which established Nevada's laws, codified in NRS Chapter 453A, regulating the use of medical marijuana. A.B. 453, 2001 Nev. Stat., ch. 592, §§ 2-33, at 3053-66.

27. When the Legislature passed A.B. 453, it explained in the preamble that it intended for the bill to "carry out the will of the people of this state and to regulate the health, medical practices and well-being of those people in a manner that respects their personal decisions concerning the relief of suffering through the medical use of marijuana." A.B. 453, 2001 Nev. Stat., ch. 592, preamble, at 3053.

28. NRS § 453A.120 provides the statutory definition for the medical use of marijuana, stating:

> The 'medical use of marijuana' means: (1) the possession, delivery, production or use of marijuana; (2) the possession, delivery or use of paraphernalia used to administer marijuana; or (3) any combination of the acts described in subsections 1 and 2, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her chronic or debilitating medical condition.

29. Nevada began offering medical marijuana registration cards to identify patients using medical marijuana, such as Roushkolb treating his chronic medical condition.

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30. NRS § 453A.800(3) states the employers are required to provide medical marijuana patients such as Roushkolb with a reasonable accommodation pursuant to his statutory rights to treatment with medical marijuana, stating in pertinent part:

> "...the employer must attempt to make reasonable accommodations for the medical needs of an employee who engages in the medical use of marijuana if the employee holds a valid registry identification card, provided that such reasonable accommodation would not: (a) Pose a threat of harm or danger to persons or property or impose an undue hardship on the employer; or (b) Prohibit the employee from fulfilling any and all of his or her job responsibilities."

31. Pursuant to NRS § 453A.800(3), employers must attempt to make reasonable accommodations for the medical needs of medical marijuana patients such as Roushkolb.

32. There are no Nevada laws regulating the use of drug and alcohol testing by private employers currently in effect.

33. Thus, the Defendant is the exclusive author of all policies and procedures regarding its pre-employment drug screenings and drug testing.

34. In 2016, the sale and consumption of marijuana for recreational use was legalized in Nevada.

35. NRS § 453D.110 codified the legalization of recreational marijuana within Nevada.

36. Pursuant to NRS § 453D.110 and Nev. Const. art. IV, § 38, the consumption of marijuana products (especially those consumed under a medical marijuana card), is legal and exempt from prosecution.

Roushkolb's Employment with Freeman

37. At all times relevant to this dispute, Roushkolb suffered from PTSD, a disability that substantially limits one or more of his major life activities.

38. At all relevant times, Roushkolb was a properly-credentialed Nevada medical marijuana patient.

39. In accordance with Nevada law, the State of Nevada reissued Roushkolb's

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Medical Marijuana Patient Identification Card on or about May 14, 2018.

40. Roushkolb accepted the available Journeyman position with the Defendant.

41. Defendant hired Roushkolb in or around January 2018.

42. Roushkolb was provided a Job Description, issued by the Defendant, for employment as a Journeyman in the Defendant's facility.

43. Through his nonworking hours, off-site medical marijuana treatments, Roushkolb was able to complete all necessary job functions of his position with Defendant.

44. In or around June 2018, Roushkolb, in his capacity as Defendant's employee, was working to 'tear down', or systematically dismantle and put away exhibits and rigging, following the close of a convention.

45. Roushkolb's work was initially led by a Freeman employee named "JR" (full name unknown).

46. On the relevant day, Roushkolb thought that JR smelled strongly of alcohol.

47. That same day, JR went to see the manager about purportedly not feeling well.

48. JR was subsequently sent home from the job by Freeman management.

49. In JR's absence, Roushkolb took on duties as lead for tear down on the exhibit in question.

50. As Roushkolb was short-handed tearing down the exhibit he was working on, Darren (last name unknown) – another Freeman employee – came over to assist.

51. Despite not having a scissor lift or other proper equipment, Freeman management ordered Roushkolb to tear down a large piece of plexiglass suspended approximately fifteen feet off the ground.

52. Roushkolb and Darren were forced to use a single, two-sided, twelve-foot high ladder to try and lower the plexiglass.

53. Darren ascended the ladder first and began to loosen the fasteners holding the plexiglass up.

54. Before Roushkolb could get into position and get a grip on his side of the

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glass, Darren let go, causing the glass to fall to the floor and shatter.

55. No one, including Roushkolb and Darren, was injured in any way by the plexiglass falling to the floor.

56. Roushkolb was not impaired in any way the time of the incident.

57. Roushkolb took a break following the incident, though he did not leave the worksite.

58. Upon returning from his break, two Freeman safety officers were stationed at the location where the plexiglass fell.

59. The Freeman safety officers insisted that Roushkolb take a drug test following the incident.

60. Initially, Freeman representatives indicated that following the accident, they contacted the exhibit's owner and the exhibit's owner requested the drug test.

61. Upon information and belief, the exhibit's owner later refuted this, indicating that they did not request a drug test.

62. Upon information and belief, Roushkolb's coworker Darren was the one who demanded a drug test for Roushkolb.

63. Roushkolb underwent a drug test as directed by the Defendant.

64. Roushkolb tested positive only for THC, consistent with his medical marijuana usage.

65. As a result of the positive test outcome, the Defendant terminated Roushkolb on or about July 11, 2018.

66. Defendant terminated Roushkolb because he tested positive for marijuana use consistent with his physician-recommended usage.

67. Defendant never offered Roushkolb any reasonable accommodation for his medical marijuana usage as required by NRS § 453A.800(3).

68. Defendant failed to engage in any interactive process with Roushkolb concerning his use of medical marijuana, away from Defendant's work site and during his non-working hours.

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COUNT I
UNLAWFUL EMPLOYMENT PRACTICES: DISCRIMINATION FOR LAWFUL USE OF ANY PRODUCT OUTSIDE PREMISES OF EMPLOYER WHICH DOES NOT ADVERSELY AFFECT JOB PERFORMANCE OR SAFETY OF OTHER EMPLOYEES NRS § 613.333, *et. seq.*

69. Roushkolb hereby realleges and incorporates every allegation of this Complaint as though fully set forth herein.

70. At all times relevant, the parties herein are subject to the provisions of NRS § 613.333, *et seq.*, entitled "Unlawful Employment Practices: Discrimination For Lawful Use Of Any Product Outside Premises Of Employer Which Does Not Adversely Affect Job Performance Or Safety Of Other Employees."

71. Defendant discriminatorily terminated Roushkolb, because Roushkolb engaged in the lawful use of medical marijuana outside the premises of the Defendant during his non-working hours.

72. Such non-working hours/offsite use of medical marijuana does not adversely affect either Roushkolb's ability to perform his job or the safety of other employees.

73. At no time did Roushkolb work for Defendant under the influence of marijuana.

74. By engaging in the practices mentioned herein, Defendant violated NRS § 613.333, *et. seq.*

75. Pursuant to NRS § 613.333(2), Roushkolb is entitled to any wages and benefits lost as a result of the Defendant terminating Roushkolb and an order directing the employer to reinstate Roushkolb's employment.

76. Additionally, pursuant to NRS § 613.333(3), Roushkolb is entitled to reasonable costs, including court costs and attorneys' fees.

COUNT II
TORTIOUS DISCHARGE – VIOLATION OF PUBLIC POLICY
NEVADA'S PUBLIC POLICY FOR THE RIGHTS OF USE OF MEDICAL MARIJUANA

77. Roushkolb hereby realleges and incorporates every allegation of this Complaint as though fully set forth herein.

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78. Defendant terminated Roushkolb for reasons which violate public policy including, but not limited to, Nevada's public policy against terminating an employee for the lawful use of medical marijuana outside of an employer's place of business during the employee's non-working hours.

79. As a proximate result of Defendant's tortious discharge of Ms. Roushkolb, Roushkolb has suffered general, special, and consequential damages in an amount in excess of Fifteen Thousand Dollars ($15,000.00).

80. The acts and/or omissions of Defendant were fraudulent, malicious, or oppressive under NRS § 42.005.

81. Pursuant to NRS § 42.005, Roushkolb is entitled to an award of punitive damages in excess of Fifteen Thousand Dollars ($15,000.00).

82. It was necessary for Roushkolb to retain the services of an attorney to file this action, which entitles Roushkolb to an award of reasonable attorney's fees and costs in this suit.

COUNT III
DECEPTIVE TRADE PRACTICES
NRS § 598, *et. seq.*

83. Roushkolb hereby realleges and incorporates every allegation of this Complaint as though fully set forth herein.

84. At all times relevant, there was a statute provided in Title 52, Chapter 598 of the Nevada Revised Statutes entitled "Deceptive Trade Practices." NRS § 598.0903, *et. seq.*

85. The Parties herein are subject to the provisions of the Nevada Deceptive Trade Practices Act.

86. In or around June 2018, Plaintiff accepted a job working for Defendant pursuant to a job vacancy posting.

87. This job posting constituted an "advertisement" as defined in NRS § 598.0905 providing for dates, base salary, benefits and other tangible and intangible property interests in exchange for Roushkolb to enter into an employment obligation with

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the Defendant.

88. NRS § 598.092, *et. seq.* defines a person engages in a "deceptive trade practice "when in the course of his or her business or occupation he or she: "knowingly misrepresents the legal rights, obligations or remedies of a party to a transaction" or "[k]nowingly takes advantage of another person's inability to reasonably protect his or her own rights or interests in a consumer transaction when such an inability is due to illiteracy, or to a mental or physical infirmity or another similar condition which manifests itself as an incapability to understand the language or terms of any agreement."

89. By engaging in the practices mentioned herein, and otherwise acting in a deceitful and fraudulent manner, Defendant violated the Nevada's Deceptive Trade Practices Act and damaged Roushkolb.

90. Further in violation of NRS § 598, *et. seq.*, Defendant did one or more of the following acts and/or omissions:

a. Knowingly made a false representation as to the source, sponsorship, approval or certification of goods or services for sale or lease;
b. Used deceptive representations or designations of geographic origin in connection with goods or services for sale or lease;
c. Knowingly made a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith;
d. Represented that goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he knows or should know that they are of another standard, quality, grade, style or model;
e. Advertised goods or services with intent not to sell or lease them as advertised;
f. Made false or misleading statements of fact concerning the price of goods or services for sale or lease, or the reasons for, existence of or amounts of price reductions;
g. Fraudulently altered any contract, written estimate of repair, written statement of charges or other document in connection with the sale or lease of goods or services;
h. Knowingly made any other false representation in a transaction;
i. Failed to disclose a material fact in connection with the sale or lease of goods or services

91. NRS § 598.0923 states in relevant part:

> Deceptive trade practice defined. A person engages in a "deceptive trade practice" when in the course of his or her business or occupation he or she knowingly: (1) Conducts the

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> business or occupation without all required state, county or city licenses. (2) Fails to disclose a material fact in connection with the sale or lease of goods or services. (3) Violates a state or federal statute or regulation relating to the sale or lease of goods or services. (4) Uses coercion, duress or intimidation in a transaction.

92. In addition to the aforementioned acts/omissions and the knowing violations of statutes herein, Defendant further knowingly violated NRS § 613.333, *et. seq.* and terminated Roushkolb.

93. The aforementioned conduct was in violation of the Nevada's Deceptive Trade Practices Act.

94. As a result of the aforementioned acts and/or omissions of Defendant, Roushkolb was damaged.

95. As stated, NRS § 598.0923(4) defines a person engages in a "deceptive trade practice" when "in the course of his or her business or occupation he or she: "knowingly [u]ses coercion, duress or intimidation in a transaction."

96. Defendant terminated Roushkolb's employment on or about July 11, 2018, and informed Roushkolb there would be no reconsideration of his employment.

97. By engaging in the practices mentioned herein including but not limited to engaging in conduct with disregard of the rights of a person with a disability, the Defendant violated the Nevada Deceptive Trade Practices Act.

98. NRS § 598.0973 states, in pertinent part:

> ...if the court finds that a person has engaged in a deceptive trade practice directed toward...a person with a disability, the court may, in addition to any other civil or criminal penalty, impose a civil penalty of not more than $12,500 for each violation. In determining whether to impose a civil penalty...the court shall consider whether:...[t]he conduct of the person was in disregard of the rights of the...person with a disability;[t]he person knew or should have known that his or her conduct was directed toward...a person with a disability;[t]he...person with a disability was more vulnerable to the conduct of the person because of the...health, infirmity, impaired understanding,

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> restricted mobility or disability of the...person with a disability; [t]he conduct of the person caused the...person with a disability to suffer actual and substantial physical, emotional or economic damage; [t]he conduct of the person caused the...person with a disability to suffer: (1) Mental or emotional anguish; (2) The loss of the primary residence of the elderly person or person with a disability; (3) The loss of the principal employment or source of income of the...person with a disability; (4) The loss of money received from a pension, retirement plan or governmental program; (5) The loss of property that had been set aside for retirement or for personal or family care and maintenance; (6) The loss of assets which are essential to the health and welfare of the...person with a disability; or (7) Any other interference with the economic well-being of the...person with a disability, including the encumbrance of his or her primary residence or principal source of income; or (f) Any other factors that the court deems to be appropriate.

99. The aforementioned conduct of the Defendant was in violation of Nevada's Deceptive Trade Practices Act.

100. As a result of the aforementioned acts and/or omissions of the Defendant, Roushkolb was damaged.

101. Pursuant to NRS § 598.0973 and NRS § 598.0977, Roushkolb is entitled to recover actual damages, punitive damages, if appropriate, and reasonable attorney fees. The collection of any restitution awarded pursuant to this section has a priority over the collection of any civil penalty imposed pursuant to NRS § 598.0973.

102. Pursuant to NRS § 598, *et. seq.*, and NRS § 41.600, *et. seq.*, Roushkolb is entitled to all reasonable attorneys' fees, costs, injunctive relief and all damages sustained by them.

COUNT IV
NEGLIGENT HIRING, TRAINING, AND SUPERVISION

103. Roushkolb hereby realleges and incorporates every allegation of this Complaint as though fully set forth herein.

104. Defendant had a duty to exercise reasonable care to protect Roushkolb from negligent and/or careless actions of Defendant's own agents, officers, employees, and others.

105. Defendant owed a duty to Roushkolb to not hire individuals with a propensity towards committing unlawful acts against Roushkolb.

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106. Defendant owed a duty to Roushkolb to adequately train and supervise its employees in regards to all correct policies and procedures relating to medical marijuana laws and/or termination policies and procedures.

107. Defendant breached its duty to protect Roushkolb by failing to properly hire, train, and/or supervise its employees, whereby a reasonable person could have foreseen the injuries of the type Roushkolb suffered would likely occur under the circumstances.

108. As a direct and proximate cause of the foregoing conduct, Roushkolb suffered harm including loss of income and benefits, severe emotional distress including but not limited to great mental and emotional harm, anguish, anxiety, insecurity, damage to self-esteem and self-worth, shame and humiliation, lack of appetite, and loss of sleep and/or anxiety.

COUNT V
VIOLATION OF THE MEDICAL NEEDS OF EMPLOYEE WHO ENGAGES IN MEDICAL USE OF MARIJUANA TO BE ACCOMMODATED BY EMPLOYER
NRS § 453A.010, *et. seq.*

109. Roushkolb hereby realleges and incorporates every allegation of this Complaint as though fully set forth herein.

110. As per NRS § 453A.810, Roushkolb's treating physician provided the Nevada Medical Marijuana Registry with an Attending Physician's Statement prior to reissuing his medical marijuana card on May 14, 2018.

111. Such statement provided that Roushkolb suffered from his chronic medical condition – his PTSD and severe pain.

112. At all times relevant, Roushkolb used medical marijuana in accordance with the provisions of NRS Chapter 453A to mitigate the symptoms or effects of his chronic or debilitating medical condition.

113. Roushkolb did not work for Defendant under the influence of marijuana.

114. Pursuant to NRS § 453A.800(3), Defendant is required to provide Roushkolb with a reasonable accommodation pursuant to his statutory rights to treatment with medical marijuana.

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115. Roushkolb's use of medical marijuana outside of working hours and not on Defendant's premises did not pose a threat of harm or danger to the Defendant.

116. Roushkolb's use of medical marijuana outside of working hours and not on Defendant's premises would not pose a threat of harm or danger to the Defendant.

117. Roushkolb's use of medical marijuana outside of working hours and not on Defendant's premises did not cause undue hardship to the Defendant.

118. Roushkolb's use of medical marijuana outside of working hours and not on Defendant's premises would not cause undue hardship to the Defendant.

119. Roushkolb's use of medical marijuana outside of working hours and not on Defendant's premises did not prevent other employees of the Defendant from fulfilling job responsibilities.

120. Roushkolb's use of medical marijuana outside of working hours and not on Defendant's premises would not prevent other employees of the Defendant from fulfilling job responsibilities.

121. Roushkolb's use of medical marijuana outside of working hours and not on Defendant's premises did not prevent Roushkolb from fulfilling his job responsibilities as provided by the Defendant.

122. Roushkolb's use of medical marijuana outside of working hours and not on Defendant's premises would not have prevented Roushkolb from fulfilling his job responsibilities as provided by the Defendant.

123. Roushkolb never requested or needed accommodation other than a reasonable accommodation not to terminate him, despite a positive indication for medical marijuana consistent with the recommended therapeutic usage for his serious medical condition.

124. Roushkolb engaged in activity protected under Nevada law when Roushkolb requested a reasonable accommodation pursuant to his rights provided by NRS § 453A.800(3).

125. At no time did Plaintiff violate any lawful requirement regarding the

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possession, use, and or control of medical marijuana in Nevada.

126. At all times relevant, Plaintiff was in compliance with all laws regarding the use, possession, or control of medical marijuana in Nevada.

127. The Defendant failed to provide Roushkolb with a reasonable accommodation and subjected Roushkolb to adverse employment actions, including terminating Roushkolb.

128. As a result of the Defendant's conduct, as set forth herein, Roushkolb has been required to retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof, has been damaged thereby, and is entitled to reasonable attorney's fees and costs.

129. The conduct of Defendant has been malicious, fraudulent, or oppressive and was designed to vex, annoy, harass, or humiliate Roushkolb. Thus, Roushkolb is entitled to punitive damages with respect to his claim against Defendant.

WHEREFORE, Plaintiff prays for a judgment against Defendant as follows:

A. All damages and penalties allowed under NRS § 453A, *et. seq.*;

B. All damages and penalties allowed under Nev. Const. art. IV, § 38;

C. All damages and penalties allowed under NRS § 598, *et. seq.*;

D. All damages and penalties allowed under NRS § 613.333, *et. seq.*;

E. For general damages in excess of $15,000.00;

F. Liquidated damages in an amount equal to the amount of lost or unpaid compensation found due;

G. For special damages, where applicable, in excess of $15,000.00;

H. For compensatory damages in excess of $15,000.00;

I. Prejudgment and Post-Judgement Interest;

J. For reasonable attorney's fees and costs incurred in filing this action;

K. For punitive damages on claims warranting such damages; and

L. Such other and further relief, including all equitable and declaratory relief, as this Honorable Court deems appropriate and just.

Dated this 12th day of November, 2019.

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Respectfully submitted,

GABROY LAW OFFICES

By: _/s/ Christian Gabroy_____
Christian Gabroy (#8805)
Justin A. Shiroff (#12869)
The District at Green Valley Ranch
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Tel: (702) 259-7777
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christian@gabroy.com
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Attorneys for Plaintiff

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EXHIBIT I

Nevada Medical Marijuana Registry

Attending Healthcare Provider Statement

Issuance of a State of Nevada Medical Marijuana Card does not exempt the holder from prosecution under federal law. Per NRS 453A.810 "The State must not be held responsible for any deleterious outcomes from the medical use of marijuana by any person".

Instructions

Please complete all information in order to comply with the registration requirements of NRS 453A. This form does not constitute a prescription for marijuana.

Applicant

NAME (First, Middle, Last)	CARDHOLDER BIRTH DATE
JAMES ARTHUR ROUSHKOLB	[redacted]
CAREGIVER (if there is one) (First, Middle, Last)	CAREGIVER BIRTH DATE

Healthcare Provider

NAME (First, Middle, Last)	LICENSE/CERTIFICATION NUMBER
Carmen Jones MD	[redacted]
OFFICE ADDRESS: 601 Whitney Ranch Dr Ste C-13	OFFICE PHONE NUMBER: 702-800-7479
OFFICE CITY, STATE, ZIPCODE: Henderson, NV 89014	HEALTHCARE PROVIDER TYPE: ☒ MD ☐ DO ☐ OTHER
REGISTRATION TERM (default is 1 year) Select the length of the cardholder application: ☒ 1 Year ☐ 2 Years	IF OTHER, PROVIDE TYPE
PHYSICIAN NAME (if provider is a Physician Assistant) (First, Middle, Last)	PHYSICIAN LICENSE NUMBER

Healthcare Provider's Statement

☐ Acquired Immune Deficiency Syndrome (AIDS)	☒ Post-Traumatic Stress Disorder (PTSD)	☐ Cancer	☐ Glaucoma
COMMENTS	☐ Cachexia	☒ Severe pain	
	☐ Severe nausea	☐ Seizures, including without limitation, seizures caused by epilepsy	
	☐ Persistent muscle spasms, including, but not limited to, spasms caused by multiple sclerosis		

Signature and Date

I hereby certify that I, a healthcare provider licensed/certified to practice in Nevada under NRS 629, 630 or 633, have primary responsibility for the care and treatment of the above-named patient. I am authorized to write a prescription for a medication to treat a chronic or debilitating medical condition.

The above-named patient has been diagnosed with a debilitating medical condition. Marijuana may mitigate the symptoms or effects of this patient's condition.

I approve of the above-named caregiver (if there is one). I have explained to the above-named patient and the above named caregiver (if any named) the possible risks and benefits of the medical use of marijuana. I also certify that I have seen a photo identification of this patient and caregiver (if there is one) verifying that he/she is the patient or caregiver (if there is one) named on this "Attending Healthcare Provider Statement."

I will keep and maintain valid written documentation to support everything I am affirming in this statement in my files for the applicant.

I have obtained the consent from the above-named patient to make such written documentation available to the Division of Public and Behavioral Health and I will make such records available to the Division upon request.

This is not a prescription for the use of medical marijuana.

HEALTHCARE PROVIDER SIGNATURE (sign in blue ink only)	DATE
PHYSICIAN SIGNATURE (if provider is a Physician Assistant) (sign in blue ink only)	DATE
	5/12/18

0000154524_06

20170304

Roushkolb 0029

PA042

EXHIBIT B

SUMM

District Court

CLARK COUNTY, NEVADA

JAMES ROUSHKOLB, an individual;

Plaintiff,

vs.

THE FREEMAN COMPANY, LLC, a Domestic Corporation; EMPLOYEE(S)/AGENT(S) DOES I-X; and ROE CORPORATIONS XI-XX, inclusive;

Defendant.

Case No.: A-19-805268-C
Dept.: VIII

SUMMONS

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

TO THE DEFENDANT: A Civil Petition for Judicial Review has been filed by the plaintiff against you for the relief set forth in the Complaint.

THE FREEMAN COMPANY, LLC c/o Corporation Service Company

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:

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

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

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

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

Issued at the request of:

Christian Gabroy
Nevada Bar No. 8805
Gabroy Law Offices
170 S. Green Valley Parkway, Suite 280
Henderson, Nevada 89012
Attorney for Plaintiff

STEVEN D. GRIERSON, CLERK OF COURT

By: Marie Kramer 11/13/2019
Deputy Clerk Date
County Courthouse
200 South Third Street
Las Vegas, Nevada 89101
Marie Kramer

*NOTE: When service is by publication, add a brief statement of the object of the action. See Rules of Civil Procedure, Rule 4(b).

EXHIBIT C

Collective Bargaining Agreement

Between

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 631, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

AND

Global Experience Specialists, Inc.

and

Freeman Expositions, Inc.

June 1, 2017 to May 31, 2021

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PREAMBLE

THIS AGREEMENT is made by and between [Employer] (hereinafter referred to as the "Employer") and TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 631, INTERNATIONAL BROTHERHOOD OF TEAMSTERS (hereinafter referred to as the "Union"), who, by their signatures endorsed hereon, have signified their approval thereof.

Should any provision of this Agreement violate or conflict with any state or federal law or regulation, such provision shall be null and void, and shall be reopened for negotiations so as to comply with said law or regulation; but the remainder of this Agreement shall be binding upon the parties hereto in accordance with the remainder of its terms.

Whenever in this Agreement employees are referred to in the male gender, it is agreed such reference applies to the female employees as well as male employees.

ARTICLE 1
UNION RECOGNITION

Section A. The Employer hereby recognizes the Union as the sole collective bargaining agent for all employees of the Employer, in the wage scales and classifications set forth herein in the Employer's operation located within the jurisdiction of the signatory Local Union.

Section B. It is the intent and purpose of the parties herein that this Agreement will promote and improve the industrial and economic relationship between the Employer and its employees and to set forth herein the basic Agreement covering rates, hours of work, and conditions of employment to be observed between the parties hereto during the life of this Agreement.

ARTICLE 2
SECURITY BOND

Section A. Each signatory Employer to this Collective Bargaining Agreement shall provide a Surety Bond in the amount of sixty thousand dollars ($60,000.00) prior to the commencement of any work within the terms of this Agreement.

Section B. The above bond shall only secure the payment of wages and benefits of those workers employed by the signatory Employer for an exhibitor or convention client. In the event that the signatory Employer acts as a pay roller for another Employer, then the signatory Employer must post an additional Surety Bond in the amount of sixty thousand dollars ($60,000.00) for each other Employer for which the signatory Employer acts as a pay roller.

Section C. The signatory Employer(s) shall execute the Surety Bond as set forth by Teamsters Local 631 Security Fund for Southern Nevada.

Section D. Employer(s) covered by this Agreement who are established locally and are able to produce a financial report satisfactory to the Trust shall not be required to provide a Surety Bond. Notwithstanding the foregoing sections of this Article, for the purpose of organizing new, small and/or occasionally working Employers, each as defined and determined by the Trust, such Employers shall post security in form and amount, also determined by the Trust in writing, but not in an amount less than five thousand dollars $5,000 for the payment of benefits and wages, of those workers employed by such Employer for an exhibitor or convention client. Upon thirty (30) days written notice from the Trust that it has determined changed circumstances exist, such an Employer shall promptly provide other security in form and amount determined by the Trust but not to exceed the foregoing requirements in this Article. Changed circumstances include an increase in hours worked for such an Employer; the failure of such Employer to timely pay or remit required wages and/or benefits contributions; or other circumstances reflecting, in the judgment of the Trust, that the existing security is inadequate or insufficient, in form and/or amount, to secure payment of wages and benefits. This subsection gives the Trust flexibility to adjust the type and amount of security to fit the circumstances, and provide for changes to the security when circumstances change. This subsection will serve as a precursor, to full bonding.

ARTICLE 3
UNION RIGHTS

Section A. The Company agrees that, subject to the provisions of this Agreement, the Union shall at all times be free to exercise its rights provided under the National Labor Relations Act and Law.

Section B. The Business Representative of the Union will be allowed access to the property of the Employer to contact employees relative to provisions of this Agreement at any reasonable time and will cooperate to minimize interference with the Employer's business. The Company agrees not to interfere with any Business Representative of the Union while in the process of his/her duties.

Section C. The Employer will provide bulletin boards for official Union notices at the Employer's warehouse(s) and labor trailer(s) on a permanent basis and temporary bulletin boards during move-in, show days, and move-out at the Las Vegas Convention Center, the Sands Exposition Center and Mandalay Bay. Upon notice that provided bulletin boards for official Union notices are inoperable or in disrepair the Company will repair or replace such boards.

Section D. The Union at its sole discretion will determine who is eligible for dispatch according to its dispatch rules and policies.

ARTICLE 4
MANAGEMENT RIGHTS

Section A.

The Employer shall have the exclusive right to determine its policies and to manage its business, including:

1. Specifying the methods of operation and types of equipment to be used.
2. Determining the size of its working force and the extent to which its operation or part thereof shall be operated or shutdown.
3. The right to hire, promote, transfer, suspend, or discharge workers.
4. Scheduling its operations and selecting the equipment to be used at various jobs, including the right to make technological changes.

The above listing of management rights is not intended to be, nor shall it be considered, a restriction of or a waiver of any of the rights of the Employer not listed and not specifically abridged in this Agreement whether or not such rights have been exercised in the past.

In no case, shall the above management rights be in derogation of any of the terms and conditions of this Labor Agreement between the parties.

Section B. Employer's Rules, Regulations, Policies and Procedures

1. All employees covered by this Agreement are bound by and must comply with all reasonable rules, regulations, policies and procedures of the Employer, show management or facility where the work covered by this Agreement is being performed.

2. The Employer reserves the right to modify, amend or change any existing rules, regulations, policies or procedures and to implement, at any time, new reasonable rules, regulations, policies or procedures, as long as such modifications, amendments or changes or new rules, regulations, policies or procedures do not conflict with any specific provision of this Agreement. The Employer shall provide the Union with a copy of any new rule, regulation, policy or procedure. When practicable, the Employer will provide such copy two (2) weeks prior to implementation, as well as an opportunity to meet and confer at the written request of the Union.

ARTICLE 5
DUES CHECK-OFF

Section A. Upon receipt of an authorization signed by any employee covered by this Agreement from the Union, the Employer shall, in accordance with the terms of such authorization and in accordance with this Agreement, deduct from such employee's earnings, on the first pay period of each month, the amount owed to the Union by the employee for his/her monthly Union dues. Such deducted dues shall be paid to the Union within fifteen (15) calendar days of the time of such deduction.

Section B. Where an employee who is on check-off is not on the payroll during the week in which the deduction is to be made or has no earnings or has insufficient earnings during that week, the employee must make arrangements with the Union and/or the Employer to pay such dues in advance.

Section C. The Employer will recognize an authorization for deductions from wages of any employee, if in compliance with state law, to the Union Political Action Committee or Drive.

Section D. The Union shall indemnify and save the Employer harmless against any and all claims, demands, suits, or other forms of liability which may arise by reason of any action taken in making deductions and remitting same to the Union pursuant to the foregoing provisions.

ARTICLE 6
JURISDICTION AND WORK COVERED/CLASSIFICATIONS

Section A. The Employer recognizes the following work herein outlined as being within the scope of this Agreement and defined as erection, touch-up painting, dismantling and repair of all exhibits. This work is to include wall coverings, floor coverings, pipe and drape, painting, aisle coverings, hanging of signs and decorative materials from the ceiling, placement of all signs, erection of platforms and placement and care of furniture as well as wiping down exhibits. The Employer further recognizes within this scope the loading and unloading of all trucks of common and contract carriers as well as individual company vehicles and the movement of freight, crates, and rigging within its facilities, including all work in the Company's warehouse facilities will be bargaining unit work. In the area of rigging, packing and crating, the work performed includes, but is not limited to, unloading, uncrating, unskidding, painting, and assembly of machinery and equipment as well as the reverse process. It should be noted that cleaning does not include mobile washing.

The contract of, in whole or in part, including any structures or operations which are incidental thereto, the assembly, operations, maintenance and repair, and other facilities used in connection with the performance of the aforementioned work and services, and includes, without limitation, the types or classes of work listed under classifications, as well as any other work regularly assigned in the past.

Work currently being performed within the jurisdiction of the Union shall continue to be performed by the Union.

The following work is currently being performed within the jurisdiction of the Union and the following is meant to clarify and memorialize the current practice:

- The installation of graphics. There may be a need for graphics to be installed by outside vendors based on complexity of installations and the time and cost of replacement if installed incorrectly. If the Company needs the use of an outside vendor they will notify the Union in a timely fashion.
- The installation of ground supported truss when its primary purpose is part of a booth structure.
- Hand written freight paperwork at show site and warehouses.

- The processing of air freight from delivery truck to the item(s) destination to include the receiving whether by hand written receivers or by scanner.
- Privately owned vehicles (when contracted to the Employer); it is understood that exhibitors have privately owned vehicles which the exhibitor may request the services of the Company to unload and reload their privately owned vehicle.

The foregoing article is not meant to increase or decrease the jurisdiction of the Union.

Notwithstanding the above, the Union has no jurisdiction over the work of employees who have traditionally been represented by another Union.

Section B. Notwithstanding the foregoing, if the Employer is not contracted to perform the foregoing work, it is not bargaining unit work under this Agreement.

Section C. Classification Applications

1. Leadman - The Leadman shall be an employee whom the Employer has assigned supervision of a crew of three or more workers. That work assignment shall be of a specific nature, the priority of which requires proper direction for its completion.

2. Working Foreman - A Working Foreman shall be any employee whom the Employer chooses to assign the supervision of a group or multi-group of employees and/or Leadmen. Those work assignments require coordination of all workers or groups of workers to assume proper completion of the required projects.

3. Show Foreman - The Show Foreman shall be any employee whom the Employer has assigned supervision of Leadmen, Working Foremen and/or groups of employees to coordinate all work activities and to ensure that such work activities are proper, productive, and timely relative to completion, to quality and to quantity.

4. If any additional classifications are required under this Agreement, the Employer and the Union will add such classifications as may become necessary for the Employer to fill its requirements.

5. a. Except as provided in subparagraph b, it is the Employer's intent in subcontracting any work of a substantial, major or continuous nature which is covered by this Agreement with any person, firm, corporation, partnership or other organization to require the subcontractor to observe the applicable wage rates, hours and working conditions set forth in this Agreement.

   b. Subparagraph 5. a. shall not apply (1) when the Employer is unable to reasonably procure or provide equipment to be operated by employees covered by this Agreement and the Employer procures such equipment with an operator not covered by this Agreement, provided that the operator of the equipment is covered by the Master Freight Agreement or the operator is provided the same or similar wages,

benefits and conditions as provided in this Agreement; or (2) when an official services contractor procures specialty furniture from another company which provides as part of its services the labor required to unload, place, wipe down, repair and replace such furniture at a show and to remove and load such furniture at the conclusion of the show. Specialty furniture is furniture leased by the Employer for a limited period of time during which the furniture will be used at a tradeshow, convention, corporate event, conference or similar event. The forgoing provision relating to the subcontracting of specialty furniture and the labor associated with such furniture has no application to standard furniture owned by the Employer. The unloading, placement, wipe down, repair and replacement of such Employer owned standard furniture at a show and the removal and loading of such furniture at the conclusion of the show shall continue to be performed by employees covered by this Agreement. The Employer agrees that it will continue to own the same standard furniture during the term of this Agreement. Standard furniture is defined and limited to the furniture currently owned by the Employer and the furniture purchased by the Employer during the term of the Agreement.

Section D. Use of Leadmen, Working Foreman, and/or Show Foreman

1. A manager cannot replace a Union Leadman classification.

2. At a minimum, anytime there is a crew of people a Union Leadman classification must be used.

3. Show Foreman, Working Foreman, and/or Leadman are the recognized classifications used by the Employer to direct the Bargaining Unit workforce on any given show or in the warehouse.

4. A non-bargaining unit supervisor may direct, instruct, or seek assistance from any bargaining unit employee without going through the employee's immediate Union supervisor from time to time.

Section E. Leadmen, Working Foreman, and/or Show Foreman Schedule

The Employer will provide Lead men, Foremen and Show Foremen their prospective schedule, in which they will be performing the aforementioned duties, for the following month. The Union and the Employer understand such schedule may be subject to change. This provision shall not be subject to Article 13.

ARTICLE 7
DISPATCH PROCEDURES

1. The Employer will make every attempt to communicate its dispatch needs as soon as possible. The Employer and the Union agree that all dispatches for any type of labor will be done by the Union Dispatch Office. Both parties also agree that the Company will not call employees covered under this Agreement directly for labor. This includes any Department Managers, Supervisors, Labor Coordinators, Leadmen, Foreman, or anyone associated with the Company and/or Union other than the Union Dispatch Office.

2. All Employers will provide a schedule of shows/events and labor projections monthly for the following month. Notice must be sent to the Teamsters Local 631 Dispatch Office no later than ten (10) days prior to the end of the month. For example the show schedule and labor projections for the month of February will be provided to the Teamsters Local 631 Dispatch Office no later than ten (10) days prior to the last day of January. If the schedule changes or the projections are recalculated with a variable greater than 10% the Employer will notify the Union as soon as practical.

3. Given the "24-7" nature of the Las Vegas Trade Show industry, the Union agrees to operate its Dispatch Office to provide employees covered under the Collective Bargaining Agreement with more opportunities to obtain work and to provide the Companies with skilled labor when needed during larger shows. Upon notice provided to the Union by an Official Services Contractor of at least ten (10) calendar days and upon mutual Agreement, the Union shall keep the Hall open on the weekend(s), open the Dispatch Office earlier and/or keep the Dispatch Office open later than the regular hours of operation. Such request must be identified in the notice, for the purpose of dispatch.

4. If the Employer submits a "call-by-name" dispatch and the dispatch remains incomplete, the Employer shall communicate its intentions by 3 P.M. the day prior to the designated reported time (or Friday for a Sunday or Monday dispatch). At 3 PM, the Employer has three (3) options: (1) open the call and replace as needed, (2) close the call, or (3) the call remains as submitted. If the Employer fails to contact the Dispatch Office by 3 PM, then the Dispatch Office will let the call remain and not automatically open it up and shall not result in a failure to fill a call.

5. The Employer, at its option, shall be entitled to designate employees on a "call-by-name" dispatch as a "do-not-replace" ("DNR") employee. The Employer has sole discretion to change employees from a DNR to an open call. The Union shall not be considered to have failed to fill the call due to its inability to dispatch the DNR employees on the "call-by-name" dispatch.

6. In the event of a late change due to showsite constraints a "call-by-name" dispatch may be submitted between the hours of 3 PM and 5 PM. The Dispatch Office shall attempt to call these employees and shall wait until 4 PM for the employee to accept the dispatch. At 4 PM, the Employer shall contact dispatch to inquire as to what extent they have met the Employer's needs. At that time, it will be the Employer's discretion to: (1) open the call and replace as needed, (2) close and cancel the call, (3) provide alternative names, if time permits for dispatch. If the call is closed or the Employer provides alternative names, the Dispatch office will use its best efforts to complete the dispatch - but it shall not be considered a failure to fill the call. At the time the Dispatch Office closes, any unfilled open call where the Union can replace as needed, will be considered a failure to fill the call.

7. The Employer and Union recognize that circumstances exist where an Employer may call after the designated time with a status change. These circumstances will be communicated to the Dispatch Office as soon as possible.

ARTICLE 8
EMPLOYMENT PROCEDURES

Section A. The Employer must have the right to hire qualified employees in sufficient quantity as needed to fulfill its current and future responsibilities to its clients and customers relating to work to be performed in the tradeshow industry which is within the jurisdiction of the Union. The parties must recognize that the needs of the Employer for quality employees in sufficient quantity varies from day to day, week to week, and month to month in accordance with the Employer's contractual responsibilities to its clients and customers which varies significantly from tradeshow to tradeshow. The parties must recognize the anticipated growth in the tradeshow industry in Southern Nevada and the immediate need to improve the qualifications of many employees represented by the Union who work in the tradeshow industry.

The Employer is the sole judge as to the performance of all its employees and is the sole judge of the competency of applicants for employment. The Employer may reject any worker referred by the Union and the Union may not refer to an Employer any employee about whom the Union has received a "no-dispatch" letter from that Employer. All employees must perform their work to the satisfaction of the Employer. However, no employee shall be discharged or discriminated against because of activities on behalf of, or representation of, the Union, subject to the provisions of Article 12 - Union Stewards.

For the purpose of this Agreement, the term "Journeyman" will mean an individual who qualifies as a Journeyman in the convention industry in accordance with the provisions of Section A.1 of this Article.

In the employment of workers for all work covered by this Agreement, the following provisions shall govern:

1. Journeymen

The Union shall establish and maintain a separate and open, nondiscriminatory employment list for Journeymen workers desiring employment on work covered by this Agreement, and such workers shall be entitled to registration and dispatch, subject to the provisions of this Article. The Journeymen classifications shall consist of the following:

a. All individuals qualified as Journeymen under the prior Collective Bargaining Agreement.

b. Individuals certified as Journeymen by the Apprenticeship Training Program.

2. Apprentice(s)

In the event, and to the extent, there are Apprentices available under the program set forth in Article 11, the Employer will hire such as in the ratio set forth in that Article. Such Apprentices shall be included, in the proper ratio, in the total call for employees and not in addition to the total. Once employed, and except as provided in other provisions of this Article, Apprentices shall be subject to the same layoff procedures as other workers except that within the divisions set forth in Section E.2 (b) at a particular show site, the Employer agrees to exercise reasonable efforts to maintain the ratio of Apprentices set forth in Article 11, Section H.

3. Installation and Dismantle (I&D)

The Union and the Employer agree that in order to provide customers the highest level of qualified labor for the purpose of I&D, the Joint Training Trust will develop, in concert with I&D Employers, a Training Program that objectively evaluates and classifies an applicant's ability to perform I&D work. The I&D Training Program will objectively certify and create recertification for current Journeymen workers and new applicants. It is understood that entry and subsequent certification into or by The I&D Training Program shall not have the authority to certify workers as Convention Journeymen. There shall be three levels of certification; Level 1) Specialist which will consist of Journeymen only, Level 2) Qualified which may consist of Journeymen and non-Journeymen and Level 3) Certified which may consist of Journeymen and non-Journeymen. The criteria for achieving certification shall be as follows:

a) I&D Specialist

i) Those Journeymen who have been paid Leadman, Foreman or any "premium" pay by a signatory Employer performing I&D work or,

ii) Those Journeymen who a minimum of three Employers have submitted a "call by name" to perform I&D work or,

iii) Those Journeymen who have completed the I&D Specialist training, physical and written tests and met the requirements as outlined by the I&D Training program.

b) I&D Qualified

i) Those who have been certified as Journeymen by the Teamsters Local 631 Training Program whom have requested to the Local Union Dispatch Office no later than November 30, 2017 to receive I&D calls or,

ii) Those Journeymen who a minimum of two Employers have submitted a "call by name" to perform I&D work or,

iii) Those who were certified as I&D Specialist prior to the signing of this Agreement or,

iv) Those who have completed the I&D Qualified training, physical and written tests and met the requirements as outlined by the I&D Training Program or,

v) Those who provide documentation to the Training Trust that they are a "Union Journeyman" or equivalent in a Trade Union, other than Teamsters Local 631, which performs I&D work or,

vi) Those who are employees of a signatory Employer performing I&D work

c) I&D Certified

i) Those who have been certified as Journeymen by the Teamsters Local 631 Training Program or,

ii) Those who performed I&D work for a minimum of one hundred (100) hours through Teamsters Local 631 dispatch and substantiated by receipts that the 100 hours were in I&D. The one hundred (100) hour achievement must be recorded at the Teamsters Local 631 Security Fund and pass the I&D Certification test or,

iii) Those who have been provided with a letter of recommendation by an Employer who is a signatory to the aforementioned Convention Collective Bargaining Agreement and pass the I&D Certification test.

The Employer may request and utilize Journeymen over non Journeymen regardless of their certification level. The Employer may submit a written request to the Joint Training Trust or their designee to certify, recertify or provide remedial training to any certification level of I&D workers. The Training Program shall evaluate the request and

provide the Joint Training Program a recommendation as to the appropriate action to be taken.

Any evaluated recommendation shall be approved by the Board of Trustees of Teamsters Local 631 Training Trust which is comprised of GES, Freeman, EAC's and the Union. The Board of Trustees, or their designee, has the ability to evaluate and/or amend the testing process of the Teamsters Local 631 Training Center. The Board of Trustees may request a visual demonstration of hands-on testing for any applicant. Any and all disputes regarding the Board of Trustees refusal to certify an individual shall not be subject to the Grievance and Arbitration Procedure.

During the run of a show if an Employer elects to utilize a non-Journeyman, client requested Leadman or Foreman in any booth or venue the Employer will employ one Journeyman per such position within the applicable booth or venue.

If a Journeyman refuses three calls for an Employer, the Journeyman will not be eligible for dispatch to that Employer for the duration of the show.

If a Journeyman does not perform I&D work, due to job refusals, within a six month period the Journeyman will be reduced one certification level per occurrence until they are reduced to I&D Certified.

4. Skilled Extra Board

The Union will establish and maintain a separate and open, nondiscriminatory employment list for Skilled Extra Board workers which shall consist of employees eligible for dispatch in accordance with the Local 631 dispatch rules and procedures. These employees are eligible as workers who are to be used in accordance with the provisions of this Agreement.

Such Skilled Extra Board employees must possess a current certification in one or more of the following categories:

a) CDL
b) Forklift
c) Condor/Scissor Lift
d) Aerial Rigging

To qualify as a Skilled Extra Board for b. (forklift operator), the applicant shall be required to perform a practical test and certification as a forklift operator through the Apprentice Training Trust or provide documentation to the Training Trust that they are a "Union Journeyman" or equivalent in a craft which performs forklift operator work with a current certification.

When a Skilled Extra Board worker is dispatched to the Employer pursuant to an Employer call for a Skilled Extra Board worker, the employee will be paid at the rate of

the classification set forth in Article 23 for the entire period the worker is employed on that dispatch. If these workers are dispatched pursuant to an Employer call for Unskilled Extra Board workers, they will be paid the rate for an outside source worker set forth in Article 23, unless the employee is assigned to perform work which requires one (1) of the certifications referenced above. In that event, the employee will be paid at the rate of the certified classification for the period he/she performs such certified work. All other hours will be paid at the rate of an outside source worker.

5. Unskilled Extra Board

The Union will establish and maintain a separate and open, nondiscriminatory employment list for Unskilled Extra Board workers which shall consist of employees eligible for dispatch in accordance with the Local 631 dispatch rules and procedures and who do not possess any of the certifications referenced in Section A.3 and A.4 above. These workers are eligible as outside source workers who may be employed by the Employer in accordance with the provisions of this Agreement.

These workers will be paid the rate of outside source workers set forth in Article 23, except as provided in Section 4 above.

The Union will provide the Employer, upon request, a list of all workers on the extra board. A separate list(s) of persons who possess any of the four (4) certifications in Section A.4 (a-d) above will also be provided. Representatives of the Employer and the Union will meet quarterly to evaluate the extra board list to determine whether individuals should be purged from the list.

The Union must maintain at all times an accurate out of work list for Journeymen, for I&D Specialist, for I&D Qualified, for I&D Certified, for Skilled Extra Board workers and for Unskilled Extra Board workers. The Union shall immediately transmit by electronic mail a current copy of such lists to the Employer upon request. Any discrepancies in the lists will be adjusted between the parties; and, if this cannot be done, then through the grievance procedure.

Skilled Extra Board, Non Journeymen I&D, and Unskilled Extra Board workers are not entitled to the benefits of a seniority employee or a Casual Journeyman pertaining to Article 10, Article 14 and Article 15(e).

6. Installation of Aisle Carpet

The Union recognizes the unique needs of an official services contractor to staff for the installation of aisle carpet. The Union also recognizes the need of the official services contractor to have a consistent and repetitive group of workers who are able and willing to perform this function.

The Union will create a separate and distinct list of Journeymen, I&D Qualified and/or I&D Certified, Skilled and/or Unskilled Extra Board, and Workers on the 360 list that are able and committed to perform aisle carpet work on a consistent and repetitive basis. Further, the Union and Employer trustees of the Teamsters Convention Industry

Training Trust agree to mandate the performance of this work on a consistent and repetitive basis by all apprentices who are not actively employed in the convention industry at the time the aisle carpet work is scheduled to be performed.

The Employer will, to the extent feasible, provide the Union dispatch office and the Teamsters Convention Training Trust a forty five (45) day projection each month of the scheduled dates for the performance of aisle carpet work for each calendar month as well as its projection of the number of workers needed to perform such work. The information regarding the number of workers needed for each show will be updated forty eight (48) hours prior to the reporting time of the call. Updates may be sent twenty four (24) hours prior to reporting time of call. The Union and the Training Trust Fund will advise the Employer as soon as possible, but in no event later than 4:00 p.m. of the day prior to the reporting time of the call, whether they will be able to fill the call. If the Union and the Training Trust are unable to fill the call, or if they fail to notify the Employer by 4:00 p.m. of the day prior to the reporting time of the call, the Employer shall have the right to immediately fill its call from any other source.

The Union and the Teamster Training Trust will provide the Employer with a list of available workers or apprentices available for a carpet call. Notwithstanding any other provision of this Agreement, the Union and the Teamster Convention Industry Training Trust will fill the separate calls for aisle carpet in the following order:

1) Journeymen who are on this separate list and apprentices in ratio.
2) *Unemployed apprentices in response to the call*
3) I&D lists subject to the provisions of Article 8 Section A. 3
4) Skilled and/or Unskilled Extra Board and Workers on the 360 list to fill the call.

Any employee assigned to the installation of aisle carpet in accordance with the above will be laid off /marked paid when that job assignment is complete, unless currently dispatched to the Employer. Foremen, Leadmen and fork operators involved with this work may come from outside this list. Representatives of the Employer and the Union will meet quarterly to evaluate the carpet list to determine whether individuals should *be purged from the list.*

The Employer will schedule employees that have "opted in" to do aisle carpet and are currently on a dispatch to the Employer and are available to be scheduled into the aisle carpet, prior to going to the Union for the additional people.

Employees that opted in to aisle carpet and are currently dispatch for the Employer but have other assignments for the day of aisle carpet installation or the following day that may conflict with the aisle carpet installation will not be scheduled to do aisle carpet and will perform their other assignments.

If there are employees that are currently dispatched for the Employer and have not opted into aisle carpet and there is not a work assignment for the day of the aisle carpet, the employee will be scheduled for a future assignment or laid off if there is not a future assignment available.

This article is not intended to cover the move out roll up of Aisle Carpet. This work will continue as historically performed.

Section B. Callout Order

1. The Employer has the right, on an unlimited basis, to submit a call to the Teamsters Local 631 Dispatch Office for Journeymen workers, Skilled Extra Board workers, I&D workers and Unskilled Extra Board workers by name without regard to their position on their respective out of work list.

2. In making any call by name, the Employer shall furnish to the Union with its labor call the names of the Journeymen workers, Skilled Extra Board workers, I&D workers and Unskilled Extra Board workers being called by name. The Employer may also furnish the names of additional Journeymen workers in order of preference who are to replace those called by name on the labor call who are unavailable for dispatch or who refuse the call.

3. The Employers agree upon notice from the Union, to layoff I&D workers that have been dispatched to the Employer as Unskilled Extra Board and are not being utilized in an I&D capacity, for re-dispatch with the understanding that the Union must replace such workers with available Journeymen, Apprentices, or Extra Board participants.

4. Once an open I&D call which has been placed, seventy two (72) hours prior to the requested start time, is filled with 50% unskilled extra board, the Employer may utilize either Carpenters Local 1780 or Stagehands Local 720 for the remaining 50%.

5. Prior to the Employer calling the Union dispatch for additional labor, Journeymen and Apprentices previously dispatched to a particular show must be working or offered the first right of refusal for all remaining available work on that show.

6. The Employer may choose to reassign a worker to another division or show site. Employees have no right to bump other employees.

7. The Employer shall verify that the employee has a current and proper Union dispatch slip (printed or email) and retain a copy for their records. Violation(s) of this article will be subject to the grievance procedure.

8. On the twelfth of each month the Employer will send to the Teamsters Local 631 Dispatch Office a new dispatch request for all employees currently in their population. Upon receipt of such dispatch request the Teamsters Local 631 Dispatch Office will notify the Company(s) which of the requested employees are not eligible to be re-dispatched in accordance with the Unions Dispatch Procedures. The Employer shall

within forty eight (48) hours release the ineligible employee(s) to obtain a proper dispatch.

9. Upon request, the Union will provide to the Employer a listing of Journeymen workers, I&D workers, Skilled Extra Board workers and/or Unskilled Extra Board workers by name and record number in the industry who are available for dispatch. Any discrepancies in the List will be adjusted between the parties; and, if this cannot be done, then through the grievance procedure.

10. If the Union is unable to furnish a sufficient number of competent Journeymen workers to fill the Employer's call, or if dispatched Journeyman workers don't respond to the call, the Employer will first attempt to fill the call with unemployed Apprentices, out of ratio, through the Training Trust. If the Employer is still unable to fill its call, it will contact the Union Dispatch Office, in accordance with A.3 of this article for I&D workers and Skilled Extra Board workers if the Employer has need for workers with one or more of the certifications listed in Section A.4. Such calls for Skilled Extra Board workers shall be made before the Employer places a call for such workers from any other outside source. If the Employer is still unable to fill its call, it may procure workers from any source, including Unskilled Extra Board workers. If the workers procured by the Employer from another source are from another Union, the wage rates, fringe benefit provisions, and other terms and conditions of this Agreement will not be applicable to those employees. If the workers procured from another source by the Employer are not from another Union, the applicable wage rates and fringe benefits set forth in this Agreement shall apply to such workers. All workers used by the Employer from another source must meet the same skills and qualification requirements as employees covered under this Agreement including and not limited to drug testing procedures, forklift certifications, etc. The Employer agrees that it will notify the Union Dispatch Office and Business Agent(s) by fax or email monthly of the identity of employees hired from sources other than the Union under the above provision and shall maintain adequate payroll records for such employees including job names and locations in Las Vegas. Any and all payroll records shall be made available to the Union and/or trust fund auditors upon request.

Section C. Rollover Procedures

1. The Union will cooperate with all convention industry Employers to the maximum extent possible in facilitating the rollover of Journeymen from Employer to Employer without the necessity of the employee returning to the Union Dispatch Office for a new referral. All rollover requests shall be performed between the Union Dispatch Office, Union Steward and the Employer.

2. Two (2) types of Rollovers are recognized: permanent and temporary. When the Employer has Journeymen and/or Apprentices who may be utilized with another company, a voluntary list will be established. The Union Steward will be involved to

assure workers are eligible for dispatch prior to their name being placed on the list. Such list will specify either "temporary" or "permanent". An employee who is permanently rolled over shall be laid off and not returned to the originating Employer without a new dispatch. An employee who is a "temporary" rollover shall have a return time and date marked on their timecard and does not require a new dispatch to return to the originating Employer. The Union Dispatch Office must be notified of all rollovers by the receiving Employer. After such notice, the Union is obligated to send the receiving Employer dispatches for the employees involved in the rollover. The Employer will provide such dispatch to the employee.

Section D. Single Day Dispatch.

When an employee covered by this Agreement works a single day, he/she shall retain his/her position on the out-of-work list. The Union shall be responsible for administering this system. If, after accepting an assignment, an employee covered by this Agreement calls off or is a no show, he/she does not retain his/her position on the out-of-work list. If an employee covered by this Agreement requests a lay-off in response to a future work assignment, or calls off or is a no show for the next assignment, he/she shall not retain his/her position on the out-of-work list.

Section E. Layoff or Cutback

1. Company agrees to mark employees laid off in the Teamster Dispatch System.
2. It is the intent of this Section to provide qualified Journeyman workers first right of refusal on all bargaining unit work. Selection of employees for layoff or cutback, excluding aisle carpet and empty return work, shall be in accordance with the following:

   a) Subject to the provisions and exceptions set forth in Section b) below, the Employer will layoff and/or cutback in the order of (1) labor from outside sources, then (2) Unskilled Extra Board workers, then (3) Skilled Extra Board workers, then (4) I&D Certified non-Journeymen, then (5) I&D Certified Apprentices, then (6) I&D Certified Journeymen, then (7) I&D Qualified non-Journeymen, then (8) I&D Qualified Apprentices, then (9) I&D Qualified Journeymen, then (10) Apprentices outside the ratio, then (11) Journeymen and Apprentices in ratio. All layoffs and cutbacks will be within the following divisions and/or work: Freight, Decorating, I&D and Official at each showsite. Numbers 4,5,6,7,8,9 shall apply to I&D work only.

   b) Section a) will not apply in the following situations:

      i) when displacement would interfere with job continuity in the following areas: I&D work on a specific booth, custom modular interlocking system (e.g., MIS/GEM) work on a specific booth, work for show management/official work and forklift operators for booth work;

      ii) when the higher list worker is not qualified to perform the work involved;

iii) when the higher list worker is sent home to permit an eight (8) hour break in accordance with Article 19, Section D., prior to his/her specific scheduled starting time on the following workday;

iv) when a daily cutback involves a specific crew with a specific starting time, the members of that crew may not bump or displace members of a crew with a later starting time;

v) when a daily cutback is from a job assignment specific in nature in terms of the work performed or in terms of the location of the work;

c) Aisle carpet installation cutbacks and the return of empty crate cutbacks will be by Leadman or Foreman as defined by Section E.2.a., above within their assigned crew.

d) For the purpose of this Article, job continuity ends at the end of a shift except for I&D Work on a specific booth.

e) Except for the work covered in d) above (job continuity), the Employer's obligation is to attempt in good faith to start each workday with the proper ratio of Journeymen and Apprentices prior to the employment of workers secured from outside sources.

Section F. Specialty Crafts

For Specialty Craft Mechanic(s) and Painter(s) (Display Shop)-the Employer shall notify the Union Dispatch Office and Business Agent(s) by fax or verifiable email of job vacancies before hiring or interviewing new, additional, or replacement employees and before the vacancies are filled. The Union shall refer qualified applicants for employment to fill such vacancies. The Employer has the right to request more than one applicant. If the Union is unable to supply qualified applicants for specialty crafts within two (2) business days, the Union will inform the Employer that it may fill the vacancy from any source.

Section G. Call by Name Review Process

The Employer and the Union acknowledge that changes in show schedules (overlap, seasonality, show dates, show rotation), and show dynamics (show size, mix of work, changes in required skills for shows) create variability in labor requirements for Employers. Subject to Article 4 and barring discipline and/or documented performance issues, Call by Name Employees who have been consistently called by a single employer for a minimum of 1400 hours in the preceding calendar year, shall have a reasonable expectation for future assignments. Employees will be expected to submit in writing to the Union any reasonable claim of disparity immediately upon notice of such. This section shall not constitute a guarantee of hours.

In the event there are material changes in a Call by Name Employee's assignments, the mechanism for evaluating conditions shall be a review by the Union and Management. The review shall be conducted as needed on a monthly basis, whereby the assignments of the Call

by Name Employee shall be reviewed against the aforementioned conditions (seasonality, show rotation, changes in required skills for shows, etc.). Unless resolved or dismissed at the time of the review, the Union may within ten (10) business days provide the Employer with a letter to arbitrate and proceed to the arbitration process as delineated in Article 13, Section C. Should resolution not be attained at the review it is understood that the company's exposure will begin from the date of that review until the arbitrator's decision. Notwithstanding the forgoing Call by Name Employees shall remain casual employees.

Section H. Requested Time Off

Request for a single day off by an Employee shall be granted whenever reasonably possible, provided the request is submitted in writing to a Manager of the Company, no later than forty eight (48) hours from the date of the time off being requested. If the employee has not received an assignment by 12 PM the day prior to returning to work, the employee will contact the Employer prior to 3 PM.

ARTICLE 9
BULLPEN

The intent of any Bullpen is to better utilize experienced workers, when available, to fill immediate needs of any Signatory Convention Services Contractor as replacement workers for the day only. The use of a Bullpen, even while Dispatch is open, is limited to providing replacement workers for employees who do not show up for work in a timely fashion, or at all, plus up to ten (10) additional workers for use in I&D.

Journeymen and Apprentices scheduled off who have signed onto the Employed but Available (EBA) list will be utilized before the Employer can use a Live Bullpen participant(s) who are not on that Employer's dispatch. The EBA list will be utilized during normal 631 dispatch hours of operation. Exceptions to the above being primary aisle carpet installation, show close/tear out and immediate I&D needs

All EBA List participants must commit and be able to be on site and working within sixty (60) minutes of being selected. If a participant arrives after the sixty (60) minute window, the Company has the option to use or not use said participant. Participants selected from the Employed but Available list that report within sixty (60) minutes shall be guaranteed a minimum of four (4) hours pay whether the job lasts four (4) hours or not. If a participant fails to fulfill the sixty (60) minute commitment he/she shall be denied access to this system for thirty (30) calendar days. A second occurrence within a six (6) month period shall permanently revoke future access unless mutually agreed upon between the Employer and the Union.

Live Bullpen

Section A. The organization of Bullpens shall be limited to the Official Services Contractor. No other Employer will organize or facilitate a Live Bullpen without written Union approval. The organizer is responsible for promoting each location and time. The Employer must utilize the Teamsters Local 631 website to promote any Live Bullpen. Dispatch will be notified by the Steward daily by electronic transmission, fax or email to the Union Dispatch Office of all replacement workers for the day who are employed by the Employer.

Live Bullpens are only allowed at the three main facilities – Las Vegas Convention Center, Sands Expo and Convention Center and Mandalay Bay Convention Center. A Live Bullpen would be prohibited at all other locations unless mutually agreed upon between the Union Business Agent(s) and the Employer(s).

Live Bullpens may only be administered by a Union Steward. A Steward will be permitted thirty (30) minutes prior to the advertised time of the Bullpen to process the attendees in the Live Bullpen. The Steward shall be compensated thirty (30) minutes time to properly administer the Live Bullpen if the Steward's start-time and the announced Bullpen are the same.

Section B. Workers who are employed through a Bullpen will be laid off/marked paid at the end of each day. If the Employer wishes to retain a Journeyman acquired from a Bullpen and if said Journeyman is on the out of work list – prior to the end of the Journeyman's shift, the Employer must request said Journeyman by name through Teamster Dispatch and said Journeyman must accept the dispatch.

To register in any Bullpen, participants must be in compliance with Teamsters Local 631 Bullpen procedures. If a worker is signed up for a Bullpen and said worker has already worked a shift, or are scheduled for a future shift within the same calendar day for an Employer that is requesting labor from said Bullpen, the Employer has no requirement to select said worker.

Section C. The Callout order will follow the Callout order delineated in the CBA with respect to the following:

1) Those already on dispatch to the requesting company will have priority within each classification respectively.
2) Apprentices will be taken in the order in which they sign-in.
3) The worker must be qualified to perform the available work.

Decisions as to employee qualifications remain vested with the Employer. A Union Steward will administer all Live Bullpens to verify workers are taken from the Bullpen in accordance with Bullpen provisions.

Section D. Any Journeyman, Apprentice or I&D certified, Qualified, for I&D work only, who is eligible for dispatch may participate in Live Bullpens. Skilled/Unskilled Extra Boards who are eligible for dispatch may only participate in Live Bullpens if any the following apply; Initial installation of aisle carpet, initial day of a show move out/empty return, Teamster Dispatch is dispatching Skilled/Unskilled Extra Boards or Teamster Dispatch is closed.

Section E. Once the Bullpen is closed by the Employer it shall remain closed and empty. Only the Union or the Labor Supervisor, or their designee (which designation shall be communicated to the Steward), shall have the authority to open or close a Bullpen. If a worker is utilized/ pulled from a Bullpen after the Bullpen is closed the Employer will pay the first person signed in on the original Bullpen list, whom did not receive work, no less than the hours worked by that worker if this results from intent to circumvent this process.

Employed but Available List (EBA)

The Employers and the Union agree that the Union will create and implement an Employed but Available List (EBA). Parties acknowledge that the current process may be modified or discontinued with a signed mutual agreement as future technological developments create more efficient process' for the industry.

The intent of this list will be to utilize workers who are already on dispatch but have available days off between assignments for the original Employer. Workers will be able to sign on to an Employed but Available List and post the days they are 'completely' available for work. Workers will be able to add/remove dates of availability if their circumstances change. Use of the EBA is voluntary. Workers who sign onto the list will commit to the following:

1. To Honor the next assignment from the Employer that the worker is originally dispatched to.
2. To accept any request for work as long as the worker is qualified to perform said work.
3. To accept any request for work regardless of start time, location or department.

Employers may access the EBA List through the Teamsters Local 631 online Dispatch site. Employers may only request workers from the list for the days listed as 'Available' for each worker. Workers on dispatch for an Employer must be working or offered first right of refusal of all available work prior to the Employer requesting workers from the EBA List.

EBA workers will be laid off/marked paid at the end of the shift if the worker is only needed/available for one (1) day or at the end of the shift of the last day of his/her EBA work, if the work constitutes more than one (1) day.

For advanced scheduling, the EBA List will only be accessible when Teamsters Local 631 Dispatch is dispatching Extra Boards.

ARTICLE 10
SENIORITY

Section A. Only regular full-time employees shall accrue seniority under this Agreement. Seniority, for the purpose of this Agreement, including layoffs, rehires, vacations and first right of refusal of work available up to 40 hours in workweek (See Article 19), shall be based on the length of each employee's continuous employment with the Employer as a regular employee, if the employee is qualified to perform the available work. However, seniority rights shall not be used to bump other employees.

The Employer may select from the work force the employees who will be regular employees. To qualify for the seniority roster, the employees shall be chosen as regular employees by the Employer.

The seniority list shall be updated every one hundred and eighty (180) days.

Continuous employment as a regular employee shall be broken by:

1. Voluntarily quitting.
2. Discharge.
3. Absence due to layoff in excess of 180 days.
4. Absence due to sickness or injury for a period in excess of one year. By mutual consent between the Union and the Employer, seniority may be extended indefinitely.
5. When an employee accepts employment elsewhere except as set forth in Section C below.
6. Failure to return to work at the expiration of an approved leave of absence.
7. Failure to return to work from an illness or injury if released by his/her physician to return to work.

Section B. Leaves of Absence

A leave of absence shall be granted to any employee to attend to legal matters, on account of death in his/her immediate family, personal illness, or for any other reason or emergency determined to be valid by the Employer and the Union. Application for leave of absence must be in writing and approved by a representative of the Employer and a copy to the Union.

Leave of absence will be for a period of not more than 30 days but may be extended for reasonable cause by Agreement between the Employer and the Union. Any employee on leave of absence who accepts employment elsewhere will be considered to have quit and shall lose his/her seniority rights.

Section C. The Employer agrees that if a regular seniority employee employed by the Employer has not been offered work by the Employer for seven (7) consecutive days during which the employee is ready and available for work, that regular seniority employee shall be allowed to seek employment elsewhere without loss of seniority if the employee reports to the Employer for work when and as directed by the Employer.

ARTICLE 11
CONVENTION TRAINING AND APPRENTICESHIP FUND

Section A. There has been established a training trust fund for convention industry employees in which the Employer has participated. The Employer agrees to continue to participate in this trust fund during the term of this Agreement. The trust fund is known as the Teamsters Convention Industry Training Fund.

Section B. The Employer shall contribute thirty cents ($0.30) per hour for all hours worked by casual employees employed by the Employer under the terms of this Agreement except hours worked by employees hired by the Employer from other Unions pursuant to Article 8, Section B.10. The Employer shall contribute to the training trust fund a monthly amount of fifty-one dollars and ninety cents ($51.90) for all regular seniority employees employed by the Employer under the terms of this Agreement. The Employer's contributions to the training trust fund shall be forwarded by the Employer on a monthly basis.

If during the term of this Agreement, the Trustees of the fund find it necessary to increase the Employer's contributions of flat and hourly rate of the premium in order to maintain the fund or to cover the cost of expanded training needs, the Employer agrees that the contributions will be increased or decreased as needed and such amounts will be paid by the Employer not to exceed $.10 for the term of this agreement. In the event the Board of Trustees believe additional funds are required, the Employer will be open to discussions to evaluate and/or facilitate the funding of the stated need.

Section C. Pursuant to the trust Agreement governing the operation of the training trust fund, there shall be an equal number of Employer and Union trustees respectively elected or appointed by the participating Employers and by the Union. This Employer accepts the Employer trustee(s) as its trustee(s) on the training trust fund.

Section D. There shall be established during the term of this Agreement training courses for Convention Journeymen to learn and to enhance the skills of the installation of graphics, flooring, display building and operation of motorized equipment; such as Forklifts, Aerial Lifts, and any new type of training that expands the work qualifications of Journeymen. In addition, a portion of each module will address the importance of customer service.

Section E. There has been established in the convention industry an Apprenticeship program chaired and overseen by the trustees of the fund.

Section F. The trustees shall meet at least once every quarter. Special meetings may be called by the Chairman.

Section G. The trustees of the fund shall employ a Director of Training and trainers to implement an Apprenticeship program and a Journeyman training program.

Section H. *During the term of this Agreement, the Employer is obligated to and agrees to* employ one (1) Apprentice for each nine (9) Journeymen employed up to a total of three hundred (300) employees employed city-wide in Group I, II, III, V and VI, if available for employment. Once the Employer has exceeded three hundred (300) employees the ratio shall be one (1) Apprentice for each fourteen (14) Journeymen thereafter employed in Group I, II, III, V, VI, if available for employment. Such Apprentices may be assigned by the Employer to perform any bargaining unit work covered by this Agreement.

Section I. Employer's obligation under Section H is to attempt in good faith to start each workday in the proper ratio unless its failure to do so is not the Employer's fault or is caused by factors beyond the Employer's control.

Section J. In order for an Apprentice to move to Journeyman status, he/she must complete two thousand (2,000) hours consisting of hands-on training and employment by signatory Employers in the convention industry. In addition, an Apprentice must complete at least one hundred and forty four (144) hours of mandatory classroom time each year of his/her Apprenticeship in accordance with NRS 610 of the State Apprenticeship Standards. The Convention Training Trust may increase the required hours for an Apprentice to reach Journeymen status. The rates to be paid Apprentices are set forth in Article 23 of this Agreement.

Section K. The Employer shall contact the Fund for the referral of Apprentices to be employed in accordance with Section H above, or for Apprentices out of ratio after the Union Hiring Hall has no Journeymen available for referral. It shall be the responsibility of the Fund to advise the Union and the Employer of the availability of Apprentices for referral and to refer available Apprentices in accordance with the number of Apprentices called by the Employer. An Apprentice will not be available for referral to an Employer during time when the Apprentice is scheduled for classroom instruction or other responsibilities at the training center.

Section L. The number of Apprentices enrolled shall be determined by the trustees of the trust.

Section M. Apprentices will not be assigned to any Leadman, Working Foreman or Show Foreman position.

Section N. Any Apprentice who enters the Teamsters Local 631 Apprenticeship Program after ratification of the this agreement who are a level one or level two Apprentice of the Teamster Apprenticeship program shall not be entitled to the benefits of Article 15 - Drug and Alcohol.

Section O. The Company shall recognize an employee's opt out requests for future assignments and dispatches, as requested to the Union Dispatch Office, for employees with respect to aisle carpet installation and I&D work.

Section P. Riggers

To keep up with the industry's heavy rigging needs and to compensate for expected growth, the Union and the Employer shall work cooperatively to develop and maintain a list of one hundred fifty (150) certified heavy riggers and one hundred (100) qualified heavy riggers. The Training Trust shall establish criteria for certifying and qualifying riggers that may include required rigging hours, classroom instruction and testing. Upon request by the Employer the Training Trust shall review the needs of the Employer for certified and qualified riggers. Current Journeyman whom have worked on or led a rigging crew in the twelve (12) months prior to June 1, 2017 shall be certified as Heavy Riggers. The Union and the Employer shall submit personnel to be qualified to the Director of the Training Center. The Training Trust shall evaluate the Director's recommendation and either accept or deny such recommendation. In the interim the Union will continue to work with the Employer to facilitate their heavy rigging needs.

Section Q. Display Fabricators and Cut Shop

1. It is understood that there are different skills within the Carpenter Shop. A Display Fabricator is someone that is versed and able to construct / fabricate a complex finished product from raw materials.

2. The Teamsters Training Trust shall develop and certify Display Fabricators (Teamster Carpenters) within the Journeyman and Apprentice classifications.

3. Teamster Carpenters classified as such under the previous Collective Bargaining Agreement may be retained as such until such time as their employment ends due to no fault of their own. For the purposes of recall the following order shall prevail 1) Journeyman 2) Teamster Carpenter. Layoffs shall occur in reverse order. Such order will be followed as long as the persons are qualified to perform the available work. Decisions as to the employee qualifications remain vested with the Employer.

ARTICLE 12
UNION STEWARDS

Section A. The Employer and the Union recognize that the success of the tradeshow/convention industry will be influenced by harmonious relations between all parties. The Employer recognizes the obligation of the Union to ensure the rights of the Employer's bargaining unit employees under this Agreement by the proper administration of this Agreement. The Union recognizes that Stewards employed by the Employer are employees of the Employer as well as representatives of the Union, at any site that bargaining unit work is being performed. The Employer and the Union mutually agree they shall not discriminate against any employee or prospective employee because of Union membership or activity.

Section B. Union Stewards are not agents of the Employer when functioning in their capacity as Union Stewards, even if they are employed by the Employer.

Section C. Union Stewards will be appointed by the Union. The appointment of a Steward will become effective upon the Employer receiving notice from the Union.

Section D. Steward Work Day

1. The Union Steward or his designee will be the first Teamster employee employed, following the foreman or Leadman on the crew they elect to come in with, except for specialty crafts providing they are qualified to perform the work available.

2. The Union Steward or their designee shall be entitled to the same hours as the original crew they elect to come in with including any premium pay worked.

3. If the original crew that the active Steward elects to come in with, works less than eight hours and there are other crews working, the active Steward may elect to stay with the other crew(s) up to eight (8) hours of work. After working eight (8) hours, the inactive Steward will become the active Steward. The Employer can elect to keep the active Steward longer if needed.

4. The Union Steward or their designee shall be the last individual to leave other than the exceptions listed below:

    a. When there is one (1) Foreman or Leadman remaining

    b. Specialty crafts

    c. Worker(s) for show management with project knowledge who are part of the original crew

    d. I&D work on specific booth(s)

    e. Forklift booth work specific to a work order

f. In the event that the Steward needs an eight (8) hour break and their original crew continues to work, the Steward will be given a choice of whether to stay and work with their original crew even if it involves premium pay or double time. Should the Steward opt to stay with their original crew, they will be excluded from working any further until they receive an eight (8) hour rest period, or they may take an eight (8) hour rest and come in the next day. If they do not come in the next day, then the Union will appoint a designee. If any member of the original crew stays late, and does not receive an eight (8) hour rest, and comes in the next day on overtime, then the show Steward may elect to do the same.

5. The Employer agrees to pay one Steward for actual time participating in grievance meetings.

Warehouse Stewards

When the Employer employs bargaining unit employees at a warehouse, the Union shall have the right to appoint one (1) working active Steward. The Union may also appoint an inactive Steward. The purpose of an inactive Steward is to have an additional Steward to cover the length of the entire workday, if needed. The inactive Steward becomes the active Steward when the active Steward leaves for the day. The inactive Steward may also be used to cover requested days off by the active Steward or for mandatory DOT compliance (restarts).

Tradeshow Stewards

Show site - When the Employer employs bargaining unit employees at a show site, the Union shall have the right to appoint one (1) working active Steward. The Union may also appoint an inactive Steward(s). The purpose of an inactive Steward is to have an additional Steward to cover the length of the entire workday, if needed. The inactive Steward becomes the active Steward when the active Steward leaves for the day. The inactive Steward may also be used to cover requested days off by the active Steward.

At individual tradeshows, the Union shall have the right to designate one (1) existing Steward as a non-working Steward at a tradeshow if one hundred and one (101) or more employees are working for the Employer at one time. Should the labor call drop below one hundred and one (101) employees, the non-working Steward will resume the position of a working Steward.

At a tradeshow, the Union may appoint Stewards in the following ratio:

	Working Steward	Non-Working Steward
1-100	1	0
101-200	1	1
201-300	2	1
301-400	3	1

The parties agree there are circumstances, after the Union has one (1) non-working Steward, which may necessitate a second non-working Steward for certain days of a particular show, based upon such considerations as the demographics/location(s) of a show, size of booths, number of exhibitors, square footage of the show, etc. In such circumstances, the Union may request of the Employer that a second non-working Steward be assigned.

Section E. Stewards appointed by the Union shall have the following rights and responsibilities:

1. To report or to assist in the investigation of unsafe or unhealthy conditions on the job.

2. To assist in checking employees in and out and to assist in identifying employees.

3. To assist the Employer in checking shortages on calls with the Union's dispatch office or with the Apprenticeship Coordinator.

4. To investigate grievances of employees. To report to the Employer and to the Union Business Representative any grievances or problems at the site or other work locations. Both parties recognize for business related purposes, such matters are not to be reported to any other outside party to this Agreement.

5. Steward(s) assigned to work the Tradeshow may participate in on-site production meetings. Stewards shall be given the show site work rules by the Employer prior to the move-in of the show.

6. To manage the provisions of Bullpen procedures as defined in Article 9 of the contract.

7. To ensure that employees are working with a proper dispatch.

Section F. All Stewards employed by the Employer are to administer this Agreement solely as it relates to the Employer's operations. Stewards shall not spend any time administering or policing the Agreement between the Union and any other Employer or policing problems that do not relate to the Employer.

Section G. No Steward shall:

1. Stop or interfere with any work at or related to any jobsite, any work of any contractor or any work of the Employer for any reason.

2. Tell any individual, including employees of the Employer, that he/she cannot work on the job.

3. Attempt to discuss on the site any jurisdictional issue under the Agreement with anyone other than representatives of the Employer, bargaining unit employees covered by this Agreement and the Unions.

Infractions of these rules by a Steward may be cause for discipline.

Section H. The Union will instruct all its members that they have no right to refuse to perform work in accordance with any instructions from Employer supervision and that, in the event they question such instructions, their sole recourse is through the grievance and arbitration process set forth herein.

Section I. The Employer will notify the Steward of any on-the-job injury as soon as possible and also will inform the Union of any serious on-the-job injury.

Section J. The Union may elect not to assign a Steward when jobsite conditions may not warrant one.

Section K. Working Stewards who are required to be away from their assigned duties to perform Steward responsibilities on site will notify the designated managerial representatives assigned to that show or his/her designee prior to leaving those assigned duties. The designated manager and the Steward will decide on the urgency of the request to leave their assigned duties. Whenever practical the assigned work duties should be completed prior to leaving their assigned duties. Such Steward responsibilities will be performed as expeditiously as possible so that the Steward will return to work as quickly as possible.

ARTICLE 13
GRIEVANCE AND ARBITRATION PROCEDURE

Section A. A grievance shall be limited and only defined as a dispute regarding the interpretation and/or application of the provisions of this Agreement arising during the term of this Agreement filed by the Union signatory to this Agreement or by an employee covered by this Agreement alleging a violation of terms and provisions of this Agreement.

Section B. Procedure. All grievances covered by this Article shall be handled exclusively in the following manner:

STEP ONE:

A grievance may not be filed unless the issue is first discussed informally at the jobsite between a Representative designated by the Union and a Supervisor(s) designated by the Employer, both with the authority to resolve a dispute, and that Supervisor(s) has refused or failed to adjust the issue on an informal basis. Any such informal resolution must be implemented within the time agreed upon in the resolution, or if a pay issue, within ten (10) business days. Such informal resolutions are not precedential for either side. If the Union was unaware of the alleged violation or grievance the Union may address such in Step Two.

STEP TWO:

All grievances to be valid shall be filed with the designated representative of the Employer in writing via verifiable email, facsimile, Certified Mail or in person within ten (10) business days after the first occurrence of the event giving rise to the grievance, or within ten (10) business days of the time the employee or the Union reasonably could have acquired knowledge of the event. The Union must obtain a signed receipt of the grievance from a designated Employer Representative(s). A grievance must be reduced to writing, citing the facts involved and the specific Article(s) and Section(s) of this Agreement alleged to have been violated. A grievance which does not meet these requirements shall be null and void, and will not be processed in accordance with this procedure.

STEP THREE:

The Employer Representative(s) and the Union Representative(s) will meet and discuss the grievance, within fourteen (14) calendar days. Prior to such meeting the Union must designate the grievance or grievances to be discussed. More than one (1) meeting may be requested and held within the fourteen (14) calendar day period. If the Employer Representative(s) does not make himself/herself available to meet within the fourteen (14) calendar day period, the Union may take the grievance to arbitration. If the Representative of the Employer and the employee and/or the Representative of the Union are unable to resolve the grievance within twenty-one (21) calendar days after the filing of the grievance, the grievance may only be submitted to arbitration by the Union giving the Employer written notice of its intent to do so within said twenty-one (21) calendar days. If the grievance is resolved at this step, such resolution will be reduced to writing within said twenty-one (21) days and shall be implemented within ten (10) calendar days. Such written resolution or the notice of intent to arbitrate from the Union shall be submitted via verifiable email, facsimile, Certified Mail or hand delivered.

Section C. Arbitration. An impartial arbitrator shall be selected from a panel of seven (7) arbitrators obtained from either the National Association of Arbitrators or Federal Mediation and Conciliation Services. The party requesting the panel of arbitrators shall direct the aforementioned to supply only members of the National Academy of Arbitrators, unless the parties mutually agree upon an arbitrator. The fees and expenses of the arbitrator shall be equally shared by the Company and the Union.

Section D. The arbitrator shall hold a hearing within ninety (90) calendar days of his/her selection unless otherwise agreed. The hearing shall not be public. The arbitrator shall afford the Union and the Employer liberal rights to present evidence, exhibitory, documentary and witnesses, and to examine and cross-examine witnesses. The Union and the Employer may be represented as individually desired. Upon the arbitrator's or Union's request, or Employer's desire, and when practicable, the Employer and the Union shall make employees available as

witnesses. All employee witnesses shall be free of restraint, interference, coercion and reprisal and, in wages, shall be kept whole by the party requesting said witness.

Section E. The arbitrator shall not have the authority to modify, amend, alter, add to or subtract from any provision of this Agreement. The Union shall have the right to grieve and the arbitrator shall have the right to rule on any grievance within the scope of Section A as long as the grievance is filed and processed within the time limits of this Article, even if the grievance is filed after the termination date of this Agreement. However, the Union shall not have the authority to grieve and the arbitrator shall not have the authority to rule on any matter, whether or not it meets the definition of a grievance under Section A, which arises after the termination date of this Agreement, or which is not filed or processed within the time limits specified in this Article.

Arbitrator will be allowed a reasonable amount of time, if needed (one to two hours) following the hearing to prepare his/her bench decision and provide such decision in writing no later than thirty (30) calendar days following the hearing date.

1. In cases where a bench decision is not given the arbitrator will render the finding and award in writing within thirty (30) days after the conclusion of the hearing.

2. In cases where a bench decision is not given and post briefs are written such briefs shall be due to the arbitrator no later than thirty (30) days from the termination of the hearing. The arbitrator will render the finding and award in writing within thirty (30) days of the receipt of post hearing briefs.

3. In cases where a bench decision is not given and post briefs are written and a stenographer or other recording device is used such briefs shall be due to the arbitrator no later than thirty (30) days from the receipt of such minutes or recording. The arbitrator will render the finding and award in writing within thirty (30) days of the receipt of post hearing briefs.

The arbitrator shall have the power to and may, from time to time, provide reasonable continuances and postponements of the hearing(s) as deemed appropriate or as agreed by the Union and the Employer. Parties will agree to meet after the normal work day (nights) and/or Saturdays to accommodate the Arbitrator's schedule.

At arbitration meetings there will be no stenographers allowed or other recording devices, nor post hearing briefs, unless mutually agreed to. Mediator and arbitration expenses will be split equally between both parties.

Section F. In any arbitration hearing concerning the discipline and/or discharge of a Regular Seniority employee, for a named infraction set forth in the sub-paragraphs of Article 14, Section B , the arbitrator's sole authority shall be to determine if the employee committed the act or

infraction alleged by the Employer. The arbitrator shall have no authority to modify the disciplinary penalty imposed by the Employer if the arbitrator finds the employee did commit the act or infraction alleged by the Employer.

Section G. The arbitrator shall base his/her ruling on a preponderance of the evidence. The arbitrator shall have no authority to modify the standard of proof required to anything other than a preponderance of the evidence.

Section H. The expenses of arbitration, including the arbitrator's fee and expenses, the cost of the court reporter transcript, and the cost, if any, of the facilities in which the hearing is held, shall be borne equally by the Employer and the Union. All expenses incurred by either party in the preparation or presentation of its case are to be borne solely by the party incurring such expense.

Section I. The time limits contained in this Article are to be strictly enforced. Any grievance shall be considered null and void if not filed and/or processed by the Union or the aggrieved employee in strict accordance with the time limitations set forth in this Article unless these time limitations have been expressly extended or waived in writing by the Employer and the Union.

Section J. Nothing herein shall preclude the Union or an employee covered by this Agreement from exercising the statutory rights of the employee to process an alleged case(s) of illegal discrimination with any regulatory authority having jurisdiction over such cases or in court.

ARTICLE 14
DISCIPLINE/DISCHARGE/LETTER OF NO DISPATCH

Section A. Casual Employees

1. Progressive Discipline – Casual Employees

The purpose of this procedure is to provide the affected casual employee with notice of his/her deficiencies or problems and to provide the employee with the opportunity to take corrective action. To be valid any such written warning must be issued within ten (10) business days after the Employer first became aware of the alleged deficiency or problem warranting the warning notice. A copy of any written warning notice must be given or sent to the employee when the warning is issued. A copy of the warning notice must also be sent to the Union by verifiable email, fax or by certified mail. The Employer, prior to issuing a Letter of No Dispatch, must issue the employee at least two

(2) written warning notices, of the same or similar offense, within a twelve (12) month period, stating the deficiency or problem which prompted the written notice. If the Employer issues a Letter of No Dispatch for any reason other than those set forth below of this article the Employer must first follow the progressive procedure set forth herein

2. Letters of No Dispatch – Casual Employees

The Employer may immediately issue a Letter of No Dispatch to a casual employee barring that casual employee from employment with the Employer for any of the following reasons:

a. Possession of any weapon, other than a tool of the trade, on any jobsite or on any Company premises, including parking lots or violence or threats of violence toward another person except reasonable self-defense.

b. Dishonesty, including but not limited to stealing/theft, falsification or the unauthorized use, removal or possession of property not belonging to the employee.

c. Refusal of a job assignment, except for safety reasons, and/or including, but not limited to, quitting in response to an assignment, leaving jobsite and/or assignment without authorization, except in the case of a verifiable emergency.

d. Harassing, obscene or abusive behavior toward another person.

e. Solicitation of, or acceptance of any gratuity from any person associated with a trade show.

f. Reckless behavior or willfully or negligently misusing, destroying or damaging any property of the Employer, show management, exhibitor or convention facility.

g. Work done in competition with the Employer while employed by the Employer.

h. Insubordination or other refusal to follow the order of a supervisor or other management representative of the Employer.

i. Conviction of a felony involving assault, theft, terrorist activity, or any other felony that adversely affects employment.

In addition to the above, the Employer may also immediately issue a Letter of No Dispatch to a casual employee for violation of the Drug and Alcohol Policy.

In the event the Employer suspends a casual employee pending an investigation of an alleged violation covered by this Section, the Employer must complete the investigation within ten (10) business days. At the end of that period, the Employer must either issue a warning notice or

Letter of No Dispatch or the Employer must reimburse the employee for work missed during the period of the investigation, unless mutually agreed otherwise. All violations other than those covered by this Section shall not be cause for suspension.

The Employer will consider factors such as an employees work history and past infractions when determining the duration of a suspension or a Letter of No Dispatch.

Any Letter of No Dispatch shall contain the date of the event; article(s) and section(s) of the Collective Bargaining Agreement relied upon to issue the Letter and the duration of the No Dispatch. Any casual employee may challenge the No-Dispatch Letter by filing a written claim with the Union against the Employer within twelve (12) days of mailing of such a No-Dispatch Letter to the employee by Certified Mail. The Employer shall fax or send via verifiable email a copy to the Union the same day it is mailed to the employee. A designated representative of the Union shall evaluate the merit of the claim. If that Union representative determines the claim has merit, the Union may present the claim to a Joint Committee described below no later than twenty (20) days after receipt of the claim by the Union.

Such Committee shall consist of two (2) representatives, one appointed by the Employer and the other shall be the Secretary-Treasurer of the Union or his/her designee if the Secretary-Treasurer is unavailable during the twenty (20) day period. In no event shall the designee be the same person who performed the Union's initial evaluation of the claim.

3. Joint Committee – Casual Employees

The Joint Committee shall have the ability to resolve the claim in one of the following ways:

a) The Committee finds that the employee has engaged in such conduct, and the No-Dispatch Letter should remain in force.

b) The Committee finds that the Employer has failed to prove that the employee engaged in the conduct prohibited by any of the reasons set forth in the No-Dispatch Letter, then the No-Dispatch Letter shall be null and void and the employee will be made whole for all lost wages and benefits.

c) The Committee may agree to compromise on a substitute decision as a resolution. The Committee has the authority to reach a decision of a lesser penalty than a permanent Letter of No Dispatch. Such decision, resolution or compromise shall be final and binding on all parties and will be non-precedential.

If the Committee reaches a deadlock the case may be filed to a binding arbitration. The authority of the arbitrator shall be specifically limited to the matters submitted to the arbitrator. The arbitrator shall have no authority in any manner to amend, alter, modify or change any provisions of this Agreement. The arbitrator shall have the authority to resolve the claim in one of the aforementioned ways.

Where the Joint Committee by majority vote settles a dispute, such decision shall be final and binding on both parties and the employee(s) involved, with no further appeal.

Section B. Regular Seniority Employees

1. Cause for Discipline.

No regular seniority employee shall be discharged, suspended without pay or subjected to other disciplinary action without just cause.

When a regular employee is discharged or disciplined, any prior disciplinary action of that employee during the term of his employment shall be relevant in determining the just cause of the discharge or discipline. Prior disciplinary action is not a condition precedent to the discharge or to discipline of a regular employee. The sole condition shall be whether the discharge or discipline was for just cause.

The parties recognize that many different types of conduct or infractions can constitute just cause for discharge or for disciplinary action. The parties agree that just cause for discharge without prior discipline shall include, but not be limited to:

a) Gross insubordination toward a supervisor or toward any other person at the Employer's premises or show site.

b) Dishonesty.

c) Recklessness resulting in property damage or personal injury while on duty.

d) Loss, revocation of driver's license for employees in runner classification. Loss, revocation are defined as per state laws, and Employer must be notified by employee of any pending action.

e) Drunkenness or drinking alcohol on duty.

f) Violation of the Drug and Alcohol Policy in a manner which warrants discharge under the Drug and Alcohol Policy incorporated in this Agreement.

g) Fighting while on duty or on the Employer's premises or at the Employer's jobsite, excepting reasonable self-defense.

h) Refusal to follow the order of a supervisor or other representative of the Employer.

i) Possession of any weapon, other than tool of the trade, on any jobsite or on the Company premises, including parking lots.

j) Unauthorized use of company equipment or failure to immediately report an accident, or carrying unauthorized passenger.

2. Whenever the Employer receives verifiable information that a regular seniority employee may have engaged in conduct warranting discipline, the Employer shall issue discipline, if any, within ten (10) calendar days of the time the Employer received such information or could reasonably have acquired knowledge of the information. If such initial discipline is a suspension pending further investigation, the Union and the Employer shall meet within ten (10) calendar days thereafter for the Union to present the grievant, witnesses, and/or evidence regarding the alleged conduct of the employee. The Employer shall issue final discipline, if any, within ten (10) calendar days after such meeting. These time limits may be extended by mutual Agreement of the parties. Nothing in this provision requires that the Employer suspend a regular seniority employee prior to assessing discipline up to and including discharge.

3. In disciplinary cases of regular seniority employees which do not warrant discharge without prior discipline under the terms of Section A of this Article, the Employer will not discharge or suspend without pay any regular employee unless that employee has been given at least two (2) written disciplinary warning notices within 12 months.

4. Copies of written warning notices shall be sent to the Union.

5. The Employer shall not dismiss nor reprimand an employee for making a complaint or giving evidence with respect to alleged violations of any provisions of this Agreement.

6. Mitigation of Damages. Any regular seniority employee covered by this Agreement who is discharged by the Employer and who disputes his discharge was for just cause shall have an affirmative duty to mitigate any potential damages which might result to the Employer in the event the discharge action involved is subject to Article 13-Grievance/Arbitration and an arbitrator overrules the discharge. An arbitrator acting under the terms of this Agreement who sustains the grievance of a discharged employee shall have no authority to award any back pay to that employee unless that employee or the Union has affirmatively proven by a preponderance of the evidence that the employee has fulfilled his duty to mitigate damages at all times since his discharge.

7. Any regular seniority employee who feels he/she has been unjustly discharged or suspended has the right to refer the action to the grievance procedure of this contract.

ARTICLE 15
DRUG AND ALCOHOL POLICY

[Employer] (hereinafter referred to as the Company) and the Union are committed to providing the safest and most productive work environment for all of the Company's employees represented by the Union. This policy is therefore to ensure that all the Teamster represented employees of the Company work in an environment free of the negative effects of illegal drug use and the misuse of legal drugs and alcohol. The Company and the Union recognize that early recognition and treatment of substance abuse problems are key to successful rehabilitation, and therefore, strongly encourage employees prior to violating the terms of this Article to seek help and use their Employee Assistance Program.

Section A. PROHIBITED CONDUCT

All Teamster represented employees are prohibited from:

1. Using, possessing, manufacturing, distributing or selling illegal drugs, or legal drugs in an illegal manner, at any job site, on any Company properties (defined here and throughout this Article as properties which are owned, leased or are under contract to use), on Company business, in company supplied vehicles or vehicles being used for company business or during working hours.

2. Unauthorized use of alcohol, using illegal drugs or misusing legal drugs (in excess of that recommended or approved by the prescribing physician) at any job site, on any Company properties, on company business, in company supplied vehicles or vehicles being used for company business or during working hours.

3. Being under the influence of alcohol, illegal drugs or misused legal drugs (in excess of that recommended or approved by the prescribing physician) at any job site, on any Company properties, on company business, in company supplied vehicles or vehicles being used for company business or during working hours.

4. Possession and/or storage of any illegal drug or unsealed containers of alcohol at any job site, on any Company properties, in a Company vehicle, company supplied vehicle or vehicle used for company business or while on company business.

5. Substituting, adulterating or tampering with any breath or urine sample used in the testing process.

6. Failing to submit a breath or urine sample for testing in the following manner:

    a. Failure to provide an adequate breath or urine sample for testing without a valid medical reason.

b. Failure within two (2) hours of signing the consent form, to produce a sample suitable for testing, e.g. such as a sample that falls out of proper temperature range.

7. Refusing to consent to testing or engaging in conduct that clearly obstructs the testing process including but not limited to failure to sign the required forms, failure to report to the testing site within the time allocated, failure to cooperate with the testing personnel and failing to remain readily available for a test.

8. Failure to cooperate and/or successfully complete any requirements of the evaluation and rehabilitation processes.

9. *Conviction or guilty plea in any court proceeding involving the distribution, sale or* trafficking of illegal drugs or alcohol.

10. Failure to notify a supervisor or manager of the use of prescription or over-the-counter drugs which the employee should have known may alter the employee's physical or mental ability to perform his/her job functions. Further, employees must follow all physician, manufacture or package insert directions when taking prescription or over-the-counter drugs.

11. Failure to pass any required drug and/or alcohol test as mandated by this policy.

Section B. TESTING

Drug and alcohol testing is an effective way to determine if an employee is inappropriately using drugs and/or alcohol. The methods used to determine the presence of alcohol and/or *drugs shall be urine for drugs and breath testing for alcohol.*

The Company may do the following tests for the presence of illegal drugs and/or alcohol in an individual's system.

1. REASONABLE SUSPICION DRUG AND/OR ALCOHOL TESTING. If the Company has a "reasonable suspicion" that an employee has violated this Policy, the Company may require the employee to submit to both alcohol and controlled substance tests immediately. "Reasonable suspicion" means that a management representative, based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee, has reached a good faith suspicion of such a violation. A supervisor's report must be available to the Union within 24 hours.

2. POST-ACCIDENT DRUG AND/OR ALCOHOL TESTING. Employees involved in an accident at a job site or on Company properties, on company business, during working hours, or while driving a company-supplied vehicle or other vehicle used for company business

when such accident involves any other person or results in either (a) a fatality, (b) bodily injury or (c) property damage will be subject to a post-accident drug and/or alcohol test. The employee must remain readily available at the medical facility, worksite or site of the accident for the purpose of submitting to the drug and/or alcohol test.

3. GOVERNMENT REQUIRED DRUG AND/OR ALCOHOL TESTING. The Company fully complies with all government regulations concerning drug and/or alcohol testing including testing under the Department of Transportation's (DOT) Anti-drug and Alcohol Abuse Statutes as administered by the Federal Highway Authority (FHWA).

4. RANDOM DRUG AND/OR ALCOHOL TESTING. All employees will be subject to unannounced random drug and/or alcohol testing during any working hours and will be included in the pool for selection. The selection of the employees to be tested out of that pool will be done by an independent testing facility or other entity outside of the Company's control. The random selection procedure will ensure that all employees will be treated fairly and equally. The testing will occur on a periodic basis reasonably spread throughout the year. The Company reserves the right to determine and also to change the percentage of employees to be randomly selected. At the completion of testing, the Employer shall immediately provide the list used to call the employees for the present round of testing to the Union.

When it is determined that an employee is to be tested other than random testing, the Employer shall summon the presence of a Union official and permit at least thirty (30) minutes for a Union official to arrive. The parties agree that time is of the essence in such matters and, if a Union official fails to arrive within the time set, the Employer may send the employee to be tested. In the case of reasonable suspicion testing, if the management representative still maintains a good faith suspicion of a violation after the arrival of the Union official, the employee may be sent for the test. A Union Steward or other designated Union official may accompany the employee, if such Union official arrives within the time set forth in this Agreement, to witness and confirm the collection procedures. Any dispute as to the reasonableness of the event shall be subject to the grievance procedure.

Section C. COLLECTION AND TESTING PROCEDURES

Along with the concern to maintain a safe and drug-free workplace for all of the Company's employees represented by the Union, the Company and the Union are also concerned about protecting the rights of such Company employees under this anti-drug and alcohol program. They want to ensure that the collection and testing procedures are conducted in a scientifically valid program to insure fairness, scientific accuracy and the highest integrity in the process. Under this program, the Company will retain the services of an independent Health & Human Services approved laboratory which will test by way of urine collection for the presence of amphetamines, marijuana metabolites, cocaine metabolites, opiate metabolites (heroin) and phencyclidine (PCP). The laboratory will further test for the presence of alcohol by taking

breath samples through the use of a DOT approved breathalyzer. In addition, to insure fairness and integrity in the process, the collection and chain of custody procedures, Medical Review Officer review of positives only, and split sample testing will also be adopted by the Company as part of this program. The Employer may, at its sole option, in the case of reasonable suspicion or post-accident testing, have the laboratory perform a quick test which will quickly screen out all negatives to allow the employee who tests negative to return to work as quickly as possible. Should the quick test result in a "non-negative" the laboratory shall then initiate the normal testing procedure under this policy. In addition, the Company will submit to the lab periodic blind samples to insure the integrity of the process.

Upon the completion of all such tests, except for a reasonable cause test, the employee may, at the Employer's option, be returned to work if he or she is otherwise physically released to return to work and shall continue to work as assigned pending the test results. For employees tested under the reasonable cause standard, they shall not return to work until the test results are reported to the Employer. If the test is negative, the employee shall be returned to work status and paid for whatever time he or she would have worked in the absence of the test.

Section D. EVALUATION AND VIOLATION RATES

All employees will be tested based upon the cut off levels under the DOT rules. In addition, certain employees, such as those holding a commercial driver's license operating vehicles in interstate commerce fall within the jurisdiction of those DOT rules and are subject to the sanctions imposed by those rules and the provisions of this policy. Under those rules, the minimum cut-off levels are as follows:

a. ALCOHOL - an alcohol concentration of .04 or above

b. ILLEGAL DRUGS

	Screening Cut-off	Confirmation Cut-off
Amphetamines	1,000	500 ng/ml
Cocaine	300	150 ng/ml
Marijuana	50	15 ng/ml
Opiates	2,000	2000 ng/ml
Phencyclidine	25	25 ng/ml

Under this program, any employee who tests at or over these cutoff levels for drugs or alcohol or engages in any of the prohibited conduct as enumerated herein has violated this policy.

Section E. CONSEQUENCES FOR VIOLATION OF THIS POLICY

Once the Employer has established that "chain of custody" has been met and the cut-off levels have been exceeded, the following shall apply:

Once an employee violates any provision of this Policy, other than by failing a drug and/or alcohol test and/or by violating Section A.6 of this Policy, the employee shall be immediately and permanently terminated from employment with the Company and immediately and permanently ineligible for dispatch by the Union to any Employer signatory to a convention industry Agreement with the Union.

Once an employee fails any drug and/or alcohol test under this Policy and/or violates Section A.6 of this Policy, the employee shall be immediately removed from the Company's payroll and is immediately suspended from employment and ineligible for dispatch by the Union to any Employer signatory to a convention industry contract with the Union for a period of thirty (30) days or the completion of the MAP program, whichever is later. Such an employee must, as a condition of re-eligibility for dispatch, complete any required evaluation and rehabilitation programs as required by the Membership Aid Plan (MAP), pass a return-to-duty test taken at the employee's cost prior to his/her return to work, abide by all terms of this Drug and Alcohol Policy and be subject to, in addition to testing under other provisions of this Policy, six (6) additional company paid follow-up drug and/or alcohol tests within a period of one year following the date that the employee returns to work with that Company, but no more than a total of six (6) times during the five (5) year period following that date.

Once an employee who is employed or dispatched pursuant to the preceding paragraph again fails any drug and/or alcohol test under this Policy, such employee shall be immediately and permanently terminated from employment and immediately and permanently ineligible for dispatch by the Union to any Employer signatory to a convention industry contract with the Union.

ARTICLE 16
WORKER'S COMPENSATION

Section A. The Employer agrees to cooperate toward the prompt settlement of employee on-the-job injury claims when such claims are due and owing as required by law.

The Employer shall provide workers' compensation protection for all employees when required by state law.

Employees injured on the job will remain in pay status until released by the medical facility and returned to the work location, but in no event less than his/her daily guarantee from the start of their workday. Such employees will be provided transportation, for emergency medical care, from the jobsite to the treating facility and back to his/her work location.

The Employer will notify the Union in writing with a copy of the C-1 report regarding the employee's on-the-job injury within seven (7) calendar days of any job incurred injury to an employee covered by this Agreement while employed by the Employer which results in lost work time. Once the Union is notified, the employee shall not be eligible for dispatch by the Union to any Employer, until the affected employee delivers to the Employer and to the Union a written release to full duty signed by the appropriate physician treating the employee for the job incurred injury.

Section B. The Employer will pay monthly at the applicable contribution rate to the Health and Welfare Fund for a maximum of 173 hours per month for a total period of one (1) year during the term of this Agreement on behalf of regular seniority employees employed by the Employer who are not working due to an on-the-job injury covered under Nevada's worker compensation statutes, if the injury occurred during the regular seniority employee's employment with the Employer.

Section C. The Employer will pay monthly at the applicable contribution rate to the Health and Welfare Fund for a maximum of 173 hours per month for a total period of twelve (12) months during the term of this Agreement on behalf of a casual employee who is not working due to an on-the-job injury covered under Nevada's worker compensation statutes, if the injury occurred during the casual employee's employment with the Employer.

Section D. The Employer will pay monthly at the applicable contributions rate to the Health and Welfare Fund for a maximum of 173 hours per month for a maximum period of three (3) months during the term of this Agreement on behalf of extra board employees employed by the Employer who are not working due to an on-the-job injury covered under Nevada's workers compensation statutes, if the injury occurred during the employee's employment with the Employer.

Section E. In addition to the conditions set forth in Section A, B, C and D above, the Employer's obligation to make the payments referenced in Section B, C and D above shall cease immediately when the affected employee is released to return to work, or if the employee returns to work for the Employer or any other Employer in any capacity

ARTICLE 17
SAFETY

Section A. The Employer and the Union recognize the importance of safety provisions at the Employer's property and at all worksite locations for the welfare of all employees.

Section B. The Employer agrees to make provisions for the safety and health of its employees and recognizes that Employer and Union both have obligations under municipal, state, and federal laws and regulations.

Section C. Employees will not be required to work under conditions they reasonably believe to be conditions of imminent danger to life and/or limb. Investigation of such incidents will be made by the Safety Committee and reports made to executive management of the Company. The final decision will be management's prerogative which shall be subject to the grievance process.

Section D. There will be an active Safety Committee developed which will consist of at least two (2) bargaining unit employees of the Company and one (1) Union Representative, and one (1) Employer Representative.

The Committee will hold meetings quarterly. Notices of these meetings will be posted so that all employees of the Employer may raise to members of the Committee conditions which may be unsafe.

The Safety Committee will investigate reported unsafe or unhealthy conditions and make recommendations to management to relieve or correct such conditions. Management, in turn, will review the recommendations and discuss with the Committee the corrective actions to be taken. It shall be management's prerogative and responsibility to make the final decision on corrective actions to be taken.

Section E. The Employer will provide fresh cold water on all jobsites.

Section F. The Employer will provide a reasonable number of first aid kits on all jobsites.

Section G. Safety equipment, when provided by the Employer, must be used or worn by the employee.

ARTICLE 18
TOOLS AND DRESS CODE

Section A. Proper Tools for Journeymen, Apprentices, I&D Specialists and Extra Board(s).

If an employee does not report to work with the required tools, the Employer has the right to refuse to employ the employee and the Employer shall not be liable for any payment to such employee.

Items of tools which must accompany convention workers on job site are as follows:

1. Staple Gun (JT-21)
2. Pliers (Standard 6" size)
3. Blade Screwdriver (Medium size)
4. Phillips Head Screwdriver (Medium size)
5. Adjustable Wrench (at least 6" size or larger)
6. Stanley Knife
7. 25' minimum retractable metal Tape Measure
8. Hammer
9. Cushion Back Carpet Cutter
10. Toolbox or Pouch
11. Allen Wrench Sets (Metric and Standard)
12. Work Gloves
13. Pry Bar (Flat Bar and Nail Bar)
14. Tin Snips
15. Hack Saw (Employer to supply blades)
16. Key Hole Saw (Employer to supply blades)
17. Drill Index
18. 7/32" Cam lock key (six inch Allen Wrench)
19. 5/16" Cam lock key (six inch Allen Wrench)
20. T-30 Torx t-handled wrench / tool

Section B. Dress Code/Personal Hygiene

The Employer and the Union recognize the necessity of implementing a dress code and minimal personal hygiene standards for purposes of safety, insurance and customer service. In furtherance of this goal, the Employer and the Union agree to the following:

1. All employees are required to wear leather or tennis shoes while on duty. Sandals, moccasins, open toed shoes, mesh top shoes and/or plastic top shoes are prohibited.

2. All clothing at the start of the shift should be clean. All employees must wear shirts, including T-shirts, with hemmed collars, bottoms and sleeves. All tank tops, open midriff tops and/or shirts with obscene or pornographic remarks are prohibited. Shirts with the name or logos of a company other than the Employer are prohibited. The Employer in its sole discretion shall determine whether and when employees may wear short or long pants.

3. Personal hygiene must be maintained.

4. Employees who do not comply with the above provisions will be sent home and are not entitled to reporting pay.

ARTICLE 19
THE WORKING DAY AND PAYDAYS

Section A. The Working Day

Eight hours work shall constitute a day's work within a twenty-four (24) hour period. All time worked in excess of eight (8) hours in any one (1) day and/or forty (40) straight-time hours in any one week shall be at the overtime rate of pay. All employees shall be guaranteed four (4) hours' pay when they are required to report, whether the job lasts four (4) hours or not. Employees leaving jobsite are required to receive authorization of management, except in the case of a verifiable emergency. A four (4) hour minimum does not constitute a day's work when there is more work available. Such hours not worked shall be at straight-time except on Saturdays or Sundays when it shall be at time and one-half (1½). Holidays shall be paid at double time (2X). An employee performing work on Saturday, Sunday, and/or holidays shall be paid at the applicable overtime rate and be guaranteed four (4) hours' pay.

For a single day show, employees working both the "in" and the "out" during a twenty-four (24) hour period are guaranteed a minimum four (4) hour call for each.

Section B. Extra Board Workers

Extra Board Workers having less than 100 hours worked for the Employer in the previous calendar year will only receive time and one-half (1½) after eight (8) hours worked in a day or forty (40) hours worked in a week.

Section C. Overtime

Each eight (8) hours are to be paid at regular time, next four (4) hours at time and one-half (1½), and all hours over twelve (12) are to be paid at double time (2X); and, unless an eight (8) hour break exists between letting employees leave their job and come back; they, of course, then return at the double time (2X) rate.

Section D. Breaks Between Shifts

Eight (8) hour break between shifts or revert to premium time rate prior to break. It is understood that the Employer will provide a good faith effort to provide a ten (10) hour break when requested by an employee.

Section E. Workweek

The workweek will be Monday through Sunday. All employees shall be paid one and one-half (1½) times the base rate for all work performed between the hours of 10:00 p.m. and 6:00 a.m. except employees covered under Section B. above. There shall be no pyramiding of overtime. All regular employees shall be guaranteed forty (40) hours per week, including Saturday, Sunday, and after hours, when available.

Section F. Regular Seniority Employees

The Union shall be notified of the hire of all new regular seniority employees within seven (7) calendar days of hire. The Union shall be provided the following information:

1. Name
2. Social Security Number
3. Hire Date
4. Address
5. Telephone Number

All regular seniority employees shall be guaranteed a schedule of forty (40) hours when and if work which the regular seniority employee is qualified to perform is available during a workweek including Saturday and/or Sunday and/or after the hours of the regular seniority employee's shift. Hours during a workweek for which a regular seniority employee is scheduled but does not work shall count toward the Employer's obligation to provide that employee forty (40) hours of work in a workweek when and if work is available.

A regular seniority employee who has not been scheduled for and/or worked forty (40) hours in a workweek shall have priority over a casual employee for available work during that workweek which he/she is qualified to perform until the regular seniority employee reaches forty (40) hours of work during that workweek.

Nothing contained in this Section F shall prohibit the Employer from scheduling and/or requiring a regular seniority employee to work certain hours up to or in excess of forty (40) hours in a workweek rather than employing a casual employee to perform such work.

Section G. Breaks and Meal Periods

All employees shall be allowed two fifteen (15) minute non-scheduled coffee breaks for each six (6) hours worked between start time and the first meal break or for each six (6) hours worked between meal periods. Should the time worked between start time and the first meal break or between meal breaks be less than six (6) hours, only one (1) non-scheduled coffee break need be allowed. After working eight (8) hours and every two (2) hours thereafter, employees will be entitled to a coffee break.

Employees shall not be required to work more than six (6) hours without being allowed a meal period of at least one-half (½) hour. Meal period shall not be considered as time worked and shall not be paid for by the Employer. Meal periods shall not exceed one (1) hour in duration and may be granted no sooner than two (2) hours after the employee begins work. Subsequent meal periods shall be called not less frequently than six (6) hours and not more frequently than every four (4) hours after the completion of the first meal period of the day. Meal periods may be staggered among members of the crew.

Employees returning from a meal shall be guaranteed one (1) hour of work or one (1) hour pay at the appropriate rate in lieu thereof.

No employee will be required to work more than six (6) hours without a meal break. If the Employer directs an employee to work more than six (6) hours without a meal period, the employee, in addition to pay for hours worked, will receive one-half hour pay at the rate of pay in effect at the time the meal penalty is incurred. No employee may waive nor be coerced into waiving meal penalties. If an employee is found to have not been compensated for a meal penalty the Employer will rectify the mistake.

Food furnished by the Employer at the jobsite without providing the appropriate time off for a meal period shall not be considered an appropriate meal break.

Section H. Incidental Pay Policy

An employee shall receive pay hereunder only for hours actually worked if he/she elects to leave the place of employment, or refuses to do other work, or if the Employer is unable to furnish him work because of inclement weather, mechanical breakdown, or other physical

conditions beyond his control. Anytime the Employer requires an employee to travel out of town, the Employer will pay reasonable compensation for the following: travel expense, room accommodations, meals, and necessary living and miscellaneous expenses.

Any employee required to travel out of town on behalf of the Employer shall be paid one (1) hour travel time prior to the scheduled departure time of the flight, travel time for the duration of the flight and one (1) hour after arrival. However, such employee shall be paid no less than a four (4) hour minimum or more than a twelve (12) hour maximum on a travel day on which no work is performed.

Section I. Paydays

A pay period shall be seven (7) consecutive days, Monday through Sunday.

The Employer shall provide each employee with a daily time record. The Employer shall have the option of determining the format of the record providing the format provides the employee and the Union with the required and necessary information.

The employees shall be paid on a regular designated payday each week for all work performed during the previous pay period, and their checks will be available at the Employer's designated facility.

The Employer will not hold back more than one week's pay on any employee.

When an individual is not compensated in accordance with this Agreement, the individual shall advise the Employer as soon as possible of the error and provide documentary proof thereof. Each Employer shall designate a procedure and/or office to receive such claims. The Employer and the individual shall attempt to correct the error as soon as possible and the individual shall promptly provide all required documentation in support of his/her claim. In the event the individual has fully cooperated with the Employer's request for proper documentation and his/her pay is not corrected within five consecutive days and the shortage involves more than one hundred dollars ($100.00), the Employer, in addition to correcting the payment error, shall pay the individual a penalty equal to 25% of the correction pay. In the event the correction pay is not made within 15 days from receipt of proof of the shortage, the penalty shall be equal to 50% of the correction pay and must be paid on or before the next pay cycle. If it is not made on or before the next pay cycle, the Company will pay an additional penalty equal to 50% of the *original correction amount for each pay period thereafter. Nothing herein shall be intended to* subject the Employer to penalty pay in circumstances where the Employer has a good faith dispute with respect to the proper payment obligations to the individual or where the individual has not fully cooperated with the Employer's request for proof of a payment error.

Upon request of the Union on behalf of a member who has filed a grievance concerning the time worked or pay, the Employer agrees to submit the payroll records of such employee for audit by an agent of the Union.

Section J. Covered Work

When the Employer schedules more than one consecutive or overlapping shift, where employees are performing essentially the same work in the same location ("Covered Work"), the Employer will use its best efforts to utilize employees for a minimum of six (6) hours. Covered Work is limited to the following areas: In Freight, a specific door at a convention center or hotel; in MIS, a specific booth; or in Deco, a specific zone. This provision shall not apply to employees working as Leads or Foremen. The intent of this provision is to avoid situations similar to the following: A freight crew at Door 4 starts at 8:00 a.m. Another freight crew at Door 4 starts at 12 p.m. The Company then sends the 8 a.m. crew home at noon. Both parties understand that the Employer is unable to guarantee a six (6) hour shift for every shift, due to time or contract restraints, as well as the needs of the exhibitors, show management and other customers. This provision shall not apply where the schedules result from events outside the Employer's control.

In the event that a pattern of less than six (6) hour shifts has developed for Covered Work, the parties will meet and ensure this practice is corrected. If the parties are unable to agree on whether a pattern has developed, the issues may be subject to the contractual provisions of the grievance and arbitration process, under the American Arbitration Association rules for expedited arbitration. In the event the matter proceeds to arbitration, the parties agree that the relief provided by the Arbitrator shall be limited to (1) issuing a cease and desist order and/or (2) the difference in pay between the actual number of hours worked and a six (6) hour shift (if the conduct was willful).

ARTICLE 20
HOLIDAYS AND VACATIONS

Section A. Holidays

Eight (8) holidays will be observed: New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, and Christmas Day. The above holidays will be paid at the double time rate if worked. If not worked, they shall not be paid. The observed holidays shall be:

	2017	2018	2019	2020	2021
New Year's Day		Mon, Jan 1	Tues, Jan 1	Wed, Jan 1	Fri, Jan 1
Presidents' Day		Mon, Feb 19	Mon, Feb 18	Mon, Feb 17	Mon, Feb 15
Memorial Day		Mon, May 28	Mon, May 27	Mon, May 25	Mon, May 31
Independence Day	Tues, July 4	Wed, July 4	Thurs, July 4	Sat, July 4	Sun, July 4 *
Labor Day	Mon, Sept 4	Mon, Sept 3	Mon, Sept 2	Mon, Sept 7	Mon, Sept 6
Veterans' Day	Sat, Nov 11	Sun, Nov 11	Mon, Nov 11	Wed, Nov 11	Thurs, Nov 11
Thanksgiving	Thur, Nov 23	Thur, Nov 22	Thur, Nov 28	Thurs, Nov 26	Thurs, Nov 25
Christmas Day	Mon, Dec 25	Tues, Dec 25	Wed, Dec 25	Fri, Nov 25	Sat, Dec 25

*Observed Monday, July 5

Section B. Vacations

1. All regular seniority employees shall be entitled to the following number of weeks of vacation based upon their seniority with the Employer as of June 1 of each year:

Years of Seniority	Weeks of Vacation
One (1)	One (1)
Two (2)	Two (2)
Eight (8)	Three (3)
Twenty (20)	Four (4)

2. Each employee eligible for vacation pay shall receive forty (40) hours of pay at his/her regular rate for each week of vacation.

3. Employees who quit or are terminated shall be paid pro rata vacation pay; however, upon termination of employment, the terminated employee shall not be eligible for such pro rata vacation pay until after he/she has acquired one (1) year of seniority.

4. Vacations must be taken unless work load requirements are such that the employees are needed to work.

5. Dates selected for vacations must be with Employer approval depending on work load requirements, and seniority dates shall be used to select desirable vacation periods. In all cases, the efficient operation of the Employer's business shall be the first requirement for determining vacation dates.

6. Should an employee not have the opportunity to take his vacation during the June 1 calendar year, he/she shall be paid for such unused vacation if his/her Employer refused to release him/her.

ARTICLE 21
PENSION

Section A. Subject to the provisions of this Agreement, the Employer agrees to accept the provisions of the Western Conference of Teamsters Pension Trust Fund and further agrees that the Employer Trustees of such fund, and their successors in trust, are and shall be its representatives and consents to be bound by the rules and regulations established, or as may be established, by the Western Conference of Teamsters Pension Trust Fund on account of each employee covered by this Agreement, except those hired pursuant to Article 8, Section B.10. The Employer's total contribution obligations to the Pension Trust Fund are set forth in Article 23 of this Agreement. The contributions required to provide PEER 84 will not be taken into consideration for benefit accrual purposes under the Plan. The additional contribution for PEER 84 must at all times be 6.5% of the basic contribution and cannot be decreased or discontinued at any time. The PEER 84 contribution shall not result in any increase to the Employer's basic contribution rate.

The contribution amount may be increased solely by a reallocation from and a consequent reduction of, the wage rates then in effect. The Employer will not be and is not responsible for paying any increase in contributions to the Pension Trust Fund, except as provided herein.

Section B. If the workers procured by the Employer from another source when the Union hiring hall is exhausted are from an employment agency providing temporary employees, the Employer shall be obligated to contribute to the Pension Plan in accordance Article 23 for hours worked by such employees. The Employer shall not be obligated to pay any wage rate set forth in Article 23 and shall not be obligated to contribute to the Health and Welfare Plan for hours worked by such employees. The wage rates and fringe benefits, if any, other than pension, for such employees shall be as agreed to between the Employer and the employment agency.

Section C. Contributions shall be due and payable to the Area Administrative Office no later than ten (10) days after the end of each month.

ARTICLE 22
HEALTH AND WELFARE

Section A. A Health and Welfare Fund known as the Teamsters Local 631 Security Fund for Southern Nevada is hereby established, and the Employer, subject to the provisions of this Agreement, agrees to abide by the plan Agreement and declaration of trust, and further to make payments to the Fund in the amount designated below. Such payments are solely for employees covered by this Agreement, and no contributions shall be made for hours worked by employees hired from other sources pursuant to the terms of this Agreement.

Section B. Subject to the provisions of this Article, participation by the Employer in said Trust shall be for the duration of this Agreement and renewals or extensions thereof, or for the period workers are employed under the terms of this Agreement. The Employer accepts the Employer Trustees as its Trustees.

Section C. Except as provided herein, the Employer's sole obligation shall be to contribute to the Trust for all hours worked by all employees; except those employees covered by another Union contract or employees hired from a temporary employment agency. The Employer's total contribution obligations to the Health and Welfare Fund are set forth in Article 23 of this Agreement. The hourly contribution shall be inclusive of a seventy-five cent ($0.75) per hour contribution to the Retiree Pre-Funding Program. The amounts set forth in Article 23, as the case may be, may be increased solely by a reallocation from and a consequent reduction of, the wage rates then in effect. The Employer will not be and is not responsible for paying any increase in contributions to the Health and Welfare Trust Fund mandated by the Trustees in excess of the amounts set forth herein. If the increases to the Health and Welfare Fund as set forth in Article 23 of this Agreement are more than the amounts needed, the additional money will be moved to pension.

Section D. Once the provisions of this Article are in effect, the provisions of Article 14 – Health and Welfare of the Collective Bargaining Agreement covering the period June 1, 2011 through May 31, 2014 shall be null and void. There shall be no flat rate contribution under this Article. There shall be no minimum contribution for employees who have been credited with the minimum number of hours required by the Health and Welfare Fund. There shall be no maximum contribution. There shall be no reconciliation payments made by the Employer. The sole obligation of the Employer under this Article is as set forth in Section C. above and in Sections E. and F. below.

Section E. A "month" is defined as the period beginning with the first calendar day of the month and ending with the last calendar day of the month.

Section F. During the term of Agreement, an employee in the convention industry shall not be initially eligible for benefits under the Trust, unless and until the employee works and has

paid on his/her behalf two consecutive full months contributions into the Plan as required by the summary plan description.

Section G. The bank of any employee no longer eligible for dispatch in the convention industry and the bank of any Apprentice removed from the Apprenticeship Program shall be cancelled immediately, and may not be used by such individuals to secure eligibility for benefits.

ARTICLE 23
WAGE SCALES, BENEFIT CONTRIBUTIONS

The total economic increases to be paid under this Agreement shall be as follows:

Effective June 1, 2017 - $.15 to wage, $.31 to pension and $.29 to H&W

Effective October 1, 2017 - $1.00 to vacation fund

Effective June 1, 2018 - $.40 to wage, $.60 to pension, $.30 to vacation and $.45 to H&W

Effective June 1, 2019- $.50 to wage, $.60 to pension, $.20 to vacation and $.45 to H&W

Effective June 1, 2020 - $.35 to wages, $.80 to pension and $.60 H&W

Effective June 1, 2017 through October 1, 2017
Total Economic Package (Wages, Benefit Contributions)

Classifications	Wage Rate	Time and Half Rate	Double Time	H&W	Retiree H&W	Pension	PEER 84 6 5% of Pension Rate	Training	Straight Time Total
GROUP I									
Decorator	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Carpet Layer Booth & Official Only	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Furniture Setup &	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Seamstress	$31.75	$47.63	$63.50	$10 20	$0.75	$7.41	$0.52	$0.30	$50.93
Condor Lift Operator	$33.10	$49.65	$66.20	$10 20	$0.75	$7.41	$0.52	$0.30	$52.28
High Work @ <16'	$32.35	$64.70	$64.70	$10.20	$0.75	$7.41	$0.52	$0.30	$51.53
Group II - Freight									
Freight Handler	$31.75	$47.63	$63.50	$10.20	$0.75	$7 41	$0.52	$0.30	$50.93
Packer & Crater	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Fork Operator	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Warehouseman If covered by earlier CBA With Union	$31.75	$47.63	$63 50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Rigger	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Truck Driver	$31 75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Runner (Whse To Showsite)	$31 75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Runner (Showsite)	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Group III - I&D									
Displayman	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Exhibit Maint & Service	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Displayman - Leadman	$33.66	$50.48	$67.31	$10.20	$0.75	$7 41	$0.52	$0.30	$52.84
Exhibit Builder (If covered by earlier CBA with Union)	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Group IV - Specialty Crafts									
Mechanic	$33.10	$49.65	$66.20	$10 20	$0.75	$7.41	$0.52	$0.30	$52.28
Painter - Display Shop	$31.75	$47.63	$63.50	$10 20	$0.75	$7.41	$0.52	$0.30	$50.93
Group V Leadman/Foreman									
Leadman	$33.66	$50.49	$67.32	$10.20	$0.75	$7.41	$0.52	$0.30	$52 84
*Working Foreman(If the Employer elects to use this	$34.13	$51.20	$68.26	$10.20	$0.75	$7.41	$0.52	$0.30	$53.31
*Show Foreman(If the Employer elects to use this Bargaining Unit Classification	$34.61	$51.92	$51.92	$10.20	$0.75	$7.41	$0 52	$0.30	$53.79

*The use of these bargaining unit classifications shall in no way be construed to restrict non-bargaining unit supervisors of the Employer from giving order, instructions directly to any bargaining unit employee of the Employer

The wage rate for the Leadman classification during the term of this Agreement shall be six percent (6%) above the Journeyman (Decorator) wage

The wage rate for the Working Foreman classification during the term of this Agreement shall be seven and one half percent (7.5%) above the Journeyman (Decorator) wage rate

The wage rate for the Show Foreman classification during the term of this Agreement shall be nine percent (9%) above the Journeyman (Decorator) wage rate

Group VI - Seniority Employees

All seniority Employees will receive $ 15 an hour more than the classification in which they work.

Group VII - Apprentices		
	1st 500 hours of employment as an apprentice	60%
	2nd 500 hours of employment as an apprentice	70%
	3rd 500 hours of employment as an apprentice	80%
	4th 500 hours of employment as an apprentice	90%

Employees other than apprentices may also be assigned to work in more than one classification or kind of work but if they are, they shall receive the rate of the highest paid classification on which they are employed for the entire day.

The wage for outside source workers shall be $14 00 per hour for the term of this Agreement

PA101

Effective October 1, 2017 through May 31, 2018
Total Economic Package (Wages, Benefit Contributions)

Classifications	Wage Rate	Time and Half Rate	Double Time	Vacation	H&W	Retiree H&W	Pension	PEER 84 6.5% of Pension Rate	Training	Straight Time Total
GROUP I										
Decorator	$31 75	$47 63	$63.50	$1.00	$10.20	$0.75	$7.41	$0.52	$0.30	$51.93
Carpet Layer Booth & Official Only	$31 75	$47.63	$63.50	$1.00	$10.20	$0.75	$7.41	$0.52	$0.30	$51.93
Furniture Setup &	$31 75	$47.63	$63.50	$1.00	$10.20	$0.75	$7.41	$0.52	$0.30	$51.93
Seamstress	$31.75	$47.63	$63.50	$1.00	$10.20	$0 75	$7 41	$0 52	$0.30	$51.93
Condor Lift Operator	$33.10	$49.65	$66.20	$1.00	$10.20	$0.75	$7 41	$0 52	$0.30	$53.28
High Work @ <16'	$32.35	$64.70	$64.70	$1.00	$10.20	$0.75	$7.41	$0 52	$0 30	$52.53
Group II - Freight										
Freight Handler	$31.75	$47.63	$63.50	$1.00	$10.20	$0.75	$7.41	$0 52	$0.30	$51.93
Packer & Crater	$31.75	$47.63	$63.50	$1.00	$10.20	$0.75	$7.41	$0.52	$0.30	$51 93
Fork Operator	$31.75	$47.63	$63.50	$1.00	$10 20	$0.75	$7.41	$0.52	$0 30	$51.93
Warehouseman If covered by earlier CBA With Union	$31.75	$47.63	$63.50	$1.00	$10.20	$0.75	$7.41	$0 52	$0.30	$51 93
Rigger	$31 75	$47.63	$63.50	$1.00	$10.20	$0.75	$7.41	$0 52	$0.30	$51.93
Truck Driver	$31.75	$47.63	$63.50	$1.00	$10.20	$0.75	$7.41	$0 52	$0.30	$51.93
Runner (Whse To Showsite)	$31.75	$47.63	$63.50	$1.00	$10 20	$0.75	$7 41	$0.52	$0.30	$51.93
Runner (Showsite)	$31.75	$47.63	$63.50	$1.00	$10 20	$0.75	$7 41	$0 52	$0.30	$51.93
Group III - I&D										
Displayman	$31.75	$47.63	$63.50	$1.00	$10.20	$0.75	$7 41	$0 52	$0 30	$51 93
Exhibit Maint. & Service	$31.75	$47.63	$63.50	$1.00	$10.20	$0.75	$7.41	$0 52	$0 30	$51 93
Displayman - Leadman	$33.66	$50.49	$67.31	$1.00	$10.20	$0.75	$7.41	$0.52	$0.30	$53.84
Exhibit Builder (If covered by earlier CBA with Union)	$31.75	$47.63	$63.50	$1 00	$10 20	$0.75	$7.41	$0 52	$0.30	$51.93
Group IV - Specialty Crafts										
Mechanic	$33.10	$49.65	$66.20	$1.00	$10.20	0.75	$7 41	$0 52	$0.30	$53.28
Painter - Display Shop	$31.75	$47.63	$63.50	$1.00	$10 20	0.75	$7 41	$0 52	$0.30	$51 93
Group V Leadman/Foreman										
Leadman	$33.66	$50.49	$67.32	$1.00	$10 20	$0.75	$7 41	$0 52	$0 30	$53 84
*Working Foreman(If the Employer elects to use this Bargaining Unit Classification	$34.13	$51.20	$68.26	$1.00	$10.20	$0.75	$7.41	$0.52	$0.30	$54.31
*Show Foreman(If the Employer elects to use this Bargaining Unit Classification	$34.61	$51.92	$69.22	$1.00	$10 20	$0.75	$7 41	$0 52	$0.30	$54.79

*The use of these bargaining unit classifications shall in no way be construed to restrict non-bargaining unit supervisors of the Employer from giving order, instructions directly to any bargaining unit employee of the Employer

The wage rate for the Leadman classification during the term of this Agreement shall be six percent (6%) above the Journeyman (Decorator) wage rate

The wage rate for the Working Foreman classification during the term of this Agreement shall be seven and one half percent (7 5%) above the Journeyman (Decorator) wage rate

The wage rate for the Show Foreman classification during the term of this Agreement shall be nine percent (9%) above the Journeyman (Decorator) wage rate

Group VI - Seniority Employees

All seniority Employees will receive $ 15 an hour more than the classification in which they work.

Group VII - Apprentices	1st 500 hours of employment as an apprentice	60%
	2nd 500 hours of employment as an apprentice	70%
	3rd 500 hours of employment as an apprentice	80%
	4th 500 hours of employment as an apprentice	90%

Employees other than apprentices may also be assigned to work in more than one classification or kind of work but if they are, they shall receive the rate of the highest paid classification on which they are employed for the entire day

The wage for outside source workers shall be $14 00 per hour for the term of this Agreement

PA102

9

Effective June 1, 2018 through May 31,2019
Total Economic Package (Wages, Benefit Contributions)

Classifications	Wage Rate	Time and Half Rate	Double Time	Vacation	H&W	Retiree H&W	Pension	PEER 84 6 5% of Pension Rate	Training	Straight Time Total
GROUP I										
Decorator	$32.15	$48 23	$64.30	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$53.68
Carpet Layer Booth & Official Only	$32.15	$48.23	$64 30	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$53 68
Furniture Setup &	$32.15	$48.23	$64.30	$1 30	$10.65	$0.75	$7.98	$0 55	$0.30	$53.68
Seamstress	$32.15	$48.23	$64.30	$1 30	$10.65	$0.75	$7.98	$0 55	$0.30	$53.68
Condor Lift Operator	$33.50	$50.25	$67.00	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$55.03
High Work @ <16'	$32.75	$65.50	$65.50	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$54.28
Group II - Freight										
Freight Handler	$32.15	$48 23	$64.30	$1.30	$10 65	$0.75	$7.98	$0.55	$0.30	$53.68
Packer & Crater	$32.15	$48.23	$64.30	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$53.68
Fork Operator	$32 15	$48.23	$64.30	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$53.68
Warehouseman If covered by earlier CBA With Union	$32.15	$48.23	$64.30	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$53.68
Rigger	$32.15	$48.23	$64.30	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$53.68
Truck Driver	$32.15	$48.23	$64 30	$1.30	$10.65	$0 75	$7.98	$0.55	$0.30	$53.68
Runner (Whse To Showsite)	$32.15	$48.23	$64 30	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$53 68
Runner (Showsite)	$32.15	$48.23	$64 30	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$53 68
Group III - I&D										
Displayman	$32.15	$48.23	$64.30	$1 30	$10.65	$0.75	$7 98	$0 55	$0.30	$53.68
Exhibit Maint & Service	$32.15	$48.23	$64.30	$1 30	$10.65	$0.75	$7.98	$0.55	$0 30	$53.68
Displayman - Leadman	$34.08	$51.12	$68.48	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$55.61
Exhibit Builder (If covered by earlier CBA with Union)	$32.15	$48.23	$64.30	$1.30	$10 65	$0.75	$7.98	$0.55	$0.30	$53.68
Group IV - Specialty Crafts										
Mechanic	$33.50	$50.25	$67.00	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$55.03
Painter - Display Shop	$32.15	$48.23	$64.30	$1.30	$10.65	$0.75	$7.98	$0 55	$0.30	$53.68
Group V Leadman/Foreman										
Leadman	$34.08	$51.12	$68.16	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$55.61
*Working Foreman(If the Employer elects to use this Bargaining Unit Classification	$34.56	$51.84	$69.12	$1.30	$10.65	0.75	$7.98	$0.55	$0.30	$56.09
*Show Foreman(If the Employer elects to use this Bargaining Unit Classification	$35.04	$52.56	$70.08	$1.30	$10.65	0.75	$7.98	$0.55	$0.30	$56.57

*The use of these bargaining unit classifications shall in no way be construed to restrict non-bargaining unit supervisors of the Employer from giving order, instructions directly to any bargaining unit employee of the Employer

The wage rate for the Leadman classification during the term of this Agreement shall be six percent (6%) above the Journeyman (Decorator) wage rate

The wage rate for the Working Foreman classification during the term of this Agreement shall be seven and one half percent (7 5%) above the Journeyman (Decorator) wage rate

The wage rate for the Show Foreman classification during the term of this Agreement shall be nine percent (9%) above the Journeyman (Decorator) wage rate

Group VI - Seniority Employees

All seniority Employees will receive $.15 an hour more than the classification in which they work.

Group VII - Apprentices	1st 500 hours of employment as an apprentice	60%
	2nd 500 hours of employment as an apprentice	70%
	3rd 500 hours of employment as an apprentice	80%
	4th 500 hours of employment as an apprentice	90%

Employees other than apprentices may also be assigned to work in more than one classification or kind of work but if they are, they shall receive the rate of the highest paid classification on which they are employed for the entire day

The wage for outside source workers shall be $14 00 per hour for the term of this Agreement

Effective June 1, 2019 through May 31,2020
Total Economic Package (Wages, Benefit Contributions)

Classifications	Wage Rate	Time and Half Rate	Double Time	Vacation	H&W	Retiree H&W	Pension	PEER 84 6 5% of Pension Rate	Training	Straight Time Total
GROUP I										
Decorator	$32.65	$48.98	$65.30	$1.50	$11.10	$0.75	$8.53	$0.60	$0.30	$55.43
Carpet Layer Booth & Official Only	$32.65	$48.98	$65.30	$1.50	$11.10	$0.75	$8.53	$0 60	$0.30	$55 43
Furniture Setup &	$32.65	$48.98	$65.30	$1 50	$11 10	$0.75	$8 53	$0.60	$0.30	$55.43
Seamstress	$32.65	$48 98	$65 30	$1.50	$11.10	$0.75	$8.53	$0.60	$0.30	$55.43
Condor Lift Operator	$34.00	$51.00	$68.00	$1.50	$11.10	$0 75	$8 53	$0.60	$0.30	$56 78
High Work @ <16'	$33.25	$49.88	$66.50	$1.50	$11 10	$0 75	$8.53	$0.60	$0 30	$56.03
Group II - Freight										
Freight Handler	$32.65	$48.98	$65 30	$1.50	$11.10	$0.75	$8.53	$0.60	$0.30	$55.43
Packer & Crater	$32.65	$48.98	$65.30	$1.50	$11 10	$0.75	$8.53	$0.60	$0.30	$55.43
Fork Operator	$32.65	$48.98	$65 30	$1.50	$11.10	$0.75	$8.53	$0.60	$0.30	$55.43
Warehouseman If covered by earlier CBA With Union	$32 65	$48 98	$65.30	$1.50	$11.10	$0.75	$8 53	$0.60	$0.30	$55.43
Rigger	$32.65	$48.98	$65.30	$1 50	$11 10	$0.75	$8.53	$0.60	$0.30	$55.43
Truck Driver	$32.65	$48.98	$65 30	$1.50	$11.10	$0.75	$8.53	$0.60	$0.30	$55.43
Runner (Whse To Showsite)	$32.65	$48.98	$65.30	$1.50	$11 10	$0.75	$8.53	$0.60	$0.30	$55.43
Runner (Showsite)	$32.65	$48.98	$65.30	$1.50	$11.10	$0.75	$8.53	$0.60	$0.30	$55.43
Group III - I&D										
Displayman	$32.65	$48.98	$65.30	$1 50	$11 10	$0.75	$8.53	$0.60	$0.30	$55.43
Exhibit Maint. & Service	$32.65	$48.98	$65.30	$1.50	$11.10	$0.75	$8.53	$0 60	$0.30	$55.43
Displayman - Leadman	$34 61	$51.92	$69.22	$1 50	$11.10	$0.75	$8.53	$0.60	$0.30	$57 39
Exhibit Builder (If covered by earlier CBA with Union)	$32.65	$48.98	$65.30	$1.50	$11 10	$0.75	$8.53	$0.60	$0.30	$55.43
Group IV - Specialty Crafts										
Mechanic	$33 60	$50.40	$67.20	$1 50	$11 10	$0 75	$8 53	$0.60	$0.30	$56.38
Painter - Display Shop	$32.65	$48.98	$65 30	$1.50	$11.10	$0.75	$8.53	$0.60	$0.30	$55.43
Group V Leadman/Foreman										
Leadman	$34 61	$51.91	$69.22	$1 50	$11.10	$0.75	$8.53	$0.60	$0.30	$57 39
*Working Foreman(If the Employer elects to use	$35.10	$52.65	$70.20	$1.50	$11 10	$0.75	$8 53	$0.60	$0.30	$57.88
*Show Foreman(If the Employer elects to use this	$35 59	$53.38	$71.18	$1 50	$11.10	$0.75	$8.53	$0.60	$0.30	$58.37

*The use of these bargaining unit classifications shall in no way be construed to restrict non-bargaining unit supervisors of the Employer from giving order, instructions directly to any bargaining unit employee of the Employer

The wage rate for the Leadman classification during the term of this Agreement shall be six percent (6%) above the Journeyman (Decorator) wage rate

The wage rate for the Working Foreman classification during the term of this Agreement shall be seven and one half percent (7.5%) above the Journeyman (Decorator) wage rate

The wage rate for the Show Foreman classification during the term of this Agreement shall be nine percent (9%) above the Journeyman (Decorator) wage rate.

Group VI - Seniority Employees

All seniority Employees will receive $.15 an hour more than the classification in which they work.

Group VII - Apprentices	1st 500 hours of employment as an apprentice	60%
	2nd 500 hours of employment as an apprentice	70%
	3rd 500 hours of employment as an apprentice	80%
	4th 500 hours of employment as an apprentice	90%

Employees other than apprentices may also be assigned to work in more than one classification or kind of work but if they are, they shall receive the rate of the highest paid classification on which they are employed for the entire day

The wage for outside source workers shall be $14 00 per hour for the term of this Agreement

Effective June 1, 2020 through May 31,2021
Total Economic Package (Wages, Benefit Contributions)

Classifications	Wage Rate	Time and Half Rate	Double Time	Vacation	H&W	Retiree H&W	Pension	PEER 84 6 5% of Pension Rate	Training	Straight Time Total
GROUP I										
Decorator	$33.00	$49.50	$66.00	$1 50	$11.70	$0.75	$9.28	$0.65	$0.30	$57.18
Carpet Layer Booth & Official Only	$33.00	$49 50	$66.00	$1 50	$11 70	$0 75	$9.28	$0 65	$0.30	$57 18
Furniture Setup &	$33 00	$49.50	$66.00	$1.50	$11.70	$0.75	$9 28	$0.65	$0 30	$57.18
Seamstress	$33.00	$49.50	$66.00	$1 50	$11 70	$0.75	$9.28	$0.65	$0.30	$57 18
Condor Lift Operator	$34.35	$51.53	$68.70	$1.50	$11.70	$0.75	$9.28	$0.65	$0.30	$58.53
High Work @ <16'	$33.60	$50.40	$67.20	$1.50	$11.70	$0.75	$9 28	$0 65	$0 30	$57.78
Group II - Freight										
Freight Handler	$33.00	$49.50	$66.00	$1.50	$11.70	$0.75	$9.28	$0.65	$0.30	$57.18
Packer & Crater	$33 00	$49.50	$66.00	$1.50	$11.70	$0.75	$9 28	$0 65	$0.30	$57.18
Fork Operator	$33.00	$49.50	$66.00	$1 50	$11 70	$0.75	$9.28	$0.65	$0.30	$57 18
Warehouseman If covered by earlier CBA With Union	$33.00	$49.50	$66.00	$1.50	$11.70	$0.75	$9 28	$0 65	$0.30	$57.18
Rigger	$33.00	$49.50	$66 00	$1.50	$11.70	$0.75	$9.28	$0.65	$0.30	$57 18
Truck Driver	$33.00	$49.50	$66.00	$1.50	$11.70	$0.75	$9.28	$0.65	$0 30	$57.18
Runner (Whse To Showsite)	$33.00	$49.50	$66.00	$1.50	$11.70	$0.75	$9.28	$0 65	$0.30	$57.18
Runner (Showsite)	$33.00	$49.50	$66.00	$1 50	$11.70	$0.75	$9.28	$0.65	$0.30	$57 18
Group III - I&D										
Displayman	$33.00	$49.50	$66.00	$1.50	$11.70	$0.75	$9.28	$0.65	$0.30	$57.18
Exhibit Maint & Service	$33.00	$49.50	$66.00	$1.50	$11.70	$0.75	$9.28	$0.65	$0.30	$57.18
Displayman - Leadman	$34.98	$52.47	$69.96	$1.50	$11.70	$0.75	$9.28	$0 65	$0.30	$59.16
Exhibit Builder (If covered by earlier CBA with Union)	$33.00	$49.50	$66.00	$1.50	$11.70	$0.75	$9.28	$0 65	$0.30	$57.18
Group IV - Specialty Crafts										
Mechanic	$33.95	$50.93	$67.90	$1.50	$11.70	0.75	$9.28	$0.65	$0.30	$58.13
Painter - Display Shop	$33 00	$49.50	$66.00	$1.50	$11 70	0.75	$9.28	$0.65	$0.30	$57.18
Group V Leadman/Foreman										
Leadman	$34.98	$52.47	$69.96	$1.50	$11.70	$0.75	$9 28	$0.65	$0.30	$59.16
*Working Foreman(If the Employer elects to use	$35.48	$53.22	$70.96	$1 50	$11 70	$0.75	$9.28	$0.65	$0.30	$59.66
*Show Foreman(If the Employer elects to use this	$35 97	$53.96	$71.94	$1.50	$11.70	$0.75	$9.28	$0.65	$0.30	$60 15

*The use of these bargaining unit classifications shall in no way be construed to restrict non-bargaining unit supervisors of the Employer from giving order, instructions *directly to any bargaining unit employee of the Employer*

The wage rate for the Leadman classification during the term of this Agreement shall be six percent (6%) above the Journeyman (Decorator) wage rate

The wage rate for the Working Foreman classification during the term of this Agreement shall be seven and one half percent (7 5%) above the Journeyman (Decorator) wage rate

The wage rate for the Show Foreman classification during the term of this Agreement shall be nine percent (9%) above the Journeyman (Decorator) wage rate

Group VI - Seniority Employees

All seniority Employees will receive $.15 an hour more than the classification in which they work

Group VII - Apprentices	1st 500 hours of employment as an apprentice	60%
	2nd 500 hours of employment as an apprentice	70%
	3rd 500 hours of employment as an apprentice	80%
	4th 500 hours of employment as an apprentice	90%

Employees other than apprentices may also be assigned to work in more than one classification or kind of work but if they are, they shall receive the rate of the highest paid classification on which they are employed for the entire day

The wage for outside source workers shall be $14 00 per hour for the term of this Agreement

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ARTICLE 24
VACATION SAVINGS

Section A. Each Employer shall add TBD per hour to the employee's gross wages and then shall subtract TBD per hour from the employee's net wages as Vacation Savings. The deduction for Vacation Savings shall be sent on a monthly transmittal form to a designated depository. This addition and deduction shall be made on all employees covered under this Agreement. The monthly transmittal shall include all payroll weeks ending within the calendar month. On the monthly transmittal form, the following information concerning each employee shall be set forth in separate columns:

1) Name of each employee
2) Social Security number of each employee
3) Number of hours worked
4) Total amount of vacation savings deduction
5) Gross pay for each employee

Section B. The monthly transmittal forms shall be furnished to the Employer who shall set forth thereon all information requested by the instructions and return the full number of copies, after retaining one (1) copy for his files. The fund shall pay for the administrative expenses incurred in the operation of the
Vacation Savings Plan, other than those incurred within the individual's own office.

Section C. Employer Reports: The parties recognize and acknowledge that the regular prompt payments to the Vacation Savings Plan are essential. Each transmittal to the Vacation Savings Plan shall be made promptly and in any event on or before the twentieth (20^{th}) day of the month following in which deductions were made. If not paid in full, it shall be delinquent. Failure on the part of any Employer to make prompt payments shall be deemed to be a breach of the collective bargaining agreement by such Employer and in such event the Union shall bring action against the Employer in law or in equity, or the Union may use economic action to either compel the performance of this Agreement, as well as the collective bargaining agreement. In the event of death of the depositor, the balance of the deposit shall be paid to such person or persons entitled thereto upon submission of necessary proof. The parties agree to this provision to the extent permissible under and in compliance with applicable law.

ARTICLE 25
NO STRIKES/NO LOCKOUTS

Section A. The Employer and the Union agree that the grievance and arbitration procedures set forth in this Agreement shall be the sole and exclusive means of resolving all grievances arising under this Agreement, and, further, that administrative and judicial remedies and procedures provided by law shall be the sole and exclusive means of settling all other disputes between the Union and the Employer. Accordingly, neither the Union nor any employee in the bargaining unit covered by this Agreement will instigate, promote, sponsor, engage in or condone any strike, sympathy strike, slowdown, concerted stoppage of work, or any other interruption of work.

Section B. In the event that any employee in the bargaining unit covered by this Agreement shall, during its term, engage in any of the activities herein prohibited, the Union agrees, upon being notified by the Employer, to immediately direct such persons to cease such activity and resume work immediately.

Section C. The Employer shall have the right to immediately terminate without notice any employee who engages in any of the activities prohibited by this Section; and, in the event a grievance is filed protesting such termination, the sole question for arbitration shall be whether the person engaged in the prohibited activity. The foregoing shall not be construed as a limitation upon any other relief to which the Employer may be entitled.

Section D. During the term of this Agreement, the Employer will not lockout the employees covered by this Agreement.

Section E. The Employer recognizes the right of an individual employee to refuse to cross a lawful primary picket line sanctioned by Teamsters Joint Council 42 and/or The International Brotherhood of Teamsters. It shall not be a violation of this Agreement and it shall not be cause for discharge or disciplinary action if an employee exercises his individual right to refuse to cross a lawful primary picket line sanctioned by Teamsters Joint Council 42 and/or The International Brotherhood of Teamsters. An employee has no right to refuse to go to work when he/she has access to the jobsite without the necessity of crossing a picket line, except as permitted by federal or Nevada State Law.

ARTICLE 26
TERM AND TERMINATION

Section A. This Agreement shall be in full force and effect from June 1, 2017 through May 31, 2021, and shall be considered renewed for one year thereafter unless either party shall give written notice to the other party sixty (60) days prior to May 31, 2021, of its desire to modify or terminate the Agreement.

Section B. In the event the Union enters into any Agreement with any contractor engaged in convention services work which has terms more favorable to that Employer than the terms of this Agreement, the Union shall immediately submit to the Employer signatory herein a copy of such Agreement; and the signatory Employer shall have the right to adopt the more favorable terms and practices of the Agreement entered into by the Union and such other Employer, and this Agreement shall thereupon be deemed amended accordingly.

Section C. Section B above shall not apply to initial contracts, up to a maximum of three (3) years in duration, with a convention industry Employer whose employees were not previously represented by the Union, The Union shall submit to the Employer signatory herein, a copy of any such agreement in reasonable time.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized signatures to be inscribed hereto this 1st day of June, 2017.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION 631

By: _____

Its: Secretary - Treasurer

Date: 6/15/17

[EMPLOYER]

By: _____
Guy Langlais
VP Labor Relations

Its: _____

Date: June 16 / 2017

By: _____

Its: Allen Lind
SVP/General Manager

Date: 6/17/2017

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Freeman Expositions, LLC
Improperly Named The Freeman Company, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JAMES ROUSHKOLB, Plaintiff, vs. THE FREEMAN COMPANY, LLC, a Domestic Corporation; EMPLOYEE(S)/AGENT(S) DOES I-X; and ROE CORPORATIONS XI-XX, Inclusive, Defendants.	Case No. 2:19-cv-02084-JCM-NJK **DEFENDANT'S MOTION TO DISMISS**

Defendant Freeman Expositions, LLC improperly named as the Freeman Company, LLC ("Freeman" or "Defendant"), by and through its counsel, Jackson Lewis P.C., moves to dismiss Plaintiff James Roushkolb's ("Plaintiff") Complaint in its entirety. Plaintiff's first, second, third, fourth, and fifth causes of action, which he has entitled unlawful employment practices, tortious discharge, deceptive trade practices, and violation of the medical needs of an employee pursuant to NRS 453A.010 *et. seq*, respectively, are preempted by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, and should be dismissed. In addition, even if the Court did not find that these claims are preempted, it must still dismiss Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6). The five causes of action fail to state claims upon which relief could be

granted.

This request is based on the attached Memorandum of Points and Authorities, all pleadings and documents on file with the Court, and any argument that the Court deems proper.

Dated this 21st day of January, 2020.

JACKSON LEWIS P.C.

/s/ Paul T. Trimmer
Paul T. Trimmer, Bar #9291
Lynne K. McChrystal, Bar #14739
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Las Vegas, Nevada 89101

Attorneys for Defendant
Freeman Expositions, LLC
Improperly Named The Freeman Company, LLC

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

I. INTRODUCTION

Freeman employed Plaintiff as a journeyman. As a journeyman, he was represented for purposes of collective bargaining by the Teamsters, Chauffeurs, Warehouseman and Helpers, Local 631, International Brotherhood of Teamsters (the "Union" or "Local 631"), and the terms and conditions of his employment were governed by the collective bargaining agreement (the "CBA" or the "Agreement") between Freeman and Local 631. *See* **Exhibit A** (relevant sections of the June 1, 2017-May 31, 2021 collective bargaining agreement).

Plaintiff's Complaint contains five causes of action: (1) unlawful employment practices, (2) tortious discharge, (3) deceptive trade practices, (4) negligent hiring, training, and supervision and (5) violation of the medical needs of an employee pursuant to NRS 453A.010 *et. seq*. Each of these claims, at its core, is predicated on the allegation that Plaintiff's July 11, 2018 discharge lacked just cause and violated the terms and conditions of the collective bargaining

agreement. The law is clear. Such claims are precluded by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, because the CBA "can reasonably be said to be relevant to the resolution of the dispute." *Firestone v. Southern California Gas Co.*, 281 F.3d 801, 802 (9th Cir. 2002). Given that Plaintiff did not exhaust his contractual remedies, and the claims would be time barred by Section 301's six-month statute of limitations, Roushkolb's lawsuit is preempted. As also explained below, even if the Court concludes that one or more the claims are not preempted, each also fails as a matter of law. Accordingly, on either ground, the Complaint should be dismissed with prejudice.

II. STANDARD OF REVIEW

A complaint should be dismissed if it fails "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint must provide "[a] short and plain statement of the claim showing that the pleader is entitled to relief." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). That short and plain statement must amount to "more than labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). "Factual allegations must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Dismissal of a complaint is appropriate when the complaint does not give the defendant fair notice of a legally cognizable claim and the grounds on which it rests. *Id.*

III. STATEMENT OF FACTS[1]

Plaintiff was terminated on July 11, 2018 following a workplace accident and subsequent drug test. Compl. ¶¶ 40-41, 54, 65; **Exhibit B**. His termination letter to the Union stated that

[1] The attached collective bargaining agreement, **Exhibit A**, and the termination letter attached hereto as **Exhibit B** can be considered when a motion is brought pursuant to Section 301 of the LMRA. *See Van Buskirk v. CNN*, 284 F.3d 977, 980 (9th Cir. 2002) ("Under the 'incorporation by reference" rule of this Circuit, a court may look beyond the pleadings without converting the Rule 12(b)(6) motion into one for summary judgment.")

that Plaintiff was ineligible for dispatch. **Ex. B**.

The terms and conditions of Plaintiff's employment were governed by Freeman's collective bargaining agreement with the Union. *See* **Exs. A & B**. Articles 4, 13, 14 and 15 of are specifically relevant to this case. Article 4 vests Freeman with the "right to hire, promote, transfer, suspend, or discharge workers" for just cause. *Id.* Article 13 sets forth detailed grievance and arbitration procedures for resolving alleged violations of the CBA, including allegedly improper terminations. *Id.* Article 14 sets forth parallel, but equally mandatory, disciplinary procedures for casual employees such as Plaintiff, including when Freeman may issue a Letter of No Dispatch immediately rather than following the progressive discipline procedure.[2] *Id.* Article 14 also provides a procedure wherein a casual employee, such as Plaintiff, may challenge a Letter of No Dispatch[3] through his or her Union, which may in turn present the casual employee's challenge to a Joint Committee. *Id.* The Joint Committee, which is the "arbitrator" for purposes of resolving the matter, considers and ultimately makes a final determination as to whether the employee engaged in the alleged conduct and if a lesser penalty than a permanent Letter of No Dispatch is warranted. *Id.*

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[2] As described in the CBA, Freeman generally hires "casual employees" on a job-by-job basis by placing a call to the Union hall. The hall fills the labor order by identifying then unassigned journeyman teamsters who are qualified to perform the work described in the work call, and then dispatches the selected journeymen to Freeman. At the conclusion of the work call, the journeyman is released from Freeman's payroll and returns to the Union hall to await another call from Freeman or any other employer who has a collective bargaining relationship with the Union.

[3] Under the terms of the CBA, "regular employees" have seniority and are subject to discipline or discharge for "just cause." "Casual employees," in contrast, do not have seniority because they are employed periodically and then released back to the hall. Similarly, in the event casual employees perform poorly at the jobsite they are not typically subject to discipline or discharge. They are instead released and, when appropriate, Freeman sends to the Union a letter of "No Dispatch," memorializing the Company's determination that the employee will not be accepted for future labor calls. Like discipline or discharge, letters of No Dispatch are subject to the CBA's mandatory dispute resolution procedure.

Article 15 of the CBA contains a collectively bargained Drug and Alcohol Policy (the "Drug Policy"). The Drug Policy provides for post-accident testing for illegal drugs, including marijuana. *Id.* Employees who test above the listed cutoff for marijuana will be considered to have violated the Drug Policy. Any dispute between Freeman and the Union regarding the interpretation or application of the CBA is subject to mandatory arbitration. *Id.* If an employee disputes disciplinary action, including discharge, the CBA requires the employee to lodge a written claim within twelve days of the disciplinary action or the grievance is barred. *Id.*

Plaintiff's first cause of action is "unlawful employment practices" pursuant to "lawful use of a product outside premises." Compl. at ¶¶ 69-76. Plaintiff claims Freeman had "discriminatorily terminated [him], because [he] engaged in the lawful use of medical marijuana outside the premises…during his non-working hours." *Id.* at ¶ 71. Plaintiff alleges that his termination was "wrongful" because his "offsite use of medical marijuana [did] not adversely effect [his] ability to perform his job or the safety of other employees and requests an order reinstating his employment." *Id.* at ¶¶ 72, 75.

Plaintiff's second cause of action is for tortious discharge-violation of public policy. *Id.* at ¶¶ 77-82. It essentially duplicates Plaintiff's first claim. Plaintiff asserts Freeman "terminated [him] for reasons which violate public policy including…Nevada's public policy against terminating an employee for the lawful use of medical marijuana…." *Id.* at ¶ 78. The "public policy" Plaintiff refers to is the same statute, NRS 613.333(1)(b) cited in his first cause of action.

The third claim in the Complaint is for "deceptive trade practices." Compl. at ¶¶ 83-102. Again, the cause of action is based on Plaintiff's termination. *Id.* at ¶¶ 92, 96. He baldly alleges that "by engaging in the practices herein, and otherwise acting in a deceitful and fraudulent manner, [Freeman] violated the Nevada's Deceptive Trade Practices Act…." *Id.* at ¶89.

Plaintiff characterizes his fourth cause of action as negligent hiring, training, and supervision. *Id.* at ¶¶ 103-108. As with his first, second and third causes of action, the claim is

predicated on Plaintiff's discharge. *Id.* Plaintiff asserts Feeman "owed a duty to [Plaintiff] to adequately train and supervise its employees in regards to all correct policies and procedures related to medical marijuana laws and/or **termination polices or procedures**." *Id.* at ¶106 (emphasis added).

Plaintiff's fifth and final cause of action repackages his termination claim as an action for "violation of needs of employee who engages in medical use of marijuana to be accommodate by employer." *Id.* at ¶¶ 109-129. Plaintiff cites to NRS 453A.010 *et seq.* as the basis for this cause of action. This statue, however, does not provide for a private cause of action. *See* NRS 453A.010 *et seq.* Nonetheless, Plaintiff alleges Freeman "failed to provide [him] with a reasonable accommodation and subjected [him] to adverse employment actions, **including terminating [him]**." *Id.* at ¶ 127 (emphasis added).

IV. ARGUMENT

Plaintiff's five causes of action cannot be resolved without substantial interpretation and application of Articles 4, 13, 14, and 15 of the Agreement. They are therefore preempted by Section 301 and must be dismissed. If the Court determines that any of Plaintiff's claims are not preempted by Section 301, as set forth in more detail below, each of the claims must still be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

A. Plaintiff's Causes of Action Are Preempted By Section 301 of the LMRA.

Section 301 of the LMRA gives Federal district courts exclusive jurisdiction over suits for violations of collective bargaining agreements, and to that end, it preempts any state law claim that is "substantially dependent on the terms of an agreement made between parties to a labor contract[.]" *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985). A plaintiff cannot avoid Section 301 preemption by withholding mention of the statute in his or her complaint. *Atchley v. Heritage Cable Vision Assocs.*, 101 F.3d 495, 498 (7th Cir. 1996). Similarly, a plaintiff cannot avoid the reach of Section 301 by failing to refer specifically to the CBA

governing his or her employment. *See Stallcop v. Kaiser Foundation Hospitals*, 820 F.2d 1044, 1048 (9th Cir. 1987) (court's consideration of CBA is appropriate to investigate true nature of employees' allegations for preemption purposes).

When deciding whether a claim is preempted under Section 301 of the LMRA, a court must engage in a two-part analysis. *See Burnside v. Kiewit*, 491 F.3d 1053, 1059 (9th Cir. 2007). First, the court should make "inquiry into whether the asserted cause of action involves a right conferred upon an employee by virtue of state law, not by a CBA. If the right exists solely as a result of the CBA, then the claim is preempted, and . . . [the court's] analysis ends there." *Id.* (citations omitted). Second, even if the right asserted "exists independently of the CBA, . . . [the court] must still consider whether it is nevertheless 'substantially dependent on analysis of a collective bargaining agreement.'" *Id.* (citation omitted). In short, state law claims like those asserted by Plaintiff are preempted "if the plaintiff['s] claim is either grounded in the provisions of the labor contract *or* requires interpretation of it." *Id.* at 1059; *see also Adkins v. Mireles*, 526 F.3d 531, 539 (9th Cir. 2008); *Firestone*, 281 F.3d at 802 (state law claims are preempted when interpretation of an existing provision of the CBA "can reasonably be said to be relevant to the resolution of the dispute"); *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 405-06 (1988) (Section 301 preempts state claims based upon obligations created by a collective bargaining agreement).

1. Each of Plaintiff's five claims for relief is preempted because they require interpretation of the CBA.

Each of Plaintiff's five causes of action is subject to the same preemption analysis because all allege that Plaintiff's termination for use of marijuana was unlawful, wrongful, or in violation of a provision of the collective bargaining agreement. The Ninth Circuit has repeatedly held that such claims depend on allegations that the employee's termination violated the good cause provision in the relevant CBA – in this case, Articles 4 and 14, as well as the negotiated

Drug Policy in Article 15 – even in circumstances like this, where the employee has bracketed his contractual claims with references to common law tort theories or codified state employment statutes. *See, e.g., Hyles v. Mensing*, 849 F.2d 1213, 1216 (9th Cir. 1988). The claims are therefore "inextricably intertwined with consideration of the terms of the labor contract" and thus preempted by federal law. *See id.*; *see also Stallcop*, 820 F.2d at 1049 ("Resolution of [plaintiff's] claims [of intentional and negligent infliction of emotional distress] . . . necessarily entails examination and interpretation of the [collective bargaining] agreement, and these claims are also preempted."); *Grayson v. Titanium Metals Corp.*, Case No. 2:08-cv-1874-KJD-GWF, 2009 U.S. Dist. LEXIS 7235, at *2-3 (D. Nev. Jan. 30, 2009) (holding that although claims such as wrongful discharge "appear to be framed under state law, they are clearly preempted"). State law "must yield to the developing federal common law, lest common terms in bargaining agreements be given different and potentially inconsistent interpretations in different jurisdictions." *Firestone*, 281 F.3d at 802.

There are no unique allegations or circumstances in this case that would allow the Court to reach a different result. The factual contentions in Plaintiff's Complaint make it clear that he is alleging that Freeman's conduct was unlawful wrongful for one reason only:[4] Freeman terminated his employment based on his allegedly lawful use of medical marijuana outside of the premises during non-working hours. *See* Compl. ¶ 66 (Freeman "terminated [Plaintiff] because he tested positive for marijuana use consistent with his physician recommended usage."); ¶71 (Freeman "discriminatorily terminated [Plaintiff], because [Plaintiff] engaged in the lawful use of medical marijuana outside the premises…during his non-working hours."); ¶78 (Freeman

[4] Notably, despite Plaintiff's inclusion of exhaustive facts related to an alleged disability which precipitated his need to use medical marijuana, Compl. ¶¶ 7-11, Plaintiff does not allege disability discrimination under Nevada state law. Presumably this is because Plaintiff failed to exhaust his administrative remedy for any alleged disability discrimination by filing a charge of discrimination.

"terminated [Plaintiff] for reasons which violate public policy including…Nevada's public policy against terminating an employee for the lawful use of medical marijuana…."); ¶92 (Freeman "knowingly violated NRS § 613.333, *et seq*. and terminated [Plaintiff]."); ¶96 (Freeman "terminated [Plaintiff's] employment…and informed [Plaintiff] there would be no reconsideration of his employment."); ¶106 (Freeman "owed a duty to [Plaintiff] to adequately train and supervise its employees in regards to all correct policies and procedures relating to medical marijuana laws and/or termination policies and procedures,"); ¶123 ("[Plaintiff] never requested or accommodation other than a reasonable accommodation not to terminate him, despite a positive indication for medical marijuana…."); ¶127 (Freeman "failed to provide [Plaintiff] with a reasonable accommodation and subjected [Plaintiff] to adverse employment actions, including terminating [Plaintiff]."). Plaintiff's allegedly lawful use of marijuana is the predicate for every cause of action in his Complaint, and the resolution of the allegation requires assessment of, and interpretation of, the duties and obligations set forth in Articles 4, 14 and 15 of the collective bargaining agreement.

Artful pleading aside, the viability of Plaintiff's Complaint necessarily depends upon a finding that Freeman's application of the Drug Policy articulated in Article 15 of the CBA to his employment was unlawful, violative of public policy, and/or implicated a duty to accommodate him and train its employees to accommodate him. This requires the Court to determine, among other issues, whether the Drug Policy was a valid term and condition of Plaintiff's employment and assess whether Plaintiff's medical marijuana rights are "subject to negotiation and [can] be conditioned by the terms of the CBA." *Cramer v. Consol. Freightways, Inc.*, 255 F.3d 683, 694 (9th Cir. 2001);[5] *see also Schlacter-Jones General Tel.*, 936 F.2d 435, 441 (9th Cir. 1991) (plaintiff's claim preempted where examination of the CBA required to determine whether a

[5] In *Cramer*, the court found that the privacy rights at issue were *not* subject to and conditioned by the terms of the CBA. That is not the case here.

drug policy was a valid term and condition of employment); *Laws v. Calmat*, 852 F.2d 430 (9th Cir. 1988) (upholding dismissal based on Section 301 preemption where employee challenged employer's drug and alcohol testing program and his suspension for refusal to participate). The Court would be required to interpret whether marijuana constituted an "illegal drug" pursuant to the CBA and/or was validly designated as such, whether Freeman may proscribe the misuse of legal drugs, that the post-accident drug testing was properly triggered, that Freeman properly exercised its right to discharge workers pursuant to the management rights clause, and that summary issuance of a Letter of No Dispatch rather than progressive discipline was the appropriate disciplinary measure pursuant to Article 14.

Other jurisdictions have found preemption appropriate in similar circumstances. In *Holmes v. National Football League*, 939 F. Supp. 517 (N.D. Tex. 1996), an NFL player who was suspended after testing positive for marijuana filed suit against the NFL alleging numerous state-law tort claims. The court found that the plaintiff's claims were preempted because their resolution was "inextricably intertwined and substantially dependent" upon an analysis of the provision in the collective bargaining agreement authorizing the team to conduct the drug test which prompted the claims. *Id.* In *Jackson v. Liquid Carbonic Corp.*, 863 F.2d 111, 120 (1st Cir. 1988), the court discussed that "other courts have also found claims that employers' drug-testing programs violated state tort laws to be preempted by section 301 because of the degree of imbrication between the claims and the collective bargaining agreements in force." *Id.* The *Jackson* court cited *Laws*, *supra*, and *Strachan v. Union Oil Co.*, 768 F.2d 703, 704 (5th Cir. 1985) (ruling that challenged drug tests fell squarely within the scope of the company's "power….under the collective bargaining agreement to insist upon medical examinations….") in support of the proposition that such claims were termed "grist for the mill of grievance procedures and arbitration." *Jackson*, 863 F.2d at 120 (quoting *Strachan*, 768 F.2d at 705); *see also Association of Western Pulp & Paper Workers v. Boise Cascade Corp*, 644 F. Supp. 183,

186 (D. Or. 1986) (claim that drug-testing program violated state tort law preempted because it necessitated interpretation of contract provision allowing management to "institute reasonable work rules").

Uniformity is an especially compelling consideration which calls for preemption in this matter. "Congress intended doctrines of federal labor law uniformly to prevail over inconsistent local rules." *Teamsters v. Lucas Flour Co*., 369 U.S. 95, 104, 82 S. Ct. 571, 577, 7 L. Ed. 2d 593 (1962)). Marijuana use is a poster child for inconsistent rules at a local level. Multiple states have decriminalized the use of marijuana for medical purposes. Some have extended decriminalization to permit use for recreational purposes. Others have taken no action to decriminalize or otherwise legalize marijuana use. But regardless, both the possession and use or marijuana remains illegal under federal law pursuant to the Controlled Substances Act (21 U.S.C. §801 *et seq*.) Permitting claims such as Plaintiff's to proceed here would promote inconsistency because it would require that common terms in bargaining agreements (i.e. "illegal," "just cause," etc.) be "given different and potentially inconsistent interpretations in different jurisdictions." *Firestone*, 281 F.3d at 802.

Allowing Plaintiff's claims to survive would not merely promote inconsistency, however. Finding that he has stated a claim that survives preemption would place Nevada law in actual conflict with both the Controlled Substances Act and federal labor law. That conflict is fatal. As noted above, collective bargaining is governed by federal, not state law, and to that end, Section 301 vests U.S. District Courts with exclusive jurisdiction over disputes arising out of or concerning collective bargaining agreements. To the extent that enforcement of state law would preclude the parties' enforcement of the collective bargaining agreement, state law is preempted. *See, e.g., Wickard v. Filburn*, 317 U.S. 111, 124 (1942) ("[N]o form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress"). Indeed, sustaining the validity of Plaintiff's claims would require a federal court to issue an order

validating and authorizing the use of a substance which is illegal under federal law. That is unconscionable. *Cf. Assenberg, et al. v. Anacortes Housing Authority*, 2006 U.S. Dist. LEXIS 34002 (W.D. Wash. 2006)("[T]o the extent that the state law legalizes marijuana use and prohibits the forfeiture of public housing, it conflicts with the CSA and the federal statutes and regulations that criminalize marijuana use and prohibit illegal drug use in public housing.").

Because Plaintiff's claims are inextricably intertwined with the CBA, and because any determinations regarding Freeman's ability to release Plaintiff because his use of medical marijuana led him to perform unsafely would require the Court to interpret and apply the collective bargaining agreement, each of Plaintiff's claims for relief is preempted. *See, e.g., Hyles*, 849 F.2d at 1216; *see also Sewell v. Genstar Gypsum Products Co., Div. of Domtar Gypsum, Inc.*, 699 F. Supp. 1443, 1449 (D. Nev. 1988) ("Plaintiff's wrongful discharge claim, whether framed in terms of breach of Collective Bargaining Agreement, breach of individual employment contract, or breach of implied covenant of job security, is governed by the terms of the Collective Bargaining Agreement, and is therefore preempted by § 301 of the LMRA.").

2. Plaintiff's five causes of action must be dismissed with prejudice.

For the reasons set forth above, there can be no dispute that each of Plaintiff's five causes of action depends on interpretation and application of the CBA for resolution. It is well-settled that such claims "must either be treated as a Section 301 claim . . . or [be] dismissed as preempted by federal law contract law." *Allis-Chalmers Corp*, 471 U.S. at 220. Even if Plaintiff had exhausted his contractual remedies, and his claims could be properly recharacterized as claims under Section 301, such claims would be time-barred. Section 301 has a six-month statute of limitations and Plaintiff was discharged more than a year ago on July 11, 2018. *See, e.g., DelCostello v. Int'l Brotherhood of Teamsters*, 462 U.S. 151 (1983); *Inlandboatmen's Union of the Pacific v. Dutra Group*, 279 F.3d 1075, 1083-84 (9th Cir. 2002). Accordingly, the Complaint should be dismissed in its entirety.

B. Even If The Court Were To Conclude That One Or More Of Plaintiff's Causes Of Action Are Not Preempted, The Claims Must Still Be Dismissed As A Matter Of Law.

Even if one or more of Plaintiff's state law claims could survive preemption, they must still be dismissed pursuant to Fed. R. Civ. P. 12(b)(6). In each case, the allegations set forth in the Complaint are insufficient to establish a plausible claim under Nevada law.

1. Plaintiff's unlawful employment practices claim fails as a matter of law.

Plaintiff's first cause of action alleges Freeman unlawfully discharged him in violation of NRS 613.333 *et seq*. The text of the statute does not support his claim. To begin with, and as admitted in his Complaint, Plaintiff was discharged because the Company concluded that he was under the influence of marijuana when, while working as a rigger, he dropped a large plate of glass which he was attempting to suspend from the ceiling. Further, this statute was enacted in 1991, prior to the enactment of the medical marijuana legislation cited in Plaintiff's Complaint. It provides:

> It is an unlawful employment practice for an employer to…[d]ischarge or otherwise discriminate against any employee concerning the employee's compensation, terms, conditions or privileges of employment, because the employee engages in the **lawful use in this state of any product** outside the premises of the employer during the employee's nonworking hours, if that use does not adversely affect the employee's ability to perform his or her job or the safety of other employees.

NRS 613.333 (1)(b)(emphasis added). Plaintiff does not specifically allege that marijuana is a "product" contemplated by the statute but does allege that his use of marijuana is lawful. Compl. ¶ 71. There also is no legal precedent or legislative history (marijuana was not legalized until *after* NRS 613.333 was enacted) to support Plaintiff's repurposing of the statute, and Plaintiff accordingly fails to state a claim.

Analogous cases in the Ninth Circuit reject the idea that a medicinal marijuana user is entitled to any special deference under the law. In *James v. City of Costa Mesa,* 684 F.3d 825, 828 (9th Cir. 2012), the Ninth Circuit analyzed whether the City of Costa Mesa's decision to raid

medical marijuana facilities that are authorized under state law violate Title II of the Americans with Disabilities Act ("ADA"). The Court ruled that marijuana, even when legal under state law, still constituted "illegal drug use" under federal law and thus determined that "the ADA does not protect medical marijuana users who claim to face discrimination on the basis of their marijuana use." *Id.* at 828, n.3 (*citing* 42 U.S.C. § 12210(a)).

The Colorado Supreme Court effectively summarized the issue in *Brandon Coats v. Dish Network, LLC*, 2015 CO 44, ¶ 18, 350 P.3d 849, 852 (2013):

> At the time of plaintiff's termination, all marijuana use was prohibited by federal law. *See* 21 U.S.C. § 844(a); *Gonzales v. Raich*, 545 U.S. 1, 29, 125 S. Ct. 2195, 162 L. Ed. 2d 1 (2005) (state law authorizing possession and cultivation of marijuana does not circumscribe federal law prohibiting use and possession); *Ross v. RagingWire Telecommunications, Inc.*, 42 Cal. 4th 920, 70 Cal. Rptr. 3d 382, 174 P.3d 200, 204 (Cal. 2008) ("No state law could completely legalize marijuana for medical purposes because the drug remains illegal under federal law, even for medical users." (citations omitted)). It remains so to date…Plaintiff acknowledges that medical marijuana use is illegal under federal law but argues that his use was nonetheless "lawful activity" for purposes of section 24-34-402.5 because the statutory term "lawful activity" refers to only state, not federal law. We disagree.

Id. As the court in *Coats* explained, it was not required to interpret lawful activity as including activity that is prohibited by federal law but is not prohibited by state law. This Court should reject Plaintiff's first cause of action on the same grounds.

2. Plaintiff's wrongful discharge claim fails as a matter of law.

Plaintiff's second cause of action, for wrongful termination, plainly fails to state a claim for relief under Nevada law. In this state, "tortious discharge actions are severely limited to those rare and exceptional cases where the employer's conduct violates strong and compelling policy." *Sands Regent v. Valgardson*, 105 Nev. 436, 440 (1989); *see also State v. Eighth Judicial District Court (Anzalone)*, 118 Nev. 151-52 (2002); *Bigelow v. Bullard*, 111 Nev. 1178, 1181 (1995) ("The only exception to the general rule that at-will employees can be dismissed without cause is the so-called public policy exception discussed in Western States, a case in which tort liability arose out of an employer's dismissing an employee for refusing to follow his employer's orders to work in an area that would have been dangerous to him.").

Here, Plaintiff alleged that he tested positive for marijuana following a post-accident drug test and that his use of marijuana was protected. Even if those allegations are true, however, they do not state a claim for tortious discharge as a matter of law. The Nevada Supreme Court has allowed wrongful discharge claims to proceed only when: 1) an employee was terminated for refusing to engage in unlawful conduct, *Allum v. Valley Bank of Nevada*, 114 Nev. 1313, 1321 (1998); 2) an employee was terminated for refusing to work in unreasonably dangerous conditions, *Western States v. Jones*, 107 Nev. 704 (1991); or 3) when an employee was terminated for filing a workers compensation claim, *Hansen v. Harrah's*, 100 Nev. 70 (1984). Plaintiff's allegations do not fit within any of these protected categories and given the facts of this case, it is unlikely that the Nevada Supreme Court would expand a narrow exception to cover the Plaintiff's claim, particularly since it has rejected similar claims on a number of occasions. *See, e.g., Bigelow*, 111 Nev. at 1187. Nevada courts have never found that terminating an employee for using medical marijuana (in violation of state-adopted federal law) "constitutes a qualifying public policy violation and warrants an exception to the at-will employment doctrine." *Whitfield v. Trade Show Servs.*, No. 2:10-CV-00905-LRH-VCF, 2012 U.S. Dist. LEXIS 26790, at *18 (D. Nev. Mar. 1, 2012).

Other jurisdictions have rejected wrongful termination claims premised on the alleged lawful uses of marijuana. In *Roe v. TeleTech Customer Care Mgmt. (Colo.) LLC*, 171 Wn.2d 736, 759, 257 P.3d 586, 597 (2011), the Washington Supreme Court noted that plaintiffs have no legal right to use marijuana under federal law pursuant to 21 U.S.C §§ 812, 844(a). The *Roe* court rejected plaintiff's contention that federal drug law could be completely separated from the state tort claim for wrongful discharge, and found that "holding a broad public policy exists that would require an employer to allow an employee to engage in illegal activity" would not be proper when assessing narrow exceptions to the at-will employment doctrine. *Id.* The Court should apply the same analysis here.

3. Plaintiff's deceptive trade practices claim fails as a matter of law.

Plaintiff's third cause of action, brought pursuant to the Nevada Deceptive Trade Practices Act ("NDTPA"), inappropriately attempts to bring his labor dispute under the auspices of a consumer protections statute. The NDTPA was enacted "primarily for the protection of consumers." *Sobel v. Hertz Corp.*, 698 F.Supp.2d 1218, 1224 (D. Nev. 2010) (grant of summary judgment overturned on non-DPTA claim by *Sobel v. Hertz Corp*, 674 Fed. Appx. 663 (9th Cir. 2017)). It also provides protection for businesses against unfair competition. *See Southern Service Corp. v. Excel Bldg. Services, Inc.*, 617 F.Supp.2d 1097, 1099 (D. Nev., 2007) (citing NRS 598.0953(1)). To that end, Courts in this district have held that the elements of a NDTPA violation are as follows: (1) an act of consumer fraud by the defendant (2) causing plaintiff (3) damage. *Govereau v. Wellish*, 2012 U.S. Dist. LEXIS 151494, Case No. 2:12-CV-00805-KJD-VCF *4-5, 2012 WL 5215098 (D. Nev. 2012) (noting that neither this Court nor any other jurisdiction had ever permitted an "employee to sue an employer under this theory" and citing *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 652 (D. Nev. 2009). None of those facts are alleged here and dismissing Plaintiff's claims would be consistent with the majority approach adopted in other jurisdictions. *See, e.g., Anderson v. Sara Lee Corp.*, 508 F.3d 181, 190 (4th Cir. 2007) (North Carolina deceptive trade practices act does not extend to employment disputes); *Dobbins v. Scriptfleet, Inc.*, 2012 U.S. Dist. LEXIS 23131, 2012 WL 601145, 4 (M.D. Fla. 2012) (Florida's deceptive trade practices act does not apply where there is no consumer relationship between employee and employer).

Moreover, Plaintiff's cause of action under the NDTPA fails the requirement that fraud be pled with particularity. *See George v. Morton,* 2007 U.S. Dist. LEXIS 15980, *11 (D. Nev. Mar 1, 2007) (NRS § 598 statements that rely on fraud must satisfy the pleading requirements of Rule 9(b)). Rule 9(b) requires pleading fraud with particularity; a plaintiff's allegations must contain the "time, place, and specific content of the false representations as well as the identities

of the parties to the misrepresentations." *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007). Plaintiffs must also set forth "what is false or misleading about a statement, and why it is false." *Ebeid ex rel. U.S. v. Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010). Here, Plaintiff fails to satisfy the heightened pleading standards. He merely alleges that "by engaging in the practices herein, and otherwise acting in a deceitful and fraudulent manner, [Freeman] violated the Nevada's Deceptive Trade Practices Act…." *Id.* Compl., ¶89. NRS Chapter 598 itself is forty-five pages and contains ten definitions of "deceptive trade practice" by itself. *See, e.g.*, NRS 598.0915 to NRS 598.0925. None of them equate a job offer with an "advertisement" as Plaintiff alleges in his Complaint. Compl. ¶ 87. Plaintiff's additional bulk citations to portions of NRS 598 does not satisfy the heightened pleading standards. The lack of specificity in Plaintiff's Complaint mandates this claim be dismissed.

4. Plaintiff's claim for negligent hiring, training, and supervision fails as a matter of law.

Plaintiff's fourth cause of action for negligent hiring, training, and supervision (hereinafter "negligent hiring") fails to state a claim because it is preempted by NRS 613.330, *et seq.*, which provides the exclusive remedy for tort claims premised on illegal employment practices. "NRS § 613.330 *et seq.* provides the exclusive remedy for tort claims premised on illegal employment practices. The Nevada Supreme Court, as well as the District Court for the District of Nevada, have held that tort claims premised on discrimination in employment are remedied under the statute." *Brinkman v. Harrah's Operating Co., Inc.*, 2:08-cv-00817-RCJ-PAL, 2008 U.S. Dist. LEXIS 123992 at*3 (D. Nev. October 16, 2008); *see also Valgardson*, 777 P.2d at 900.

In *Valgardson*, 777 P.2d at 900, the Nevada Supreme Court ruled that an employee could not maintain separate tort claims premised upon discriminatory conduct that was subject to the comprehensive statutory remedies provided by NRS 613.310 *et seq*. The Nevada Supreme Court subsequently clarified and strengthened this holding in *D'Angelo v. Gardner*, 107 Nev. 704 (1991), explicitly confirming that the statutory scheme set forth in NRS 613.310 *et seq*. was the

sole remedy available for claims of discrimination, displacing potentially overlapping common law torts. Because there is an adequate statutory remedy for unlawful discrimination, Nevada courts will not permit a plaintiff to recover in tort for the same claims. The U.S. District Court for the District of Nevada has applied the same rationale and dismissed state tort claims when such claims were premised upon discriminatory conduct covered by state or federal statutes with adequate remedies. *See Jackson v. Universal Health Servs.*, No. 2:13-cv-01666-GMN-NJK, 2014 U.S. Dist. LEXIS 129490 (D. Nev. Sept. 15, 2014) (dismissing negligent hiring, supervision and training claim based on alleged race and gender discrimination when there is an exclusive statutory remedy for these claims); *Westbrook v. DTG Operations, Inc.*, No. 2:05-cv-00789-KJD-PAL, 2007 U.S. Dist. LEXIS 14653, at *19 (D. Nev. Feb. 28, 2007) (dismissing negligence *per se* claim based on violations of the Americans with Disabilities Act); *Colquhoun v. BHC Montevista Hospital, Inc.*, No. 2:10-cv-0144-RLH-PAL, 2010 U.S. Dist. LEXIS 57066 (D. Nev. June 9, 2010) (dismissing negligent hiring, supervision and training claim based on alleged discrimination, stating "the fact that an employee acts wrongfully does not in and of itself give rise to a claim for negligent hiring, training or supervision"); *Lund v. J.C. Penney Outlet*, 911 F. Supp. 442 (D. Nev. 1996) (the court dismissed the plaintiff's public policy wrongful discharge claim concluding that an available statutory remedy existed under federal law in the Americans With Disabilities Act ("ADA")).

Moreover, even if the Court were inclined to consider the claim, the allegations in the Complaint – that Freeman failed to ensure that managers are familiar with state marijuana law – do not establish a claim. "The tort of negligent hiring imposes a general duty on the employer to conduct a reasonable background check on a potential employee to ensure that the employee is fit for the position." *Hall v. SSF, Inc.*, 112 Nev. 1384, 1392, 930 P.2d 94, 98 (1996). There is no common law duty to hire and/or train employees so that they are aware of the complexities of medical marijuana law under state and federal standards. Indeed, it would be strange, at the least, to hold an employer liable for hiring "unfit" employees when the employer merely acted in accordance with its Drug Policy and federal law. Accordingly, Plaintiff's fourth cause of action must be dismissed for failure to state a cognizable claim for relief.

5. Plaintiff's Fifth Cause of Action fails to state a claim for "violation of the medical needs of an employee who engages in medical use of marijuana to be accommodated by employer."

Plaintiff's fifth cause of action is for failure to accommodate pursuant to NRS 453A.10, *et seq.* But the allegations in the Complaint do not state a claim. The statute does not contain a private right of action, and Plaintiff's citation to NRS 453A.800(3), which falls under section entitled in part "medical use of marijuana **not required** to be allowed in workplace," conflicts with his contention that his termination for use of marijuana was unlawful. (emphasis added). Plaintiff's other allegations, on their face, render a cause of action based on this statute impossible. Plaintiff claims "**he never requested an accommodation** other than a reasonable accommodation not to terminate him, despite a positive indication for medical marijuana…." Compl., ¶123 (emphasis added). Plaintiff plainly cannot claim that Freeman violated NRS 453A.800 by failing to grant an accommodation that he admittedly "never requested."

Even if Plaintiff's allegations were reframed and recharacterized to fit with the ambit of the statutory text, the claim still fails. A decision by the Supreme Court of Montana is instructive. In *Johnson v. Columbia Falls Aluminum Co.*, LLC, 2009 MT 108N, P5, 2009 Mont. LEXIS 120, *5, the Supreme Court of Montana held that Montana's Medical Marijuana Act ("MMA") does not provide an employee with an express or implied private right of action against an employer. *Id.* Instead, the MMA specifically provided that it cannot be construed to require employers to accommodate the medical use of marijuana in any workplace. *Id.*

NRS 453A.800(2) similarly does not "require an employer to allow the medical use of marijuana in the workplace." NRS 453A.800(3) expressly does not "require an employer to modify the job or working conditions of an employee who engages in the medical use of marijuana that are based upon the reasonable business purposes of the employer…." The business purposes of Freeman's Drug Policy are clearly articulated in the CBA and the law does not require accomodation. **Ex. A**. Accordingly, even if this Court were to construe Plaintiff's

fifth cause of action in the light most favorable to Plaintiff, he cannot state a claim as a matter of law.

V. CONCLUSION

For the reasons set forth above, Plaintiff's five causes of action are preempted by Section 301 of the LMRA and must be dismissed with prejudice. If the Court concludes otherwise, it must still dismiss the Complaint in its entirety because, based on the allegations in the Complaint, Plaintiff's claims fail as a matter of law.

Dated this 21st day of January, 2020.

JACKSON LEWIS P.C.

/s/ Paul T. Trimmer
Paul T. Trimmer, Bar #9291
Lynne K. McChrystal, Bar #14739
300 S. Fourth Street, Suite 900
Las Vegas, Nevada 89101

Attorneys for Defendant
Freeman Expositions, LLC
Improperly Named The Freeman Company, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Jackson Lewis P.C., and that on this 21st day of January 2020, I caused to be served via the Court's CM/ECF, a true and correct copy of the above foregoing **DEFENDANT'S MOTION TO DISMISS** properly addressed to the following:

Christian Gabroy
GABROY LAW OFFICES
The District at Green Valley Ranch
170 South Green Valley Parkway, Suite 280
Henderson, Nevada 89012

Attorney for Plaintiff James Roushkolb

/s/ Kelley Chandler
Employee of Jackson Lewis P.C.

4812-9412-2674, v. 2

EXHIBIT A

EXHIBIT A

Collective Bargaining Agreement

Between

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 631, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

AND

Global Experience Specialists, Inc.

and

Freeman Expositions, Inc.

June 1, 2017 to May 31, 2021

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PREAMBLE

THIS AGREEMENT is made by and between [Employer] (hereinafter referred to as the "Employer") and TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 631, INTERNATIONAL BROTHERHOOD OF TEAMSTERS (hereinafter referred to as the "Union"), who, by their signatures endorsed hereon, have signified their approval thereof.

Should any provision of this Agreement violate or conflict with any state or federal law or regulation, such provision shall be null and void, and shall be reopened for negotiations so as to comply with said law or regulation; but the remainder of this Agreement shall be binding upon the parties hereto in accordance with the remainder of its terms.

Whenever in this Agreement employees are referred to in the male gender, it is agreed such reference applies to the female employees as well as male employees.

ARTICLE 1
UNION RECOGNITION

Section A. The Employer hereby recognizes the Union as the sole collective bargaining agent for all employees of the Employer, in the wage scales and classifications set forth herein in the Employer's operation located within the jurisdiction of the signatory Local Union.

Section B. It is the intent and purpose of the parties herein that this Agreement will promote and improve the industrial and economic relationship between the Employer and its employees and to set forth herein the basic Agreement covering rates, hours of work, and conditions of employment to be observed between the parties hereto during the life of this Agreement.

ARTICLE 2
SECURITY BOND

Section A. Each signatory Employer to this Collective Bargaining Agreement shall provide a Surety Bond in the amount of sixty thousand dollars ($60,000.00) prior to the commencement of any work within the terms of this Agreement.

Section B. The above bond shall only secure the payment of wages and benefits of those workers employed by the signatory Employer for an exhibitor or convention client. In the event that the signatory Employer acts as a pay roller for another Employer, then the signatory Employer must post an additional Surety Bond in the amount of sixty thousand dollars ($60,000.00) for each other Employer for which the signatory Employer acts as a pay roller.

Section C. The signatory Employer(s) shall execute the Surety Bond as set forth by Teamsters Local 631 Security Fund for Southern Nevada.

Section D. Employer(s) covered by this Agreement who are established locally and are able to produce a financial report satisfactory to the Trust shall not be required to provide a Surety Bond. Notwithstanding the foregoing sections of this Article, for the purpose of organizing new, small and/or occasionally working Employers, each as defined and determined by the Trust, such Employers shall post security in form and amount, also determined by the Trust in writing, but not in an amount less than five thousand dollars $5,000 for the payment of benefits and wages, of those workers employed by such Employer for an exhibitor or convention client. Upon thirty (30) days written notice from the Trust that it has determined changed circumstances exist, such an Employer shall promptly provide other security in form and amount determined by the Trust but not to exceed the foregoing requirements in this Article. Changed circumstances include an increase in hours worked for such an Employer; the failure of such Employer to timely pay or remit required wages and/or benefits contributions; or other circumstances reflecting, in the judgment of the Trust, that the existing security is inadequate or insufficient, in form and/or amount, to secure payment of wages and benefits. This subsection gives the Trust flexibility to adjust the type and amount of security to fit the circumstances, and provide for changes to the security when circumstances change. This subsection will serve as a precursor, to full bonding.

ARTICLE 3
UNION RIGHTS

Section A. The Company agrees that, subject to the provisions of this Agreement, the Union shall at all times be free to exercise its rights provided under the National Labor Relations Act and Law.

Section B. The Business Representative of the Union will be allowed access to the property of the Employer to contact employees relative to provisions of this Agreement at any reasonable time and will cooperate to minimize interference with the Employer's business. The Company agrees not to interfere with any Business Representative of the Union while in the process of his/her duties.

Section C. The Employer will provide bulletin boards for official Union notices at the Employer's warehouse(s) and labor trailer(s) on a permanent basis and temporary bulletin boards during move-in, show days, and move-out at the Las Vegas Convention Center, the Sands Exposition Center and Mandalay Bay. Upon notice that provided bulletin boards for official Union notices are inoperable or in disrepair the Company will repair or replace such boards.

Section D. The Union at its sole discretion will determine who is eligible for dispatch according to its dispatch rules and policies.

ARTICLE 4
MANAGEMENT RIGHTS

Section A.

The Employer shall have the exclusive right to determine its policies and to manage its business, including:

1. Specifying the methods of operation and types of equipment to be used.
2. Determining the size of its working force and the extent to which its operation or part thereof shall be operated or shutdown.
3. The right to hire, promote, transfer, suspend, or discharge workers.
4. Scheduling its operations and selecting the equipment to be used at various jobs, including the right to make technological changes.

The above listing of management rights is not intended to be, nor shall it be considered, a restriction of or a waiver of any of the rights of the Employer not listed and not specifically abridged in this Agreement whether or not such rights have been exercised in the past.

In no case, shall the above management rights be in derogation of any of the terms and conditions of this Labor Agreement between the parties.

Section B. Employer's Rules, Regulations, Policies and Procedures

1. All employees covered by this Agreement are bound by and must comply with all reasonable rules, regulations, policies and procedures of the Employer, show management or facility where the work covered by this Agreement is being performed.

2. The Employer reserves the right to modify, amend or change any existing rules, regulations, policies or procedures and to implement, at any time, new reasonable rules, regulations, policies or procedures, as long as such modifications, amendments or changes or new rules, regulations, policies or procedures do not conflict with any specific provision of this Agreement. The Employer shall provide the Union with a copy of any new rule, regulation, policy or procedure. When practicable, the Employer will provide such copy two (2) weeks prior to implementation, as well as an opportunity to meet and confer at the written request of the Union.

ARTICLE 5
DUES CHECK-OFF

Section A. Upon receipt of an authorization signed by any employee covered by this Agreement from the Union, the Employer shall, in accordance with the terms of such authorization and in accordance with this Agreement, deduct from such employee's earnings, on the first pay period of each month, the amount owed to the Union by the employee for his/her monthly Union dues. Such deducted dues shall be paid to the Union within fifteen (15) calendar days of the time of such deduction.

Section B. Where an employee who is on check-off is not on the payroll during the week in which the deduction is to be made or has no earnings or has insufficient earnings during that week, the employee must make arrangements with the Union and/or the Employer to pay such dues in advance.

Section C. The Employer will recognize an authorization for deductions from wages of any employee, if in compliance with state law, to the Union Political Action Committee or Drive.

Section D. The Union shall indemnify and save the Employer harmless against any and all claims, demands, suits, or other forms of liability which may arise by reason of any action taken in making deductions and remitting same to the Union pursuant to the foregoing provisions.

ARTICLE 6
JURISDICTION AND WORK COVERED/CLASSIFICATIONS

Section A. The Employer recognizes the following work herein outlined as being within the scope of this Agreement and defined as erection, touch-up painting, dismantling and repair of all exhibits. This work is to include wall coverings, floor coverings, pipe and drape, painting, aisle coverings, hanging of signs and decorative materials from the ceiling, placement of all signs, erection of platforms and placement and care of furniture as well as wiping down exhibits. The Employer further recognizes within this scope the loading and unloading of all trucks of common and contract carriers as well as individual company vehicles and the movement of freight, crates, and rigging within its facilities, including all work in the Company's warehouse facilities will be bargaining unit work. In the area of rigging, packing and crating, the work performed includes, but is not limited to, unloading, uncrating, unskidding, painting, and assembly of machinery and equipment as well as the reverse process. It should be noted that cleaning does not include mobile washing.

The contract of, in whole or in part, including any structures or operations which are incidental thereto, the assembly, operations, maintenance and repair, and other facilities used in connection with the performance of the aforementioned work and services, and includes, without limitation, the types or classes of work listed under classifications, as well as any other work regularly assigned in the past.

Work currently being performed within the jurisdiction of the Union shall continue to be performed by the Union.

The following work is currently being performed within the jurisdiction of the Union and the following is meant to clarify and memorialize the current practice:

- The installation of graphics. There may be a need for graphics to be installed by outside vendors based on complexity of installations and the time and cost of replacement if installed incorrectly. If the Company needs the use of an outside vendor they will notify the Union in a timely fashion.
- The installation of ground supported truss when its primary purpose is part of a booth structure.
- Hand written freight paperwork at show site and warehouses.

- The processing of air freight from delivery truck to the item(s) destination to include the receiving whether by hand written receivers or by scanner.
- Privately owned vehicles (when contracted to the Employer); it is understood that exhibitors have privately owned vehicles which the exhibitor may request the services of the Company to unload and reload their privately owned vehicle.

The foregoing article is not meant to increase or decrease the jurisdiction of the Union.

Notwithstanding the above, the Union has no jurisdiction over the work of employees who have traditionally been represented by another Union.

Section B. Notwithstanding the foregoing, if the Employer is not contracted to perform the foregoing work, it is not bargaining unit work under this Agreement.

Section C. Classification Applications

1. Leadman - The Leadman shall be an employee whom the Employer has assigned supervision of a crew of three or more workers. That work assignment shall be of a specific nature, the priority of which requires proper direction for its completion.

2. Working Foreman - A Working Foreman shall be any employee whom the Employer chooses to assign the supervision of a group or multi-group of employees and/or Leadmen. Those work assignments require coordination of all workers or groups of workers to assume proper completion of the required projects.

3. Show Foreman - The Show Foreman shall be any employee whom the Employer has assigned supervision of Leadmen, Working Foremen and/or groups of employees to coordinate all work activities and to ensure that such work activities are proper, productive, and timely relative to completion, to quality and to quantity.

4. If any additional classifications are required under this Agreement, the Employer and the Union will add such classifications as may become necessary for the Employer to fill its requirements.

5. a. Except as provided in subparagraph b, it is the Employer's intent in subcontracting any work of a substantial, major or continuous nature which is covered by this Agreement with any person, firm, corporation, partnership or other organization to require the subcontractor to observe the applicable wage rates, hours and working conditions set forth in this Agreement.

   b. Subparagraph 5. a. shall not apply (1) when the Employer is unable to reasonably procure or provide equipment to be operated by employees covered by this Agreement and the Employer procures such equipment with an operator not covered by this Agreement, provided that the operator of the equipment is covered by the Master Freight Agreement or the operator is provided the same or similar wages,

benefits and conditions as provided in this Agreement; or (2) when an official services contractor procures specialty furniture from another company which provides as part of its services the labor required to unload, place, wipe down, repair and replace such furniture at a show and to remove and load such furniture at the conclusion of the show. Specialty furniture is furniture leased by the Employer for a limited period of time during which the furniture will be used at a tradeshow, convention, corporate event, conference or similar event. The forgoing provision relating to the subcontracting of specialty furniture and the labor associated with such furniture has no application to standard furniture owned by the Employer. The unloading, placement, wipe down, repair and replacement of such Employer owned standard furniture at a show and the removal and loading of such furniture at the conclusion of the show shall continue to be performed by employees covered by this Agreement. The Employer agrees that it will continue to own the same standard furniture during the term of this Agreement. Standard furniture is defined and limited to the furniture currently owned by the Employer and the furniture purchased by the Employer during the term of the Agreement.

Section D. Use of Leadmen, Working Foreman, and/or Show Foreman

1. A manager cannot replace a Union Leadman classification.

2. At a minimum, anytime there is a crew of people a Union Leadman classification must be used.

3. Show Foreman, Working Foreman, and/or Leadman are the recognized classifications used by the Employer to direct the Bargaining Unit workforce on any given show or in the warehouse.

4. A non-bargaining unit supervisor may direct, instruct, or seek assistance from any bargaining unit employee without going through the employee's immediate Union supervisor from time to time.

Section E. Leadmen, Working Foreman, and/or Show Foreman Schedule

The Employer will provide Lead men, Foremen and Show Foremen their prospective schedule, in which they will be performing the aforementioned duties, for the following month. The Union and the Employer understand such schedule may be subject to change. This provision shall not be subject to Article 13.

ARTICLE 7
DISPATCH PROCEDURES

1. The Employer will make every attempt to communicate its dispatch needs as soon as possible. The Employer and the Union agree that all dispatches for any type of labor will be done by the Union Dispatch Office. Both parties also agree that the Company will not call employees covered under this Agreement directly for labor. This includes any Department Managers, Supervisors, Labor Coordinators, Leadmen, Foreman, or anyone associated with the Company and/or Union other than the Union Dispatch Office.

2. All Employers will provide a schedule of shows/events and labor projections monthly for the following month. Notice must be sent to the Teamsters Local 631 Dispatch Office no later than ten (10) days prior to the end of the month. For example the show schedule and labor projections for the month of February will be provided to the Teamsters Local 631 Dispatch Office no later than ten (10) days prior to the last day of January. If the schedule changes or the projections are recalculated with a variable greater than 10% the Employer will notify the Union as soon as practical.

3. Given the "24-7" nature of the Las Vegas Trade Show industry, the Union agrees to operate its Dispatch Office to provide employees covered under the Collective Bargaining Agreement with more opportunities to obtain work and to provide the Companies with skilled labor when needed during larger shows. Upon notice provided to the Union by an Official Services Contractor of at least ten (10) calendar days and upon mutual Agreement, the Union shall keep the Hall open on the weekend(s), open the Dispatch Office earlier and/or keep the Dispatch Office open later than the regular hours of operation. Such request must be identified in the notice, for the purpose of dispatch.

4. If the Employer submits a "call-by-name" dispatch and the dispatch remains incomplete, the Employer shall communicate its intentions by 3 P.M. the day prior to the designated reported time (or Friday for a Sunday or Monday dispatch). At 3 PM, the Employer has three (3) options: (1) open the call and replace as needed, (2) close the call, or (3) the call remains as submitted. If the Employer fails to contact the Dispatch Office by 3 PM, then the Dispatch Office will let the call remain and not automatically open it up and shall not result in a failure to fill a call.

5. The Employer, at its option, shall be entitled to designate employees on a "call-by-name" dispatch as a "do-not-replace" ("DNR") employee. The Employer has sole discretion to change employees from a DNR to an open call. The Union shall not be considered to have failed to fill the call due to its inability to dispatch the DNR employees on the "call-by-name" dispatch.

6. In the event of a late change due to showsite constraints a "call-by-name" dispatch may be submitted between the hours of 3 PM and 5 PM. The Dispatch Office shall attempt to call these employees and shall wait until 4 PM for the employee to accept the dispatch. At 4 PM, the Employer shall contact dispatch to inquire as to what extent they have met the Employer's needs. At that time, it will be the Employer's discretion to: (1) open the call and replace as needed, (2) close and cancel the call, (3) provide alternative names, if time permits for dispatch. If the call is closed or the Employer provides alternative names, the Dispatch office will use its best efforts to complete the dispatch - but it shall not be considered a failure to fill the call. At the time the Dispatch Office closes, any unfilled open call where the Union can replace as needed, will be considered a failure to fill the call.

7. The Employer and Union recognize that circumstances exist where an Employer may call after the designated time with a status change. These circumstances will be communicated to the Dispatch Office as soon as possible.

ARTICLE 8
EMPLOYMENT PROCEDURES

Section A. The Employer must have the right to hire qualified employees in sufficient quantity as needed to fulfill its current and future responsibilities to its clients and customers relating to work to be performed in the tradeshow industry which is within the jurisdiction of the Union. The parties must recognize that the needs of the Employer for quality employees in sufficient quantity varies from day to day, week to week, and month to month in accordance with the Employer's contractual responsibilities to its clients and customers which varies significantly from tradeshow to tradeshow. The parties must recognize the anticipated growth in the tradeshow industry in Southern Nevada and the immediate need to improve the qualifications of many employees represented by the Union who work in the tradeshow industry.

The Employer is the sole judge as to the performance of all its employees and is the sole judge of the competency of applicants for employment. The Employer may reject any worker referred by the Union and the Union may not refer to an Employer any employee about whom the Union has received a "no-dispatch" letter from that Employer. All employees must perform their work to the satisfaction of the Employer. However, no employee shall be discharged or discriminated against because of activities on behalf of, or representation of, the Union, subject to the provisions of Article 12 - Union Stewards.

For the purpose of this Agreement, the term "Journeyman" will mean an individual who qualifies as a Journeyman in the convention industry in accordance with the provisions of Section A.1 of this Article.

In the employment of workers for all work covered by this Agreement, the following provisions shall govern:

1. Journeymen

The Union shall establish and maintain a separate and open, nondiscriminatory employment list for Journeymen workers desiring employment on work covered by this Agreement, and such workers shall be entitled to registration and dispatch, subject to the provisions of this Article. The Journeymen classifications shall consist of the following:

a. All individuals qualified as Journeymen under the prior Collective Bargaining Agreement.

b. Individuals certified as Journeymen by the Apprenticeship Training Program.

2. Apprentice(s)

In the event, and to the extent, there are Apprentices available under the program set forth in Article 11, the Employer will hire such as in the ratio set forth in that Article. Such Apprentices shall be included, in the proper ratio, in the total call for employees and not in addition to the total. Once employed, and except as provided in other provisions of this Article, Apprentices shall be subject to the same layoff procedures as other workers except that within the divisions set forth in Section E.2 (b) at a particular show site, the Employer agrees to exercise reasonable efforts to maintain the ratio of Apprentices set forth in Article 11, Section H.

3. Installation and Dismantle (I&D)

The Union and the Employer agree that in order to provide customers the highest level of qualified labor for the purpose of I&D, the Joint Training Trust will develop, in concert with I&D Employers, a Training Program that objectively evaluates and classifies an applicant's ability to perform I&D work. The I&D Training Program will objectively certify and create recertification for current Journeymen workers and new applicants. It is understood that entry and subsequent certification into or by The I&D Training Program shall not have the authority to certify workers as Convention Journeymen. There shall be three levels of certification; Level 1) Specialist which will consist of Journeymen only, Level 2) Qualified which may consist of Journeymen and non-Journeymen and Level 3) Certified which may consist of Journeymen and non-Journeymen. The criteria for achieving certification shall be as follows:

a) I&D Specialist

i) Those Journeymen who have been paid Leadman, Foreman or any "premium" pay by a signatory Employer performing I&D work or,

ii) Those Journeymen who a minimum of three Employers have submitted a "call by name" to perform I&D work or,

iii) Those Journeymen who have completed the I&D Specialist training, physical and written tests and met the requirements as outlined by the I&D Training program.

b) I&D Qualified

i) Those who have been certified as Journeymen by the Teamsters Local 631 Training Program whom have requested to the Local Union Dispatch Office no later than November 30, 2017 to receive I&D calls or,

ii) Those Journeymen who a minimum of two Employers have submitted a "call by name" to perform I&D work or,

iii) Those who were certified as I&D Specialist prior to the signing of this Agreement or,

iv) Those who have completed the I&D Qualified training, physical and written tests and met the requirements as outlined by the I&D Training Program or,

v) Those who provide documentation to the Training Trust that they are a "Union Journeyman" or equivalent in a Trade Union, other than Teamsters Local 631, which performs I&D work or,

vi) Those who are employees of a signatory Employer performing I&D work

c) I&D Certified

i) Those who have been certified as Journeymen by the Teamsters Local 631 Training Program or,

ii) Those who performed I&D work for a minimum of one hundred (100) hours through Teamsters Local 631 dispatch and substantiated by receipts that the 100 hours were in I&D. The one hundred (100) hour achievement must be recorded at the Teamsters Local 631 Security Fund and pass the I&D Certification test or,

iii) Those who have been provided with a letter of recommendation by an Employer who is a signatory to the aforementioned Convention Collective Bargaining Agreement and pass the I&D Certification test.

The Employer may request and utilize Journeymen over non Journeymen regardless of their certification level. The Employer may submit a written request to the Joint Training Trust or their designee to certify, recertify or provide remedial training to any certification level of I&D workers. The Training Program shall evaluate the request and

provide the Joint Training Program a recommendation as to the appropriate action to be taken.

Any evaluated recommendation shall be approved by the Board of Trustees of Teamsters Local 631 Training Trust which is comprised of GES, Freeman, EAC's and the Union. The Board of Trustees, or their designee, has the ability to evaluate and/or amend the testing process of the Teamsters Local 631 Training Center. The Board of Trustees may request a visual demonstration of hands-on testing for any applicant. Any and all disputes regarding the Board of Trustees refusal to certify an individual shall not be subject to the Grievance and Arbitration Procedure.

During the run of a show if an Employer elects to utilize a non-Journeyman, client requested Leadman or Foreman in any booth or venue the Employer will employ one Journeyman per such position within the applicable booth or venue.

If a Journeyman refuses three calls for an Employer, the Journeyman will not be eligible for dispatch to that Employer for the duration of the show.

If a Journeyman does not perform I&D work, due to job refusals, within a six month period the Journeyman will be reduced one certification level per occurrence until they are reduced to I&D Certified.

4. Skilled Extra Board

The Union will establish and maintain a separate and open, nondiscriminatory employment list for Skilled Extra Board workers which shall consist of employees eligible for dispatch in accordance with the Local 631 dispatch rules and procedures. These employees are eligible as workers who are to be used in accordance with the provisions of this Agreement.

Such Skilled Extra Board employees must possess a current certification in one or more of the following categories:

a) CDL
b) Forklift
c) Condor/Scissor Lift
d) Aerial Rigging

To qualify as a Skilled Extra Board for b. (forklift operator), the applicant shall be required to perform a practical test and certification as a forklift operator through the Apprentice Training Trust or provide documentation to the Training Trust that they are a "Union Journeyman" or equivalent in a craft which performs forklift operator work with a current certification.

When a Skilled Extra Board worker is dispatched to the Employer pursuant to an Employer call for a Skilled Extra Board worker, the employee will be paid at the rate of

the classification set forth in Article 23 for the entire period the worker is employed on that dispatch. If these workers are dispatched pursuant to an Employer call for Unskilled Extra Board workers, they will be paid the rate for an outside source worker set forth in Article 23, unless the employee is assigned to perform work which requires one (1) of the certifications referenced above. In that event, the employee will be paid at the rate of the certified classification for the period he/she performs such certified work. All other hours will be paid at the rate of an outside source worker.

5. Unskilled Extra Board

The Union will establish and maintain a separate and open, nondiscriminatory employment list for Unskilled Extra Board workers which shall consist of employees eligible for dispatch in accordance with the Local 631 dispatch rules and procedures and who do not possess any of the certifications referenced in Section A.3 and A.4 above. These workers are eligible as outside source workers who may be employed by the Employer in accordance with the provisions of this Agreement.

These workers will be paid the rate of outside source workers set forth in Article 23, except as provided in Section 4 above.

The Union will provide the Employer, upon request, a list of all workers on the extra board. A separate list(s) of persons who possess any of the four (4) certifications in Section A.4 (a-d) above will also be provided. Representatives of the Employer and the Union will meet quarterly to evaluate the extra board list to determine whether individuals should be purged from the list.

The Union must maintain at all times an accurate out of work list for Journeymen, for I&D Specialist, for I&D Qualified, for I&D Certified, for Skilled Extra Board workers and for Unskilled Extra Board workers. The Union shall immediately transmit by electronic mail a current copy of such lists to the Employer upon request. Any discrepancies in the lists will be adjusted between the parties; and, if this cannot be done, then through the grievance procedure.

Skilled Extra Board, Non Journeymen I&D, and Unskilled Extra Board workers are not entitled to the benefits of a seniority employee or a Casual Journeyman pertaining to Article 10, Article 14 and Article 15(e).

6. Installation of Aisle Carpet

The Union recognizes the unique needs of an official services contractor to staff for the installation of aisle carpet. The Union also recognizes the need of the official services contractor to have a consistent and repetitive group of workers who are able and willing to perform this function.

The Union will create a separate and distinct list of Journeymen, I&D Qualified and/or I&D Certified, Skilled and/or Unskilled Extra Board, and Workers on the 360 list that are able and committed to perform aisle carpet work on a consistent and repetitive basis. Further, the Union and Employer trustees of the Teamsters Convention Industry

Training Trust agree to mandate the performance of this work on a consistent and repetitive basis by all apprentices who are not actively employed in the convention industry at the time the aisle carpet work is scheduled to be performed.

The Employer will, to the extent feasible, provide the Union dispatch office and the Teamsters Convention Training Trust a forty five (45) day projection each month of the scheduled dates for the performance of aisle carpet work for each calendar month as well as its projection of the number of workers needed to perform such work. The information regarding the number of workers needed for each show will be updated forty eight (48) hours prior to the reporting time of the call. Updates may be sent twenty four (24) hours prior to reporting time of call. The Union and the Training Trust Fund will advise the Employer as soon as possible, but in no event later than 4:00 p.m. of the day prior to the reporting time of the call, whether they will be able to fill the call. If the Union and the Training Trust are unable to fill the call, or if they fail to notify the Employer by 4:00 p.m. of the day prior to the reporting time of the call, the Employer shall have the right to immediately fill its call from any other source.

The Union and the Teamster Training Trust will provide the Employer with a list of available workers or apprentices available for a carpet call. Notwithstanding any other provision of this Agreement, the Union and the Teamster Convention Industry Training Trust will fill the separate calls for aisle carpet in the following order:

1) Journeymen who are on this separate list and apprentices in ratio.
2) *Unemployed apprentices in response to the call*
3) I&D lists subject to the provisions of Article 8 Section A. 3
4) Skilled and/or Unskilled Extra Board and Workers on the 360 list to fill the call.

Any employee assigned to the installation of aisle carpet in accordance with the above will be laid off /marked paid when that job assignment is complete, unless currently dispatched to the Employer. Foremen, Leadmen and fork operators involved with this work may come from outside this list. Representatives of the Employer and the Union will meet quarterly to evaluate the carpet list to determine whether individuals should *be purged from the list.*

The Employer will schedule employees that have "opted in" to do aisle carpet and are currently on a dispatch to the Employer and are available to be scheduled into the aisle carpet, prior to going to the Union for the additional people.

Employees that opted in to aisle carpet and are currently dispatch for the Employer but have other assignments for the day of aisle carpet installation or the following day that may conflict with the aisle carpet installation will not be scheduled to do aisle carpet and will perform their other assignments.

If there are employees that are currently dispatched for the Employer and have not opted into aisle carpet and there is not a work assignment for the day of the aisle carpet, the employee will be scheduled for a future assignment or laid off if there is not a future assignment available.

This article is not intended to cover the move out roll up of Aisle Carpet. This work will continue as historically performed.

Section B. Callout Order

1. The Employer has the right, on an unlimited basis, to submit a call to the Teamsters Local 631 Dispatch Office for Journeymen workers, Skilled Extra Board workers, I&D workers and Unskilled Extra Board workers by name without regard to their position on their respective out of work list.

2. In making any call by name, the Employer shall furnish to the Union with its labor call the names of the Journeymen workers, Skilled Extra Board workers, I&D workers and Unskilled Extra Board workers being called by name. The Employer may also furnish the names of additional Journeymen workers in order of preference who are to replace those called by name on the labor call who are unavailable for dispatch or who refuse the call.

3. The Employers agree upon notice from the Union, to layoff I&D workers that have been dispatched to the Employer as Unskilled Extra Board and are not being utilized in an I&D capacity, for re-dispatch with the understanding that the Union must replace such workers with available Journeymen, Apprentices, or Extra Board participants.

4. Once an open I&D call which has been placed, seventy two (72) hours prior to the requested start time, is filled with 50% unskilled extra board, the Employer may utilize either Carpenters Local 1780 or Stagehands Local 720 for the remaining 50%.

5. Prior to the Employer calling the Union dispatch for additional labor, Journeymen and Apprentices previously dispatched to a particular show must be working or offered the first right of refusal for all remaining available work on that show.

6. The Employer may choose to reassign a worker to another division or show site. Employees have no right to bump other employees.

7. The Employer shall verify that the employee has a current and proper Union dispatch slip (printed or email) and retain a copy for their records. Violation(s) of this article will be subject to the grievance procedure.

8. On the twelfth of each month the Employer will send to the Teamsters Local 631 Dispatch Office a new dispatch request for all employees currently in their population. Upon receipt of such dispatch request the Teamsters Local 631 Dispatch Office will notify the Company(s) which of the requested employees are not eligible to be re-dispatched in accordance with the Unions Dispatch Procedures. The Employer shall

within forty eight (48) hours release the ineligible employee(s) to obtain a proper dispatch.

9. Upon request, the Union will provide to the Employer a listing of Journeymen workers, I&D workers, Skilled Extra Board workers and/or Unskilled Extra Board workers by name and record number in the industry who are available for dispatch. Any discrepancies in the List will be adjusted between the parties; and, if this cannot be done, then through the grievance procedure.

10. If the Union is unable to furnish a sufficient number of competent Journeymen workers to fill the Employer's call, or if dispatched Journeyman workers don't respond to the call, the Employer will first attempt to fill the call with unemployed Apprentices, out of ratio, through the Training Trust. If the Employer is still unable to fill its call, it will contact the Union Dispatch Office, in accordance with A.3 of this article for I&D workers and Skilled Extra Board workers if the Employer has need for workers with one or more of the certifications listed in Section A.4. Such calls for Skilled Extra Board workers shall be made before the Employer places a call for such workers from any other outside source. If the Employer is still unable to fill its call, it may procure workers from any source, including Unskilled Extra Board workers. If the workers procured by the Employer from another source are from another Union, the wage rates, fringe benefit provisions, and other terms and conditions of this Agreement will not be applicable to those employees. If the workers procured from another source by the Employer are not from another Union, the applicable wage rates and fringe benefits set forth in this Agreement shall apply to such workers. All workers used by the Employer from another source must meet the same skills and qualification requirements as employees covered under this Agreement including and not limited to drug testing procedures, forklift certifications, etc. The Employer agrees that it will notify the Union Dispatch Office and Business Agent(s) by fax or email monthly of the identity of employees hired from sources other than the Union under the above provision and shall maintain adequate payroll records for such employees including job names and locations in Las Vegas. Any and all payroll records shall be made available to the Union and/or trust fund auditors upon request.

Section C. Rollover Procedures

1. The Union will cooperate with all convention industry Employers to the maximum extent possible in facilitating the rollover of Journeymen from Employer to Employer without the necessity of the employee returning to the Union Dispatch Office for a new referral. All rollover requests shall be performed between the Union Dispatch Office, Union Steward and the Employer.

2. Two (2) types of Rollovers are recognized: permanent and temporary. When the Employer has Journeymen and/or Apprentices who may be utilized with another company, a voluntary list will be established. The Union Steward will be involved to

assure workers are eligible for dispatch prior to their name being placed on the list. Such list will specify either "temporary" or "permanent". An employee who is permanently rolled over shall be laid off and not returned to the originating Employer without a new dispatch. An employee who is a "temporary" rollover shall have a return time and date marked on their timecard and does not require a new dispatch to return to the originating Employer. The Union Dispatch Office must be notified of all rollovers by the receiving Employer. After such notice, the Union is obligated to send the receiving Employer dispatches for the employees involved in the rollover. The Employer will provide such dispatch to the employee.

Section D. Single Day Dispatch.

When an employee covered by this Agreement works a single day, he/she shall retain his/her position on the out-of-work list. The Union shall be responsible for administering this system. If, after accepting an assignment, an employee covered by this Agreement calls off or is a no show, he/she does not retain his/her position on the out-of-work list. If an employee covered by this Agreement requests a lay-off in response to a future work assignment, or calls off or is a no show for the next assignment, he/she shall not retain his/her position on the out-of-work list.

Section E. Layoff or Cutback

1. Company agrees to mark employees laid off in the Teamster Dispatch System.
2. It is the intent of this Section to provide qualified Journeyman workers first right of refusal on all bargaining unit work. Selection of employees for layoff or cutback, excluding aisle carpet and empty return work, shall be in accordance with the following:

   a) Subject to the provisions and exceptions set forth in Section b) below, the Employer will layoff and/or cutback in the order of (1) labor from outside sources, then (2) Unskilled Extra Board workers, then (3) Skilled Extra Board workers, then (4) I&D Certified non-Journeymen, then (5) I&D Certified Apprentices, then (6) I&D Certified Journeymen, then (7) I&D Qualified non-Journeymen, then (8) I&D Qualified Apprentices, then (9) I&D Qualified Journeymen, then (10) Apprentices outside the ratio, then (11) Journeymen and Apprentices in ratio. All layoffs and cutbacks will be within the following divisions and/or work: Freight, Decorating, I&D and Official at each showsite. Numbers 4,5,6,7,8,9 shall apply to I&D work only.

   b) Section a) will not apply in the following situations:

      i) when displacement would interfere with job continuity in the following areas: I&D work on a specific booth, custom modular interlocking system (e.g., MIS/GEM) work on a specific booth, work for show management/official work and forklift operators for booth work;

      ii) when the higher list worker is not qualified to perform the work involved;

iii) when the higher list worker is sent home to permit an eight (8) hour break in accordance with Article 19, Section D., prior to his/her specific scheduled starting time on the following workday;

iv) when a daily cutback involves a specific crew with a specific starting time, the members of that crew may not bump or displace members of a crew with a later starting time;

v) when a daily cutback is from a job assignment specific in nature in terms of the work performed or in terms of the location of the work;

c) Aisle carpet installation cutbacks and the return of empty crate cutbacks will be by Leadman or Foreman as defined by Section E.2.a., above within their assigned crew.

d) For the purpose of this Article, job continuity ends at the end of a shift except for I&D Work on a specific booth.

e) Except for the work covered in d) above (job continuity), the Employer's obligation is to attempt in good faith to start each workday with the proper ratio of Journeymen and Apprentices prior to the employment of workers secured from outside sources.

Section F. Specialty Crafts

For Specialty Craft Mechanic(s) and Painter(s) (Display Shop)-the Employer shall notify the Union Dispatch Office and Business Agent(s) by fax or verifiable email of job vacancies before hiring or interviewing new, additional, or replacement employees and before the vacancies are filled. The Union shall refer qualified applicants for employment to fill such vacancies. The Employer has the right to request more than one applicant. If the Union is unable to supply qualified applicants for specialty crafts within two (2) business days, the Union will inform the Employer that it may fill the vacancy from any source.

Section G. Call by Name Review Process

The Employer and the Union acknowledge that changes in show schedules (overlap, seasonality, show dates, show rotation), and show dynamics (show size, mix of work, changes in required skills for shows) create variability in labor requirements for Employers. Subject to Article 4 and barring discipline and/or documented performance issues, Call by Name Employees who have been consistently called by a single employer for a minimum of 1400 hours in the preceding calendar year, shall have a reasonable expectation for future assignments. Employees will be expected to submit in writing to the Union any reasonable claim of disparity immediately upon notice of such. This section shall not constitute a guarantee of hours.

In the event there are material changes in a Call by Name Employee's assignments, the mechanism for evaluating conditions shall be a review by the Union and Management. The review shall be conducted as needed on a monthly basis, whereby the assignments of the Call

by Name Employee shall be reviewed against the aforementioned conditions (seasonality, show rotation, changes in required skills for shows, etc.). Unless resolved or dismissed at the time of the review, the Union may within ten (10) business days provide the Employer with a letter to arbitrate and proceed to the arbitration process as delineated in Article 13, Section C. Should resolution not be attained at the review it is understood that the company's exposure will begin from the date of that review until the arbitrator's decision. Notwithstanding the forgoing Call by Name Employees shall remain casual employees.

Section H. Requested Time Off

Request for a single day off by an Employee shall be granted whenever reasonably possible, provided the request is submitted in writing to a Manager of the Company, no later than forty eight (48) hours from the date of the time off being requested. If the employee has not received an assignment by 12 PM the day prior to returning to work, the employee will contact the Employer prior to 3 PM.

ARTICLE 9
BULLPEN

The intent of any Bullpen is to better utilize experienced workers, when available, to fill immediate needs of any Signatory Convention Services Contractor as replacement workers for the day only. The use of a Bullpen, even while Dispatch is open, is limited to providing replacement workers for employees who do not show up for work in a timely fashion, or at all, plus up to ten (10) additional workers for use in I&D.

Journeymen and Apprentices scheduled off who have signed onto the Employed but Available (EBA) list will be utilized before the Employer can use a Live Bullpen participant(s) who are not on that Employer's dispatch. The EBA list will be utilized during normal 631 dispatch hours of operation. Exceptions to the above being primary aisle carpet installation, show close/tear out and immediate I&D needs

All EBA List participants must commit and be able to be on site and working within sixty (60) minutes of being selected. If a participant arrives after the sixty (60) minute window, the Company has the option to use or not use said participant. Participants selected from the Employed but Available list that report within sixty (60) minutes shall be guaranteed a minimum of four (4) hours pay whether the job lasts four (4) hours or not. If a participant fails to fulfill the sixty (60) minute commitment he/she shall be denied access to this system for thirty (30) calendar days. A second occurrence within a six (6) month period shall permanently revoke future access unless mutually agreed upon between the Employer and the Union.

Live Bullpen

Section A. The organization of Bullpens shall be limited to the Official Services Contractor. No other Employer will organize or facilitate a Live Bullpen without written Union approval. The organizer is responsible for promoting each location and time. The Employer must utilize the Teamsters Local 631 website to promote any Live Bullpen. Dispatch will be notified by the Steward daily by electronic transmission, fax or email to the Union Dispatch Office of all replacement workers for the day who are employed by the Employer.

Live Bullpens are only allowed at the three main facilities – Las Vegas Convention Center, Sands Expo and Convention Center and Mandalay Bay Convention Center. A Live Bullpen would be prohibited at all other locations unless mutually agreed upon between the Union Business Agent(s) and the Employer(s).

Live Bullpens may only be administered by a Union Steward. A Steward will be permitted thirty (30) minutes prior to the advertised time of the Bullpen to process the attendees in the Live Bullpen. The Steward shall be compensated thirty (30) minutes time to properly administer the Live Bullpen if the Steward's start-time and the announced Bullpen are the same.

Section B. Workers who are employed through a Bullpen will be laid off/marked paid at the end of each day. If the Employer wishes to retain a Journeyman acquired from a Bullpen and if said Journeyman is on the out of work list – prior to the end of the Journeyman's shift, the Employer must request said Journeyman by name through Teamster Dispatch and said Journeyman must accept the dispatch.

To register in any Bullpen, participants must be in compliance with Teamsters Local 631 Bullpen procedures. If a worker is signed up for a Bullpen and said worker has already worked a shift, or are scheduled for a future shift within the same calendar day for an Employer that is requesting labor from said Bullpen, the Employer has no requirement to select said worker.

Section C. The Callout order will follow the Callout order delineated in the CBA with respect to the following:

1) Those already on dispatch to the requesting company will have priority within each classification respectively.
2) Apprentices will be taken in the order in which they sign-in.
3) The worker must be qualified to perform the available work.

Decisions as to employee qualifications remain vested with the Employer. A Union Steward will administer all Live Bullpens to verify workers are taken from the Bullpen in accordance with Bullpen provisions.

Section D. Any Journeyman, Apprentice or I&D certified, Qualified, for I&D work only, who is eligible for dispatch may participate in Live Bullpens. Skilled/Unskilled Extra Boards who are eligible for dispatch may only participate in Live Bullpens if any the following apply; Initial installation of aisle carpet, initial day of a show move out/empty return, Teamster Dispatch is dispatching Skilled/Unskilled Extra Boards or Teamster Dispatch is closed.

Section E. Once the Bullpen is closed by the Employer it shall remain closed and empty. Only the Union or the Labor Supervisor, or their designee (which designation shall be communicated to the Steward), shall have the authority to open or close a Bullpen. If a worker is utilized/ pulled from a Bullpen after the Bullpen is closed the Employer will pay the first person signed in on the original Bullpen list, whom did not receive work, no less than the hours worked by that worker if this results from intent to circumvent this process.

Employed but Available List (EBA)

The Employers and the Union agree that the Union will create and implement an Employed but Available List (EBA). Parties acknowledge that the current process may be modified or discontinued with a signed mutual agreement as future technological developments create more efficient process' for the industry.

The intent of this list will be to utilize workers who are already on dispatch but have available days off between assignments for the original Employer. Workers will be able to sign on to an Employed but Available List and post the days they are 'completely' available for work. Workers will be able to add/remove dates of availability if their circumstances change. Use of the EBA is voluntary. Workers who sign onto the list will commit to the following:

1. To Honor the next assignment from the Employer that the worker is originally dispatched to.
2. To accept any request for work as long as the worker is qualified to perform said work.
3. To accept any request for work regardless of start time, location or department.

Employers may access the EBA List through the Teamsters Local 631 online Dispatch site. Employers may only request workers from the list for the days listed as 'Available' for each worker. Workers on dispatch for an Employer must be working or offered first right of refusal of all available work prior to the Employer requesting workers from the EBA List.

EBA workers will be laid off/marked paid at the end of the shift if the worker is only needed/available for one (1) day or at the end of the shift of the last day of his/her EBA work, if the work constitutes more than one (1) day.

For advanced scheduling, the EBA List will only be accessible when Teamsters Local 631 Dispatch is dispatching Extra Boards.

ARTICLE 10
SENIORITY

Section A. Only regular full-time employees shall accrue seniority under this Agreement. Seniority, for the purpose of this Agreement, including layoffs, rehires, vacations and first right of refusal of work available up to 40 hours in workweek (See Article 19), shall be based on the length of each employee's continuous employment with the Employer as a regular employee, if the employee is qualified to perform the available work. However, seniority rights shall not be used to bump other employees.

The Employer may select from the work force the employees who will be regular employees. To qualify for the seniority roster, the employees shall be chosen as regular employees by the Employer.

The seniority list shall be updated every one hundred and eighty (180) days.

Continuous employment as a regular employee shall be broken by:

1. Voluntarily quitting.
2. Discharge.
3. Absence due to layoff in excess of 180 days.
4. Absence due to sickness or injury for a period in excess of one year. By mutual consent between the Union and the Employer, seniority may be extended indefinitely.
5. When an employee accepts employment elsewhere except as set forth in Section C below.
6. Failure to return to work at the expiration of an approved leave of absence.
7. Failure to return to work from an illness or injury if released by his/her physician to return to work.

Section B. Leaves of Absence

A leave of absence shall be granted to any employee to attend to legal matters, on account of death in his/her immediate family, personal illness, or for any other reason or emergency determined to be valid by the Employer and the Union. Application for leave of absence must be in writing and approved by a representative of the Employer and a copy to the Union.

Leave of absence will be for a period of not more than 30 days but may be extended for reasonable cause by Agreement between the Employer and the Union. Any employee on leave of absence who accepts employment elsewhere will be considered to have quit and shall lose his/her seniority rights.

Section C. The Employer agrees that if a regular seniority employee employed by the Employer has not been offered work by the Employer for seven (7) consecutive days during which the employee is ready and available for work, that regular seniority employee shall be allowed to seek employment elsewhere without loss of seniority if the employee reports to the Employer for work when and as directed by the Employer.

ARTICLE 11
CONVENTION TRAINING AND APPRENTICESHIP FUND

Section A. There has been established a training trust fund for convention industry employees in which the Employer has participated. The Employer agrees to continue to participate in this trust fund during the term of this Agreement. The trust fund is known as the Teamsters Convention Industry Training Fund.

Section B. The Employer shall contribute thirty cents ($0.30) per hour for all hours worked by casual employees employed by the Employer under the terms of this Agreement except hours worked by employees hired by the Employer from other Unions pursuant to Article 8, Section B.10. The Employer shall contribute to the training trust fund a monthly amount of fifty-one dollars and ninety cents ($51.90) for all regular seniority employees employed by the Employer under the terms of this Agreement. The Employer's contributions to the training trust fund shall be forwarded by the Employer on a monthly basis.

If during the term of this Agreement, the Trustees of the fund find it necessary to increase the Employer's contributions of flat and hourly rate of the premium in order to maintain the fund or to cover the cost of expanded training needs, the Employer agrees that the contributions will be increased or decreased as needed and such amounts will be paid by the Employer not to exceed $.10 for the term of this agreement. In the event the Board of Trustees believe additional funds are required, the Employer will be open to discussions to evaluate and/or facilitate the funding of the stated need.

Section C. Pursuant to the trust Agreement governing the operation of the training trust fund, there shall be an equal number of Employer and Union trustees respectively elected or appointed by the participating Employers and by the Union. This Employer accepts the Employer trustee(s) as its trustee(s) on the training trust fund.

Section D. There shall be established during the term of this Agreement training courses for Convention Journeymen to learn and to enhance the skills of the installation of graphics, flooring, display building and operation of motorized equipment; such as Forklifts, Aerial Lifts, and any new type of training that expands the work qualifications of Journeymen. In addition, a portion of each module will address the importance of customer service.

Section E. There has been established in the convention industry an Apprenticeship program chaired and overseen by the trustees of the fund.

Section F. The trustees shall meet at least once every quarter. Special meetings may be called by the Chairman.

Section G. The trustees of the fund shall employ a Director of Training and trainers to implement an Apprenticeship program and a Journeyman training program.

Section H. *During the term of this Agreement, the Employer is obligated to and agrees to* employ one (1) Apprentice for each nine (9) Journeymen employed up to a total of three hundred (300) employees employed city-wide in Group I, II, III, V and VI, if available for employment. Once the Employer has exceeded three hundred (300) employees the ratio shall be one (1) Apprentice for each fourteen (14) Journeymen thereafter employed in Group I, II, III, V, VI, if available for employment. Such Apprentices may be assigned by the Employer to perform any bargaining unit work covered by this Agreement.

Section I. Employer's obligation under Section H is to attempt in good faith to start each workday in the proper ratio unless its failure to do so is not the Employer's fault or is caused by factors beyond the Employer's control.

Section J. In order for an Apprentice to move to Journeyman status, he/she must complete two thousand (2,000) hours consisting of hands-on training and employment by signatory Employers in the convention industry. In addition, an Apprentice must complete at least one hundred and forty four (144) hours of mandatory classroom time each year of his/her Apprenticeship in accordance with NRS 610 of the State Apprenticeship Standards. The Convention Training Trust may increase the required hours for an Apprentice to reach Journeymen status. The rates to be paid Apprentices are set forth in Article 23 of this Agreement.

Section K. The Employer shall contact the Fund for the referral of Apprentices to be employed in accordance with Section H above, or for Apprentices out of ratio after the Union Hiring Hall has no Journeymen available for referral. It shall be the responsibility of the Fund to advise the Union and the Employer of the availability of Apprentices for referral and to refer available Apprentices in accordance with the number of Apprentices called by the Employer. An Apprentice will not be available for referral to an Employer during time when the Apprentice is scheduled for classroom instruction or other responsibilities at the training center.

Section L. The number of Apprentices enrolled shall be determined by the trustees of the trust.

Section M. Apprentices will not be assigned to any Leadman, Working Foreman or Show Foreman position.

Section N. Any Apprentice who enters the Teamsters Local 631 Apprenticeship Program after ratification of the this agreement who are a level one or level two Apprentice of the Teamster Apprenticeship program shall not be entitled to the benefits of Article 15 - Drug and Alcohol.

Section O. The Company shall recognize an employee's opt out requests for future assignments and dispatches, as requested to the Union Dispatch Office, for employees with respect to aisle carpet installation and I&D work.

Section P. Riggers

To keep up with the industry's heavy rigging needs and to compensate for expected growth, the Union and the Employer shall work cooperatively to develop and maintain a list of one hundred fifty (150) certified heavy riggers and one hundred (100) qualified heavy riggers. The Training Trust shall establish criteria for certifying and qualifying riggers that may include required rigging hours, classroom instruction and testing. Upon request by the Employer the Training Trust shall review the needs of the Employer for certified and qualified riggers. Current Journeyman whom have worked on or led a rigging crew in the twelve (12) months prior to June 1, 2017 shall be certified as Heavy Riggers. The Union and the Employer shall submit personnel to be qualified to the Director of the Training Center. The Training Trust shall evaluate the Director's recommendation and either accept or deny such recommendation. In the interim the Union will continue to work with the Employer to facilitate their heavy rigging needs.

Section Q. Display Fabricators and Cut Shop

1. It is understood that there are different skills within the Carpenter Shop. A Display Fabricator is someone that is versed and able to construct / fabricate a complex finished product from raw materials.

2. The Teamsters Training Trust shall develop and certify Display Fabricators (Teamster Carpenters) within the Journeyman and Apprentice classifications.

3. Teamster Carpenters classified as such under the previous Collective Bargaining Agreement may be retained as such until such time as their employment ends due to no fault of their own. For the purposes of recall the following order shall prevail 1) Journeyman 2) Teamster Carpenter. Layoffs shall occur in reverse order. Such order will be followed as long as the persons are qualified to perform the available work. Decisions as to the employee qualifications remain vested with the Employer.

ARTICLE 12
UNION STEWARDS

Section A. The Employer and the Union recognize that the success of the tradeshow/convention industry will be influenced by harmonious relations between all parties. The Employer recognizes the obligation of the Union to ensure the rights of the Employer's bargaining unit employees under this Agreement by the proper administration of this Agreement. The Union recognizes that Stewards employed by the Employer are employees of the Employer as well as representatives of the Union, at any site that bargaining unit work is being performed. The Employer and the Union mutually agree they shall not discriminate against any employee or prospective employee because of Union membership or activity.

Section B. Union Stewards are not agents of the Employer when functioning in their capacity as Union Stewards, even if they are employed by the Employer.

Section C. Union Stewards will be appointed by the Union. The appointment of a Steward will become effective upon the Employer receiving notice from the Union.

Section D. Steward Work Day

1. The Union Steward or his designee will be the first Teamster employee employed, following the foreman or Leadman on the crew they elect to come in with, except for specialty crafts providing they are qualified to perform the work available.

2. The Union Steward or their designee shall be entitled to the same hours as the original crew they elect to come in with including any premium pay worked.

3. If the original crew that the active Steward elects to come in with, works less than eight hours and there are other crews working, the active Steward may elect to stay with the other crew(s) up to eight (8) hours of work. After working eight (8) hours, the inactive Steward will become the active Steward. The Employer can elect to keep the active Steward longer if needed.

4. The Union Steward or their designee shall be the last individual to leave other than the exceptions listed below:

    a. When there is one (1) Foreman or Leadman remaining

    b. Specialty crafts

    c. Worker(s) for show management with project knowledge who are part of the original crew

    d. I&D work on specific booth(s)

    e. Forklift booth work specific to a work order

f. In the event that the Steward needs an eight (8) hour break and their original crew continues to work, the Steward will be given a choice of whether to stay and work with their original crew even if it involves premium pay or double time. Should the Steward opt to stay with their original crew, they will be excluded from working any further until they receive an eight (8) hour rest period, or they may take an eight (8) hour rest and come in the next day. If they do not come in the next day, then the Union will appoint a designee. If any member of the original crew stays late, and does not receive an eight (8) hour rest, and comes in the next day on overtime, then the show Steward may elect to do the same.

5. The Employer agrees to pay one Steward for actual time participating in grievance meetings.

Warehouse Stewards

When the Employer employs bargaining unit employees at a warehouse, the Union shall have the right to appoint one (1) working active Steward. The Union may also appoint an inactive Steward. The purpose of an inactive Steward is to have an additional Steward to cover the length of the entire workday, if needed. The inactive Steward becomes the active Steward when the active Steward leaves for the day. The inactive Steward may also be used to cover requested days off by the active Steward or for mandatory DOT compliance (restarts).

Tradeshow Stewards

Show site - When the Employer employs bargaining unit employees at a show site, the Union shall have the right to appoint one (1) working active Steward. The Union may also appoint an inactive Steward(s). The purpose of an inactive Steward is to have an additional Steward to cover the length of the entire workday, if needed. The inactive Steward becomes the active Steward when the active Steward leaves for the day. The inactive Steward may also be used to cover requested days off by the active Steward.

At individual tradeshows, the Union shall have the right to designate one (1) existing Steward as a non-working Steward at a tradeshow if one hundred and one (101) or more employees are working for the Employer at one time. Should the labor call drop below one hundred and one (101) employees, the non-working Steward will resume the position of a working Steward.

At a tradeshow, the Union may appoint Stewards in the following ratio:

	Working Steward	Non-Working Steward
1-100	1	0
101-200	1	1
201-300	2	1
301-400	3	1

The parties agree there are circumstances, after the Union has one (1) non-working Steward, which may necessitate a second non-working Steward for certain days of a particular show, based upon such considerations as the demographics/location(s) of a show, size of booths, number of exhibitors, square footage of the show, etc. In such circumstances, the Union may request of the Employer that a second non-working Steward be assigned.

Section E. Stewards appointed by the Union shall have the following rights and responsibilities:

1. To report or to assist in the investigation of unsafe or unhealthy conditions on the job.

2. To assist in checking employees in and out and to assist in identifying employees.

3. To assist the Employer in checking shortages on calls with the Union's dispatch office or with the Apprenticeship Coordinator.

4. To investigate grievances of employees. To report to the Employer and to the Union Business Representative any grievances or problems at the site or other work locations. Both parties recognize for business related purposes, such matters are not to be reported to any other outside party to this Agreement.

5. Steward(s) assigned to work the Tradeshow may participate in on-site production meetings. Stewards shall be given the show site work rules by the Employer prior to the move-in of the show.

6. To manage the provisions of Bullpen procedures as defined in Article 9 of the contract.

7. To ensure that employees are working with a proper dispatch.

Section F. All Stewards employed by the Employer are to administer this Agreement solely as it relates to the Employer's operations. Stewards shall not spend any time administering or policing the Agreement between the Union and any other Employer or policing problems that do not relate to the Employer.

Section G. No Steward shall:

1. Stop or interfere with any work at or related to any jobsite, any work of any contractor or any work of the Employer for any reason.

2. Tell any individual, including employees of the Employer, that he/she cannot work on the job.

3. Attempt to discuss on the site any jurisdictional issue under the Agreement with anyone other than representatives of the Employer, bargaining unit employees covered by this Agreement and the Unions.

Infractions of these rules by a Steward may be cause for discipline.

Section H. The Union will instruct all its members that they have no right to refuse to perform work in accordance with any instructions from Employer supervision and that, in the event they question such instructions, their sole recourse is through the grievance and arbitration process set forth herein.

Section I. The Employer will notify the Steward of any on-the-job injury as soon as possible and also will inform the Union of any serious on-the-job injury.

Section J. The Union may elect not to assign a Steward when jobsite conditions may not warrant one.

Section K. Working Stewards who are required to be away from their assigned duties to perform Steward responsibilities on site will notify the designated managerial representatives assigned to that show or his/her designee prior to leaving those assigned duties. The designated manager and the Steward will decide on the urgency of the request to leave their assigned duties. Whenever practical the assigned work duties should be completed prior to leaving their assigned duties. Such Steward responsibilities will be performed as expeditiously as possible so that the Steward will return to work as quickly as possible.

ARTICLE 13
GRIEVANCE AND ARBITRATION PROCEDURE

Section A. A grievance shall be limited and only defined as a dispute regarding the interpretation and/or application of the provisions of this Agreement arising during the term of this Agreement filed by the Union signatory to this Agreement or by an employee covered by this Agreement alleging a violation of terms and provisions of this Agreement.

Section B. Procedure. All grievances covered by this Article shall be handled exclusively in the following manner:

STEP ONE:

A grievance may not be filed unless the issue is first discussed informally at the jobsite between a Representative designated by the Union and a Supervisor(s) designated by the Employer, both with the authority to resolve a dispute, and that Supervisor(s) has refused or failed to adjust the issue on an informal basis. Any such informal resolution must be implemented within the time agreed upon in the resolution, or if a pay issue, within ten (10) business days. Such informal resolutions are not precedential for either side. If the Union was unaware of the alleged violation or grievance the Union may address such in Step Two.

STEP TWO:

All grievances to be valid shall be filed with the designated representative of the Employer in writing via verifiable email, facsimile, Certified Mail or in person within ten (10) business days after the first occurrence of the event giving rise to the grievance, or within ten (10) business days of the time the employee or the Union reasonably could have acquired knowledge of the event. The Union must obtain a signed receipt of the grievance from a designated Employer Representative(s). A grievance must be reduced to writing, citing the facts involved and the specific Article(s) and Section(s) of this Agreement alleged to have been violated. A grievance which does not meet these requirements shall be null and void, and will not be processed in accordance with this procedure.

STEP THREE:

The Employer Representative(s) and the Union Representative(s) will meet and discuss the grievance, within fourteen (14) calendar days. Prior to such meeting the Union must designate the grievance or grievances to be discussed. More than one (1) meeting may be requested and held within the fourteen (14) calendar day period. If the Employer Representative(s) does not make himself/herself available to meet within the fourteen (14) calendar day period, the Union may take the grievance to arbitration. If the Representative of the Employer and the employee and/or the Representative of the Union are unable to resolve the grievance within twenty-one (21) calendar days after the filing of the grievance, the grievance may only be submitted to arbitration by the Union giving the Employer written notice of its intent to do so within said twenty-one (21) calendar days. If the grievance is resolved at this step, such resolution will be reduced to writing within said twenty-one (21) days and shall be implemented within ten (10) calendar days. Such written resolution or the notice of intent to arbitrate from the Union shall be submitted via verifiable email, facsimile, Certified Mail or hand delivered.

Section C. Arbitration. An impartial arbitrator shall be selected from a panel of seven (7) arbitrators obtained from either the National Association of Arbitrators or Federal Mediation and Conciliation Services. The party requesting the panel of arbitrators shall direct the aforementioned to supply only members of the National Academy of Arbitrators, unless the parties mutually agree upon an arbitrator. The fees and expenses of the arbitrator shall be equally shared by the Company and the Union.

Section D. The arbitrator shall hold a hearing within ninety (90) calendar days of his/her selection unless otherwise agreed. The hearing shall not be public. The arbitrator shall afford the Union and the Employer liberal rights to present evidence, exhibitory, documentary and witnesses, and to examine and cross-examine witnesses. The Union and the Employer may be represented as individually desired. Upon the arbitrator's or Union's request, or Employer's desire, and when practicable, the Employer and the Union shall make employees available as

witnesses. All employee witnesses shall be free of restraint, interference, coercion and reprisal and, in wages, shall be kept whole by the party requesting said witness.

Section E. The arbitrator shall not have the authority to modify, amend, alter, add to or subtract from any provision of this Agreement. The Union shall have the right to grieve and the arbitrator shall have the right to rule on any grievance within the scope of Section A as long as the grievance is filed and processed within the time limits of this Article, even if the grievance is filed after the termination date of this Agreement. However, the Union shall not have the authority to grieve and the arbitrator shall not have the authority to rule on any matter, whether or not it meets the definition of a grievance under Section A, which arises after the termination date of this Agreement, or which is not filed or processed within the time limits specified in this Article.

Arbitrator will be allowed a reasonable amount of time, if needed (one to two hours) following the hearing to prepare his/her bench decision and provide such decision in writing no later than thirty (30) calendar days following the hearing date.

1. In cases where a bench decision is not given the arbitrator will render the finding and award in writing within thirty (30) days after the conclusion of the hearing.

2. In cases where a bench decision is not given and post briefs are written such briefs shall be due to the arbitrator no later than thirty (30) days from the termination of the hearing. The arbitrator will render the finding and award in writing within thirty (30) days of the receipt of post hearing briefs.

3. In cases where a bench decision is not given and post briefs are written and a stenographer or other recording device is used such briefs shall be due to the arbitrator no later than thirty (30) days from the receipt of such minutes or recording. The arbitrator will render the finding and award in writing within thirty (30) days of the receipt of post hearing briefs.

The arbitrator shall have the power to and may, from time to time, provide reasonable continuances and postponements of the hearing(s) as deemed appropriate or as agreed by the Union and the Employer. Parties will agree to meet after the normal work day (nights) and/or Saturdays to accommodate the Arbitrator's schedule.

At arbitration meetings there will be no stenographers allowed or other recording devices, nor post hearing briefs, unless mutually agreed to. Mediator and arbitration expenses will be split equally between both parties.

Section F. In any arbitration hearing concerning the discipline and/or discharge of a Regular Seniority employee, for a named infraction set forth in the sub-paragraphs of Article 14, Section B , the arbitrator's sole authority shall be to determine if the employee committed the act or

infraction alleged by the Employer. The arbitrator shall have no authority to modify the disciplinary penalty imposed by the Employer if the arbitrator finds the employee did commit the act or infraction alleged by the Employer.

Section G. The arbitrator shall base his/her ruling on a preponderance of the evidence. The arbitrator shall have no authority to modify the standard of proof required to anything other than a preponderance of the evidence.

Section H. The expenses of arbitration, including the arbitrator's fee and expenses, the cost of the court reporter transcript, and the cost, if any, of the facilities in which the hearing is held, shall be borne equally by the Employer and the Union. All expenses incurred by either party in the preparation or presentation of its case are to be borne solely by the party incurring such expense.

Section I. The time limits contained in this Article are to be strictly enforced. Any grievance shall be considered null and void if not filed and/or processed by the Union or the aggrieved employee in strict accordance with the time limitations set forth in this Article unless these time limitations have been expressly extended or waived in writing by the Employer and the Union.

Section J. Nothing herein shall preclude the Union or an employee covered by this Agreement from exercising the statutory rights of the employee to process an alleged case(s) of illegal discrimination with any regulatory authority having jurisdiction over such cases or in court.

ARTICLE 14
DISCIPLINE/DISCHARGE/LETTER OF NO DISPATCH

Section A. Casual Employees

1. Progressive Discipline – Casual Employees

The purpose of this procedure is to provide the affected casual employee with notice of his/her deficiencies or problems and to provide the employee with the opportunity to take corrective action. To be valid any such written warning must be issued within ten (10) business days after the Employer first became aware of the alleged deficiency or problem warranting the warning notice. A copy of any written warning notice must be given or sent to the employee when the warning is issued. A copy of the warning notice must also be sent to the Union by verifiable email, fax or by certified mail. The Employer, prior to issuing a Letter of No Dispatch, must issue the employee at least two

(2) written warning notices, of the same or similar offense, within a twelve (12) month period, stating the deficiency or problem which prompted the written notice. If the Employer issues a Letter of No Dispatch for any reason other than those set forth below of this article the Employer must first follow the progressive procedure set forth herein

2. Letters of No Dispatch – Casual Employees

The Employer may immediately issue a Letter of No Dispatch to a casual employee barring that casual employee from employment with the Employer for any of the following reasons:

a. Possession of any weapon, other than a tool of the trade, on any jobsite or on any Company premises, including parking lots or violence or threats of violence toward another person except reasonable self-defense.

b. Dishonesty, including but not limited to stealing/theft, falsification or the unauthorized use, removal or possession of property not belonging to the employee.

c. Refusal of a job assignment, except for safety reasons, and/or including, but not limited to, quitting in response to an assignment, leaving jobsite and/or assignment without authorization, except in the case of a verifiable emergency.

d. Harassing, obscene or abusive behavior toward another person.

e. Solicitation of, or acceptance of any gratuity from any person associated with a trade show.

f. Reckless behavior or willfully or negligently misusing, destroying or damaging any property of the Employer, show management, exhibitor or convention facility.

g. Work done in competition with the Employer while employed by the Employer.

h. Insubordination or other refusal to follow the order of a supervisor or other management representative of the Employer.

i. Conviction of a felony involving assault, theft, terrorist activity, or any other felony that adversely affects employment.

In addition to the above, the Employer may also immediately issue a Letter of No Dispatch to a casual employee for violation of the Drug and Alcohol Policy.

In the event the Employer suspends a casual employee pending an investigation of an alleged violation covered by this Section, the Employer must complete the investigation within ten (10) business days. At the end of that period, the Employer must either issue a warning notice or

Letter of No Dispatch or the Employer must reimburse the employee for work missed during the period of the investigation, unless mutually agreed otherwise. All violations other than those covered by this Section shall not be cause for suspension.

The Employer will consider factors such as an employees work history and past infractions when determining the duration of a suspension or a Letter of No Dispatch.

Any Letter of No Dispatch shall contain the date of the event; article(s) and section(s) of the Collective Bargaining Agreement relied upon to issue the Letter and the duration of the No Dispatch. Any casual employee may challenge the No-Dispatch Letter by filing a written claim with the Union against the Employer within twelve (12) days of mailing of such a No-Dispatch Letter to the employee by Certified Mail. The Employer shall fax or send via verifiable email a copy to the Union the same day it is mailed to the employee. A designated representative of the Union shall evaluate the merit of the claim. If that Union representative determines the claim has merit, the Union may present the claim to a Joint Committee described below no later than twenty (20) days after receipt of the claim by the Union.

Such Committee shall consist of two (2) representatives, one appointed by the Employer and the other shall be the Secretary-Treasurer of the Union or his/her designee if the Secretary-Treasurer is unavailable during the twenty (20) day period. In no event shall the designee be the same person who performed the Union's initial evaluation of the claim.

3. Joint Committee – Casual Employees

The Joint Committee shall have the ability to resolve the claim in one of the following ways:

a) The Committee finds that the employee has engaged in such conduct, and the No-Dispatch Letter should remain in force.

b) The Committee finds that the Employer has failed to prove that the employee engaged in the conduct prohibited by any of the reasons set forth in the No-Dispatch Letter, then the No-Dispatch Letter shall be null and void and the employee will be made whole for all lost wages and benefits.

c) The Committee may agree to compromise on a substitute decision as a resolution. The Committee has the authority to reach a decision of a lesser penalty than a permanent Letter of No Dispatch. Such decision, resolution or compromise shall be final and binding on all parties and will be non-precedential.

If the Committee reaches a deadlock the case may be filed to a binding arbitration. The authority of the arbitrator shall be specifically limited to the matters submitted to the arbitrator. The arbitrator shall have no authority in any manner to amend, alter, modify or change any provisions of this Agreement. The arbitrator shall have the authority to resolve the claim in one of the aforementioned ways.

Where the Joint Committee by majority vote settles a dispute, such decision shall be final and binding on both parties and the employee(s) involved, with no further appeal.

Section B. Regular Seniority Employees

1. Cause for Discipline.

No regular seniority employee shall be discharged, suspended without pay or subjected to other disciplinary action without just cause.

When a regular employee is discharged or disciplined, any prior disciplinary action of that employee during the term of his employment shall be relevant in determining the just cause of the discharge or discipline. Prior disciplinary action is not a condition precedent to the discharge or to discipline of a regular employee. The sole condition shall be whether the discharge or discipline was for just cause.

The parties recognize that many different types of conduct or infractions can constitute just cause for discharge or for disciplinary action. The parties agree that just cause for discharge without prior discipline shall include, but not be limited to:

a) Gross insubordination toward a supervisor or toward any other person at the Employer's premises or show site.

b) Dishonesty.

c) Recklessness resulting in property damage or personal injury while on duty.

d) Loss, revocation of driver's license for employees in runner classification. Loss, revocation are defined as per state laws, and Employer must be notified by employee of any pending action.

e) Drunkenness or drinking alcohol on duty.

f) Violation of the Drug and Alcohol Policy in a manner which warrants discharge under the Drug and Alcohol Policy incorporated in this Agreement.

g) Fighting while on duty or on the Employer's premises or at the Employer's jobsite, excepting reasonable self-defense.

h) Refusal to follow the order of a supervisor or other representative of the Employer.

i) Possession of any weapon, other than tool of the trade, on any jobsite or on the Company premises, including parking lots.

j) Unauthorized use of company equipment or failure to immediately report an accident, or carrying unauthorized passenger.

2. Whenever the Employer receives verifiable information that a regular seniority employee may have engaged in conduct warranting discipline, the Employer shall issue discipline, if any, within ten (10) calendar days of the time the Employer received such information or could reasonably have acquired knowledge of the information. If such initial discipline is a suspension pending further investigation, the Union and the Employer shall meet within ten (10) calendar days thereafter for the Union to present the grievant, witnesses, and/or evidence regarding the alleged conduct of the employee. The Employer shall issue final discipline, if any, within ten (10) calendar days after such meeting. These time limits may be extended by mutual Agreement of the parties. Nothing in this provision requires that the Employer suspend a regular seniority employee prior to assessing discipline up to and including discharge.

3. In disciplinary cases of regular seniority employees which do not warrant discharge without prior discipline under the terms of Section A of this Article, the Employer will not discharge or suspend without pay any regular employee unless that employee has been given at least two (2) written disciplinary warning notices within 12 months.

4. Copies of written warning notices shall be sent to the Union.

5. The Employer shall not dismiss nor reprimand an employee for making a complaint or giving evidence with respect to alleged violations of any provisions of this Agreement.

6. Mitigation of Damages. Any regular seniority employee covered by this Agreement who is discharged by the Employer and who disputes his discharge was for just cause shall have an affirmative duty to mitigate any potential damages which might result to the Employer in the event the discharge action involved is subject to Article 13-Grievance/Arbitration and an arbitrator overrules the discharge. An arbitrator acting under the terms of this Agreement who sustains the grievance of a discharged employee shall have no authority to award any back pay to that employee unless that employee or the Union has affirmatively proven by a preponderance of the evidence that the employee has fulfilled his duty to mitigate damages at all times since his discharge.

7. Any regular seniority employee who feels he/she has been unjustly discharged or suspended has the right to refer the action to the grievance procedure of this contract.

ARTICLE 15
DRUG AND ALCOHOL POLICY

[Employer] (hereinafter referred to as the Company) and the Union are committed to providing the safest and most productive work environment for all of the Company's employees represented by the Union. This policy is therefore to ensure that all the Teamster represented employees of the Company work in an environment free of the negative effects of illegal drug use and the misuse of legal drugs and alcohol. The Company and the Union recognize that early recognition and treatment of substance abuse problems are key to successful rehabilitation, and therefore, strongly encourage employees prior to violating the terms of this Article to seek help and use their Employee Assistance Program.

Section A. PROHIBITED CONDUCT

All Teamster represented employees are prohibited from:

1. Using, possessing, manufacturing, distributing or selling illegal drugs, or legal drugs in an illegal manner, at any job site, on any Company properties (defined here and throughout this Article as properties which are owned, leased or are under contract to use), on Company business, in company supplied vehicles or vehicles being used for company business or during working hours.

2. Unauthorized use of alcohol, using illegal drugs or misusing legal drugs (in excess of that recommended or approved by the prescribing physician) at any job site, on any Company properties, on company business, in company supplied vehicles or vehicles being used for company business or during working hours.

3. Being under the influence of alcohol, illegal drugs or misused legal drugs (in excess of that recommended or approved by the prescribing physician) at any job site, on any Company properties, on company business, in company supplied vehicles or vehicles being used for company business or during working hours.

4. Possession and/or storage of any illegal drug or unsealed containers of alcohol at any job site, on any Company properties, in a Company vehicle, company supplied vehicle or vehicle used for company business or while on company business.

5. Substituting, adulterating or tampering with any breath or urine sample used in the testing process.

6. Failing to submit a breath or urine sample for testing in the following manner:

    a. Failure to provide an adequate breath or urine sample for testing without a valid medical reason.

b. Failure within two (2) hours of signing the consent form, to produce a sample suitable for testing, e.g. such as a sample that falls out of proper temperature range.

7. Refusing to consent to testing or engaging in conduct that clearly obstructs the testing process including but not limited to failure to sign the required forms, failure to report to the testing site within the time allocated, failure to cooperate with the testing personnel and failing to remain readily available for a test.

8. Failure to cooperate and/or successfully complete any requirements of the evaluation and rehabilitation processes.

9. *Conviction or guilty plea in any court proceeding involving the distribution, sale or* trafficking of illegal drugs or alcohol.

10. Failure to notify a supervisor or manager of the use of prescription or over-the-counter drugs which the employee should have known may alter the employee's physical or mental ability to perform his/her job functions. Further, employees must follow all physician, manufacture or package insert directions when taking prescription or over-the-counter drugs.

11. Failure to pass any required drug and/or alcohol test as mandated by this policy.

Section B. TESTING

Drug and alcohol testing is an effective way to determine if an employee is inappropriately using drugs and/or alcohol. The methods used to determine the presence of alcohol and/or *drugs shall be urine for drugs and breath testing for alcohol.*

The Company may do the following tests for the presence of illegal drugs and/or alcohol in an individual's system.

1. REASONABLE SUSPICION DRUG AND/OR ALCOHOL TESTING. If the Company has a "reasonable suspicion" that an employee has violated this Policy, the Company may require the employee to submit to both alcohol and controlled substance tests immediately. "Reasonable suspicion" means that a management representative, based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee, has reached a good faith suspicion of such a violation. A supervisor's report must be available to the Union within 24 hours.

2. POST-ACCIDENT DRUG AND/OR ALCOHOL TESTING. Employees involved in an accident at a job site or on Company properties, on company business, during working hours, or while driving a company-supplied vehicle or other vehicle used for company business

when such accident involves any other person or results in either (a) a fatality, (b) bodily injury or (c) property damage will be subject to a post-accident drug and/or alcohol test. The employee must remain readily available at the medical facility, worksite or site of the accident for the purpose of submitting to the drug and/or alcohol test.

3. GOVERNMENT REQUIRED DRUG AND/OR ALCOHOL TESTING. The Company fully complies with all government regulations concerning drug and/or alcohol testing including testing under the Department of Transportation's (DOT) Anti-drug and Alcohol Abuse Statutes as administered by the Federal Highway Authority (FHWA).

4. RANDOM DRUG AND/OR ALCOHOL TESTING. All employees will be subject to unannounced random drug and/or alcohol testing during any working hours and will be included in the pool for selection. The selection of the employees to be tested out of that pool will be done by an independent testing facility or other entity outside of the Company's control. The random selection procedure will ensure that all employees will be treated fairly and equally. The testing will occur on a periodic basis reasonably spread throughout the year. The Company reserves the right to determine and also to change the percentage of employees to be randomly selected. At the completion of testing, the Employer shall immediately provide the list used to call the employees for the present round of testing to the Union.

When it is determined that an employee is to be tested other than random testing, the Employer shall summon the presence of a Union official and permit at least thirty (30) minutes for a Union official to arrive. The parties agree that time is of the essence in such matters and, if a Union official fails to arrive within the time set, the Employer may send the employee to be tested. In the case of reasonable suspicion testing, if the management representative still maintains a good faith suspicion of a violation after the arrival of the Union official, the employee may be sent for the test. A Union Steward or other designated Union official may accompany the employee, if such Union official arrives within the time set forth in this Agreement, to witness and confirm the collection procedures. Any dispute as to the reasonableness of the event shall be subject to the grievance procedure.

Section C. COLLECTION AND TESTING PROCEDURES

Along with the concern to maintain a safe and drug-free workplace for all of the Company's employees represented by the Union, the Company and the Union are also concerned about protecting the rights of such Company employees under this anti-drug and alcohol program. They want to ensure that the collection and testing procedures are conducted in a scientifically valid program to insure fairness, scientific accuracy and the highest integrity in the process. Under this program, the Company will retain the services of an independent Health & Human Services approved laboratory which will test by way of urine collection for the presence of amphetamines, marijuana metabolites, cocaine metabolites, opiate metabolites (heroin) and phencyclidine (PCP). The laboratory will further test for the presence of alcohol by taking

breath samples through the use of a DOT approved breathalyzer. In addition, to insure fairness and integrity in the process, the collection and chain of custody procedures, Medical Review Officer review of positives only, and split sample testing will also be adopted by the Company as part of this program. The Employer may, at its sole option, in the case of reasonable suspicion or post-accident testing, have the laboratory perform a quick test which will quickly screen out all negatives to allow the employee who tests negative to return to work as quickly as possible. Should the quick test result in a "non-negative" the laboratory shall then initiate the normal testing procedure under this policy. In addition, the Company will submit to the lab periodic blind samples to insure the integrity of the process.

Upon the completion of all such tests, except for a reasonable cause test, the employee may, at the Employer's option, be returned to work if he or she is otherwise physically released to return to work and shall continue to work as assigned pending the test results. For employees tested under the reasonable cause standard, they shall not return to work until the test results are reported to the Employer. If the test is negative, the employee shall be returned to work status and paid for whatever time he or she would have worked in the absence of the test.

Section D. EVALUATION AND VIOLATION RATES

All employees will be tested based upon the cut off levels under the DOT rules. In addition, certain employees, such as those holding a commercial driver's license operating vehicles in interstate commerce fall within the jurisdiction of those DOT rules and are subject to the sanctions imposed by those rules and the provisions of this policy. Under those rules, the minimum cut-off levels are as follows:

a. ALCOHOL - an alcohol concentration of .04 or above

b. ILLEGAL DRUGS

	Screening Cut-off	Confirmation Cut-off
Amphetamines	1,000	500 ng/ml
Cocaine	300	150 ng/ml
Marijuana	50	15 ng/ml
Opiates	2,000	2000 ng/ml
Phencyclidine	25	25 ng/ml

Under this program, any employee who tests at or over these cutoff levels for drugs or alcohol or engages in any of the prohibited conduct as enumerated herein has violated this policy.

Section E. CONSEQUENCES FOR VIOLATION OF THIS POLICY

Once the Employer has established that "chain of custody" has been met and the cut-off levels have been exceeded, the following shall apply:

Once an employee violates any provision of this Policy, other than by failing a drug and/or alcohol test and/or by violating Section A.6 of this Policy, the employee shall be immediately and permanently terminated from employment with the Company and immediately and permanently ineligible for dispatch by the Union to any Employer signatory to a convention industry Agreement with the Union.

Once an employee fails any drug and/or alcohol test under this Policy and/or violates Section A.6 of this Policy, the employee shall be immediately removed from the Company's payroll and is immediately suspended from employment and ineligible for dispatch by the Union to any Employer signatory to a convention industry contract with the Union for a period of thirty (30) days or the completion of the MAP program, whichever is later. Such an employee must, as a condition of re-eligibility for dispatch, complete any required evaluation and rehabilitation programs as required by the Membership Aid Plan (MAP), pass a return-to-duty test taken at the employee's cost prior to his/her return to work, abide by all terms of this Drug and Alcohol Policy and be subject to, in addition to testing under other provisions of this Policy, six (6) additional company paid follow-up drug and/or alcohol tests within a period of one year following the date that the employee returns to work with that Company, but no more than a total of six (6) times during the five (5) year period following that date.

Once an employee who is employed or dispatched pursuant to the preceding paragraph again fails any drug and/or alcohol test under this Policy, such employee shall be immediately and permanently terminated from employment and immediately and permanently ineligible for dispatch by the Union to any Employer signatory to a convention industry contract with the Union.

ARTICLE 16
WORKER'S COMPENSATION

Section A. The Employer agrees to cooperate toward the prompt settlement of employee on-the-job injury claims when such claims are due and owing as required by law.

The Employer shall provide workers' compensation protection for all employees when required by state law.

Employees injured on the job will remain in pay status until released by the medical facility and returned to the work location, but in no event less than his/her daily guarantee from the start of their workday. Such employees will be provided transportation, for emergency medical care, from the jobsite to the treating facility and back to his/her work location.

The Employer will notify the Union in writing with a copy of the C-1 report regarding the employee's on-the-job injury within seven (7) calendar days of any job incurred injury to an employee covered by this Agreement while employed by the Employer which results in lost work time. Once the Union is notified, the employee shall not be eligible for dispatch by the Union to any Employer, until the affected employee delivers to the Employer and to the Union a written release to full duty signed by the appropriate physician treating the employee for the job incurred injury.

Section B. The Employer will pay monthly at the applicable contribution rate to the Health and Welfare Fund for a maximum of 173 hours per month for a total period of one (1) year during the term of this Agreement on behalf of regular seniority employees employed by the Employer who are not working due to an on-the-job injury covered under Nevada's worker compensation statutes, if the injury occurred during the regular seniority employee's employment with the Employer.

Section C. The Employer will pay monthly at the applicable contribution rate to the Health and Welfare Fund for a maximum of 173 hours per month for a total period of twelve (12) months during the term of this Agreement on behalf of a casual employee who is not working due to an on-the-job injury covered under Nevada's worker compensation statutes, if the injury occurred during the casual employee's employment with the Employer.

Section D. The Employer will pay monthly at the applicable contributions rate to the Health and Welfare Fund for a maximum of 173 hours per month for a maximum period of three (3) months during the term of this Agreement on behalf of extra board employees employed by the Employer who are not working due to an on-the-job injury covered under Nevada's workers compensation statutes, if the injury occurred during the employee's employment with the Employer.

Section E. In addition to the conditions set forth in Section A, B, C and D above, the Employer's obligation to make the payments referenced in Section B, C and D above shall cease immediately when the affected employee is released to return to work, or if the employee returns to work for the Employer or any other Employer in any capacity

ARTICLE 17
SAFETY

Section A. The Employer and the Union recognize the importance of safety provisions at the Employer's property and at all worksite locations for the welfare of all employees.

Section B. The Employer agrees to make provisions for the safety and health of its employees and recognizes that Employer and Union both have obligations under municipal, state, and federal laws and regulations.

Section C. Employees will not be required to work under conditions they reasonably believe to be conditions of imminent danger to life and/or limb. Investigation of such incidents will be made by the Safety Committee and reports made to executive management of the Company. The final decision will be management's prerogative which shall be subject to the grievance process.

Section D. There will be an active Safety Committee developed which will consist of at least two (2) bargaining unit employees of the Company and one (1) Union Representative, and one (1) Employer Representative.

The Committee will hold meetings quarterly. Notices of these meetings will be posted so that all employees of the Employer may raise to members of the Committee conditions which may be unsafe.

The Safety Committee will investigate reported unsafe or unhealthy conditions and make recommendations to management to relieve or correct such conditions. Management, in turn, will review the recommendations and discuss with the Committee the corrective actions to be taken. It shall be management's prerogative and responsibility to make the final decision on corrective actions to be taken.

Section E. The Employer will provide fresh cold water on all jobsites.

Section F. The Employer will provide a reasonable number of first aid kits on all jobsites.

Section G. Safety equipment, when provided by the Employer, must be used or worn by the employee.

ARTICLE 18
TOOLS AND DRESS CODE

Section A. Proper Tools for Journeymen, Apprentices, I&D Specialists and Extra Board(s).

If an employee does not report to work with the required tools, the Employer has the right to refuse to employ the employee and the Employer shall not be liable for any payment to such employee.

Items of tools which must accompany convention workers on job site are as follows:

1. Staple Gun (JT-21)
2. Pliers (Standard 6" size)
3. Blade Screwdriver (Medium size)
4. Phillips Head Screwdriver (Medium size)
5. Adjustable Wrench (at least 6" size or larger)
6. Stanley Knife
7. 25' minimum retractable metal Tape Measure
8. Hammer
9. Cushion Back Carpet Cutter
10. Toolbox or Pouch
11. Allen Wrench Sets (Metric and Standard)
12. Work Gloves
13. Pry Bar (Flat Bar and Nail Bar)
14. Tin Snips
15. Hack Saw (Employer to supply blades)
16. Key Hole Saw (Employer to supply blades)
17. Drill Index
18. 7/32" Cam lock key (six inch Allen Wrench)
19. 5/16" Cam lock key (six inch Allen Wrench)
20. T-30 Torx t-handled wrench / tool

Section B. Dress Code/Personal Hygiene

The Employer and the Union recognize the necessity of implementing a dress code and minimal personal hygiene standards for purposes of safety, insurance and customer service. In furtherance of this goal, the Employer and the Union agree to the following:

1. All employees are required to wear leather or tennis shoes while on duty. Sandals, moccasins, open toed shoes, mesh top shoes and/or plastic top shoes are prohibited.

2. All clothing at the start of the shift should be clean. All employees must wear shirts, including T-shirts, with hemmed collars, bottoms and sleeves. All tank tops, open midriff tops and/or shirts with obscene or pornographic remarks are prohibited. Shirts with the name or logos of a company other than the Employer are prohibited. The Employer in its sole discretion shall determine whether and when employees may wear short or long pants.

3. Personal hygiene must be maintained.

4. Employees who do not comply with the above provisions will be sent home and are not entitled to reporting pay.

ARTICLE 19
THE WORKING DAY AND PAYDAYS

Section A. The Working Day

Eight hours work shall constitute a day's work within a twenty-four (24) hour period. All time worked in excess of eight (8) hours in any one (1) day and/or forty (40) straight-time hours in any one week shall be at the overtime rate of pay. All employees shall be guaranteed four (4) hours' pay when they are required to report, whether the job lasts four (4) hours or not. Employees leaving jobsite are required to receive authorization of management, except in the case of a verifiable emergency. A four (4) hour minimum does not constitute a day's work when there is more work available. Such hours not worked shall be at straight-time except on Saturdays or Sundays when it shall be at time and one-half (1½). Holidays shall be paid at double time (2X). An employee performing work on Saturday, Sunday, and/or holidays shall be paid at the applicable overtime rate and be guaranteed four (4) hours' pay.

For a single day show, employees working both the "in" and the "out" during a twenty-four (24) hour period are guaranteed a minimum four (4) hour call for each.

Section B. Extra Board Workers

Extra Board Workers having less than 100 hours worked for the Employer in the previous calendar year will only receive time and one-half (1½) after eight (8) hours worked in a day or forty (40) hours worked in a week.

Section C. Overtime

Each eight (8) hours are to be paid at regular time, next four (4) hours at time and one-half (1½), and all hours over twelve (12) are to be paid at double time (2X); and, unless an eight (8) hour break exists between letting employees leave their job and come back; they, of course, then return at the double time (2X) rate.

Section D. Breaks Between Shifts

Eight (8) hour break between shifts or revert to premium time rate prior to break. It is understood that the Employer will provide a good faith effort to provide a ten (10) hour break when requested by an employee.

Section E. Workweek

The workweek will be Monday through Sunday. All employees shall be paid one and one-half (1½) times the base rate for all work performed between the hours of 10:00 p.m. and 6:00 a.m. except employees covered under Section B. above. There shall be no pyramiding of overtime. All regular employees shall be guaranteed forty (40) hours per week, including Saturday, Sunday, and after hours, when available.

Section F. Regular Seniority Employees

The Union shall be notified of the hire of all new regular seniority employees within seven (7) calendar days of hire. The Union shall be provided the following information:

1. Name
2. Social Security Number
3. Hire Date
4. Address
5. Telephone Number

All regular seniority employees shall be guaranteed a schedule of forty (40) hours when and if work which the regular seniority employee is qualified to perform is available during a workweek including Saturday and/or Sunday and/or after the hours of the regular seniority employee's shift. Hours during a workweek for which a regular seniority employee is scheduled but does not work shall count toward the Employer's obligation to provide that employee forty (40) hours of work in a workweek when and if work is available.

A regular seniority employee who has not been scheduled for and/or worked forty (40) hours in a workweek shall have priority over a casual employee for available work during that workweek which he/she is qualified to perform until the regular seniority employee reaches forty (40) hours of work during that workweek.

Nothing contained in this Section F shall prohibit the Employer from scheduling and/or requiring a regular seniority employee to work certain hours up to or in excess of forty (40) hours in a workweek rather than employing a casual employee to perform such work.

Section G. Breaks and Meal Periods

All employees shall be allowed two fifteen (15) minute non-scheduled coffee breaks for each six (6) hours worked between start time and the first meal break or for each six (6) hours worked between meal periods. Should the time worked between start time and the first meal break or between meal breaks be less than six (6) hours, only one (1) non-scheduled coffee break need be allowed. After working eight (8) hours and every two (2) hours thereafter, employees will be entitled to a coffee break.

Employees shall not be required to work more than six (6) hours without being allowed a meal period of at least one-half (½) hour. Meal period shall not be considered as time worked and shall not be paid for by the Employer. Meal periods shall not exceed one (1) hour in duration and may be granted no sooner than two (2) hours after the employee begins work. Subsequent meal periods shall be called not less frequently than six (6) hours and not more frequently than every four (4) hours after the completion of the first meal period of the day. Meal periods may be staggered among members of the crew.

Employees returning from a meal shall be guaranteed one (1) hour of work or one (1) hour pay at the appropriate rate in lieu thereof.

No employee will be required to work more than six (6) hours without a meal break. If the Employer directs an employee to work more than six (6) hours without a meal period, the employee, in addition to pay for hours worked, will receive one-half hour pay at the rate of pay in effect at the time the meal penalty is incurred. No employee may waive nor be coerced into waiving meal penalties. If an employee is found to have not been compensated for a meal penalty the Employer will rectify the mistake.

Food furnished by the Employer at the jobsite without providing the appropriate time off for a meal period shall not be considered an appropriate meal break.

Section H. Incidental Pay Policy

An employee shall receive pay hereunder only for hours actually worked if he/she elects to leave the place of employment, or refuses to do other work, or if the Employer is unable to furnish him work because of inclement weather, mechanical breakdown, or other physical

conditions beyond his control. Anytime the Employer requires an employee to travel out of town, the Employer will pay reasonable compensation for the following: travel expense, room accommodations, meals, and necessary living and miscellaneous expenses.

Any employee required to travel out of town on behalf of the Employer shall be paid one (1) hour travel time prior to the scheduled departure time of the flight, travel time for the duration of the flight and one (1) hour after arrival. However, such employee shall be paid no less than a four (4) hour minimum or more than a twelve (12) hour maximum on a travel day on which no work is performed.

Section I. Paydays

A pay period shall be seven (7) consecutive days, Monday through Sunday.

The Employer shall provide each employee with a daily time record. The Employer shall have the option of determining the format of the record providing the format provides the employee and the Union with the required and necessary information.

The employees shall be paid on a regular designated payday each week for all work performed during the previous pay period, and their checks will be available at the Employer's designated facility.

The Employer will not hold back more than one week's pay on any employee.

When an individual is not compensated in accordance with this Agreement, the individual shall advise the Employer as soon as possible of the error and provide documentary proof thereof. Each Employer shall designate a procedure and/or office to receive such claims. The Employer and the individual shall attempt to correct the error as soon as possible and the individual shall promptly provide all required documentation in support of his/her claim. In the event the individual has fully cooperated with the Employer's request for proper documentation and his/her pay is not corrected within five consecutive days and the shortage involves more than one hundred dollars ($100.00), the Employer, in addition to correcting the payment error, shall pay the individual a penalty equal to 25% of the correction pay. In the event the correction pay is not made within 15 days from receipt of proof of the shortage, the penalty shall be equal to 50% of the correction pay and must be paid on or before the next pay cycle. If it is not made on or before the next pay cycle, the Company will pay an additional penalty equal to 50% of the *original correction amount for each pay period thereafter. Nothing herein shall be intended to* subject the Employer to penalty pay in circumstances where the Employer has a good faith dispute with respect to the proper payment obligations to the individual or where the individual has not fully cooperated with the Employer's request for proof of a payment error.

Upon request of the Union on behalf of a member who has filed a grievance concerning the time worked or pay, the Employer agrees to submit the payroll records of such employee for audit by an agent of the Union.

Section J. Covered Work

When the Employer schedules more than one consecutive or overlapping shift, where employees are performing essentially the same work in the same location ("Covered Work"), the Employer will use its best efforts to utilize employees for a minimum of six (6) hours. Covered Work is limited to the following areas: In Freight, a specific door at a convention center or hotel; in MIS, a specific booth; or in Deco, a specific zone. This provision shall not apply to employees working as Leads or Foremen. The intent of this provision is to avoid situations similar to the following: A freight crew at Door 4 starts at 8:00 a.m. Another freight crew at Door 4 starts at 12 p.m. The Company then sends the 8 a.m. crew home at noon. Both parties understand that the Employer is unable to guarantee a six (6) hour shift for every shift, due to time or contract restraints, as well as the needs of the exhibitors, show management and other customers. This provision shall not apply where the schedules result from events outside the Employer's control.

In the event that a pattern of less than six (6) hour shifts has developed for Covered Work, the parties will meet and ensure this practice is corrected. If the parties are unable to agree on whether a pattern has developed, the issues may be subject to the contractual provisions of the grievance and arbitration process, under the American Arbitration Association rules for expedited arbitration. In the event the matter proceeds to arbitration, the parties agree that the relief provided by the Arbitrator shall be limited to (1) issuing a cease and desist order and/or (2) the difference in pay between the actual number of hours worked and a six (6) hour shift (if the conduct was willful).

ARTICLE 20
HOLIDAYS AND VACATIONS

Section A. Holidays

Eight (8) holidays will be observed: New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, and Christmas Day. The above holidays will be paid at the double time rate if worked. If not worked, they shall not be paid. The observed holidays shall be:

	2017	2018	2019	2020	2021
New Year's Day		Mon, Jan 1	Tues, Jan 1	Wed, Jan 1	Fri, Jan 1
Presidents' Day		Mon, Feb 19	Mon, Feb 18	Mon, Feb 17	Mon, Feb 15
Memorial Day		Mon, May 28	Mon, May 27	Mon, May 25	Mon, May 31
Independence Day	Tues, July 4	Wed, July 4	Thurs, July 4	Sat, July 4	Sun, July 4 *
Labor Day	Mon, Sept 4	Mon, Sept 3	Mon, Sept 2	Mon, Sept 7	Mon, Sept 6
Veterans' Day	Sat, Nov 11	Sun, Nov 11	Mon, Nov 11	Wed, Nov 11	Thurs, Nov 11
Thanksgiving	Thur, Nov 23	Thur, Nov 22	Thur, Nov 28	Thurs, Nov 26	Thurs, Nov 25
Christmas Day	Mon, Dec 25	Tues, Dec 25	Wed, Dec 25	Fri, Nov 25	Sat, Dec 25

*Observed Monday, July 5

Section B. Vacations

1. All regular seniority employees shall be entitled to the following number of weeks of vacation based upon their seniority with the Employer as of June 1 of each year:

Years of Seniority	Weeks of Vacation
One (1)	One (1)
Two (2)	Two (2)
Eight (8)	Three (3)
Twenty (20)	Four (4)

2. Each employee eligible for vacation pay shall receive forty (40) hours of pay at his/her regular rate for each week of vacation.

3. Employees who quit or are terminated shall be paid pro rata vacation pay; however, upon termination of employment, the terminated employee shall not be eligible for such pro rata vacation pay until after he/she has acquired one (1) year of seniority.

4. Vacations must be taken unless work load requirements are such that the employees are needed to work.

5. Dates selected for vacations must be with Employer approval depending on work load requirements, and seniority dates shall be used to select desirable vacation periods. In all cases, the efficient operation of the Employer's business shall be the first requirement for determining vacation dates.

6. Should an employee not have the opportunity to take his vacation during the June 1 calendar year, he/she shall be paid for such unused vacation if his/her Employer refused to release him/her.

ARTICLE 21
PENSION

Section A. Subject to the provisions of this Agreement, the Employer agrees to accept the provisions of the Western Conference of Teamsters Pension Trust Fund and further agrees that the Employer Trustees of such fund, and their successors in trust, are and shall be its representatives and consents to be bound by the rules and regulations established, or as may be established, by the Western Conference of Teamsters Pension Trust Fund on account of each employee covered by this Agreement, except those hired pursuant to Article 8, Section B.10. The Employer's total contribution obligations to the Pension Trust Fund are set forth in Article 23 of this Agreement. The contributions required to provide PEER 84 will not be taken into consideration for benefit accrual purposes under the Plan. The additional contribution for PEER 84 must at all times be 6.5% of the basic contribution and cannot be decreased or discontinued at any time. The PEER 84 contribution shall not result in any increase to the Employer's basic contribution rate.

The contribution amount may be increased solely by a reallocation from and a consequent reduction of, the wage rates then in effect. The Employer will not be and is not responsible for paying any increase in contributions to the Pension Trust Fund, except as provided herein.

Section B. If the workers procured by the Employer from another source when the Union hiring hall is exhausted are from an employment agency providing temporary employees, the Employer shall be obligated to contribute to the Pension Plan in accordance Article 23 for hours worked by such employees. The Employer shall not be obligated to pay any wage rate set forth in Article 23 and shall not be obligated to contribute to the Health and Welfare Plan for hours worked by such employees. The wage rates and fringe benefits, if any, other than pension, for such employees shall be as agreed to between the Employer and the employment agency.

Section C. Contributions shall be due and payable to the Area Administrative Office no later than ten (10) days after the end of each month.

ARTICLE 22
HEALTH AND WELFARE

Section A. A Health and Welfare Fund known as the Teamsters Local 631 Security Fund for Southern Nevada is hereby established, and the Employer, subject to the provisions of this Agreement, agrees to abide by the plan Agreement and declaration of trust, and further to make payments to the Fund in the amount designated below. Such payments are solely for employees covered by this Agreement, and no contributions shall be made for hours worked by employees hired from other sources pursuant to the terms of this Agreement.

Section B. Subject to the provisions of this Article, participation by the Employer in said Trust shall be for the duration of this Agreement and renewals or extensions thereof, or for the period workers are employed under the terms of this Agreement. The Employer accepts the Employer Trustees as its Trustees.

Section C. Except as provided herein, the Employer's sole obligation shall be to contribute to the Trust for all hours worked by all employees; except those employees covered by another Union contract or employees hired from a temporary employment agency. The Employer's total contribution obligations to the Health and Welfare Fund are set forth in Article 23 of this Agreement. The hourly contribution shall be inclusive of a seventy-five cent ($0.75) per hour contribution to the Retiree Pre-Funding Program. The amounts set forth in Article 23, as the case may be, may be increased solely by a reallocation from and a consequent reduction of, the wage rates then in effect. The Employer will not be and is not responsible for paying any increase in contributions to the Health and Welfare Trust Fund mandated by the Trustees in excess of the amounts set forth herein. If the increases to the Health and Welfare Fund as set forth in Article 23 of this Agreement are more than the amounts needed, the additional money will be moved to pension.

Section D. Once the provisions of this Article are in effect, the provisions of Article 14 – Health and Welfare of the Collective Bargaining Agreement covering the period June 1, 2011 through May 31, 2014 shall be null and void. There shall be no flat rate contribution under this Article. There shall be no minimum contribution for employees who have been credited with the minimum number of hours required by the Health and Welfare Fund. There shall be no maximum contribution. There shall be no reconciliation payments made by the Employer. The sole obligation of the Employer under this Article is as set forth in Section C. above and in Sections E. and F. below.

Section E. A "month" is defined as the period beginning with the first calendar day of the month and ending with the last calendar day of the month.

Section F. During the term of Agreement, an employee in the convention industry shall not be initially eligible for benefits under the Trust, unless and until the employee works and has

paid on his/her behalf two consecutive full months contributions into the Plan as required by the summary plan description.

Section G. The bank of any employee no longer eligible for dispatch in the convention industry and the bank of any Apprentice removed from the Apprenticeship Program shall be cancelled immediately, and may not be used by such individuals to secure eligibility for benefits.

ARTICLE 23
WAGE SCALES, BENEFIT CONTRIBUTIONS

The total economic increases to be paid under this Agreement shall be as follows:

Effective June 1, 2017 - $.15 to wage, $.31 to pension and $.29 to H&W

Effective October 1, 2017 - $1.00 to vacation fund

Effective June 1, 2018 - $.40 to wage, $.60 to pension, $.30 to vacation and $.45 to H&W

Effective June 1, 2019- $.50 to wage, $.60 to pension, $.20 to vacation and $.45 to H&W

Effective June 1, 2020 - $.35 to wages, $.80 to pension and $.60 H&W

Effective June 1, 2017 through October 1, 2017
Total Economic Package (Wages, Benefit Contributions)

Classifications	Wage Rate	Time and Half Rate	Double Time	H&W	Retiree H&W	Pension	PEER 84 6 5% of Pension Rate	Training	Straight Time Total
GROUP I									
Decorator	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Carpet Layer Booth & Official Only	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Furniture Setup &	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Seamstress	$31.75	$47.63	$63.50	$10 20	$0.75	$7.41	$0.52	$0.30	$50.93
Condor Lift Operator	$33.10	$49.65	$66.20	$10 20	$0.75	$7.41	$0.52	$0.30	$52.28
High Work @ <16'	$32.35	$64.70	$64.70	$10.20	$0.75	$7.41	$0.52	$0.30	$51.53
Group II - Freight									
Freight Handler	$31.75	$47.63	$63.50	$10.20	$0.75	$7 41	$0.52	$0.30	$50.93
Packer & Crater	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Fork Operator	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Warehouseman If covered by earlier CBA With Union	$31.75	$47.63	$63 50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Rigger	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Truck Driver	$31 75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Runner (Whse To Showsite)	$31 75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Runner (Showsite)	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Group III - I&D									
Displayman	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Exhibit Maint & Service	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Displayman - Leadman	$33.66	$50.48	$67.31	$10.20	$0.75	$7 41	$0.52	$0.30	$52.84
Exhibit Builder (If covered by earlier CBA with Union)	$31.75	$47.63	$63.50	$10.20	$0.75	$7.41	$0.52	$0.30	$50.93
Group IV - Specialty Crafts									
Mechanic	$33.10	$49.65	$66.20	$10 20	$0.75	$7.41	$0.52	$0.30	$52.28
Painter - Display Shop	$31.75	$47.63	$63.50	$10 20	$0.75	$7.41	$0.52	$0.30	$50.93
Group V Leadman/Foreman									
Leadman	$33.66	$50.49	$67.32	$10.20	$0.75	$7.41	$0.52	$0.30	$52 84
*Working Foreman(If the Employer elects to use this	$34.13	$51.20	$68.26	$10.20	$0.75	$7.41	$0.52	$0.30	$53.31
*Show Foreman(If the Employer elects to use this Bargaining Unit Classification	$34.61	$51.92	$51.92	$10.20	$0.75	$7.41	$0 52	$0.30	$53.79

*The use of these bargaining unit classifications shall in no way be construed to restrict non-bargaining unit supervisors of the Employer from giving order, instructions directly to any bargaining unit employee of the Employer

The wage rate for the Leadman classification during the term of this Agreement shall be six percent (6%) above the Journeyman (Decorator) wage

The wage rate for the Working Foreman classification during the term of this Agreement shall be seven and one half percent (7.5%) above the Journeyman (Decorator) wage rate

The wage rate for the Show Foreman classification during the term of this Agreement shall be nine percent (9%) above the Journeyman (Decorator) wage rate

Group VI - Seniority Employees

All seniority Employees will receive $ 15 an hour more than the classification in which they work.

Group VII - Apprentices		
	1st 500 hours of employment as an apprentice	60%
	2nd 500 hours of employment as an apprentice	70%
	3rd 500 hours of employment as an apprentice	80%
	4th 500 hours of employment as an apprentice	90%

Employees other than apprentices may also be assigned to work in more than one classification or kind of work but if they are, they shall receive the rate of the highest paid classification on which they are employed for the entire day.

The wage for outside source workers shall be $14 00 per hour for the term of this Agreement

Effective October 1, 2017 through May 31, 2018
Total Economic Package (Wages, Benefit Contributions)

Classifications	Wage Rate	Time and Half Rate	Double Time	Vacation	H&W	Retiree H&W	Pension	PEER 84 6.5% of Pension Rate	Training	Straight Time Total
GROUP I										
Decorator	$31 75	$47 63	$63.50	$1.00	$10.20	$0.75	$7.41	$0.52	$0.30	$51.93
Carpet Layer Booth & Official Only	$31 75	$47.63	$63.50	$1.00	$10.20	$0.75	$7.41	$0.52	$0.30	$51.93
Furniture Setup &	$31 75	$47.63	$63.50	$1.00	$10.20	$0.75	$7.41	$0.52	$0.30	$51.93
Seamstress	$31.75	$47.63	$63.50	$1.00	$10.20	$0 75	$7 41	$0 52	$0.30	$51.93
Condor Lift Operator	$33.10	$49.65	$66.20	$1.00	$10.20	$0.75	$7 41	$0 52	$0.30	$53.28
High Work @ <16'	$32.35	$64.70	$64.70	$1.00	$10.20	$0.75	$7.41	$0 52	$0 30	$52.53
Group II - Freight										
Freight Handler	$31.75	$47.63	$63.50	$1.00	$10.20	$0.75	$7.41	$0 52	$0.30	$51.93
Packer & Crater	$31.75	$47.63	$63.50	$1.00	$10.20	$0.75	$7.41	$0.52	$0.30	$51 93
Fork Operator	$31.75	$47.63	$63.50	$1.00	$10 20	$0.75	$7.41	$0.52	$0 30	$51.93
Warehouseman If covered by earlier CBA With Union	$31.75	$47.63	$63.50	$1.00	$10.20	$0.75	$7.41	$0 52	$0.30	$51 93
Rigger	$31 75	$47.63	$63.50	$1.00	$10.20	$0.75	$7.41	$0 52	$0.30	$51.93
Truck Driver	$31.75	$47.63	$63.50	$1.00	$10.20	$0.75	$7.41	$0 52	$0.30	$51.93
Runner (Whse To Showsite)	$31.75	$47.63	$63.50	$1.00	$10 20	$0.75	$7 41	$0.52	$0.30	$51.93
Runner (Showsite)	$31.75	$47.63	$63.50	$1.00	$10 20	$0.75	$7 41	$0 52	$0.30	$51.93
Group III - I&D										
Displayman	$31.75	$47.63	$63.50	$1.00	$10.20	$0.75	$7 41	$0 52	$0 30	$51 93
Exhibit Maint. & Service	$31.75	$47.63	$63.50	$1.00	$10.20	$0.75	$7.41	$0 52	$0 30	$51 93
Displayman - Leadman	$33.66	$50.49	$67.31	$1.00	$10.20	$0.75	$7.41	$0.52	$0.30	$53.84
Exhibit Builder (If covered by earlier CBA with Union)	$31.75	$47.63	$63.50	$1 00	$10 20	$0.75	$7.41	$0 52	$0.30	$51.93
Group IV - Specialty Crafts										
Mechanic	$33.10	$49.65	$66.20	$1.00	$10.20	0.75	$7 41	$0 52	$0.30	$53.28
Painter - Display Shop	$31.75	$47.63	$63.50	$1.00	$10 20	0.75	$7 41	$0 52	$0.30	$51 93
Group V Leadman/Foreman										
Leadman	$33.66	$50.49	$67.32	$1.00	$10 20	$0.75	$7 41	$0 52	$0 30	$53 84
*Working Foreman(If the Employer elects to use this Bargaining Unit Classification	$34.13	$51.20	$68.26	$1.00	$10.20	$0.75	$7.41	$0.52	$0.30	$54.31
*Show Foreman(If the Employer elects to use this Bargaining Unit Classification	$34.61	$51.92	$69.22	$1.00	$10 20	$0.75	$7 41	$0 52	$0.30	$54.79

*The use of these bargaining unit classifications shall in no way be construed to restrict non-bargaining unit supervisors of the Employer from giving order, instructions directly to any bargaining unit employee of the Employer

The wage rate for the Leadman classification during the term of this Agreement shall be six percent (6%) above the Journeyman (Decorator) wage rate

The wage rate for the Working Foreman classification during the term of this Agreement shall be seven and one half percent (7 5%) above the Journeyman (Decorator) wage rate

The wage rate for the Show Foreman classification during the term of this Agreement shall be nine percent (9%) above the Journeyman (Decorator) wage rate

Group VI - Seniority Employees

All seniority Employees will receive $ 15 an hour more than the classification in which they work.

Group VII - Apprentices	1st 500 hours of employment as an apprentice	60%
	2nd 500 hours of employment as an apprentice	70%
	3rd 500 hours of employment as an apprentice	80%
	4th 500 hours of employment as an apprentice	90%

Employees other than apprentices may also be assigned to work in more than one classification or kind of work but if they are, they shall receive the rate of the highest paid classification on which they are employed for the entire day

The wage for outside source workers shall be $14 00 per hour for the term of this Agreement

PA188

Effective June 1, 2018 through May 31,2019
Total Economic Package (Wages, Benefit Contributions)

Classifications	Wage Rate	Time and Half Rate	Double Time	Vacation	H&W	Retiree H&W	Pension	PEER 84 6 5% of Pension Rate	Training	Straight Time Total
GROUP I										
Decorator	$32.15	$48 23	$64.30	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$53.68
Carpet Layer Booth & Official Only	$32.15	$48.23	$64 30	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$53 68
Furniture Setup &	$32.15	$48.23	$64.30	$1 30	$10.65	$0.75	$7.98	$0 55	$0.30	$53.68
Seamstress	$32.15	$48.23	$64.30	$1 30	$10.65	$0.75	$7.98	$0 55	$0.30	$53.68
Condor Lift Operator	$33.50	$50.25	$67.00	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$55.03
High Work @ <16'	$32.75	$65.50	$65.50	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$54.28
Group II - Freight										
Freight Handler	$32.15	$48 23	$64.30	$1.30	$10 65	$0.75	$7.98	$0.55	$0.30	$53.68
Packer & Crater	$32.15	$48.23	$64.30	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$53.68
Fork Operator	$32 15	$48.23	$64.30	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$53.68
Warehouseman If covered by earlier CBA With Union	$32.15	$48.23	$64.30	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$53.68
Rigger	$32.15	$48.23	$64.30	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$53.68
Truck Driver	$32.15	$48.23	$64 30	$1.30	$10.65	$0 75	$7.98	$0.55	$0.30	$53.68
Runner (Whse To Showsite)	$32.15	$48.23	$64 30	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$53 68
Runner (Showsite)	$32.15	$48.23	$64 30	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$53 68
Group III - I&D										
Displayman	$32.15	$48.23	$64.30	$1 30	$10.65	$0.75	$7 98	$0 55	$0.30	$53.68
Exhibit Maint & Service	$32.15	$48.23	$64.30	$1 30	$10.65	$0.75	$7.98	$0.55	$0 30	$53.68
Displayman - Leadman	$34.08	$51.12	$68.48	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$55.61
Exhibit Builder (If covered by earlier CBA with Union)	$32.15	$48.23	$64.30	$1.30	$10 65	$0.75	$7.98	$0.55	$0.30	$53.68
Group IV - Specialty Crafts										
Mechanic	$33.50	$50.25	$67.00	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$55.03
Painter - Display Shop	$32.15	$48.23	$64.30	$1.30	$10.65	$0.75	$7.98	$0 55	$0.30	$53.68
Group V Leadman/Foreman										
Leadman	$34.08	$51.12	$68.16	$1.30	$10.65	$0.75	$7.98	$0.55	$0.30	$55.61
*Working Foreman(If the Employer elects to use this Bargaining Unit Classification	$34.56	$51.84	$69.12	$1.30	$10.65	0.75	$7.98	$0.55	$0.30	$56.09
*Show Foreman(If the Employer elects to use this Bargaining Unit Classification	$35.04	$52.56	$70.08	$1.30	$10.65	0.75	$7.98	$0.55	$0.30	$56.57

*The use of these bargaining unit classifications shall in no way be construed to restrict non-bargaining unit supervisors of the Employer from giving order, instructions directly to any bargaining unit employee of the Employer

The wage rate for the Leadman classification during the term of this Agreement shall be six percent (6%) above the Journeyman (Decorator) wage rate

The wage rate for the Working Foreman classification during the term of this Agreement shall be seven and one half percent (7 5%) above the Journeyman (Decorator) wage rate

The wage rate for the Show Foreman classification during the term of this Agreement shall be nine percent (9%) above the Journeyman (Decorator) wage rate

Group VI - Seniority Employees

All seniority Employees will receive $.15 an hour more than the classification in which they work.

Group VII - Apprentices	1st 500 hours of employment as an apprentice	60%
	2nd 500 hours of employment as an apprentice	70%
	3rd 500 hours of employment as an apprentice	80%
	4th 500 hours of employment as an apprentice	90%

Employees other than apprentices may also be assigned to work in more than one classification or kind of work but if they are, they shall receive the rate of the highest paid classification on which they are employed for the entire day

The wage for outside source workers shall be $14 00 per hour for the term of this Agreement

Effective June 1, 2019 through May 31,2020
Total Economic Package (Wages, Benefit Contributions)

Classifications	Wage Rate	Time and Half Rate	Double Time	Vacation	H&W	Retiree H&W	Pension	PEER 84 6 5% of Pension Rate	Training	Straight Time Total
GROUP I										
Decorator	$32.65	$48.98	$65.30	$1.50	$11.10	$0.75	$8.53	$0.60	$0.30	$55.43
Carpet Layer Booth & Official Only	$32.65	$48.98	$65.30	$1.50	$11.10	$0.75	$8.53	$0 60	$0.30	$55 43
Furniture Setup &	$32.65	$48.98	$65.30	$1 50	$11 10	$0.75	$8 53	$0.60	$0.30	$55.43
Seamstress	$32.65	$48 98	$65 30	$1.50	$11.10	$0.75	$8.53	$0.60	$0.30	$55.43
Condor Lift Operator	$34.00	$51.00	$68.00	$1.50	$11.10	$0 75	$8 53	$0.60	$0.30	$56 78
High Work @ <16'	$33.25	$49.88	$66.50	$1.50	$11 10	$0 75	$8.53	$0.60	$0 30	$56.03
Group II - Freight										
Freight Handler	$32.65	$48.98	$65 30	$1.50	$11.10	$0.75	$8.53	$0.60	$0.30	$55.43
Packer & Crater	$32.65	$48.98	$65.30	$1.50	$11 10	$0.75	$8.53	$0.60	$0.30	$55.43
Fork Operator	$32.65	$48.98	$65 30	$1.50	$11.10	$0.75	$8.53	$0.60	$0.30	$55.43
Warehouseman If covered by earlier CBA With Union	$32 65	$48 98	$65.30	$1.50	$11.10	$0.75	$8 53	$0.60	$0.30	$55.43
Rigger	$32.65	$48.98	$65.30	$1 50	$11 10	$0.75	$8.53	$0.60	$0.30	$55.43
Truck Driver	$32.65	$48.98	$65 30	$1.50	$11.10	$0.75	$8.53	$0.60	$0.30	$55.43
Runner (Whse To Showsite)	$32.65	$48.98	$65.30	$1.50	$11 10	$0.75	$8.53	$0.60	$0.30	$55.43
Runner (Showsite)	$32.65	$48.98	$65.30	$1.50	$11.10	$0.75	$8.53	$0.60	$0.30	$55.43
Group III - I&D										
Displayman	$32.65	$48.98	$65.30	$1 50	$11 10	$0.75	$8.53	$0.60	$0.30	$55.43
Exhibit Maint. & Service	$32.65	$48.98	$65.30	$1.50	$11.10	$0.75	$8.53	$0 60	$0.30	$55.43
Displayman - Leadman	$34 61	$51.92	$69.22	$1 50	$11.10	$0.75	$8.53	$0.60	$0.30	$57 39
Exhibit Builder (If covered by earlier CBA with Union)	$32.65	$48.98	$65.30	$1.50	$11 10	$0.75	$8.53	$0.60	$0.30	$55.43
Group IV - Specialty Crafts										
Mechanic	$33 60	$50.40	$67.20	$1 50	$11 10	$0 75	$8 53	$0.60	$0.30	$56.38
Painter - Display Shop	$32.65	$48.98	$65 30	$1.50	$11.10	$0.75	$8.53	$0.60	$0.30	$55.43
Group V Leadman/Foreman										
Leadman	$34 61	$51.91	$69.22	$1 50	$11.10	$0.75	$8.53	$0.60	$0.30	$57 39
*Working Foreman(If the Employer elects to use	$35.10	$52.65	$70.20	$1.50	$11 10	$0.75	$8 53	$0.60	$0.30	$57.88
*Show Foreman(If the Employer elects to use this	$35 59	$53.38	$71.18	$1 50	$11.10	$0.75	$8.53	$0.60	$0.30	$58.37

*The use of these bargaining unit classifications shall in no way be construed to restrict non-bargaining unit supervisors of the Employer from giving order, instructions directly to any bargaining unit employee of the Employer

The wage rate for the Leadman classification during the term of this Agreement shall be six percent (6%) above the Journeyman (Decorator) wage rate

The wage rate for the Working Foreman classification during the term of this Agreement shall be seven and one half percent (7.5%) above the Journeyman (Decorator) wage rate

The wage rate for the Show Foreman classification during the term of this Agreement shall be nine percent (9%) above the Journeyman (Decorator) wage rate.

Group VI - Seniority Employees

All seniority Employees will receive $.15 an hour more than the classification in which they work.

Group VII - Apprentices	1st 500 hours of employment as an apprentice	60%
	2nd 500 hours of employment as an apprentice	70%
	3rd 500 hours of employment as an apprentice	80%
	4th 500 hours of employment as an apprentice	90%

Employees other than apprentices may also be assigned to work in more than one classification or kind of work but if they are, they shall receive the rate of the highest paid classification on which they are employed for the entire day

The wage for outside source workers shall be $14 00 per hour for the term of this Agreement

PA190

Effective June 1, 2020 through May 31,2021

Total Economic Package (Wages, Benefit Contributions)

Classifications	Wage Rate	Time and Half Rate	Double Time	Vacation	H&W	Retiree H&W	Pension	PEER 84 6 5% of Pension Rate	Training	Straight Time Total
GROUP I										
Decorator	$33.00	$49.50	$66.00	$1 50	$11.70	$0.75	$9.28	$0.65	$0.30	$57.18
Carpet Layer Booth & Official Only	$33.00	$49 50	$66.00	$1 50	$11 70	$0 75	$9.28	$0 65	$0.30	$57 18
Furniture Setup &	$33 00	$49.50	$66.00	$1.50	$11.70	$0.75	$9 28	$0.65	$0 30	$57.18
Seamstress	$33.00	$49.50	$66.00	$1 50	$11 70	$0.75	$9.28	$0.65	$0.30	$57 18
Condor Lift Operator	$34.35	$51.53	$68.70	$1.50	$11.70	$0.75	$9.28	$0.65	$0.30	$58.53
High Work @ <16'	$33.60	$50.40	$67.20	$1.50	$11.70	$0.75	$9 28	$0 65	$0 30	$57.78
Group II - Freight										
Freight Handler	$33.00	$49.50	$66.00	$1.50	$11.70	$0.75	$9.28	$0.65	$0.30	$57.18
Packer & Crater	$33 00	$49.50	$66.00	$1.50	$11.70	$0.75	$9 28	$0 65	$0.30	$57.18
Fork Operator	$33.00	$49.50	$66.00	$1 50	$11 70	$0.75	$9.28	$0.65	$0.30	$57 18
Warehouseman If covered by earlier CBA With Union	$33.00	$49.50	$66.00	$1.50	$11.70	$0.75	$9 28	$0 65	$0.30	$57.18
Rigger	$33.00	$49.50	$66 00	$1.50	$11.70	$0.75	$9.28	$0.65	$0.30	$57 18
Truck Driver	$33.00	$49.50	$66.00	$1.50	$11.70	$0.75	$9.28	$0.65	$0 30	$57.18
Runner (Whse To Showsite)	$33.00	$49.50	$66.00	$1.50	$11.70	$0.75	$9.28	$0 65	$0.30	$57.18
Runner (Showsite)	$33.00	$49.50	$66.00	$1 50	$11.70	$0.75	$9.28	$0.65	$0.30	$57 18
Group III - I&D										
Displayman	$33.00	$49.50	$66.00	$1.50	$11.70	$0.75	$9.28	$0.65	$0.30	$57.18
Exhibit Maint & Service	$33.00	$49.50	$66.00	$1.50	$11.70	$0.75	$9.28	$0.65	$0.30	$57.18
Displayman - Leadman	$34.98	$52.47	$69.96	$1.50	$11.70	$0.75	$9.28	$0 65	$0.30	$59.16
Exhibit Builder (If covered by earlier CBA with Union)	$33.00	$49.50	$66.00	$1.50	$11.70	$0.75	$9.28	$0 65	$0.30	$57.18
Group IV - Specialty Crafts										
Mechanic	$33.95	$50.93	$67.90	$1.50	$11.70	0.75	$9.28	$0.65	$0.30	$58.13
Painter - Display Shop	$33 00	$49.50	$66.00	$1.50	$11 70	0.75	$9.28	$0.65	$0.30	$57.18
Group V Leadman/Foreman										
Leadman	$34.98	$52.47	$69.96	$1.50	$11.70	$0.75	$9 28	$0.65	$0.30	$59.16
*Working Foreman(If the Employer elects to use	$35.48	$53.22	$70.96	$1 50	$11 70	$0.75	$9.28	$0.65	$0.30	$59.66
*Show Foreman(If the Employer elects to use this	$35 97	$53.96	$71.94	$1.50	$11.70	$0.75	$9.28	$0.65	$0.30	$60 15

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The wage rate for the Show Foreman classification during the term of this Agreement shall be nine percent (9%) above the Journeyman (Decorator) wage rate

Group VI - Seniority Employees

All seniority Employees will receive $.15 an hour more than the classification in which they work

Group VII - Apprentices	1st 500 hours of employment as an apprentice	60%
	2nd 500 hours of employment as an apprentice	70%
	3rd 500 hours of employment as an apprentice	80%
	4th 500 hours of employment as an apprentice	90%

Employees other than apprentices may also be assigned to work in more than one classification or kind of work but if they are, they shall receive the rate of the highest paid classification on which they are employed for the entire day

The wage for outside source workers shall be $14 00 per hour for the term of this Agreement

PA192

ARTICLE 24
VACATION SAVINGS

Section A. Each Employer shall add TBD per hour to the employee's gross wages and then shall subtract TBD per hour from the employee's net wages as Vacation Savings. The deduction for Vacation Savings shall be sent on a monthly transmittal form to a designated depository. This addition and deduction shall be made on all employees covered under this Agreement. The monthly transmittal shall include all payroll weeks ending within the calendar month. On the monthly transmittal form, the following information concerning each employee shall be set forth in separate columns:

1) Name of each employee
2) Social Security number of each employee
3) Number of hours worked
4) Total amount of vacation savings deduction
5) Gross pay for each employee

Section B. The monthly transmittal forms shall be furnished to the Employer who shall set forth thereon all information requested by the instructions and return the full number of copies, after retaining one (1) copy for his files. The fund shall pay for the administrative expenses incurred in the operation of the
Vacation Savings Plan, other than those incurred within the individual's own office.

Section C. Employer Reports: The parties recognize and acknowledge that the regular prompt payments to the Vacation Savings Plan are essential. Each transmittal to the Vacation Savings Plan shall be made promptly and in any event on or before the twentieth (20^{th}) day of the month following in which deductions were made. If not paid in full, it shall be delinquent. Failure on the part of any Employer to make prompt payments shall be deemed to be a breach of the collective bargaining agreement by such Employer and in such event the Union shall bring action against the Employer in law or in equity, or the Union may use economic action to either compel the performance of this Agreement, as well as the collective bargaining agreement. In the event of death of the depositor, the balance of the deposit shall be paid to such person or persons entitled thereto upon submission of necessary proof. The parties agree to this provision to the extent permissible under and in compliance with applicable law.

ARTICLE 25
NO STRIKES/NO LOCKOUTS

Section A. The Employer and the Union agree that the grievance and arbitration procedures set forth in this Agreement shall be the sole and exclusive means of resolving all grievances arising under this Agreement, and, further, that administrative and judicial remedies and procedures provided by law shall be the sole and exclusive means of settling all other disputes between the Union and the Employer. Accordingly, neither the Union nor any employee in the bargaining unit covered by this Agreement will instigate, promote, sponsor, engage in or condone any strike, sympathy strike, slowdown, concerted stoppage of work, or any other interruption of work.

Section B. In the event that any employee in the bargaining unit covered by this Agreement shall, during its term, engage in any of the activities herein prohibited, the Union agrees, upon being notified by the Employer, to immediately direct such persons to cease such activity and resume work immediately.

Section C. The Employer shall have the right to immediately terminate without notice any employee who engages in any of the activities prohibited by this Section; and, in the event a grievance is filed protesting such termination, the sole question for arbitration shall be whether the person engaged in the prohibited activity. The foregoing shall not be construed as a limitation upon any other relief to which the Employer may be entitled.

Section D. During the term of this Agreement, the Employer will not lockout the employees covered by this Agreement.

Section E. The Employer recognizes the right of an individual employee to refuse to cross a lawful primary picket line sanctioned by Teamsters Joint Council 42 and/or The International Brotherhood of Teamsters. It shall not be a violation of this Agreement and it shall not be cause for discharge or disciplinary action if an employee exercises his individual right to refuse to cross a lawful primary picket line sanctioned by Teamsters Joint Council 42 and/or The International Brotherhood of Teamsters. An employee has no right to refuse to go to work when he/she has access to the jobsite without the necessity of crossing a picket line, except as permitted by federal or Nevada State Law.

ARTICLE 26
TERM AND TERMINATION

Section A. This Agreement shall be in full force and effect from June 1, 2017 through May 31, 2021, and shall be considered renewed for one year thereafter unless either party shall give written notice to the other party sixty (60) days prior to May 31, 2021, of its desire to modify or terminate the Agreement.

Section B. In the event the Union enters into any Agreement with any contractor engaged in convention services work which has terms more favorable to that Employer than the terms of this Agreement, the Union shall immediately submit to the Employer signatory herein a copy of such Agreement; and the signatory Employer shall have the right to adopt the more favorable terms and practices of the Agreement entered into by the Union and such other Employer, and this Agreement shall thereupon be deemed amended accordingly.

Section C. Section B above shall not apply to initial contracts, up to a maximum of three (3) years in duration, with a convention industry Employer whose employees were not previously represented by the Union, The Union shall submit to the Employer signatory herein, a copy of any such agreement in reasonable time.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized signatures to be inscribed hereto this 1st day of June, 2017.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION 631

By: _____

Its: Secretary - Treasurer

Date: 6/15/17

[EMPLOYER]

By: _____
Guy Langlais
VP Labor Relations

Its: _____

Date: June 16 / 2017

By: _____

Its: Allen Lind
SVP/General Manager

Date: 6/17/2017

EXHIBIT B

EXHIBIT B

FREEMAN

July 11, 2018

via Verifiable Email
& U.S. Mail

Danny Jackson
Business Agent
Teamsters Local 631
700 N. Lamb Blvd.
Las Vegas, NV 89110

Re: LETTER OF TERMINATION
James Roushkolb (–4480) Journeyman

Dear Mr. Jackson,

Freeman regrets the error that occurred on June 27, 2018 when we mailed our letter indicating a first positive drug result. On June 9, 2018 Mr. Roushkolb did have a second positive result with the first positive occurring January 19, 2009. This document supersedes our correspondence of June 27, 2018.

Therefore, Mr. Roushkolb is immediately and permanently terminated from employment effective July 11, 2018 in accordance with the terms of the current Collective Bargaining Agreement, Drug and Alcohol Policy, and shall be permanently ineligible for dispatch to any employer signatory to the Convention Industry contract with the Teamsters Union, Local 631. Additionally, Mr. Roushkolb may not work at any Freeman facility.

Please call me at 702-579-1778 should either you or Mr. Roushkolb have any questions, desire further clarification, or need additional information.

Sincerely,

Julie Messer
Manager - Risk Management

mc

cc: James Roushkolb, U.S. Certified Mail # 7013 2630 0002 2750 9913
Allen Lind, Vice President-General Manager
John Giordano, General Manager
Mike Lamoreaux, General Manager
Cheryl A. King, Regional Director, Labor Relations
Dede King, Office Manager
Marsha Conrad, Labor Relations Admin.
Dispatch, Teamsters Local 631

6555 W Sunset Rd. • Las Vegas, NV 89118
main: 702-579-1400•fax: 702-579-6161•freemanco.com

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christian@gabroy.com
kmesser@gabroy.com
Attorneys for Plaintiff James Roushkolb

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JAMES ROUSHKOLB, an individual; Plaintiff, vs. THE FREEMAN COMPANY, LLC, a Domestic Corporation; EMPLOYEE(S)/AGENT(S) DOES I-X; and ROE CORPORATIONS XI-XX, inclusive; Defendant.	Case No: 2:19-cv-02084-JCM-NJK **PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

COMES NOW Plaintiff James Roushkolb ("Plaintiff" or "Roushkolb"), by and through his attorneys Christian Gabroy, Esq. and Kaine Messer, Esq. of Gabroy Law Offices, and hereby submits his Response in Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint (ECF No. 13, Defendant's "Motion".)

This Response is made and based upon the following Memorandum of Points and Authorities, other papers and pleadings in this action, and any oral argument this Honorable Court may entertain.

Dated this 4th day of February, 2020

GABROY LAW OFFICES

By: */s/ Christian Gabroy*_____
Christian Gabroy (#8805)
Kaine Messer (#14240)
170 S. Green Valley Pkwy, Suite 280
Henderson, Nevada 89012
Attorneys for Plaintiff James Roushkolb

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is an important matter concerning the rights and privileges guaranteed to Nevada workers by our state Constitution. As will be discussed, *infra*, Plaintiff James Roushkolb relied on and followed his physician's advice, and in doing so exercised such Constitutional rights. For doing so, Defendant terminated him.

Seeking redress, Plaintiff filed his complaint in the Eight Judicial District Court in Clark County, Nevada on or about November 12, 2019. ECF No. 1-1, p.1. On or about December 5, 2019, Defendant The Freeman Company, LLC ("Defendant") removed this action to federal court. ECF No. 1, p. 4.

Defendant now asks this Court to deny Plaintiff his voter-approved, Constitutionally-protected rights via their Motion. ECF No. 13, p. 20. Each of Plaintiff's causes of action are grounded in our state Constitution, our statutes, and our common law. For the reasons stated herein, Plaintiff respectfully requests this Honorable Court deny Defendant's Motion in its entirety so that his claims may proceed and be decided on their merits.

II. FACTUAL ALLEGATIONS

In the 1998 and 2000 general election, Nevada voters approved the amending of our state Constitution to specifically provide for the use of marijuana for medical purposes by Nevadans. ECF No. 1-1, p. 4. In 2001, the legislature exercised its power under the initiative by passing A.B. 453 which established Nevada's laws, codified in NRS Chapter 453A, regulating the use of medical marijuana. A.B. 453, 2001 Nev. Stat., ch. 592, §§ 2-33, at 3053-66. ECF No. 1-1, p. 5. When the Legislature passed A.B. 453, it explained in the preamble that it intended for the bill to "carry out the will of the people of this state and to regulate the health, medical practices and well-being of those people in a manner that respects their personal decisions concerning the relief of suffering through the medical use of marijuana." A.B. 453, 2001 Nev. Stat., ch. 592, preamble, at 3053. ECF No. 1-1, p. 5. Nevada then began offering medical marijuana registration cards to identify patients using

medical marijuana. *Id*.

In accordance with Nevada law, the State of Nevada issued Roushkolb his Medical Marijuana Patient Identification Card on or about May 14, 2018. *Id*. at p. 6-7. On or about the winter of 1995, Roushkolb, a former corrections officer with the Cuyahoga County Sheriff's Department, was ambushed, assaulted, and nearly killed by a dangerous inmate. *Id.* As a result, Roushkolb suffered from PTSD and severe pain, a disability that substantially limits one or more of his major life activities. *Id*. at p. 6. Despite his disability, Plaintiff still acts as a primary caregiver for his 92 year-old father, a veteran of World War II. *Id.*

Defendant hired Roushkolb in or around January 2018. *Id*. at p 7.

In or around June of 2018, despite the absence of proper equipment, Defendant's management ordered Roushkolb to tear down a large piece of plexiglass suspended approximately fifteen feet off the ground. *Id*. at p. 7. Roushkolb and a coworker were forced to use a single, two-sided, twelve-foot high ladder to try and lower the plexiglass. *Id*. Before Roushkolb could get into position and get a grip on his side of the glass, the coworker let go, causing the glass to fall to the floor and shatter. *Id*. at p. 7-8. No one, including Roushkolb and the coworker, was injured in any way by the plexiglass falling to the floor. *Id*. at p. 8. Roushkolb was not impaired in any way the time of the incident. *Id*. Indeed, at no time did Roushkolb work for Defendant while under the influence of marijuana. *Id*. at p. 14.

Roushkolb then underwent a drug test as directed by the Defendant. *Id*. at p. 8. Roushkolb tested positive only for THC, consistent with his medical marijuana usage and Constitutional rights. *Id*.

As a result of the positive test outcome, the Defendant terminated Roushkolb on or about July 11, 2018 because he tested positive for marijuana use consistent with his physician-recommended usage. *Id*.

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III. ARGUMENT

In reviewing Defendant's Motion under Federal Rule of Civil Procedure 12(b)(6), "[a]ll allegations of material fact are taken as true and construed in the light most favorable to Petitioner." *Epstein v. Wash. Energy Co.,* 83 F.3d 1136, 1140 (9th Cir. 1996). A Court must take, "[a]ll allegations of material fact as true and construe[ ] them in the light most favorable to the nonmoving party." *Burgert v. Lokelani Bernice Pauhi Bishop Trust*, 200 F.3d 661, 663 (9th Cir. 2000). Further, there is a strong presumption against dismissing an action for failure to state a claim. *Gilligan v. Jamco Dev. Corp.* 108 F.3d 246, 249 (9th Cir. 1997).

FRCP 8(a) dictates that a complaint shall contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Such a statement is necessary to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *William O. Gilley Enter, Inc. v. Atl. Richfield Co*., 588 F. 3d 659, 667 (9th Cir. 2009)(per curiam). Similarly, under *Twombly*, 550 U.S. 544, 555 (2007), the Complaint must give a defendant "fair notice of what the claim is and the grounds upon which it rests." Dismissal of a claim under Rule 12(b)(6) for failure to state a claim is appropriate if the complaint fails to satisfy the requirements of FRCP 8(a).

As stated in *Gilman v. Davis*, 690 F. Supp.2d 1105, 1115 (E.D. Cal. 2010), "'Plausibility,' as it is used in *Twombly* and *Iqbal*, does not refer to the likelihood that a pleader will succeed in proving the allegations. Instead, it refers to whether the non-conclusory factual allegations, when assumed to be true, allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."

Further, the Supreme Court stated in *Iqbal* that the "plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." 556 U.S. at 678.

Here, Plaintiff has met this lenient standard. First, as discussed below, plaintiff's claims are in no way preempted and should remain before this Court. Second, as also discussed, all claims have been properly alleged and are firmly grounded in Nevada law.

As such, Defendant's Motion fails in its entirety.

A. Plaintiff's Causes of Action Are Not Preempted

As cited by Defendant, when determining preemption under Section 301 of the LMRA, a court conducts a two-part analysis. *See Burnside v. Kiewit*, 491 F.3d 1053, 1059 (9th Cir. 2007). First, the court must determine "whether the asserted cause of action involves a right conferred upon an employee by virtue of state law, not by a CBA. If the right exists solely as a result of the CBA, then the claim is preempted, and . . . [the] analysis ends there." *Id.* (citations omitted). Then, even if the claim "exists independently of the CBA, . . . [the court] must still consider whether it is nevertheless 'substantially dependent on analysis of a collective bargaining agreement.'" *Id.* (citation omitted). Of course, Plaintiff's rights as alleged in his Complaint arise under Nevada law and are wholly independent of any CBA analysis.

1. Plaintiff's Rights Are Conferred Via Nevada Law and Not Any CBA.

"To determine whether a right derives from state law or a CBA, the court must consider the legal character of a claim, as 'independent' of rights under the collective-bargaining agreement and not whether a grievance arising from precisely the same set of facts could be pursued." *Martel v. MEI-GSR Holdings, LLC*, No. 316CV00440RJCWGC, 2016 WL 7116013, at *3 (D. Nev. Dec. 6, 2016)(internal quotations omitted.).

As Plaintiff's Complaint begins, "[t]his is a civil action for damages under state laws prohibiting unlawful employment actions and to secure the protection of and to redress deprivation of rights under these laws." ECF No. 1-1, p. 2, lines 21-23. Specifically, Plaintiff has brought causes of action under NRS § 613.333, NRS § 598 *et seq*., NRS § 453A.010, and deeply rooted Nevada common law established by the Nevada constitutional imperative of our population. Indeed, the "legal character" of Plaintiff's claims are in no way contractual, but instead are enjoyed by virtually every Nevada worker regardless of whether such worker is a party to a CBA.

In fact, nothing –particularly nothing within the four corners of Plaintiff's Complaint— suggests Plaintiff's workplace rights arise under any supplemental contractual agreement

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with Defendant. Notably, Plaintiff has not even specifically alleged a CBA violation (nor would he need to) despite Defendant's incorrect inference. *See* Defendant's Motion, ECF No. 13, p 7, line 25.

Accordingly, Plaintiff seeks redress for the deprivation of rights bestowed by Nevada law, not by contract. The first prong of the *Burnside* analysis is therefore readily confirmed.

2. No Analysis Substantially Dependent on any CBA is Required.

Regarding the second part of the analysis, a court must consider whether the claims requires the court to interpret the CBA. *Martel*, 2016 WL 7116013, at *3. Even if the court must "look to" the CBA, the claim is not inevitably preempted. *Id*.

Indeed, whether Defendant violated Plaintiff's rights as guaranteed by the Nevada Revised Statutes require absolutely no interpretation of the purported CBA attached to Defendant's Motion (ECF No. 13-1), nor any contractual agreement. Defendant cites a litany of quotations from Plaintiff's Complaint before stating "the resolution of the allegation requires assessment of, and interpretation of, the duties and obligations set forth [in the CBA]." ECF No. 13, p. 9, lines 14-16. However, this is an inaccurate analysis and reading of Plaintiff's claims. Whether Defendant terminated Plaintiff for his lawful use of medical marijuana outside of the Defendant's during non-working hours is, simply put, a question for the trier of fact solely based upon Nevada statutes and our common law. That Defendant looks to the purported CBA for a defense does not rise to the level of substantially dependent analysis required under *Burnside* to warrant preemption.

In *Martel*, our United States District Judge Robert C. Jones looked to the Supreme Court, which held:

> It is true that when a defense to a state claim is based on the terms of a collective-bargaining agreement, the state court will have to interpret that agreement to decide whether the state claim survives. But the presence of a federal question, even a § 301 question, in a defensive argument does not overcome the paramount policies embodied in the well-pleaded complaint rule—that the plaintiff is the master of the complaint, that a federal question must appear on the face of the complaint, and that the plaintiff may, by eschewing claims

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> based on federal law, choose to have the cause heard in state court.... [A] defendant cannot, merely by injecting a federal question into an action that asserts what is plainly a state-law claim, transform the action into one arising under federal law, thereby selecting the forum in which the claim shall be litigated. If a defendant could do so, the plaintiff would be master of nothing.

Caterpillar Inc. v. Williams, 482 U.S. 386, 398-99 (1987). Such is the case here. Defendant cannot inject into Plaintiff's Complaint something that on its face cannot be found.

As such, under the second prong of the *Burnside* analysis, Plaintiff prevails. Therefore, Plaintiff's claims are not preempted and remain properly before this Court.

B. Plaintiff's Claims Should Not Be Dismissed As They Have Been Sufficiently Pleaded And Arise Under Nevada Law

As all of Plaintiff's state law claims readily survive preemption, Defendant then attempts dismissal under Fed. R. Civ. P. 12(b)(6). As Defendant addresses each of Plaintiff's causes of action individually, for clarity and to assist this Court, Plaintiff will do the same.

1. Plaintiff's NRS § 613.333 claim has been sufficiently pleaded.

Defendant contends, incorrectly, that Plaintiff's NRS § 613.333 claim should be dismissed because "as admitted in his Complaint, Plaintiff was discharged because the Company concluded that he was ***under the influence*** of marijuana when, while working as a rigger, he dropped a large plate of glass (emphasis added)…" ECF No. 13, p.13, lines 9-12. Of course, Plaintiff's Complaint alleges no such thing. Instead, Plaintiff properly pleaded he was terminated by Defendant "because he tested positive for marijuana use consistent with his physician-recommended usage." ECF No. 1-1, p. 8, lines 22-23. Notably, Plaintiff did not allege that he was "under the influence" at work, nor does he allege he was terminated by Defendant incorrectly concluding as such.

Further, Defendant cites to *Coats v. Dish Network, LLC*, 350 P.3d 849 (2013), which held that medical marijuana was not lawful under a Colorado 'lawful use' statute because it is prohibited under federal law. *See* ECF No. 13, p. 14. However, *Coats* is inapplicable to Plaintiffs' NRS § 613.333 claim because the Colorado statute is distinguishable from

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Nevada's § 613.333. Further, unlike in Colorado, the Nevada Legislature intended to interpret medical marijuana laws under a state law.

Indeed, Nevada's lawful use statute is explicitly tailored to Nevada state law, unlike the Colorado statute examined in *Coats*. Colorado's statute prohibits an employer from terminating an employee for engaging in "any **lawful activity** off the premises . . . during nonworking hours," whereas Nevada's statute prohibits discrimination based on "the lawful use in **this state**." *See* NRS § 613.333 (emphasis added). Nevada's lawful use statute is more specific in that it restricts its reach to Nevada, and does not interfere with federal law. Additionally, unlike Colorado law, as discussed more fully below, Nevada law explicitly requires that an employer attempt to make reasonable accommodations for the medical needs of an employee who lawfully engages in the use of the medical marijuana. *See* NRS § 453A.800(3).

In *Coats*, the statute at issue precluded the termination of an employee, "due to that employees engaging in any lawful activity off the premises of the employer during nonworking hours." 350 P.3d at 852. The Colorado Supreme Court held that this 'lawful use' statute does not protect medical marijuana use because there was no evidence to demonstrate that the Colorado Legislature intended the word 'lawful' to be limited to state law. Thus, *Coats* held that absent any directive from the legislature, 'lawful' was to be interpreted as lawful under both federal and state law. *Id.*

The *Coats* holding was based on legislative intent. Particularly, *Coats* held, "we find nothing to indicate that the General Assembly [of Colorado] intended to extend . . . protection for "lawful" activities to activities that are unlawful under federal law." 350 P.3d at 853. *Coats* concluded that since federal law preempts state law, medical marijuana use is not protected under Colorado law. *Id.*

In Nevada, on the other hand, there is no absence of legislative intent. On the contrary, the Nevada Legislature explicitly expressed an intent to interpret "lawful" for marijuana laws under state law only. The Legal Division of the State of Nevada Legislative Counsel Bureau ("Legislative Counsel"), which acts as the legal adviser to the Nevada

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Legislature, responded to questions posed by Senator Segerblom in an advisory letter. *See* Ltr. to Senator Segerblom, p. 1 (September 10, 2017), attached as Exhibit II[1].

Accordingly, on September 10, 2017, the Legislative Counsel responded with a statutory analysis of Chapter 453A. *Id.* The Legislative Counsel stated that the "lawful" language in Chapter 453A shall not be interpreted to include violations of federal law. Particularly, the Legislative Counsel explained that:

> A court will strive to interpret these provisions in harmony with NRS 453.316. Id. If the word "unlawfully" in NRS 453.316 were interpreted in a way that includes a violation of federal law, such an interpretation would essentially render chapters 453A and 453D of NRS void by continuing to criminalize activities that the Legislature by statute or the people by initiative explicitly made legally permissible.

Id. at 3.

The Legislative Counsel further stated that when possible, a court "will avoid rendering any part of a statute inconsequential." *Id.* (citing *Savage v. Pierson*, 123 Nev. 86, 94, 157 P.3d 697, 702 (2007)). The Legislative Counsel concluded that:

> "[s]ince considering whether a sale or use violates federal law for the purpose of determining whether the sale or use is "unlawful" . . . would have the effect of rendering entire chapters of NRS nugatory and that consequence can be avoided by considering only whether a sale or use violates the laws of this State[.]"

Id.

The Nevada Legislature clearly intends for "lawful" to mean lawful under Nevada state law. Thus, the analysis in *Coats* should not be followed in Nevada. Therefore, Plaintiff states a valid claim under NRS § 613.333.

In addition, since *Coats*, the case heavily relied upon by Defendant, three additional states have decided that similar 'lawful use' statutes, anti-discriminatory employment provisions, and reasonable accommodation laws for medical marijuana use, are not preempted by federal law.

[1] This Court may consider such advisory letter for purposes of a motion to dismiss. *See* 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure, Civil 2D § 1357 (2d ed. 1990); *see also Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) ("[T]he court may take into account matters of public record…when ruling on a motion to dismiss.")

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On August 8, 2017, *Noffsinger v. SSC Niantic Operating Co. LLC*, held that a plaintiff who uses medical marijuana is protected under a Connecticut law that prohibits employers from terminating an employee who lawfully uses medical marijuana. No. 3:16-CV-01938(JAM), 2017 WL 3401260, at *2 (D. Conn. Aug. 8, 2017). The Controlled Substance Act ("CSA") does not preempt state "lawful use" and anti-discriminatory employment statutes, such as NRS 453A. *Id.*

Noffsinger explained that state anti-discriminatory medical marijuana laws are not preempted because the CSA

> does not make it illegal to employ a marijuana user. Nor does it purport to regulate employment practices in any manner. It also contains a provision that explicitly indicates that Congress did not intend for the CSA to preempt state law 'unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.'

2017 WL 3401260, at *4 (quoting 21 U.S.C. § 903).

On May 23, 2017, the Superior Court of Rhode Island held that the CSA does not preempt the state anti-discrimination in employment medical marijuana statute because, "[t]o read the CSA as preempting [the anti-discriminatory statute] would imply that anyone who employs someone that violates federal law is thereby frustrating the purpose of the law." *Callaghan v. Darlington Fabrics Corporation*, 2017 WL 2321181, at *14 (R.I. Super. 2017). *Callaghan* further explained that, "it is a direct and unambiguous indication that Congress has decided to tolerate the tension," between state and federal marijuana laws. *Id.* at *15.

On July 17, 2017, the Massachusetts Supreme Court held that an employee could bring a claim under a state disability discrimination statute for refusing to accommodate her medical marijuana use. *Barbuto v. Advantage Sales & Mktg.*, LLC, 477 Mass. 456, 464, 78 N.E.3d 37, 45 (2017). *Barbuto* held:

> [I]n the opinion of the employee's physician, medical marijuana is the most effective medication for the employee's debilitating medical condition, and where any alternative medication whose use would be permitted by the employer's drug policy would be less effective, an exception to an employer's drug policy to permit

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its use is a facially reasonable accommodation.

Id.

Barbuto concluded that if an employer did not attempt to accommodate an employee's medical marijuana use, "the employee effectively would be denied this 'right or privilege' solely because of the patient's use of medical marijuana." *Id.*

Likewise and recently in *Whitmire v. Wal-Mart*, 3:17-cv-08109, (02/07/2019 J. Teilborg) the U.S. District Court for the District of Arizona upheld a claim and found a private cause of action involving the Arizona Medical Marijuana Act where an employee was terminated for testing positive for THC.

In light of *Noffsinger*, *Whitmire, Callaghan*, and *Barbuto*, Plaintiff states a valid claim under NRS § 613.333. Thus, this Honorable Court should not dismiss Plaintiff's claim.

2. Plaintiff's Wrongful Discharge Claim Has Been Sufficiently Pleaded.

The Nevada Supreme Court has held that whether the type of employment is at-will is immaterial to a tortious discharge claim. *Allum v. Valley Bank of Nevada*, 114 Nev. 1313, 1317, 970 P.2d 1062, 1064 (1998) (citing *D'Angelo v. Gardner*, 107 Nev. 704, 718, 819 P.2d 206, 216 (1991)). The Court recognizes such a claim in tort where an employer discharges an employee for reasons that violate public policy. *D'Angelo*, 107 Nev. at 718, 819 P.2d at 216. In *D'Angelo*, the Court stated that "[t]he essence of a tortious discharge is the wrongful, usually retaliatory, interruption of employment by means which are deemed to be contrary to the public policy of this state." *Id*. An employer may be liable for discharge if it terminates an employee for reasons that violate policy. *D'Angelo*, 107 Nev. at 704, 819 P.2d at 211.

This case is rare and exceptional because Defendant's actions violate the compelling public policy of favoring a patient's right to seek his or her own legal course of treatment for their serious disability, based upon their physician's professional medical judgment. *Whalen v. Roe*, 429 U.S. 589, 599–600, 603, 97 S. Ct. 869 (1977) (recognizing a constitutional "interest in independence in making certain kinds of important decisions," including a patient's "right to decide independently, with the advice of his physician, to

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acquire and use needed medication").

Furthermore, the public policy interest in compassion for patients with disabilities seeking medical marijuana treatment was expressed and recognized by the voters and the Legislature. In 2000, Nevada voters approved a constitutional initiative that added Article 4, Section 38, to the Nevada Constitution. Under Nev. Cons. Art. IV, § 38, the Legislature "shall provide by law . . . [t]he use by a patient, upon the advice of his physician, of a plant of the genus Cannabis for the treatment or alleviation of . . . severe, persistent . . . chronic or debilitating medical conditions."

In 2001, the Legislature exercised its power under the initiative by passing A.B. 453, which established Nevada's laws, codified in NRS Chapter 453A. *See* A.B. 453, 2001 Nev. Stat., ch. 592, §§ 2-33, at 3053-66. Before A.B. 453 was passed by the Assembly, Assemblywoman Giunchigliani stated that "I think the public knew very well what they were voting on and recognized that under extreme medical conditions, they supported the issue of a registry card and allowing an individual to have access to this." *Assembly Daily Journal*, 71st Leg., at 41 (Nev. May 23, 2001). A.B. 453 was intended to "carry out the will of the people of this state and to regulate the health, medical practices and well-being of those people in a manner that respects their personal decisions concerning the relief of suffering through the medical use of marijuana." A.B. 453, 2001 Nev. Stat., ch. 592, preamble, at 3053. At the heart of the purpose and intent of Nevada's medical marijuana laws is compassion for those suffering from serious medical conditions and acknowledgement of the right to determine their own course of treatment.

Further, this right to medical marijuana use, without fear of termination, is such an essential public policy concern that Nevada law provides explicit statutory protection for this right. *See* NRS § 453.800. This argument is explored further, *infra*, in Section III.B.5.

This case also involves a public policy interest in protecting employees from termination for partaking in lawful activities outside of work. In this case, the lawful activity is Plaintiff's right to choose his medical treatment. In fact, this is a statutory right in Nevada. *See* NRS § 613.333; *See also O'Brien v. R.C. Willey Home Furnishings*, 2016 WL

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4548674, at *4 (D. Nev. Aug. 31, 2016) (holding that NRS § 613.333 protects employee who lawfully consumed beer outside of work).

Additionally, preventing an employer from discharging or failing to hire an employee for the legal use of medical marijuana is a matter of public interest because such practice greatly affects the employee or prospective employee and the economy. If Nevada employees are not protected by Nevada's medical marijuana laws, such employees will be forced to choose between employment or effectively treating their serious medical condition. *See* Kathleen Harvey, *Protecting Medical Marijuana Users in the Workplace*, 66 CASE. W. RES. L. REV. 209, 222-24 (2015). Individuals should not be forced to choose between employment and their well-being, when such employee consumes medical marijuana outside of work.

Here, there is an existence of a clear public policy favoring a patient's right to seek his or her own legal course of treatment for their serious disability, and a public policy of allowing a patient to rely on and follow his physician's advice, and state law, without penalty. Plaintiff acted consistently with public policy when, after consultation and after the recommendation of his physician, he engaged in the lawful use of medical marijuana.

When Defendant terminated Plaintiff because Plaintiff tested positive for a drug test when he was legally treating his disability, such termination violated public policy. Public policy was further violated because such withdrawal prevented Plaintiff from working.

Indeed, Defendant reliance on *Roe v. TeleTech Customer Care Mgmt. (Colo.) LLC*, 171 Wn.2d 736, 257 P.3d 586 (2011) is therefore misplaced. In short, the factual predicate of Nevada's public policy toward this exceptional case, as demonstrated above, was simply not present before the Washington court.

As a result, Plaintiff readily states a claim for tortious discharge here in Nevada. Further, and although not binding, our State Court has allowed such a claim to procced in *Nellis v. Sunrise Hospital and Medical Center,* A-17-761981, (Nev. Dist. Court 2018, J. Bailus). Thus, this Court should not dismiss Plaintiff's claim.

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3. Plaintiff's Deceptive Trade Practices Claim Has Been Sufficiently Pleaded.

Defendant argues that employees are barred from bringing a claim under the Nevada Deceptive Trades Practice Act ("DTPA"). *See* ECF No. 13, p. 16. Defendant's argument is unpersuasive.

The Supreme Court clearly acknowledged that whether a statute provides for a private right of action is a matter of statutory construction. *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568, 99 S. Ct. 2479 (1979). If there is no express right of action provided by statute, then there are a number of factors used to determine whether or not a right of action may be implied from the statute. *Id.* Here, however, an analysis of these factors is not necessary because NRS provides an express right of action for victims of consumer fraud. The relevant statute, NRS § 41.600(1), states that "an action may be brought by any person who is a victim of consumer fraud." The statute further defines consumer fraud as "a deceptive trade practice as defined in NRS 598.0915 to 598.0925 inclusive." NRS § 41.600(2)(e).

The District Court of Nevada had the occasion to determine whether persons who are not consumers have standing to make a claim under the DTPA in *S. Serv. Corp. v. Excel Bldg. Services, Inc.,* 617 F. Supp. 2d 1097, 1099 (D. Nev. 2007). There, the Court determined that the language of the DTPA allowed for a business competitor to sue under the Act, because it was a victim, although not a consumer. While that decision did not discuss whether anyone other than a business competitor has a right to sue, it did specifically not exclude other persons from being classified as victims. *Id*.

The Ninth Circuit recently had an opportunity to discuss the matter in *Del Webb Communities, Inc. v. Partington* and also stated that a person does not have to be a traditional "consumer" in order to be a victim and have standing under the DTPA. 652 F.3d 1145, 1152 (9th Cir. 2011). The Court looked at the plain language of NRS § 41.600 and concluded that a person can be a victim of consumer fraud without being a consumer. *Id. Partington* very clearly acknowledged that standing hinges on if the company's

business practices directly harmed him, not his relationship to the company. *Id.* at 1153.

Even if the DTPA was created primarily for the protection of consumers, other parties do have standing to sue if they were harmed by a violation. The Court must look at the law first in its plain meaning, which here says that "any person" who is a victim of the DTPA may bring a claim for relief. It does not say "any person, except employees against their employers," and to find that the statute discriminates against this class of people would be absurd. Further, even our District Court, J. Jones, has allowed a DTPA claim to proceed in a wage and hour matter. See *Garcia v. Interstate Plumbing*, 10-cv-00410-RCJ-GWF Order of 02/04/2011 P. 12.

Additionally, Defendant has not cited any binding authority in this jurisdiction in which a court has specifically stated that an employee and employer can *never* have a relationship in which an employee can be harmed by the employer's violation of the DTPA. Neither has Defendant cited any binding authority that suggests that the facts of the present case, which show that Plaintiff was harmed by Defendant's violation of the DTPA, are barred from action.

In this case, Defendant essentially asserts that Plaintiff is not a "consumer" under DTPA. However, Plaintiff *is* a person who was a victim of Defendant's fraudulent and deceptive practices relating to the sale or lease of goods or services. It does not matter that Plaintiff and Defendant have an employer/employee relationship, as courts have determined that the relationship of the parties does not matter as long as the plaintiff is harmed by the defendant's violation of the DTPA.

Indeed, Defendant engaged in deceptive trade practices because it violated NRS §§ 613.333 and 453.800 when it failed to provide Plaintiff a reasonable accommodation and terminated Plaintiff' employment because of his lawful use of medical treatment.

As shown above, Defendant violated several different provisions of the DTPA. As a result, this Court should not dismiss Plaintiff's DTPA claim.

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4. Plaintiff Has Properly Pleaded His Claim for Negligent Hiring, Training, and Supervision.

Generally, to state a negligent hiring, training, and supervision claim, a claimant must show (1) a general duty on the employer to use reasonable care in the hiring, training and/or supervision of employees to ensure that they are fit for their positions; (2) breach; (3) injury; and (4) causation. *Okeke v. Biomat USA, Inc.*, 927 F. Supp. 2d 1021, 1028 (D. Nev. 2013). Such claims are based upon the premise that an employer will be held liable when it places an employee who it knows or should have known behaves wrongfully in a position in which that employee can harm another. *Id.* To that end, courts consider whether antecedent circumstances would "give[ ] the employer reason to believe that the person, by reason of some attribute of character or prior conduct, would create an undue risk of harm to others in carrying out his or her employment responsibilities." *Hall v. SSF, Inc.,* 112 Nev. 1384, 1392, 930 P.2d 94, 99 (1996).

Here, Plaintiff's Complaint alleges facts sufficient to show a plausible claim for negligent hiring, training, and supervision. For instance, Plaintiff's Complaint contains the following relevant allegations:

> 104. Defendant had a duty to exercise reasonable care to protect Roushkolb from negligent and/or careless actions of Defendant's own agents, officers, employees, and others.
> 105. Defendant owed a duty to Roushkolb to not hire individuals with a propensity towards committing unlawful acts against Roushkolb.
> 106. Defendant owed a duty to Roushkolb to adequately train and supervise its employees in regards to all correct policies and procedures relating to medical marijuana laws and/or termination policies and procedures.
> 107. Defendant breached its duty to protect Roushkolb by failing to properly hire, train, and/or supervise its employees, whereby a reasonable person could have foreseen the injuries of the type Roushkolb suffered would likely occur under the circumstances.
> 108. As a direct and proximate cause of the foregoing conduct, Roushkolb suffered harm including loss of income and benefits, severe emotional distress including but not limited to great mental and emotional harm, anguish, anxiety, insecurity, damage to self-esteem and self-worth, shame and humiliation, lack of appetite, and loss of sleep and/or anxiety.

See Complaint, ECF No. 1-1, p. 13, line 24 through p. 14, line 11.

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Taking Plaintiff's allegations as true, Defendant knew or should have known that its agents could potentially harm Plaintiff if they were not adequately trained in in regards to correct policies and procedures relating to employees' medical and workplace rights, and/or termination policies and procedures. Even though Defendant knew of should have known of this risk, Defendant negligently failed to correct this problem. As a direct and proximate result of this failure, Plaintiff suffered the damages alleged in his Complaint.

In addition, the Seventh Circuit recently held that an employer may be held liable for a claim of negligent hiring, supervision, or retention claim based on the supervisory authority an employer has over an employee. *Anicich v. Home Depot U.S.A., Inc.*, No. 16-1693, 2017 WL 1101090 (7th Cir. Mar. 24, 2017). Though not binding on this Court, the decision no less supports the basis that Defendant may be held liable for its own negligence in the hiring, training, and supervising of Plaintiff's former superiors at Defendant's business.

Indeed, as Plaintiff alleged sufficient facts to show that Defendant should have known an employee might violate Plaintiff's rights, Plaintiff's fourth cause of action should not be dismissed.

5. Plaintiff Has Properly Pleaded His Claim for Violation of the Medical Needs of an Employee Who Engages in Medical Use of Marijuana

Plaintiff's fifth cause of action for failure to accommodate pursuant to NRS § 453A.010 readily states a claim for which relief may be granted. Bizarrely, Defendant claims that "Plaintiff plainly cannot claim that [Defendant] violated NRS 453A.800 by failing to grant an accommodation that he admittedly "never requested."" ECF No. 13, p. 19, lines 12-13. Defendant ignores the entirety of the quoted sentence (despite inserting it into its Motion) which continues "…***other than a reasonable accommodation not to terminate him***, despite a positive indication for medical marijuana consistent with the recommended therapeutic usage for his serious medical condition (emphasis added)." ECF No. 1-1, p. 15, lines 21-24. Indeed, Plaintiff's Complaint undeniably includes the well-pleaded fact that Plaintiff requested a reasonable accommodation regarding his lawful, medical use of

marijuana.

Defendant then presents the irrelevant argument that NRS § 453A.800(2) is in some ways similar to Montana's Medical Marijuana Act (the "MMA"). *See* ECF No. 13, p. 19. Defendant's reliance is misplaced.

First, although it is true the MMA may not be construed to require employers to accommodate medical marijuana use *within* the workplace (*Johnson v. Columbia Falls Aluminum Co., LLC*, 2009 MT 108N, ¶ 5, 350 Mont. 562, 213 P.3d 789), Plaintiff sought no such accommodation here. Instead, Plaintiff's sought the reasonable accommodation of simply not being terminated for his lawful use of medical marijuana outside the premises of the Defendant during his non-working hours. *See* ECF No. 1-1, p. 15.

Second, unlike the MMA, NRS Chapter 453A allows a private right of action. Indeed, Plaintiff is the class of persons meant to be protected by the law, and allowing a private right of action under § 453.800 is consistent with the underlying purposes of the legislative scheme. As there is no administrative agency that could enforce Plaintiff's rights under § 453A.800, without a private remedy an employee would not have *any* recourse under the statute, and thus the statute would be rendered "inconsequential" and "nugatory." *Metz v. Metz*, 122 Nev. 786, 787, 101 P.3d 779, 792 (2004)([N]o part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can be properly avoided.") Accordingly, no legitimate reason exists to eviscerate NRS Chapter 453A of its private right of action following the Nevada Supreme Court's directive toward Nevada statutes.

CONCLUSION

For the reasons stated above, this Court should deny Defendant's Motion to Dismiss. Plaintiff respectfully attests this Court need not (1) read a CBA interpretation issue into a Complaint where none exists to justify preemption and (2) ignore the well-pleaded allegations and voter-approved, Constitutionally-provided claims that do appear on the face of the Complaint.

Instead, Plaintiff respectfully requests that this Honorable Court deny Defendant's

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Motion in its entirety so that his claims may proceed and be decided on the merits.

DATED this 4th day of February 2020.

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By: _/s/ *Christian Gabroy*_____
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Kaine Messer (#14240)
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CERTIFICATE OF SERVICE

I, Christian Gabroy, this 4th day of February 2020, served through the Electronic Case Filing system of the United States District Court, District of Nevada, a true and correct copy of the foregoing **PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS** addressed to:

Jackson Lewis P.C.
Paul T. Trimmer, Esq.
Lynne K. McChrystal, Esq.
Jackson Lewis P.C.
300 S. Fourth Street
Suite 900
Las Vegas, NV 89101
Attorneys for Defendant

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By: */s/ Christian Gabroy*
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EXHIBIT I

Declaration of Christian Gabroy, Esq.

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Kaine Messer (#14240)
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Attorneys for Plaintiff James Roushkolb

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JAMES ROUSHKOLB, an individual;

Plaintiff,

vs.

THE FREEMAN COMPANY, LLC, a Domestic Corporation; EMPLOYEE(S)/AGENT(S) DOES I-X; and ROE CORPORATIONS XI-XX, inclusive;

Defendant.

Case No: 2:19-cv-02084-JCM-NJK

DECLARATION OF CHRISTIAN GABROY IN SUPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

DECLARATION OF CHRISTIAN GABROY IN SUPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Christian Gabroy, an attorney duly admitted to practice law in the State of Nevada and a member of the bar of this Court, hereby affirms, per 28 USC § 1746 that:

1. I am counsel for Plaintiff James Roushkolb in this matter.

2. I am submitting this declaration in support of Plaintiff's Plaintiff's Response In Opposition To Defendant's Motion To Dismiss.

3. A true and correct copy of the September 10, 2017 Legal Division of the State of Nevada Legislative Counsel Bureau's ("Legislative Counsel") Letter to Senator Segerblom is attached to Plaintiff's Response In Opposition To Defendant's Motion To Dismiss as Exhibit II.

//

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I declare under penalty as prescribed in 28 USC § 1746 that the foregoing is true and correct.

Affirmed this 4th day of February 2020 in Henderson, Nevada.

/s/ Christian Gabroy
Christian Gabroy, Esq.

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EXHIBIT II

September 10, 2017 Letter to Senator Segerblom

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LEGISLATIVE BUILDING
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CARSON CITY, NEVADA 89701-4747
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Rick Combs, *Director, Secretary*

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Mark Krmpotic, *Fiscal Analyst*
Cindy Jones, *Fiscal Analyst*

BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830
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SUSAN E. SCHOLLEY, *Research Director* (775) 684-6825

September 10, 2017

Senator Richard "Tick" Segerblom
701 East Bridger Avenue, # 520
Las Vegas, Nevada 89101-5554

Dear Senator Segerblom:

You have asked this office whether a business may establish and operate a lounge or other facility or special event at which patrons of the business are allowed to use marijuana and, if so, whether counties, cities and towns may require a business license or permit and impose regulations and other restrictions on the manner in which the lounge or other facility or special event is operated. You have also asked whether the failure of the Nevada Legislature to enact Senate Bill No. 236 of the 79th Session, which would have placed certain limitations on the powers of counties and cities to license and regulate such businesses, will affect our analysis of these issues.

The statutory provisions governing the possession, sale and use of marijuana in Nevada are provided in two separate chapters of NRS. Chapter 453A of NRS contains the provisions governing the possession, sale and use of medical marijuana and chapter 453D of NRS contains the provisions governing the possession, sale and use of marijuana by adults. A person who holds a valid registry identification card or letter of approval is exempt from state prosecution for possession, delivery and production of marijuana. NRS 453A.200 and 453A.205. The purchase, possession and use of marijuana and marijuana paraphernalia is also generally decriminalized for persons who are 21 years of age or older. NRS 453D.110, 453D.120 and 453D.130. However, certain limitations are placed on the consumption of marijuana by a person who is otherwise authorized to possess marijuana. Such a person is prohibited from driving, operating or being in actual physical control of a vehicle or vessel under power or sail while under the influence of marijuana. NRS 453A.300 and 453D.100. Such a person is also prohibited from possessing or consuming marijuana at a school or correctional facility. NRS 453A.300 and 453D.100. A person who holds a valid registry identification card or letter of approval is prohibited from possessing or consuming marijuana in "any public place or in any place open to the public or exposed to public view." NRS 453A.300. A person who is 21 years of age or

older is prohibited from consuming marijuana "in a public place, in a retail marijuana store or in a moving vehicle." NRS 453D.400. The provisions of chapter 453D of NRS, which concern the adult use of marijuana, define a "public place" as "an area to which the public is invited or in which the public is permitted regardless of age" and specifically exclude a retail marijuana store. NRS 453D.030. The provisions of chapter 453A of NRS, which concern the medical use of marijuana, do not define "public place," but use the term in a manner which is consistent with the definition in chapter 453D of NRS to create a similar prohibition on the possession and consumption of marijuana. Pursuant to the rules of statutory construction, if the Legislature does not expressly define a term, a court may supply a definition by referring to the definitions of similar terms found in related statutes. *See* Univ. and Cmty. Coll. Sys. v. DR Partners, 117 Nev. 195, 199-201 (2001); Advanced Sports Info., Inc. v. Novotnak, 114 Nev. 336, 341 (1998). Additionally, "when the same word is used in different statutes that are similar with respect to purpose and content, the word will be used in the same sense, unless the statutes' context indicates otherwise." Savage v. Pierson, 123 Nev. 86, 94 (2007).

Notably, neither chapter of NRS limits the possession or consumption of marijuana to only certain enumerated locations; rather, both chapters broadly exempt the possession and consumption of marijuana from state prosecution, then prohibit only certain enumerated manners or locations of possession or consumption. Based upon the rules of statutory construction, criminal statutes are strictly construed against the state, and any ambiguities in criminal statutes must be resolved in favor of the accused. Knight v. State, 116 Nev. 140, 146-47 (2000). As a result, both chapters must be construed to permit any possession or consumption of marijuana not expressly prohibited by statute. Further, when two or more statutes seek to accomplish the same purpose or object, a court will interpret those statutes "harmoniously with one another to avoid an unreasonable or absurd result." Nev. Att'y for Injured Workers v. Nev. Self-Insurers Ass'n, 126 Nev. 74, 84 (2010). Thus, unless one chapter expressly imposes a restriction on the possession or consumption of marijuana that the other does not, chapters 453A and 453D of NRS should be read together to permit the possession or consumption of marijuana in similar circumstances.

When read together, the relevant provisions of chapters 453A and 453D of NRS prohibit the possession or consumption of marijuana at a place where the public is invited or in which the public is permitted regardless of age or a place exposed to public view. NRS 453A.300, 453D.030 and 453D.400. This language would not prohibit the possession or use of marijuana at a place to which the public is not invited or permitted, including a person's home or a lounge or other facility with restricted access, such as a private lounge or other facility, which is closed to the public and only allows entry to persons who are 21 years of age or older, so long as the possession or consumption of marijuana at such a location is not exposed to public view. Similarly, possession or consumption of marijuana would not be prohibited at an event which imposes restrictions for entry on the basis of age so long as the possession or consumption of marijuana is not

exposed to public view during the event. However, while a retail marijuana store would fall into this category of businesses which impose restrictions for entry on the basis of age, consumption of marijuana within a retail marijuana store is specifically prohibited by NRS 453D.400.

In addition to the more recently approved statutes specifically relating to marijuana, there is an additional statute which merits discussion. NRS 453.316 prohibits a person from opening or maintaining "any place for the purpose of unlawfully selling, giving away or using any controlled substance." Additionally, to sell marijuana a person is required to hold a medical marijuana establishment registration certificate or a license for a marijuana establishment. A person who sells marijuana without such a certificate or license remains subject to state prosecution for the sale of or trafficking in marijuana pursuant to chapter 453 of NRS. *See* NRS 453A.200, 453D.100 and 453D.120. Because it is presumed that the Legislature intended for its legislative enactments to be read as part of a larger statutory scheme, a court will strive to interpret statutes relating to the same subject in such a manner as to render the statutes compatible with each other whenever possible. State v. Rosenthal, 93 Nev. 36, 45 (1977). Here, the provisions of chapters 453A and 453D of NRS allow a person holding the appropriate registration certificate or license to lawfully sell marijuana under the laws of this State, despite the fact that such a sale remains prohibited by federal law. Similarly, the provisions of chapters 453A and 453D of NRS allow a person holding a registry identification card or letter of approval or who is 21 years of age or older, respectively, to lawfully possess and consume marijuana under the laws of this State, despite the fact that such possession or consumption remains prohibited by federal law. A court will strive to interpret these provisions in harmony with NRS 453.316. Id. If the word "unlawfully" in NRS 453.316 were interpreted in a way that includes a violation of federal law, such an interpretation would essentially render chapters 453A and 453D of NRS void by continuing to criminalize activities that the Legislature by statute or the people by initiative explicitly made legally permissible. Whenever possible, a court "will avoid rendering any part of a statute inconsequential." Savage v. Pierson, 123 Nev. 86, 94 (2007). As a result, "no part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided." Metz v. Metz, 120 Nev. 786, 787 (2004). Since considering whether a sale or use violates federal law for the purpose of determining whether the sale or use is "unlawful" for the purposes of NRS 453.316 would have the effect of rendering entire chapters of NRS nugatory and that consequence can be avoided by considering only whether a sale or use violates the laws of this State, chapters 453A and 453D of NRS must be read in harmony with NRS 453.316 to render a sale or use which is lawful under the laws of this State to be similarly lawful for the purpose of not creating a violation of NRS 453.316.

Similarly, a business that operates a lounge or other facility or special event in which the business allows the consumption of marijuana would not violate NRS 453.316 because the person operating the business or special event would not be maintaining the

place "for the purpose of *unlawfully*…using any controlled substance" (emphasis added). However, as marijuana may only be sold to a consumer by a medical marijuana dispensary or a retail marijuana store, and consumption of marijuana in a medical marijuana dispensary or retail marijuana store is prohibited by NRS 453A.352 and 453D.400, a business where the consumption of marijuana is allowed could not hold a registration certificate as a medical marijuana dispensary or license as a retail marijuana store and thus could not also lawfully sell marijuana.

Therefore, because we have established that the laws of this State generally authorize the possession and consumption of marijuana by certain persons and prohibit the possession and consumption of marijuana only in certain enumerated circumstances or locations, it is the opinion of this office that a business may establish and operate a lounge or other facility or special event at which patrons of the business are allowed to use marijuana.

You have also asked whether counties, cities and towns may require a business license or permit and impose requirements and restrictions on the operation of a lounge or other facility or special event at which patrons of the business are allowed to use marijuana. The Legislature has chosen to expressly grant counties, incorporated cities and unincorporated towns the power to impose a license tax upon and regulate, subject to limitations for certain kinds of businesses, all manner of lawful businesses which are conducted within the jurisdiction of the county, city or town. NRS 244.335, 268.095 and 269.170. In Nevada, local governments derive their powers from state law and, as applicable, their charters. *See* Ronnow v. City of Las Vegas, 57 Nev. 332, 341-43 (1937); Sadler v. Board of County Comm'rs, 15 Nev. 39, 42 (1880). Since the Legislature has chosen to expressly grant counties, cities and towns the power to generally license and tax businesses within the jurisdiction of the county, city or town, these local governments clearly have the power.

Therefore, it is the opinion of this office that counties, cities and towns may require a business that wishes to operate a lounge or other facility or special event at which patrons of the business are allowed to use marijuana to secure a license or permit before commencing operation. It is further the opinion of this office that the county, city or town may impose restrictions and otherwise regulate such businesses so long as the regulations or other restrictions do not violate state law.

You have also asked whether the failure of the Nevada Legislature to enact Senate Bill No. 236 of the 79th Session will affect our analysis of whether counties, cities or towns may require a business license or permit and impose requirements and restrictions on the operation of a lounge or other facility or special event at which patrons of the business are allowed to use marijuana.

Senate Bill No. 236 of the 79th Session would have placed various specific limitations on the power of counties and cities to license and regulate businesses and

special events in which the possession and consumption of marijuana is allowed by establishing certain minimum requirements for such a business or special event. In the absence of Senate Bill No. 236, as explained earlier in this opinion, the provisions of NRS 244.335, 268.095 and 269.170 grant counties, cities and towns the power to license such businesses or special events on whatever terms they determine to be appropriate and to impose a tax on such businesses or special events in an amount determined by the county, city or town. Notably, the power of a county, city or town to license and regulate businesses is limited to "lawful" businesses, so the county, city or town must at a minimum require such a business to comply with the provisions of state law as described in the previous section.

When interpreting constitutional provisions and amendments, the Nevada Supreme Court applies the same rules of construction that are used to interpret statutes. Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 538 (2001). Under those rules of construction, the Nevada Supreme Court generally gives limited weight to subsequent legislative proposals when determining the meaning of existing language, especially when the subsequent legislative proposals are defeated. See Great Basin Water Network v. Taylor, 126 Nev.Adv.Op. 20, 234 P.3d 912, 918 n.8 (2010) (following Pension Benefit Guar. Corp. v. LTV Corp., 496 U.S. 633, 650 (1990)). As further explained by the U.S. Supreme Court:

> But subsequent legislative history is a "hazardous basis for inferring the intent of an earlier" Congress. United States v. Price, 361 U.S. 304, 313 (1960). It is a particularly dangerous ground on which to rest an interpretation of a prior statute when it concerns, as it does here, a proposal that does not become law. See, e.g., United States v. Wise, 370 U.S. 405, 411 (1962). Congressional inaction lacks "persuasive significance" because "several equally tenable inferences" may be drawn from such inaction, "including the inference that the existing legislation already incorporated the offered change." Id.

Pension Benefit Guar. Corp., 496 U.S. at 650. Thus, "[t]he interpretation placed upon an existing statute by a subsequent group of Congressmen who are promoting legislation and who are unsuccessful has no persuasive significance here." Wise, 370 U.S. at 411.

Additionally, pursuant to the rules of statutory construction, repeal by implication is "heavily disfavored," and a court will not consider a prior statute to be repealed by implication by a later statute unless there is no other reasonable construction of the two statutes. Washington v. State, 117 Nev. 735, 739 (2001). Here, the Legislature did not choose to enact a later statute to repeal the existing power of counties, cities and towns to license and regulate businesses, including, without limitation, businesses where the possession or consumption of marijuana is allowed. Because repeal by implication in a statute later enacted by the Legislature is heavily disfavored, it would create an

unreasonable and absurd result to allow the choice of the Legislature not to enact a later statute to itself repeal a provision of existing law by implication, and courts will strive to avoid any interpretation which leads to unreasonable or absurd results. Nev. Tax Comm'n v. Bernhard, 100 Nev. 348, 351 (1984). The more reasonable interpretation of the choice of the Legislature not to enact Senate Bill No. 236 of the 79th Session would be that the Legislature intended to allow the provisions of NRS 244.335, 268.095 and 269.170, which already grant counties, cities and towns to determine the circumstances under which they will license and tax businesses within their jurisdiction, to stand without the imposition of further restraints on particular kinds of businesses.

In conclusion, it is the opinion of this office that under current law: (1) a business may establish and operate a lounge or other facility or special event at which patrons of the business are allowed to use marijuana in compliance with state law; and (2) a county, city or town may adopt and enforce an ordinance which requires such a business to purchase a business license or permit and comply with any applicable regulations or other restrictions imposed by the county, city or town.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Sincerely,

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JAMES ROUSHKOLB, Plaintiff, vs. THE FREEMAN COMPANY, LLC, a Domestic Corporation; EMPLOYEE(S)/AGENT(S) DOES I-X; and ROE CORPORATIONS XI-XX, Inclusive, Defendants.	Case No. 2:19-cv-02084-JCM-NJK **DEFENDANT'S REPLY IN SUPPORT OF MOTION TO DISMISS**

Defendant Freeman Expositions, LLC improperly named as the Freeman Company, LLC ("Freeman" or "Defendant"), by and through its counsel, submits this Reply in Support of Motion to Dismiss. This Reply is supported by the attached memorandum of points and authorities, the pleadings and papers on file herein, and any other evidence and oral argument this Court may entertain.

I. INTRODUCTION

There is no dispute that Freeman terminated Roushkolb because he tested positive for marijuana in a post-accident drug test. Article 15 of Freeman's collective bargaining agreement with Teamsters Local 631 specifically provides for discharge under such circumstances. Exhibit 13-1 at pp. 38-42. It adopts federal Department of Transportation "cut off levels," identifies

marijuana as an "illegal drug," and establishes that blood concentrations of more than 50 ng/ml will lead to immediate termination. *Id.* at p. 41. Roushkolb's post-accident test exceeded that cut-off level – which is subject to and governed by federal, **not** state law – so he was discharged. When he filed his Complaint, Freeman therefore moved to dismiss both because his five claims are preempted by Section 301 of the Labor Management Relations Act, *see, e.g., Firestone v. Southern California Gas Co.*, 281 F.3d 801, 802 (9th Cir. 2002), and because the claims fail as a matter of law.

Plaintiff's response to the preemption issue is not persuasive. In the main, he contends that his claims do not arise from and do not depend on the CBA because he has pleaded them under both state common law and a handful of Nevada statutes. *See* Opp. at 5. But that is not the law. The "preemptive force of § 301 is so powerful as to displace entirely any state cause of action" which arises from or depends on the provisions of a collective bargaining agreement. *Martel v. MEI-GSR Holdings, LLC*, No. 3:16-CV-00440-RJC-WGC, 2016 WL 7116013, at *3 (D. Nev. Dec. 6, 2016) (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 23 (1983)) (declining to find that state wage and hour claims are preempted by the collective bargaining agreement). Nor is this a situation like *Martel* where the collective bargaining agreement is, at best, a defense to Plaintiff's statutory causes of action. To the contrary, it is *well established* that common law tortious discharge and negligent hiring claims, like Counts II and IV of the Complaint, are preempted by Section 301 because they are "inextricably intertwined with consideration of the terms of the labor contract." *Hyles v. Mensing*, 849 F.2d 1213, 1216 (9th Cir. 1988).

Freeman and Local 631 agreed that employees covered by the CBA were subject to federal Department of Transportation drug standards. To sustain any of Plaintiff's claims, the Court would be required to find that parties may not bargain over marijuana usage contrary to Nevada or other state laws, thereby nullifying the collectively bargained drug and alcohol provisions in Article 15, despite the fact that collective bargaining relationships are governed by federal law and despite the fact that marijuana remains illegal under the federal Controlled Substances Act. Neither this Court nor any state court has such authority. *See Schlacter-Jones*

v. General Tel. of Cal., 936 F.2d 435, 441 (9th Cir. 1991) (claim preempted because CBA contained collectively bargained drug and alcohol policy); *Laws v. Calmat*, 852 F.2d 430 (9th Cir. 1988) (employee's challenge of collectively bargained drug and alcohol policy preempted); *Assenberg, et al. v. Anacortes Housing Authority*, No. C051836RSL, 2006 U.S. Dist. LEXIS 34002, at *5 (W.D. Wash. May 25, 2006).

For these reasons and the reasons set forth in more detail below, Freeman's Motion should be granted, and the Complaint should be dismissed with prejudice.

II. LEGAL ARGUMENT

A. Plaintiff's Opposition Fails to Demonstrate that His Claims Are Not Preempted by Section 301 of the LMRA.

Plaintiff's contention that he was terminated for his "lawful" use of marijuana necessarily requires the Court to interpret, rather than merely reference, the applicable CBA to ascertain the viability of the causes of action based thereon. *Grayson v. Titanium Metals Corp.*, Case No. 2:08-cv-1874-KJD-GWF, 2009 U.S. Dist. LEXIS 7235, at *2-3 (D. Nev. Jan. 30, 2009) (state claims which necessarily entail examination and interpretation of the collective bargaining agreement preempted); *see also Riggs v. Continental Baking Co.*, 678 F. Supp. 236, 238 (N.D. Cal 1988) ("[p]laintiff was a member of the union and working under the collective bargaining agreement at the time of his discharge. As the resolution of any state law claim regarding plaintiff's termination requires interpretation of the contract provisions, they are preempted by Section 301.").

More specifically, consideration of each of Plaintiff's five causes of action requires the Court to review and interpret Articles 14 (discipline) and the Drug Policy set forth in Article 15 of the CBA to determine if his termination was unlawful, violative of public policy, and/or implicated a duty to accommodate him and train its employees to accommodate him. This requires the Court to decide, among other issues, whether the Drug Policy was a valid term and condition of Plaintiff's employment and assess whether Plaintiff's medical marijuana rights are "subject to negotiation and [can] be conditioned by the terms of the CBA." *Cramer v. Consol.*

Freightways, Inc., 255 F.3d 683, 694 (9th Cir. 2001);[1] *see also Schlacter-Jones*, 936 F.2d at 441 (plaintiff's claim preempted where examination of the CBA required to determine whether a drug policy was a valid term and condition of employment); *Laws*, 852 F.2d at 430 (upholding dismissal based on Section 301 preemption where employee challenged employer's drug and alcohol testing program and his suspension for refusal to participate).

Similarly, the Court would be required to interpret whether marijuana constituted an "illegal drug" pursuant to the CBA and/or was validly designated as such, whether Freeman and the Union may proscribe the misuse of legal drugs through a collectively bargained agreement, that the post-accident drug testing was properly triggered, that Freeman properly exercised its right to discharge workers pursuant to the management rights clause, and that summary issuance of a Letter of No Dispatch rather than progressive discipline was the appropriate disciplinary measure pursuant to Article 14.

As briefly noted above, Plaintiff's reference to *Martel v. MEI-GSR Holdings, LLC*, Case No. 3:16-cv-00440-RJC-WGC, 2016 U.S. Dist. LEXIS 168461, 2016 WL 7116013 (D. Nev. Dec. 6, 2016), only confirms that preemption is required here. The *Martel* court rejected the same argument Plaintiff advances in his Opposition-that the Court should not analyze the CBA because Plaintiff deliberately chose not to plead its existence: "[i]ndeed, state-law claims arising under a labor contract are entirely preempted by Section 301, **even in some instances in which the plaintiffs have not alleged a breach of contract in their complaint, if the plaintiffs' claim is either grounded in the provisions of the labor contract or requires interpretation of it**." *Id.* at *7 (citing *Burnside v. Kiewit Pac. Corp.*, 491 F.3d 1053, 1059 (9th Cir. 2007)) (emphasis added). The *Martel* Court reviewed the applicable collective bargaining agreement but found that substantial interpretation was not required to calculate unpaid wages because "merely looking to a CBA to calculate the amount of unpaid wages does not trigger Section 301 preemption." *Id.* at *14-15.

The nature of Plaintiff's claims calls for the opposite result here. In order to assess the

[1] In *Cramer*, the court found that the privacy rights at issue were *not* subject to and conditioned by the terms of the CBA. That is not the case here.

viability of each of Plaintiff's five causes of action, the Court must do more than merely reference the CBA for defined values such as wage rates. Plaintiff has not challenged Freeman's non-exhaustive examples of the interpretation required or otherwise explained why "merely looking" to the CBA would suffice here. No such explanation exists. Accordingly, because Plaintiff's claims are inextricably intertwined with the CBA, and because any determinations regarding Freeman's ability to release Plaintiff because his use of medical marijuana led him to perform unsafely would require the Court to substantially interpret and apply the collective bargaining agreement, each of Plaintiff's claims for relief is preempted.

Finally, Plaintiff's Opposition fails to address the actual conflict between Plaintiff's claims and federal law. Here, Freeman and Local 631 bargained in good faith over a mandatory subject of bargaining under the National Labor Relations Act and arrived at a carefully considered drug and alcohol policy and testing procedure that confirmed the illegality of marijuana, which is illegal under federal law. The Union has the authority under federal law, to negotiate limitations on or even waive, the rights of employees so long as it has done so clearly and unmistakably. *See 14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 257, 129 S. Ct. 1456, 1464 (2009). Article 15 unquestionably satisfies this requirement.

Moreover, while it is undoubtedly true that state laws and requirements are always a factor in collective bargaining negotiations, this is a case where recognition of Roushkolb's state law marijuana claims creates actual and direct conflict with the Controlled Substances Act, and by extension federal labor law. The purpose and power of Section 301's complete preemption is to prevent such inconsistency. *See Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 104, 82 S. Ct. 571, 577, 7 L. Ed. 2d 593 (1962). Indeed, "[t]he application of state law to CBA disputes might lead to inconsistent results since there could be as many state-law principles as there are States." *Alaska Airlines, Inc. v. Schurke*, 898 F.3d 904, 919 (9th Cir. 2018). Section 301 preemption is necessary in such circumstances to ensure that uniform application of federal law – which makes collective bargaining possible – "will be frustrated neither by state laws purporting to determine questions relating to what the parties to a labor agreement agreed…nor by parties' efforts to renege on their arbitration promises…." *Smith v. UPS*, 433 Fed. Appx. 623, 626 (9th Cir. 2011).

B. Plaintiff's Opposition Fails to Demonstrate that His Five Causes of Action Should Not Be Dismissed for Failure to State a Claim.

1. Plaintiff's claim pursuant to NRS § 613.333 fails as a matter of law.

The bulk of Plaintiff's Opposition consists of an attempt to extend the bounds of Nevada law to salvage his claim under NRS § 613.333. Opp. at 7:15-11:11. His theory of relief would import the intent of Nevada's medicinal marijuana statute (NRS § 453A), into a statute enacted 10 years prior (NRS § 613.333). The text of the statute does not support this claim, and there is no legal precedent or legislative history to support Plaintiff's repurposing of the statute. As noted in the Motion, *Brandon Coats v. Dish Network, LLC*, 350 P.3d 849 (Colo. 2013) provides compelling guidance: "[i]n this case, we find nothing to indicate that the General Assembly intended to extend section 24-34-402.5's protection for "lawful" activities to activities that are unlawful under federal law." *Id.* at 853; Opp. at 8:20-24. Here, the Court should similarly reject Plaintiff's claim.

Plaintiff's attempt to respond to the foregoing analysis is not persuasive. He provides a September 10, 2017 legal opinion from the State of Nevada's Legislative Counsel Bureau, Opp. Ex. II. A memo issued years after the statute's enactment is not legislative intent. Moreover, the opinion analyzes only whether business may operate a facility at special events where guests are permitted to use marijuana. It does not contain a single reference to NRS § 613.333, nor purport to address the employee/employer relationship. *Id.* Its analysis of the term "unlawful" is limited to the decriminalization of marijuana use related to the "unlawful sale, gift or use of controlled substance" and accordingly has no bearing on the insufficiency of Plaintiff's NRS § 613.333 claim. *Id.* at p. 4; NRS § 453.316.

The Connecticut, Rhode Island, Massachusetts, and Arizona cases relied upon by Plaintiff are equally unavailing due to the dissimilarity of the statutes at issue in those cases and NRS § 613.333. Opp. at 9:22-11:11. In Connecticut, the Palliative Use of Marijuana Act ("PUMA") "includes a provision that explicitly prohibits discrimination against qualifying patients and primary caregivers by schools, landlords, and employers." *Noffsinger v. SSC Niantic Operating Co. LLC*, 273 F. Supp. 3d 326, 331 (D. Conn. Aug. 8, 2017) (referencing Conn. Gen.

Stat. § 21a-408p(b)). NRS § 613.333 does not contain a provision expressly prohibiting discrimination against medical marijuana patients by employers. In Rhode Island, the Hawkins-Slater Act, which addresses medical marijuana use, also has a specific anti-discrimination provision: "[n]o school, employer, or landlord may refuse to enroll, employ, or lease to, or otherwise penalize, a person solely for his or her status as a cardholder." *Callaghan v. Darlington Fabrics Corp*., 2017 R.I. Super. LEXIS 88, *5-6 (R.I. Super. 2017). No similar, express language is present in NRS § 613.333. In Arizona, the Medical Marijuana Act ("AMMA") likewise contains an affirmative anti-discrimination provision. *Whitmire v. Wal-Mart Stores Inc*., 359 F. Supp. 3d 761, 774 (D. Az. 2019) (AMMA includes an anti-discrimination provision, A.R.S. § 36-2813(B), which provides that an employer may not discriminate based on a registered qualifying patient's positive drug test). Again, NRS § 613.333 does not contain a similar provision. Finally, the Massachusetts authority Plaintiff cites in his Opposition,[2] wherein the Massachusetts Supreme Court permitted an employee to bring a claim of disability discrimination based on her medical marijuana use, only serves to highlight what Plaintiff failed to do here: pursue a claim of disability discrimination with the proper administrative agency.

2. Plaintiff's wrongful discharge claim fails as a matter of law.

Plaintiff's allegations do not establish a "rare and exceptional case[] where the employer's conduct violates strong and compelling policy." *Sands Regent v. Valgardson*, 105 Nev. 436, 440 (1989). Plaintiff's allegations do not fit within any of the protected categories recognized by Nevada law: 1) refusing to engage in unlawful conduct, *Allum v. Valley Bank of Nevada*, 114 Nev. 1313, 1321 (1998); 2) refusing to work in unreasonably dangerous conditions, *Western States v. Jones*, 107 Nev. 704 (1991); or 3) filing a workers compensation claim, *Hansen v. Harrah's*, 100 Nev. 70 (1984). Plaintiff's assertion that "the heart of the purpose and intent of Nevada's medical marijuana laws is compassion for those suffering from serious medical conditions and acknowledgment of the right to determine their own course of treatment," Opp. at 12:19-21, does not change that fact. Whatever "the heart of the purpose" of

[2] *Barbuto v. Advantage Sales & Mktg., LLC*, 477 Mass. 456, 464, 78 N.E.3d 37, 45 (2017).

NRS § 459A may be, it is not sufficient to establish a new exception to Nevada's at-will employment doctrine.

Plaintiff's contention that his case is in fact "rare and exceptional" because his "right to seek his or her own legal course of treatment for [his] serious disability, based upon [his] physician's professional medical judgment" was violated is meritless. Opp. at 11:23-26. It is a transparent attempt to recharacterize a statutory disability claim, which is not the claim at issue, as a wrongful discharge claim. The Nevada Supreme Court has already found that such public policy-based allegations fail to state a claim. *See Chavez v. Sievers*, 118 Nev. 288, 293 (2002). *Whalen v. Roe*, 429 U.S. 589, 97 S. Ct. 869 (1977), which concerns constitutional rights to privacy, has no bearing on the issue of whether Plaintiff's termination for medical marijuana use violated the strong and compelling policy of the State of Nevada.

3. Plaintiff's deceptive trade practices claim fails as a matter of law.

In his Opposition, Plaintiff argues that the Nevada Deceptive Trade Practices Act ("NDTPA") should be expanded to encompass his employment-based claims because he "is a person who was a victim of Defendant's fraudulent and deceptive sales practices relating to the sale or lease of goods of services." Opp. at 15:16-18. This is nonsensical. There are no allegations in Plaintiff's Complaint that Freeman sold or leased goods or services to Plaintiff. Further, the absence of any relevant transaction involving goods or services also undermines Plaintiff's attempt to rely on *Del Webb Cmtys., Inc. v. Partington*, 652 F.3d 1145 (9th Cir. 2011) to salvage his NDTPA claim. The basis for the claims in *Partington* involved a third party's illegal structural inspections and provision of misleading inspection reports to homebuilder's customers, which damaged the homebuilder's relationship with these consumers. *Id.* at 1153. The *Partington* court clarified that the homebuilder could pursue its claims because misrepresentations were in fact made to consumers, and the damages stemming from the misrepresentation extended to the homebuilder's business interests; it certainly never contemplated applying the NDTPA to the employer/employee relationship.

Plaintiff's suggestion that the United States District Court of Nevada "has allowed a DTPA claim to proceed in a wage and hour matter" is both unavailing and misleading. Opp. at

15:7-9. In *Garcia v. Interstate Plumbing & Air Conditioning, LLC*, 2011 U.S. Dist. LEXIS 14701, *23, 2011 WL 468439 (D. Nev. 2011), the court granted plaintiff leave to amend his complaint in order to add new claims, including claims arising under the Nevada Deceptive Business Practices Act. *Id.* It did not assess the viability of any such claims. *Id.*

Finally, Plaintiff's Opposition fails to address Freeman's well-founded argument that the Complaint fails to plead the alleged fraud underlying the NDTPA claim with particularity. *See George v. Morton*, 2007 U.S. Dist. LEXIS 15980, *11 (D. Nev. Mar 1, 2007) (NRS § 598 statements that rely on fraud must satisfy the pleading requirements of Rule 9(b)). The failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion." Local Rule 7-2(d). In its application, the Rule is not limited to instances where the non-moving party fails to file any opposition whatsoever. Rather, LR 7-2(d) also applies when the non-moving party files an opposition but does not contest the moving party's specific arguments advocating dismissal. *Corey v. McNamara*, 409 F.Supp.2d 1225, 1228-29 (D. Nev. 2006); *Grove v. Kadlic*, 968 F. Supp. 510, 516 (D. Nev. 1997). Plaintiff does not specify the "time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentations." *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007). Plaintiff also fails to set forth "what is false or misleading about a statement, and why it is false." *Ebeid ex rel. U.S. v. Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010). The lack of specificity in Plaintiff's Complaint mandates this claim be dismissed.

4. Plaintiff's claim for negligent hiring, training, and supervision fails as a matter of law.

Plaintiff's Opposition regarding his fourth cause of action for negligent hiring, training, and supervision (hereinafter "negligent hiring") merely restates the allegations in his Complaint. Opp. at 16:1-17:16. Plaintiff does not address Freeman's argument that his tort claim is preempted by NRS 613.330, *et seq.*, which provides the exclusive remedy for tort claims premised on illegal employment practices. As with his failure to address Freeman's heightened pleading argument with respect to his NDTPA claim, Plaintiff's failure to respond to Freeman's

preemption argument is fatal to his negligent hiring claim. Local Rule 7-2(d); *Corey*, 409 F.Supp.2d at 1228-29; *Grove*, 968 F. Supp. 510 at 516.

"NRS § 613.330 *et seq*. provides the exclusive remedy for tort claims premised on illegal employment practices. Plaintiff does not dispute that the basis for his Complaint is alleged illegal employment practices. The Nevada Supreme Court, as well as the District Court for the District of Nevada, have held that tort claims premised on discrimination in employment are remedied under the statute." *Brinkman v. Harrah's Operating Co., Inc.*, 2:08-cv-00817-RCJ-PAL, 2008 U.S. Dist. LEXIS 123992 at*3 (D. Nev. October 16, 2008). The U.S. District Court for the District of Nevada has applied the same rationale and dismissed state tort claims when such claims were premised upon discriminatory conduct covered by state or federal statutes with adequate remedies. *See Jackson v. Universal Health Servs.*, No. 2:13-cv-01666-GMN-NJK, 2014 U.S. Dist. LEXIS 129490 (D. Nev. Sept. 15, 2014) (dismissing negligent hiring, supervision and training claim based on alleged race and gender discrimination when there is an exclusive statutory remedy for these claims); *Westbrook v. DTG Operations, Inc.*, No. 2:05-cv-00789-KJD-PAL, 2007 U.S. Dist. LEXIS 14653, at *19 (D. Nev. Feb. 28, 2007) (dismissing negligence *per se* claim based on violations of the Americans with Disabilities Act); *Colquhoun v. BHC Montevista Hospital, Inc.*, No. 2:10-cv-0144-RLH-PAL, 2010 U.S. Dist. LEXIS 57066 (D. Nev. June 9, 2010) (dismissing negligent hiring, supervision and training claim based on alleged discrimination, stating "the fact that an employee acts wrongfully does not in and of itself give rise to a claim for negligent hiring, training or supervision").

5. Plaintiff's Fifth Cause of Action fails to state a claim for "violation of the medical needs of an employee who engages in medical use of marijuana to be accommodated by employer."

In his Opposition, Plaintiff contends that Nevada's medical marijuana statute "allows a private right of action." Opp. 18:11. However, Plaintiff does not cite to, reference, or otherwise indicate *where* within the statute the legislature expressly provided employees with a private right of action. Opp. 17:17-18:21. The only reference to employers in the statute is NRS 453A.800(3)'s discussion of accommodation in the workplace. However, Plaintiff does not allege that he requested an accommodation prior to undergoing a post-accident drug test. *See*

generally Compl. Plaintiff does not allege he disclosed his medical marijuana use to anyone at Freeman. *Id.* Indeed, the allegations in Plaintiff's Complaint are identical to those rejected by the Montana Supreme Court in *Johnson v. Columbia Falls Aluminum Co., LLC,* 2009 MT 108N, P5, 2009 Mont. LEXIS 120, *5 (Mont. 2009), which concerned an employee who began using medical marijuana after sustaining a workplace injury and who was terminated after failing a drug test in violation of the drug and alcohol policy contained within a collective bargaining agreement. *Id.* at *1-2. The *Johnson* court rejected the plaintiff's attempt to pursue a cause of action under his state's medical marijuana statute. The same result is called for here.

V. CONCLUSION

For the reasons set forth above, Plaintiff's five causes of action are preempted by Section 301 of the LMRA and must be dismissed with prejudice. If the Court concludes otherwise, it must still dismiss the Complaint in its entirety because, based on the allegations in the Complaint, Plaintiff's claims fail as a matter of law.

Dated this 11th day of February, 2020.

JACKSON LEWIS P.C.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Jackson Lewis P.C., and that on this 11th day of February 2020, I caused to be served via the Court's CM/ECF, a true and correct copy of the above foregoing **DEFENDANT'S REPLY IN SUPPORT OF MOTION TO DISMISS** properly addressed to the following:

Christian Gabroy
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Henderson, Nevada 89012

Attorney for Plaintiff James Roushkolb

/s/ Mayela E. McArthur
Employee of Jackson Lewis P.C.

4843-3280-2996, v. 1

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

JAMES ROUSHKOLB, Plaintiff(s), v. FREEMAN COMPANY, LLC, Defendant(s).	Case No. 2:19-CV-2084 JCM (NJK) ORDER

Presently before the court is the Freeman Company's ("defendant") motion to dismiss. (ECF No. 13). James Roushkolb ("plaintiff") filed a response (ECF No. 15), to which defendant replied (ECF No. 16).

I. Background

The instant action arises from an employment dispute. Plaintiff regularly used medical marijuana at night to treat post-traumatic stress disorder ("PTSD") pursuant to a doctor's recommendation. (ECF No. 1-1 at 2). Plaintiff, a member of the Teamsters, Chauffeurs, Warehousemen, and Helpers, Local 631, International Brotherhood of Teamsters ("the union"), worked as a journeyman. (*Id.* at 6; ECF No. 13 at 2). Defendant hired him as temporary labor. (ECF No. 1-1 at 6).

Plaintiff was working with another employee to remove a piece of plexiglass from the ceiling when he dropped the plexiglass, causing it to shatter. (*Id.* at 6–7). Following the accident, defendant requested that plaintiff take a drug test, which he failed on account of his medical marijuana use the previous night. (*Id.* at 7). Plaintiff claims he was not under the influence on the job site. (*Id.*) Defendant fired plaintiff as a result of his failed drug test. (*Id.*)

Plaintiff now brings claims under several Nevada employment statutes claiming that defendant did not accommodate his disability. (ECF No. 1–1). Defendant moves to dismiss all claims. (ECF No. 13).

II. Legal Standard

A court may dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "[a] short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands "more than labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

"Factual allegations must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (citation omitted).

In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply when considering motions to dismiss. First, the court must accept as true all well-pled factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Id.* at 678–79. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. *Id.* at 678.

Second, the court must consider whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff's complaint alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 678.

Where the complaint does not permit the court to infer more than the mere possibility of misconduct, the complaint has "alleged—but not shown—that the pleader is entitled to relief." *Id.* (internal quotation marks omitted). When the allegations in a complaint have not crossed the

line from conceivable to plausible, plaintiff's claim must be dismissed. *Twombly*, 550 U.S. at 570.

The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). The *Starr* court stated, in relevant part:

> First, to be entitled to the presumption of truth, allegations in a complaint or counterclaim may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively. Second, the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation.

Id.

III. Discussion

A. Preemption

Plaintiff, as a union member, is subject to a collective bargaining agreement ("CBA"). (*See* ECF No. 13 at 2). Defendant argues that plaintiff's claims require the court to interpret the CBA. (*Id* at 7). Thus, plaintiff's state law claims are preempted by the federal Labor Management Relations Act ("LMRA") § 301. (*Id.*) This court disagrees.

The LMRA gives federal courts exclusive jurisdiction over violations of collective bargaining agreements. 29 U.S.C. § 185. It also preempts any state law claim that is "substantially dependent on the terms of an agreement made between parties to a labor contract." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985). There is a two-step test to determine if the LMRA preempts a state claim. *See Burnside v. Kiewit*, 491 F.3d 1053, 1059 (9th Cir. 2007). First, the court must determine whether the cause of action results from a right granted under state law or by the CBA. *See id.* Second, the court must determine whether the claim requires interpretation of the CBA. *See id.*

Plaintiff fails to mention the CBA in his complaint. Certainly, he does not avoid preemption by withholding mention of the CBA or § 301. *See Stallcorp v. Kaiser Foundation Hospitals*, 820 F.2d 1044, 1048 (9th Cir. 1987). However, where the complaint alleges rights that exist generally, independent of the CBA, § 301 does not apply. *See Livadas v. Bradshaw*,

512 U.S. 107, 124 (1994); *Davies v. Premier Chemicals, Inc.*, 50 Fed. App'x 811, 812 (9th Cir. 2002) (holding that § 301 did not preempt a tortious discharge claim under Nevada law).

Here, plaintiff does not allege any claims wholly dependent on the CBA. (ECF No. 1-1). Plaintiff's claims all arise under Nevada law and are available for pursuit by anyone, not just members of the union subject to the CBA. *See Davies*, 50 Fed. App'x 811, 812 (9th Cir. 2002).

Further, adjudicating this matter does not require the court to interpret the CBA. "[T]he need to interpret the CBA must inhere in the nature of the plaintiff's claim." *Cramer v. Consolidated Freightways, Inc.*, 255 F.3d 683, 691–92 (9th Cir. 2001). Defendant cannot defensively rely on the CBA's terms to trigger preemption. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 991 (9th Cir. 2001). Here, the CBA is asserted only defensively. (*See* ECF No. 15 at 6–12). Defendant argues that the court must interpret articles 4 (employer's rights), 14 (discipline procedures), and 15 (drug policy) to adjudicate plaintiff's claims. (*See* ECF No. 13 at 6). But plaintiff does not challenge any of the policies contained in these sections of the CBA. Nowhere in plaintiff's complaint is there an inherent need to consult or interpret the terms of the CBA.

Because plaintiff raises claims arising under state law, and the court will not have to interpret the CBA, plaintiff's claims are not preempted by the LMRA.

B. Jurisdiction

A federal court must possess jurisdiction over an action to hear the dispute. *Weeping Hollow Avenue Trust v. Spencer*, 831 F.3d 1110, 1112 (9th Cir. 2016). If a court determines at any time that it lacks subject matter over an action, it must dismiss or remand the case as appropriate. See *id.* at 1114 (reversing and remanding with instructions to remand the case to state court, as the district court lacked subject matter jurisdiction over the claims).

Here, the defendant removed the case to federal court based on federal question jurisdiction pursuant to the LMRA. (ECF No. 1). The court has determined the LMRA is inapplicable to plaintiff's claims. Therefore, the court no longer holds subject matter jurisdiction by virtue of federal question. Defendant, despite being a Texas corporation, specifically

disclaims diversity jurisdiction, presumptively due to the amount in controversy, which is never mentioned. (ECF No. 10 at 2). Therefore, the court, *sua sponte*, remands this suit to state court.

IV. Conclusion

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant's motion to dismiss (ECF No. 13) be, and the same hereby is, DENIED as moot.

IT IS FURTHER ORDERED that this matter be, and the same hereby is, REMANDED to the state court due to this court's lack of subject matter jurisdiction.

DATED July 2, 2020.

James C. Mahan
UNITED STATES DISTRICT JUDGE

NOTC
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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES ROUSHKOLB, an individual;

Plaintiff,

vs.

THE FREEMAN COMPANY, LLC, a Domestic Corporation; EMPLOYEE(S)/AGENT(S) DOES I-X; and ROE CORPORATIONS XI-XX, inclusive;

Defendant.

Case No.: A-19-805268-C
Dept.: VIII

NOTICE OF REMAND TO STATE COURT

NOTICE OF REMAND TO STATE COURT

COMES NOW Plaintiff James Roushkolb, by and through his attorney of record, Christian Gabroy of Gabroy Law Offices, and hereby Notices the Order Remanding this Case to State Court. Please find attached Exhibit I stating this case has been remanded to State Court.

DATED this 7th day of July 2020.

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RESPECTFULLY SUBMITTED,

GABROY LAW OFFICES.

By ___/s/ Christian Gabroy_____
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CERTIFICATE OF SERVICE

I, Christian J. Gabroy, on this 7th day of July 2020 served the foregoing **NOTICE OF REMAND TO STATE COURT** in this action via the Odyssey E-File and Serve System, which will cause this document to be served upon the following counsel of record:

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