IN THE SUPREME COURT OF THE STATE OF NEVADA

ZION WOOD OBI WAN TRUST AND SHAWN WRIGHT AS TRUSTEE OF THE ZION WOOD OBI WAN TRUST Appellant vs. MMAWC, LLC d/b/a WORLD SERIES OF FIGHTING a Nevada Limited Liability Company; MMAX INVESTMENT PARTNERS d/b/a PROFESSIONAL FIGHTERS LEAGUE; NANCY and BRUCE DEIFIK FAMILY PARTNERSHIP, LLP., a Colorado limited liability partnership Respondents	**Supreme Court Case No:** **85051** **District Court Case No:** **A-17-764118-C**

APPEAL

From the Eighth Judicial District Court
Department I
Clark County Nevada
HONORABLE NANCY ALF
APPELLANTS' APPENDIX VOL 4

LAW OFFICES OF BYRON THOMAS
BYRON THOMAS, ESQ.
BAR NO: 8906

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Notice of Entry of Order Stipulation and Order The Plaintiff's Pleading Filed on 6/13/19 Captioned As "Amended Complaint" is Plaintiff's More Definite Statement as to its Claims Against Defendant Keith Redmond and the other Defendants do not Have to Respond	7/1/2019	AA480-485	IV
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Summons	12/7/2017	AA001 – AA002	I
Transcript of Hearing	02/21/2018	AA198 – AA204	I

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Attorneys for Defendant Keith Redmond

DISTRICT COURT
CLARK COUNTY, NEVADA

ZION WOOD OBI WAN TRUST and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST; WSOF GLOBAL, LLC, a Wyoming limited liability company, Plaintiffs, v. MMAWC, LLC d/b/a WORLD SERIES OF FIGHTING a Nevada limited liability company; MMAX INVESTMENT PARTNERS, INC. dba PROFESSIONAL FIGHTERS LEAGUE, a Delaware corporation; BRUCE DEIFIK, an individual; CARLOS SILVA, an individual; NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP, a Colorado limited liability partnership; KEITH REDMOND, an individual; DOES I through X, inclusive; and ROE Corporations XX through XXX, inclusive, Defendants.	CASE NO.: A-17-764118-C DISTRICT COURT DEPT: 27 **NOTICE OF ENTRY OF STIPULATION AND ORDER THE PLAINTIFF'S PLEADING FILED ON 06/3/19 CAPTIONED AS "AMENDED COMPLAINT" IS PLAINTIFF'S MORE DEFINITE STATEMENT AS TO ITS CLAIMS AGAINST DEFENDANT KEITH REDMOND AND THE OTHER DEFENDANTS DO NOT HAVE TO RESPOND**

Please take notice that the above captioned Stipulation & Order was entered on July 1, 2019. A copy is attached here as Exhibit 1.

Respectfully Submitted By,
KENNEDY & COUVILLIER, PLLC
Maximiliano D. Couvillier III
Maximiliano D. Couvillier III, Esq., Bar #7661
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EXHIBIT 1

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Attorneys for Defendant Keith Redmond

DISTRICT COURT

CLARK COUNTY, NEVADA

ZION WOOD OBI WAN TRUST and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST; WSOF GLOBAL, LLC, a Wyoming limited liability company,

Plaintiffs,

v.

MMAWC, LLC d/b/a WORLD SERIES OF FIGHTING a Nevada limited liability company; MMAX INVESTMENT PARTNERS, INC. dba PROFESSIONAL FIGHTERS LEAGUE, a Delaware corporation; BRUCE DEIFIK, an individual; CARLOS SILVA, an individual; NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP, a Colorado limited liability partnership; KEITH REDMOND, an individual; DOES I through X, inclusive; and ROE Corporations XX through XXX, inclusive.

Defendants.

CASE NO.: A-17-764118-C
DISTRICT COURT DEPT: 27

STIPULATION AND ORDER THE PLAINTIFF'S PLEADING FILED ON 06/3/19 CAPTIONED AS "AMENDED COMPLAINT" IS PLAINTIFF'S MORE DEFINITE STATEMENT AS TO ITS CLAIMS AGAINST DEFENDANT KEITH REDMOND AND THE OTHER DEFENDANTS DO NOT HAVE TO RESPOND

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Plaintiffs ZION WOOD OBI WAN TRUST; SHAWN WRIGHT; and WSOF GLOBAL, LLC, and defendants MMAWC, LLC; MMAX INVESTMENT PARTNERS, INC.; BRUCE DEIFIK; CARLOS SILVA; NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP; and KEITH REDMOND stipulate and agree as follows:

On May 17, 2019, the Court entered a *Stipulation To Vacate Hearing on Keith Redmond's Motion for a More Definite Statement and to Allows Plaintiffs to File a More Definite Statement* ("5/14/19 Stipulation"). Among other things, the 5/14/19 Stipulation provided for Plaintiffs to file a more definite statement of their claims against defendant Keith Redmond ("Redmond"), stating:

> 2. Plaintiffs shall have up to fifteen (15) calendar days from the date of entry of this Stipulation & Order to file and serve a more definite statement of their claims against Redmond.

Id. The 5/14/19 Stipulation did not provide for Plaintiffs to otherwise amend its complaint as to its claims against the other defendants. *Id.*

On June 3, 2019, Plaintiffs filed a pleading captioned *Amended Complaint* ("6/3/19 Amended Complaint") in response to the 5/14/19 Stipulation. To avoid any possible confusion, the parties stipulate as follows:

(1) the 6/3/19 Amended Complaint is only a more definite statement of the Plaintiffs' claims against defendant Redmond;

(2) the 6/3/19 Amended Complaint and amendments contained therein only concern the Plaintiffs' claims against defendant Redmond; and

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(3) the other defendants do not have to respond to the 6/3/19 Amended Complaint and the orders on their respective motions to dismiss and their answers and affirmative defenses to the prior complaint shall apply to the Amended Complaint.

Dated: June 13, 2019.

LAW OFFICES OF BYRON THOMAS	KENNEDY & COUVILLIER	DICKINSON WRIGHT
BYRON THOMAS, ESQ. Nevada Bar No. 8906 Ph: (702)747-3103 byronthomaslaw@gmail.com *Attorneys For Plaintiffs*	Maximiliano D. Couvillier III, Esq. Nevada Bar No. 7661 Ph: (702) 605-3440 Mcouvillier@kclawnv.com *Attorneys for Defendants MMAWC, LLC; Bruce Deifik; Nancy And Bruce Deifik Family Partnership LLLP; and Keith Redmond*	Michael Feder, Esq. Nevada Bar No. Ph. (702) 550-4440 MFeder@dickinson-wright.com *Attorneys for Defendants Carlos Silva and MMAX Investment Partners, Inc.*

IT IS SO ORDERED.

District Court Judge
Dated: June 17, 2019

Respectfully Submitted By,
KENNEDY & COUVILLIER, PLLC

Maximiliano D. Couvillier III, Esq., Bar #7661
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(3) the other defendants do not have to respond to the 6/3/19 Amended Complaint and the orders on their respective motions to dismiss and their answers and affirmative defenses to the prior complaint shall apply to the Amended Complaint.

Dated: June 13, 2019.

LAW OFFICES OF BYRON THOMAS	KENNEDY & COUVILLIER	DICKINSON WRIGHT
BYRON THOMAS, ESQ. Nevada Bar No. 8906 Ph: (702)747-3103 byron@thomaslawoffices.com *Attorneys For Plaintiffs*	Maximiliano D. Couvillier III, Esq. Nevada Bar No. 7661 Ph: (702) 605-3440 mcouvillier@kcbattorneys.com *Attorneys for Defendants MAIAWC, LLC; Bruce Deifik; Nancy And Bruce Deifik Family Partnership LLLP; and Keith Redmond*	Michael Feder, Esq. Nevada Bar No. Ph. (702) 550-4440 MFeder@dickinsonwright.com *Attorneys for Defendants Carlos Silva and MMAX Investment Partners, Inc.*

IT IS SO ORDERED.

District Court Judge
Dated:

Respectfully Submitted By,
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Steven D. Grierson
CLERK OF THE COURT

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Attorneys for Defendant Keith Redmond

DISTRICT COURT

CLARK COUNTY, NEVADA

ZION WOOD OBI WAN TRUST and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST; WSOF GLOBAL, LLC, a Wyoming limited liability company, Plaintiffs, v. MMAWC, LLC d/b/a WORLD SERIES OF FIGHTING a Nevada limited liability company; MMAX INVESTMENT PARTNERS, INC. dba PROFESSIONAL FIGHTERS LEAGUE, a Delaware corporation; BRUCE DEIFIK, an individual; CARLOS SILVA, an individual; NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP, a Colorado limited liability partnership; KEITH REDMOND, an individual; DOES I through X, inclusive; and ROE Corporations XX through XXX, inclusive, Defendants.	CASE NO.: A-17-764118-C DISTRICT COURT DEPT: 27 **ORDER DISMISSING CLAIMS AGAINST DEFENDANT KEITH REDMOND WITHOUT PREJUDICE**

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On July 31, 2019, the Court heard defendant Keith Redmond's ("Redmond") *Motion for Judgment on The Pleadings; or Alternatively, Motion for a More Definite Statement* ("Motion"). Maximiliano D. Couvillier III, Esq. appeared on behalf of Redmond. Byron Thomas, Esq. appeared on behalf of the Plaintiffs. Redmond's Motion requested three alternatives: judgment on the pleadings; dismissal of the claims against him; or a more definite statement of the claims against him. The Court has considered the Motion, all related briefs and documents on file, and the argument of counsel. For good cause appearing:

IT IS ORDERED that Redmond's Motion is **GRANTED IN PART** and all claims asserted against Redmond by the Plaintiffs in the above-captioned action are **DISMISSED WITHOUT PREJUDICE**. The Motion's alternative requests for judgment on the pleadings or for a more definite statement are denied as moot.

Dated: 8/22/19

District Court Judge

Respectfully Submitted By,

KENNEDY & COUVILLIER, PLLC

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Attorneys for Defendant Keith Redmond

Approved As To Form And Content.

Byron Thomas, Esq. (Bar 8906)
Byronthomaslaw@gmail.com
Attorney for Plaintiffs

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Attorneys for Defendant Keith Redmond

DISTRICT COURT

CLARK COUNTY, NEVADA

ZION WOOD OBI WAN TRUST and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST; WSOF GLOBAL, LLC, a Wyoming limited liability company,

Plaintiffs,

v.

MMAWC, LLC d/b/a WORLD SERIES OF FIGHTING a Nevada limited liability company; MMAX INVESTMENT PARTNERS, INC. dba PROFESSIONAL FIGHTERS LEAGUE, a Delaware corporation; BRUCE DEIFIK, an individual; CARLOS SILVA, an individual; NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP, a Colorado limited liability partnership; KEITH REDMOND, an individual; DOES I through X, inclusive; and ROE Corporations XX through XXX, inclusive,

Defendants.

CASE NO.: A-17-764118-C
DISTRICT COURT DEPT: 27

NOTICE OF ENTRY OF ORDER DISMISSING CLAIMS AGAINST DEFENDANT KEITH REDMOND WITHOUT PREJUDICE

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Please take Notice that on August 27, 2019, the Court entered **ORDER DISMISSING CLAIMS AGAINST DEFENDANT KEITH REDMOND WITHOUT PREJUDICE** A copy is attached here as Exhibit 1.

Dated: August 27, 2019

Respectfully Submitted By,

KENNEDY & COUVILLIER, PLLC

Maximiliano D. Couvillier III
Maximiliano D. Couvillier III, Esq., Bar #7661
mcouvillier@kclawnv.com
Attorneys for Defendant Keith Redmond

CERTIFICATE OF SERVICE

I certify that on August 27, 2019, I electronically filed the foregoing Notice with the Court's electronic filing and service system, which provides electronic service to the following registered users:

Byron Thomas, Esq. (Bar 8906)
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Byronthomaslaw@gmail.com
Attorney for Plaintiffs

Michael Feder, Esq.
Christian Spaulding, Esq.
DICKINSON WRIGHT, PLLC
MFeder@dickinson-wright.com
CSpaulding@dickinson-wright.com
Attorneys for MMAX Investment Partners, Inc. and Carlos Silva

/s/ Maximiliano D. Couvillier III
An Employee of KENNEDY & COUVILLIER, PLLC

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EXHIBIT 1

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Attorneys for Defendant Keith Redmond

DISTRICT COURT

CLARK COUNTY, NEVADA

ZION WOOD OBI WAN TRUST and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST; WSOF GLOBAL, LLC, a Wyoming limited liability company, Plaintiffs, v. MMAWC, LLC d/b/a WORLD SERIES OF FIGHTING a Nevada limited liability company; MMAX INVESTMENT PARTNERS, INC. dba PROFESSIONAL FIGHTERS LEAGUE, a Delaware corporation; BRUCE DEIFIK, an individual; CARLOS SILVA, an individual; NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP, a Colorado limited liability partnership; KEITH REDMOND, an individual; DOES I through X, inclusive; and ROE Corporations XX through XXX, inclusive, Defendants.	CASE NO.: A-17-764118-C DISTRICT COURT DEPT: 27 **ORDER DISMISSING CLAIMS AGAINST DEFENDANT KEITH REDMOND WITHOUT PREJUDICE**

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Case Number: A-17-764118-C

On July 31, 2019, the Court heard defendant Keith Redmond's ("Redmond") *Motion for Judgment on The Pleadings; or Alternatively, Motion for a More Definite Statement* ("Motion"). Maximiliano D. Couvillier III. Esq. appeared on behalf of Redmond. Byron Thomas, Esq. appeared on behalf of the Plaintiffs. Redmond's Motion requested three alternatives: judgment on the pleadings; dismissal of the claims against him; or a more definite statement of the claims against him. The Court has considered the Motion, all related briefs and documents on file, and the argument of counsel. For good cause appearing:

IT IS ORDERED that Redmond's Motion is **GRANTED IN PART** and all claims asserted against Redmond by the Plaintiffs in the above-captioned action are **DISMISSED WITHOUT PREJUDICE.** The Motion's alternative requests for judgment on the pleadings or for a more definite statement are denied as moot.

Dated: 8/22/19

District Court Judge

Respectfully Submitted By,

KENNEDY & COUVILLIER, PLLC

Maximiliano D. Couvillier III. Esq., Bar #7661
mcouvillier@kclawnv.com
Attorneys for Defendant Keith Redmond

Approved As To Form And Content.

Byron Thomas, Esq. (Bar 8906)
Byronthomaslaw@gmail.com
Attorney for Plaintiffs

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DISTRICT COURT
CLARK COUNTY, NEVADA

* * * *

ZION WOOD OBI WAN TRUST and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST; WSOF GLOBAL, LLC, a Wyoming limited liability company, Plaintiffs, v. MMAWC, LLC d/b/a WORLD SERIES OF FIGHTING a Nevada limited liability company; MMAX INVESTMENT PARTNERS, INC. dba PROFESSIONAL FIGHTERS LEAGUE, a Delaware corporation; BRUCE DEIFIK, an individual; CARLOS SILVA, an individual; NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP, a Colorado limited liability partnership; KEITH REDMOND, an individual; DOES I through X, inclusive; and ROE Corporations XX through XXX, inclusive, Defendants.	CASE NO.: A-17-764118-C DEPARTMENT XXVII

ORDER

COURT FINDS after review that on September 5, 2019 the Supreme Court of Nevada issued its Order reversing the Court's order denying a motion to dismiss and to compel arbitration, and remanding the instant action to the District Court.

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THEREFORE, COURT ORDERS for good cause appearing and after review that a **STATUS CHECK** is hereby **SET** for September 19, 2019 at 9:30 a.m. on Motions Calendar.

Dated: September 9, 2019

Nancy L Allf

NANCY ALLF
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of the foregoing was electronically served pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court's Electronic Filing Program.

Karen Lawrence
Judicial Executive Assistant

HONORABLE NANCY L. ALLF
DISTRICT COURT JUDGE
DEPT XXVII

IN THE SUPREME COURT OF THE STATE OF NEVADA

MMAWC, LLC, D/B/A WORLD SERIES OF FIGHTING, A NEVADA LIMITED LIABILITY COMPANY; BRUCE DEIFIK, AN INDIVIDUAL; AND NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP, LLLP, A COLORADO LIMITED LIABILITY PARTNERSHIP,
Appellants,
vs.
ZION WOOD OBI WAN TRUST; SHAWN WRIGHT, AS TRUSTEE OF ZION WOOD OBI WAN TRUST; AND WSOF GLOBAL, LLC, A WYOMING LIMITED LIABILITY COMPANY,
Respondents.

Supreme Court No. 75596
District Court Case No. A764118

FILED
OCT - 7 2019
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Reversed and remanded"

Judgment, as quoted above, entered this 5th day of September, 2019.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this September 30, 2019.

Elizabeth A. Brown, Supreme Court Clerk

By: Rory Wunsch
Deputy Clerk

A-17-764118-C
CCJR
NV Supreme Court Clerks Certificate/Judg
4867903

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135 Nev., Advance Opinion 38

IN THE SUPREME COURT OF THE STATE OF NEVADA

MMAWC, LLC, D/B/A WORLD SERIES OF FIGHTING, A NEVADA LIMITED LIABILITY COMPANY; BRUCE DEIFIK, AN INDIVIDUAL; AND NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP, LLLP, A COLORADO LIMITED LIABILITY PARTNERSHIP,
Appellants,
vs.
ZION WOOD OBI WAN TRUST; SHAWN WRIGHT, AS TRUSTEE OF ZION WOOD OBI WAN TRUST; AND WSOF GLOBAL, LLC, A WYOMING LIMITED LIABILITY COMPANY,
Respondents.

No. 75596

Appeal from a district court order denying a motion to dismiss and to compel arbitration. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Reversed and remanded.

Kennedy & Couvillier, PLLC, and Maximiliano D. Couvillier III, Las Vegas, for Appellants.

Law Offices of Byron Thomas and Byron E. Thomas, Las Vegas, for Respondents.

BEFORE HARDESTY, STIGLICH and SILVER, JJ.

19-37082

OPINION

By the Court, SILVER, J.:

The Federal Arbitration Act (FAA) protects arbitration agreements and preempts state laws that single out and disfavor arbitration. In this appeal, we determine whether the FAA preempts NRS 597.995, which requires agreements that include an arbitration provision to also include a specific authorization for the arbitration provision showing that the parties affirmatively agreed to that provision.

The parties to this appeal entered into a settlement agreement. That settlement agreement referenced a licensing agreement that included an arbitration provision. After the plaintiffs below sued to enforce the settlement agreement, the defendants moved to compel arbitration and dismiss the complaint on the basis that the settlement agreement incorporated the licensing agreement's arbitration clause. The district court denied the motion, concluding the arbitration provision was unenforceable because it did not include the specific authorization required by NRS 597.995.

We hold that the FAA preempts NRS 597.995, and accordingly, we conclude that statute does not void the arbitration clause at issue here. We further conclude that the claims in the underlying complaint are subject to arbitration, and therefore the complaint must be dismissed.

I.

MMAWC is a Nevada corporation that, at the time relevant here, was doing business as World Series of Fighting. In 2012, MMAWC and Vincent Hesser entered into a licensing agreement providing Hesser the right to use MMAWC's licensed marks outside of North America. Hesser thereafter assigned all of his rights and interest in the license to

World Series of Fighting Global, Ltd. (WSOF Global). WSOF Global's president was Shawn Wright, who also served as trustee of the Zion Wood Obi Wan Trust, a member of MMAWC.

MMAWC and others, including Bruce Deifik and the Nancy & Bruce Deifik Family Partnership (of which Bruce Deifik is the general partner), became embroiled in litigation with various parties and entities, including WSOF Global, Wright, and Zion Wood Obi Wan Trust. Eventually these and other parties entered into a comprehensive settlement agreement. As part of that settlement, the parties also amended the licensing agreement and MMAWC's operating agreement.

Clause 9 of the settlement agreement provided that the settlement agreement was the entire agreement between the parties "[s]ave and except the separate agreements provided in Section[] . . . 2" of the settlement agreement. Pertinent here, clause 2.1 of the settlement agreement stated as follows:

> The 10/15/12 Hesser License shall be reaffirmed and remain in full force and effect as of the date of this Agreement, as amended by the execution of the Amendment to Consulting and Master Licensing Agreement in the form attached hereto and incorporated herein as Exhibit B. The license is a material part of settlement on behalf of Hesser and Wright . . . .

Importantly, the amended licensing agreement referenced in clause 2.1 also included a newly added arbitration clause, which stated in part:

> MMA and Consultant agree that any dispute, controversy, claim or any other causes of action whether based on contract, tort, misrepresentation, or any other legal theory, related directly or indirectly to the Master License (as amended hereby), which cannot be amicably resolved by the

> parties, shall be resolved by binding arbitration in accordance with the provisions of this Section 18.

WSOF Global, Wright, and Zion Wood Obi Wan Trust (collectively, Zion) thereafter filed a complaint against MMAWC and other defendants including Bruce Deifik and the Deifik Family Partnership (collectively, MMAWC), claiming that MMAWC had breached the settlement agreement by breaching the licensing agreement. MMAWC moved to dismiss the complaint and compel arbitration, asserting the settlement agreement incorporated the licensing agreement and, by extension, the arbitration provision. The parties also contested whether the arbitration provision complied with NRS 597.995 and whether the FAA preempted that statute.

The district court concluded that the arbitration provision was unenforceable under NRS 597.995 because it failed to include any specific authorization, as required under that statute, and therefore denied the motion to dismiss the complaint and compel arbitration. MMAWC appeals, challenging the validity of NRS 597.995 under the FAA and the district court's refusal to enforce the arbitration provision.

II.

The threshold issue is whether the FAA preempts NRS 597.995. We review this question de novo. *See Jane Roe Dancer I-VII v. Golden Coin, Ltd.*, 124 Nev. 28, 32, 176 P.3d 271, 274 (2008). We also review questions of statutory construction de novo. *Franks v. State*, 135 Nev., Adv. Op. 1, 432 P.3d 752, 754 (2019).

The FAA provides that written provisions for arbitration are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2 (2012). In

United States Home Corp. v. Michael Ballesteros Trust,[1] we explained that the United States Supreme Court "has made unmistakably clear that, when the FAA applies, it preempts state laws that single out and disfavor arbitration." 134 Nev. 180, 188, 415 P.3d 32, 40 (2018). Thus, where a law or rule "imposes stricter requirements on arbitration agreements than other contracts generally," it is preempted by the FAA. *Id.* at 190, 415 P.3d at 41.

In *Doctor's Associates, Inc. v. Casarotto*, for example, the United States Supreme Court held that the FAA preempted a Montana law requiring contracts subject to arbitration to include a typed notice of the arbitration provision in capital letters on the contract's first page. 517 U.S. 681, 683, 687 (1996). The Supreme Court explained that under the FAA, courts may not "invalidate arbitration agreements under state laws applicable only to arbitration provisions," as Congress has "precluded [s]tates from singling out arbitration provisions for suspect status" and requires arbitration provisions to be placed on "the same footing as other contracts." *Id.* at 687 (internal quotation marks and emphasis omitted). The Supreme Court concluded the Montana law conflicted with the FAA because Montana's law predicated "the enforceability of arbitration agreements on compliance with a special notice requirement not applicable to contracts generally." *Id.*

We conclude that NRS 597.995 similarly imposes a special requirement on arbitration provisions that is not generally applicable to

[1]*Ballesteros* was published after the district court reached its decision in this case, so the district court did not have the benefit of that opinion.

other contract provisions. As relevant here, NRS 597.995[2] voids an arbitration provision if the agreement containing the arbitration provision does not include "specific authorization" for the arbitration provision:

> 1. . . . [A]n agreement which includes a provision which requires a person to submit to arbitration any dispute arising between the parties to the agreement must include specific authorization for the provision which indicates that the person has affirmatively agreed to the provision.
>
> 2. If an agreement includes a provision which requires a person to submit to arbitration any dispute arising between the parties to the agreement and the agreement fails to include the specific authorization required pursuant to subsection 1, the provision is void and unenforceable.

Because NRS 597.995 conditions the enforceability of arbitration provisions on a special requirement not generally applicable to other contract provisions, it singles out arbitration provisions as suspect and violates the FAA. Accordingly, we hold the FAA preempts NRS 597.995.[3] The district court therefore erred by applying the statute to void the arbitration

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[2]This statute was amended in 2019, but that amendment did not affect the statutory language at issue here. *See* A.B. 286, 80th Leg. (Nev. 2019).

[3]We have held in a prior case that an arbitration provision was unenforceable under NRS 597.995 where the parties signed at the end of the contract and did not specifically authorize the arbitration provision. *Fat Hat, LLC v. DiTerlizzi*, Docket No. 68479 (Order Affirming in Part, Reversing in Part, and Remanding, September 21, 2016). In that case, we noted that the FAA may preempt NRS 597.995, but we did not address the issue because the parties had not raised it.

provision here.[4] *See Ballesteros*, 134 Nev. at 188, 415 P.3d at 40 (holding that when it applies, the FAA preempts laws that disfavor arbitration).

This holding does not fully resolve this appeal, however, as a question remains as to whether the arbitration provision requires the parties to arbitrate the claims asserted in the complaint. Specifically, we consider whether the settlement agreement incorporated the licensing agreement and its arbitration provision.

III.

Settlement agreements are governed by general principles of contract law. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). Contract interpretation is a question of law that we review de novo where no facts are in dispute, considering the contract's language and surrounding circumstances. *Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015). We will enforce a contract as written where the language is clear and unambiguous. *State, Dep't of Transp. v. Eighth Judicial Dist. Court*, 133 Nev. 549, 554, 402 P.3d 677, 682 (2017). In interpreting a contract, we seek to discern the intent of the parties, but we will construe any ambiguity against the drafter. *Am. First Fed. Credit Union*, 131 Nev. at 739, 359 P.3d at 106. Generally the parties' intent must be "discerned from the four corners" of the contract. *MHR Capital Partners LP v. Presstek, Inc.*, 912 N.E.2d 43, 47 (N.Y. 2009). "[W]ritings which are

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[4]We disagree with Zion's argument that the FAA does not apply here. The licensing agreement gave WSOF Global the right to use MMAWC's trade names in WSOF Global's business dealings with foreign nations, and the license therefore affects commerce. *See Ballesteros*, 134 Nev. at 186-87, 415 P.3d at 38-39 (explaining that contracts concerning transactions that involve or affect interstate commerce fall under the purview of the FAA). And, because we conclude the FAA preempts NRS 597.995, we do not address the parties' remaining arguments regarding that statute.

made a part of the contract by annexation or reference will be so construed . . . ." *Lincoln Welding Works, Inc. v. Ramirez*, 98 Nev. 342, 345, 647 P.2d 381, 383 (1982) (quoting *Orleans Hornsilver Mining Co. v. Le Champ D'Or French Gold Mining Co.*, 52 Nev. 92, 284 P. 307 (1930)).

We have carefully reviewed the settlement and licensing agreements and the parties' arguments pertaining thereto, and we conclude the claims asserted in the complaint are subject to the arbitration clause. First, the settlement agreement expressly incorporated the licensing agreement and, by extension, its arbitration clause. Clause 2.1 of the settlement agreement specifically states that the licensing agreement is "attached hereto and incorporated herein." Second, the interplay between clause 2 and clause 9 compels the requirement to arbitrate, as clause 9 specifically exempts the licensing agreement incorporated in clause 2 from the dispute provisions of the settlement agreement. This language is plain, and we must construe it as written. But even if the settlement agreement did not incorporate the licensing agreement and its arbitration provision, Zion is nonetheless bound by the arbitration provision. MMAWC maintained in its briefs and during oral argument that the claims in Zion's complaint alleged a breach of the licensing agreement, and Zion not only failed to refute this argument but also conceded at oral argument that the complaint was inartfully pleaded. Because Zion is attempting to enforce the licensing agreement, it is bound by the arbitration provision in that agreement. *See Truck Ins. Exch. v. Palmer J. Swanson, Inc.*, 124 Nev. 629, 634-37, 189 P.3d 656, 660-62 (2008) (explaining that a person may be bound by an arbitration provision in a contract to which he was not a party where he receives a direct benefit from or asserts a claim that seeks to enforce the contract containing the arbitration provision). Finally, the claims in the

complaint fall within the arbitration provision's scope. As described above, Zion's claims relate directly or indirectly to the license, and the arbitration provision requires arbitration of any disputes related either directly or indirectly to the license. Accordingly, the district court should have enforced the arbitration clause.

IV.

The FAA preempts NRS 597.995 because it singles out and disfavors arbitration by requiring a specific authorization for arbitration that does not apply to any other contractual provisions. We therefore conclude that the district court erred by deeming the arbitration clause here unenforceable under NRS 597.995. Because we further conclude the arbitration clause in the licensing agreement applies to the claims alleged in the underlying complaint, we reverse and remand to the district court with instructions to grant MMAWC's motion to dismiss and enforce the arbitration clause.

Silver, J.
Silver

We concur:

Hardesty, J.
Hardesty

Stiglich, J.
Stiglich

CERTIFIED COPY
This document is a full, true and correct copy of the original on file and of record in my office.
DATE: September 30, 2019
Supreme Court Clerk, State of Nevada
By _____ Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

MMAWC, LLC, D/B/A WORLD SERIES OF FIGHTING, A NEVADA LIMITED LIABILITY COMPANY; BRUCE DEIFIK, AN INDIVIDUAL; AND NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP, LLLP, A COLORADO LIMITED LIABILITY PARTNERSHIP,
Appellants,
vs.
ZION WOOD OBI WAN TRUST; SHAWN WRIGHT, AS TRUSTEE OF ZION WOOD OBI WAN TRUST; AND WSOF GLOBAL, LLC, A WYOMING LIMITED LIABILITY COMPANY,
Respondents.

Supreme Court No. 75596
District Court Case No. A764118

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: September 30, 2019

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch
Deputy Clerk

cc (without enclosures):
Hon. Nancy L. Allf, District Judge
Kennedy & Couvillier, PLLC
Law Offices of Byron Thomas

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on OCT - 7 2019.

RECEIVED
APPEALS
OCT 03 2019
CLERK OF THE COURT

HEATHER UNGERMANN
Deputy District Court Clerk

Electronically Filed
10/8/2019 8:59 AM
Steven D. Grierson
CLERK OF THE COURT

OSCC

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * *

ZION WOOD OBI WAN TRUST, PLAINTIFF(S) VS. MMAWC LLC, DEFENDANT(S)	CASE NO.: A-17-764118-C DEPARTMENT 27

CIVIL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,

IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Default Judgment
- ☐ Judgment on Arbitration
- ☐ Stipulated Judgment
- ☐ Summary Judgment
- ☒ Involuntary Dismissal
- ☐ Motion to Dismiss by Defendant(s)
- ☐ Stipulated Dismissal
- ☐ Voluntary Dismissal
- ☐ Transferred (before trial)
- ☐ Non-Jury – Disposed After Trial Starts
- ☐ Non-Jury – Judgment Reached
- ☐ Jury – Disposed After Trial Starts
- ☐ Jury – Verdict Reached
- ☐ Other Manner of Disposition

52

DATED this 4th day of October, 2019.

Nancy L Allf

NANCY ALLF
DISTRICT COURT JUDGE

NOE
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Attorneys for Defendant Keith Redmond

DISTRICT COURT

CLARK COUNTY, NEVADA

ZION WOOD OBI WAN TRUST and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST; WSOF GLOBAL, LLC, a Wyoming limited liability company, Plaintiffs, v. MMAWC, LLC d/b/a WORLD SERIES OF FIGHTING a Nevada limited liability company; MMAX INVESTMENT PARTNERS, INC. dba PROFESSIONAL FIGHTERS LEAGUE, a Delaware corporation; BRUCE DEIFIK, an individual; CARLOS SILVA, an individual; NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP, a Colorado limited liability partnership; KEITH REDMOND, an individual; DOES I through X, inclusive; and ROE Corporations XX through XXX, inclusive, Defendants.	CASE NO.: A-17-764118-C DISTRICT COURT DEPT: 27 **NOTICE OF ENTRY OF ORDER DISMISSING ACTION WITHOUT PREJUDICE**

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Please take Notice that on August 27, 2019, the Court entered **ORDER DISMISSING ACTION WITHOUT PREJUDICE** A copy is attached here as Exhibit 1.

Dated: October 23, 2019

Respectfully Submitted By,

KENNEDY & COUVILLIER, PLLC

Maximiliano D. Couvillier III
Maximiliano D. Couvillier III, Esq., Bar #7661
mcouvillier@kclawnv.com
Attorneys for Defendant Keith Redmond

CERTIFICATE OF SERVICE

I certify that on October 23, 2019, I electronically filed the foregoing Notice with the Court's electronic filing and service system, which provides electronic service to the following registered users:

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Attorneys for MMAX Investment Partners, Inc. and Carlos Silva

/s/ Maximiliano D. Couvillier III
An Employee of KENNEDY & COUVILLIER, PLLC

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EXHIBIT 1

ORDR
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Attorneys for Defendant Keith Redmond

DISTRICT COURT

CLARK COUNTY, NEVADA

ZION WOOD OBI WAN TRUST and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST; WSOF GLOBAL, LLC, a Wyoming limited liability company,

Plaintiffs,

v.

MMAWC, LLC d/b/a WORLD SERIES OF FIGHTING a Nevada limited liability company; MMAX INVESTMENT PARTNERS, INC. dba PROFESSIONAL FIGHTERS LEAGUE, a Delaware corporation; BRUCE DEIFIK, an individual; CARLOS SILVA, an individual; NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP, a Colorado limited liability partnership; KEITH REDMOND, an individual; DOES I through X, inclusive; and ROE Corporations XX through XXX, inclusive,

Defendants.

CASE NO.: A-17-764118-C
DISTRICT COURT DEPT: 27

ORDER DISMISSING ACTION WITHOUT PREJUDICE

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On September 19, 2019, the Court conducted a status hearing and hearing on the Motion to Stay Proceedings Pending Appeal ("Motion to Stay") by defendants MMAWC, LLC ("MMAWC"), Bruce Deifik ("Deifik"), and The Nancy And Bruce Deifik Family Partnership LLLP ("DFP"). Maximiliano D. Couvillier III, Esq. appeared on behalf of defendants MMAWC, Deifik and DFP. Byron Thomas, Esq. appeared on behalf of the Plaintiffs. Michael N. Feder, Esq. appeared on behalf of defendants MMAX Investment Partners, Inc. and Carlos Silva.

The Court has considered the Motion, all related briefs and documents on file, the status of the related appeal (NV Supreme Court Case No. 75596) and the argument of counsel.

For good cause appearing,

IT IS HEREBY ORDERED that the Motion to Stay is **DENIED AS MOOT**. On September 5, 2019, the Nevada Supreme Court resolved the related appeal (NV Supreme Court Case No. 75596) and issued an opinion that, *inter alia,* instructs the District Court to grant MMAWC's 01/08/2018 Motion to Dismiss and To Compel Arbitration and to enforce the subject arbitration clause.

IT IS FUTHER ORDERED that MMAWC's 01/08/2018 Motion to Dismiss and To Compel Arbitration is **GRANTED** and the above captioned action is dismissed without prejudice and the case will be closed. Once arbitration is completed, the parties can stipulate to reopen and case can proceed accordingly.

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IT IS FURTHER ORDERED that Plaintiffs' request for additional time for further briefing regarding possible waiver issues is **DENIED.**

IT IS SO ORDERED.

Nancy Allf
District Court Judge
Dated: 10/9/19

Respectfully Submitted By,

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Maximiliano D. Couvillier III, Esq., Bar #7661
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Attorneys for Defendants MMAWC, LLC.
Bruce Deifik and The Nancy And Bruce Deifik Family Partnership LLLP

Approved As To Form And Content,

DID NOT RESPOND

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DISTRICT COURT

CLARK COUNTY, NEVADA

ZION WOOD OBI WAN TRUST and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST; WSOF GLOBAL, LLC, a Wyoming limited liability company,

Plaintiffs,

v.

MMAWC, LLC d/b/a WORLD SERIES OF FIGHTING a Nevada limited liability company; MMAX INVESTMENT PARTNERS, INC. dba PROFESSIONAL FIGHTERS LEAGUE, a Delaware corporation; BRUCE DEIFIK, an individual; CARLOS SILVA, an individual; NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP, a Colorado limited liability partnership; KEITH REDMOND, an individual; DOES I through X, inclusive; and ROE Corporations XX through XXX, inclusive,

Defendants.

CASE NO.: A-17-764118-C
DISTRICT COURT DEPT: 27

JOINT MOTION TO REOPEN THIS MATTER AND TO CONFIRM ARBITRATION AWARDS IN FAVOR OF DEFENDANTS AND FOR JUDGMENT THEREON

(Hearing Requested)

Pursuant to the Nevada Uniform Arbitration Act at NRS 38.206 *et seq.*, defendants MMAWC, LLC ("MMAWC"), The Nancy And Bruce Deifik Family Partnership LLLP ("DFP") and MMAX Investment Partners, Inc. dba Professional Fighters League ("MMAX"),[1] by and through their respective counsel, jointly move to reopen this matter and to confirm the arbitration awards in their favor issued by the American Arbitration Association ("AAA"), and for the issuance of a judgment thereon.

This Motion is made and based upon the Memorandum of Points and Authorities below, the Court's record, the attached AAA record and any argument of counsel the Court may consider.

Dated: April 4, 2022.

KENNEDY & COUVILLIER, PLLC	DICKINSON WRIGHT PLLC
/s/Maximiliano D. Couvillier III Maximiliano D. Couvillier III, Esq. Nevada Bar No. 7661 mcouvillier@kclawnv.com *Attorneys for Defendant MMAWC, LLC and The Nancy And Bruce Deifik Family Partnership LLLP*	*/s/Michael N. Feder* Michael N. Feder (NV Bar No. 7332) MFeder@dickinsonwright.com Gabriel A. Blumberg (NV Bar No. 12332) GBlumberg@dickinsonwright.com *Attorneys for MMAX Investment Partners, Inc. dba Professional Fighters League*

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[1] MMAX is now known as Professional Fighters League, LLC.

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MEMORANDUM OF POINTS & AUTHORITIES

I. RELEVANT PROCEDURAL BACKGROUND IN THE COURT

Plaintiffs Zion Obi Wan Trust ("Zion"), its trustee Shawn Wright ("Wright") and WSOF Global, LLC ("Global") commenced the above-captioned action on November 3, 2017. Defendant MMAWC filed a *Motion To Dismiss And To Compel Arbitration* on January 8, 2018. Defendants DFP and Bruce Deifik[2] filed an identical motion on March 23, 2018, to preserve their rights to enforce the parties' arbitration agreement. On March 13, 2018, the Court entered an order ("3/13/18 Order") denying MMAWC's *Motion To Dismiss And To Compel Arbitration. See Doc ID #13*

On April 11, 2018, defendants MMAWC, DFP and Mr. Deifik respectfully filed a Notice of Appeal of the 3/13/18 Order. *See Doc ID#18.* On September 5, 2019, after conclusion of the appellate process, the Nevada Supreme Court issued an opinion reversing the 3/13/18 Order and remanding the matter with instructions to grant MMAWC's motion and to enforce the parties' arbitration agreement. On October 23, 2019, the Court entered an order ("10/23/19 Order") compelling arbitration of all the claims asserted by plaintiffs and dismissing the action without prejudice pending completion of such arbitration. *See Doc ID#98.* [3] As a result the case was ordered statically closed. *See Doc ID#96.*

II. SUMMARY OF THE AAA ARBITRATION PROCEEDINGS

On or about June 2, 2020, plaintiff Zion and White as Trustee[4], commenced arbitration proceedings with the AAA with a Demand for Arbitration against MMAWC, DFP and MMAX Investment Partners, Inc. ("MMAX"). Jay Young, Esq. was initially appointed as the sole arbitrator, without any objection from Zion, Wright or any of the other parties. Mr. Young,

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[2] *See No. 1, supra.*

[3] On August 27,2019, the Court entered an order granting defendant Keith Redmond's motion to dismiss or for judgment on the pleadings, dismissing Mr. Redmond from the action. *See Doc ID #90.*

[4] Plaintiff Global was not a claimant and did not participate in the AAA arbitration. Instead, Global attempted to circumvent the Court's 10/23/19 Order and filed a separate action on May 21, 2021, in a different Eighth Judicial District Court department (Case No. A-21-835077-B, Department 13). Global's machinations, however, failed and, on August 17, 2021, the Court (Dep. 13) entered an order dismissing Global's new action and compelling arbitration. To date, Global has not commenced an arbitration.

however, was subsequently appointed as the Eighth Judicial District Court Discovery Commissioner and Mary S. Jones, Esq. ("Arbitrator Jones") was substituted as the arbitrator. The parties provided Arbitrator Jones with disclosures of interested parties and Arbitrator Jones stated that she had no conflicts or prior relationships with any of the parties, counsel, or interested parties. Neither Zion nor Wright objected to Arbitrator Jones or raised any concerns about her appointment. Consequently, Arbitrator Jones was confirmed as the arbitrator.

Similar to Eighth Judicial District Court actions under NRCP, the parties were required to conduct and disclose a considerable amount of discovery in the Arbitration, including all documents and evidence supporting their claims or defenses. In addition, Zion and Wright were given the opportunity to conduct written discovery, including serving document requests and subpoenas. *See e.g.* **Exhibit 1** (11/4/20 Discovery Order and 3/8/21 Discovery & Scheduling Order).

After the conclusion of discovery, Zion, Wright, MMAX, MMAWC and DFP agreed to waive and vacate the Arbitration hearing and, on April 2, 2021, filed a Stipulation with the AAA requesting that the Arbitration be adjudicated and resolved through dispositive motions. A true and correct copy of the parties' *04/02/21 AAA Stipulation* is attached here as **Exhibit 2.** The parties' stipulation included an agreed reasonable briefing schedule. *Id.* Thereafter, the parties each filed competing dispositive motions on April 20, 2021. Thus, Zion and Wright filed and served their motion for summary judgment with the AAA; and MMAWC, DCF and MMAX filed and served their joint motion for summary judgment with the AAA. The parties' summary judgment motions were in accordance with Nevada law.

On May 19, 2021, Arbitrator Jones held oral argument on the parties' summary judgment motions, allowing the parties' counsel ample time to present their argument. On June 25, 2021, after carefully and thoughtfully considering the parties' briefs and argument, Arbitrator Jones issued a written *Ruling On The Parties' Stipulated Request Summary Adjudication* (06/25/21 AAA Summary Judgment Order") which granted summary judgment in favor of MMAWC, DFP and MMAX and against Zion and Wright as Trustee. A true and correct copy of the *06/25/21 AAA Summary Judgment Order* is attached here as **Exhibit 3.** Arbitrator Jones's 06/25/21 AAA

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Summary Judgment was a 20-page decision, that followed Nevada law, was well-reasoned, considerably detailed, and included her extensive findings of fact and conclusions of law. *See id.* On June 25, 2021, the parties received Notice of 06/25/21 AAA Summary Judgment Order from the AAA. A true and correct copy of that Notice is attached here as **Exhibit 4.**

The 06/25/21 AAA Summary Judgment Order further determined that MMAWC, DFP and MMAX were the prevailing parties and entitled to their reasonable attorneys' fees and costs per the applicable written contracts. *Id.* Thus, the 06/25/21 AAA Summary Judgment further instructed counsel to meet and confer about the fees and costs and see if an agreement could be reached before MMAWC, DFP and MMAX filed their applications with the Arbitrator. *Id.* Specifically, the order required MMAWC, DFP and MMAX to first present their fees and costs request to Zion and Wright along with all supporting documentation and thereafter for the parties' counsel to meet and confer. *Id.* The parties met and conferred in good faith but were not able to reach an agreement. Thus, on July 16, 2021, MMAWC and DFP filed and served their application, and MMAX filed its individual application, each setting forth the requested reasonable attorneys' fees and costs in conformity with factors set forth in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Having had an opportunity to review the requested fees and costs during the meet and confer process, Zion and Wright also filed their opposition to the applications on July 16, 2021.

On October 4, 2021, Arbitrator Jones issued her detailed *Final Award and Ruling on the Parties' Mutual Request for Reimbursement of Attorneys' Fees and Costs* ("10/4/21 Fee Award") ordering Zion and Wright to pay: (a) MMAWC and DFP $43.687.20 for their reasonable attorneys' fees and costs; and (b) MMAX $49,320.90 for its reasonable fees and costs. A true and correct copy of the 10/4/21 Fee Award is attached here as **Exhibit 5.** The 10/4/21 Fee Award was consistent with *Brunzell*. On October 4, 2021, the parties received Notice of 10/4/21 Fee Award from the AAA. A true and correct copy of that Notice is attached here as **Exhibit 6.**

III. ARGUMENT

The Court should re-open the above-captioned action (which was statistically closed) for the limited purpose of confirming the 06/25/21 AAA Summary Judgment and the 10/4/21 Fee

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Award and to issue a Judgment thereon.

The Court has inherent powers to control its docket and proceedings and to re-open a statistically closed case for limited purposes. *See Halverson v. Hardcastle*, 123 Nev. 245, 271, 163 P.3d 428, 446 (2007). NRS 38.239 further expressly empowers the Court to re-open the action and confirm the 06/25/21 AAA Summary Judgment and the 10/4/21 Fee Award. *Id.* NRS 38.239 provides:

> After a party to an arbitral proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to NRS 38.237 or 38.242 or is vacated pursuant to NRS 38.241.

Id.

1). Zion Did Not Timely Challenge The Arbitration Awards

The entry of an order confirming the 06/25/21 AAA Summary Judgment Order and the 10/4/21 Fee Award is mandatory under NRS 38.239. First, there has been no change or modification to those awards under NRS 38.237. Second, Zion did not file timely motions under NRS 38.241 or NRS 38.242. Zion received notice of 06/25/21 AAA Summary Judgment Order on June 25, 2021 (Ex. 4); and received notice of the 10/4/21 Fee Award on October 4, 2021 (Ex. 6). Zion did not file a motion to vacate those awards per NRS 38.241, which, by the most generous timeline, required Zion to have made such a motion by no later than January 2, 2022. *See* NRS 38.241(2) (motions to vacate an arbitration award must be made within 90 days). Similarly, Zion did not file a motion to modify or correct those arbitration awards per NRS 38.242, which, again by the most generous timeline, required Zion to have made such motion by no later than January 2, 2022. *See* NRS 38.242(1) (motions to modify or correct an arbitration award must be made within 90 days).

Thus, given Zion's failure to file timely motions, NRS 38.239 provides that the "court shall issue a confirming order" (*id.*) confirming the 06/25/21 AAA Summary Judgment Order and the 10/4/21 Fee Award. Similarly, the Nevada Supreme Court views the entry of an order confirming an arbitration award as mandatory when a party fails to timely move to vacate or modify the award. *Richardson v. Harris*, 107 Nev. 763, 765, 818 P.2d 1209, 1210 (1991)("[W]e

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conclude that Harris' motion to correct or modify the award was not timely filed under NRS 38.155. Therefore, the district court erred in refusing to confirm the arbitration award upon Richardson's motion.") (NRS 38.155 was superseded; NRS 38.241 and 38.242 provide identical language regarding 90 day deadline); *Casey v. Wells Fargo Bank, N.A.*, 128 Nev. 713, 716–18, 290 P.3d 265, 267–68 (2012) (if a party does not timely file motions to vacate or modify an arbitration award, the confirmation of such award is mandatory)

2). The Arbitration Awards Do Not Manifest Disregard of Law Or Are Completely Irrational

While an order confirming 06/25/21 AAA Summary Judgment Order and the 10/4/21 Fee Award is mandatory,[5] MMAWC, DFP and MMAX point out that those awards are rational and do not discard law.

> An arbitrator enjoys broad discretion in determining issues under an arbitration agreement. However, that discretion is not without limits. If an award is determined to be arbitrary, capricious, or unsupported by the agreement, it may not be enforced. Exber, Inc. v. Sletten Construction Company, 92 Nev. 721, 731, 558 P.2d 517, 523 (1976). We have stated that "[t]he district court's power of review of an arbitration award is limited to the statutory grounds provided in the Uniform Arbitration Act." New Shy Clown Casino, Inc. v. Baldwin, 103 Nev. 269, 271, 737 P.2d 524, 525 (1987); see NRS 38.145(1).2 However, when an arbitrator *90 manifestly disregards the law, a reviewing court may vacate an arbitration award. See French v. Merrill Lynch, Pierce, Fenner & Smith, 784 F.2d 902, 906 (9th Cir.1986) ("[a]n arbitrator's decision must be upheld unless it is 'completely irrational,' or it constitutes a 'manifest disregard of the law' " [citations omitted])

Wichinsky v. Mosa, 109 Nev. 84, 89–90, 847 P.2d 727, 731 (1993).

Here, the 06/25/21 AAA Summary Judgment Order and the 10/4/21 Fee Award are in accordance with Nevada law.[6] They are demonstrably rational, well-reasoned, detailed and founded on considerable factual findings and conclusions of law. *See* Exhibits 3, 5.

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[5] NRS 38.239; *Richardson*, 107 Nev. 763; *Casey*, 128 Nev. 713.

[6] Consider further that the 10/4/21 Fee Award is expressly provided by NRS 38.238 ("An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration....") and was based on the parties' agreement and consistent with Nevada law, including the *Brunzell* factors.

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IV. CONCLUSION

For the foregoing reasons, the Court should grant this Motion and enter an order and judgment confirming the 06/25/21 AAA Summary Judgment Order and the 10/4/21 Fee Award.

Respectfully,

KENNEDY & COUVILLIER, PLLC	DICKINSON WRIGHT PLLC
/s/Maximiliano D. Couvillier III	***/s/Michael N. Feder***
Maximiliano D. Couvillier III, Esq. Nevada Bar No. 7661 mcouvillier@kclawnv.com *Attorneys for Defendant MMAWC, LLC and The Nancy And Bruce Deifik Family Partnership LLLP*	Michael N. Feder (NV Bar No. 7332) MFeder@dickinsonwright.com Gabriel A. Blumberg (NV Bar No. 12332) GBlumberg@dickinsonwright.com *Attorneys for MMAX Investment Partners, Inc. dba Professional Fighters League*

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CERTIFICATE OF SERVICE

I certify that on **April 4, 2022**, I electronically filed the foregoing document with the Court's electronic filing and service system, which provides electronic service to the following registered users:

Byron Thomas, Esq. (Bar 8906)
3275 S. Jones Blvd., Ste. 104
Las Vegas, NV 89146
Byronthomaslaw@gmail.com
Attorney for Plaintiffs

/s/ Maximiliano D. Couvillier III
An Employee of KENNEDY & COUVILLIER, PLLC

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DECLARATION OF COUNSEL IN SUPPORT OF MOTION, AUTHENTICATING EXHIBITS

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Attorneys for Defendants MMAWC, LLC and The Nancy And Bruce Deifik Family Partnership LLLP

DISTRICT COURT

CLARK COUNTY, NEVADA

ZION WOOD OBI WAN TRUST and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST; WSOF GLOBAL, LLC, a Wyoming limited liability company,

Plaintiffs,

v.

MMAWC, LLC d/b/a WORLD SERIES OF FIGHTING a Nevada limited liability company; MMAX INVESTMENT PARTNERS, INC. dba PROFESSIONAL FIGHTERS LEAGUE, a Delaware corporation; BRUCE DEIFIK, an individual; CARLOS SILVA, an individual; NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP, a Colorado limited liability partnership; KEITH REDMOND, an individual; DOES I through X, inclusive; and ROE Corporations XX through XXX, inclusive,

Defendants.

CASE NO.: A-17-764118-C
DISTRICT COURT DEPT: 27

DECLARATION OF COUNSEL IN SUPPORT OF JOINT MOTION TO CONFIRM ARBITRATION AWARDS IN FAVOR OF DEFENDANTS AND FOR JUDGMENT THEREON

(Hearing Requested)

Pursuant to NRS 53.045, Maximiliano D. Couvillier III, Esq. declares as follows:

1. I make this Declaration in support of defendants' JOINT MOTION TO CONFIRM ARBITRATION AWARDS IN FAVOR OF DEFENDANTS AND FOR JUDGMENT THEREON ("Motion") in the above-captioned action.

2. I am counsel for of record for defendants MMAWC, LLC ("MMAWC") and the

Nancy and Bruce Deifik Family Partnership, LLLP ("DFP") in this action and I make this Declaration based on my personal knowledge.

3. I was also counsel of record for MMAWC and the DFP in the arbitration matter with the American Arbitration Association captioned *Zion Wood OB Wan Trust and Shawn Wright as Trustee v. MMAWC, LLC et al.*, Case Number 01-20-0005-4568 ("Arbitration").

4. The parties were required to conduct and disclose a considerable amount of discovery in the Arbitration, including all documents and evidence supporting their claims or defenses. In addition, Zion Obi Wan Trust ("Zion") and its trustee, Shawn Wright ("Wright"), were given the opportunity to conduct written discovery, including serving document requests and subpoenas. Attached to the Motion as **Exhibit 1** is a true and correct copy of the 11/4/20 Discovery Order and 3/8/21 Discovery & Scheduling Order issued in the Arbitration.

5. After the conclusion of discovery, Zion, Wright, MMAX Investment Partners, Inc. ("MMAX"), MMAWC and DFP agreed to waive and vacate the Arbitration hearing and, on April 2, 2021, filed a Stipulation with the AAA requesting that the Arbitration be adjudicated and resolved through dispositive motions. A true and correct copy of the parties' *04/02/21 AAA Stipulation* is attached to the Motion as **Exhibit 2.**

6. On May 19, 2021, the Arbitrator held oral argument on the parties' summary judgment motions, allowing the parties' counsel ample time to present their argument. On June 25, 2021, after carefully and thoughtfully considering the parties' briefs and argument, the Arbitrator issued a written *Ruling On The Parties' Stipulated Request Summary Adjudication* (06/25/21 AAA Summary Judgment Order") which granted summary judgment in favor of MMAWC, DFP and MMAX and against Zion and Wright as Trustee. A true and correct copy of the *06/25/21 AAA Summary Judgment Order* is attached to the Motion as **Exhibit 3.**

7. On June 25, 2021, MMAWC, DFP, MMAX, Zion and Wright received Notice of 06/25/21 AAA Summary Judgment Order from the AAA. A true and correct copy of that Notice is attached to the Motion as **Exhibit 4.**

8. On October 4, 2021, the Arbitrator issued her detailed *Final Award and Ruling on the Parties' Mutual Request for Reimbursement of Attorneys' Fees and Costs* ("10/4/21 Fee

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Award") ordering Zion and Wright to pay: (a) MMAWC and DFP $43.687.20 for their reasonable attorneys' fees and costs; and (b) MMAX $49,320.90 for its reasonable fees and costs. A true and correct copy of the 10/4/21 Fee Award is attached to the Motion as **Exhibit 5.**

9. On October 4, 2021, the parties received Notice of 10/4/21 Fee Award from the AAA. A true and correct copy of that Notice is attached to the Motion as **Exhibit 6.**

10. I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 4, 2022.

/s/: Maximiliano D. Couvillier III
Maximiliano D. Couvillier III, Esq.

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EXHIBIT 1
Discovery Orders

AMERICAN ARBITRATION ASSOCIATION | INTERNATIONAL CE FOR DISPUTE RESOL

American Arbitration Association

Zion Wood OB Wan Trust and Shawn Wright as Trustee, Claimants -vs- MMAWC, LLC dba World Series of Fighting; Nancy and Bruce Deifik Family Partnership, LLP, MMAX Investment Partners, Inc. dba Professional Fighters League; Carlos Silva, an individual, Respondents	Case Number: 01-20-0005-4568 **Preliminary Hearing and Scheduling Order Number 1**

Pursuant to the Commercial Arbitration Rules of the American Arbitration Association (AAA) effective October 1, 2013, to which the parties agree they are bound, a preliminary hearing was held on November 20, 2020 before Arbitrator Jay Young.

Preliminary Hearing Attendees:

For Claimants Zion Wood OB Wan Trust; Shawn Wright, Trustee: Byron Thomas, Esq.
For Respondents MMA WC, LLC dba World Series of Fighting; Nancy and Bruse Deifik Family Partnership, LLP: Maximiliano Couvillier, III
For Respondent MMAX Investment Partners, Inc., dba Professional Fighters League: Michael Feder, Esq.
For Respondent Carlos Silva: No appearance
For the Association: No representative

By Agreement of the Parties and Order of the Arbitrator, the Following is now in Effect:

1. Applicable Law: The Parties agree that this dispute is governed by Nevada law.

2. Parties: The Parties represent that all necessary or appropriate parties are included in the arbitration. The parties are not certain Respondent Silva has been properly served with the demand for arbitration.

3. Claim/Counterclaim: All parties will amend/specify claims and/or counterclaims by **December 18, 2020**. Reponses, if any, are due by **December 31, 2020**.

4. Additional Preliminary Matters: Any other preliminary matters not otherwise provided for herein will be raised by the parties by **January 8, 2021**.

5. Motions: Pursuant to the Commercial Rules, motions, including dispositive motions, are disfavored and may not be filed without the permission of the Arbitrator. An application to file any motion will be filed with the AAA and the Arbitrator, by letter or email not to exceed 2 pages, describing: 1) the motion the Party wishes to file; 2) the factual and legal basis for the motion; and 3) the reasons why the motion needs to be filed and how it will expedite resolution of the case or otherwise benefit the Parties.

The submission will contain a certification that the requesting Party has in good faith conferred with the opposing Party about the proposed motion prior to any Party requesting that a Motion be filed. The certification will state whether the relief sought by the motion has been agreed to by the Parties or will be opposed. If no conference has occurred, the reason why must be stated. An opposing party may submit a responsive letter, not to exceed 2 pages within 3 business days of its receipt of a letter requesting a motion for a dispositive motion. Parties are advised that dispositive motions which require resolution of disputed facts, without a hearing, will not likely be granted. All other applications or requests for advice or direction from the Arbitrator may be made informally by email or joint telephone conference. Formal motion procedure is not required, although it is allowed if the parties wish. Any request for permission to file a dispositive motion will be made no later than **February 26, 2021**.

6. Hearing: A Final Hearing in this matter will commence before the Arbitrator 9:00 a.m. through 5:00 p.m. on **April 12, 2021**, and continue daily from 9:00 a.m. through 5:00 p.m. through **April 14, 2021**. The parties estimate this case will require 3 day(s) of hearing time, inclusive of arguments. This is a firm setting; the setting will not be changed or continued absent exceptional

circumstances, upon a showing of good cause. The parties anticipate that some or all those participating in the Final Hearing will appear by video conference. The Parties must arrange for all witnesses not appearing in person to appear by video and audio streaming. A party must provide a witness appearing by video and audio streaming with a full set of all exhibits, whether joint exhibits or party exhibits. The video conference will take place through BlueJeans, utilizing the following conference identification: https://bluejeans.com/612659381?src=calendarLink. All other participants will attend the Final Hearing at 3800 Howard Hughes Parkway, Ste. 1000, Las Vegas, Nevada 89169.

7. Exchange of Information/Discovery: On or before **December 11, 2020**, the parties will make initial disclosures as outlined in this paragraph. The parties will exchange the name and, if known, the address and telephone number of each individual likely to have information regarding any matter not privileged which is relevant to the subject matter involved in this dispute, regardless of whether it relates to the claim or defense of a party or that of the other party. The disclosure will include any witness anticipated for impeachment or rebuttal. The identifying party will identify the subject(s) on which the witness will provide testimony. The parties will also disclose and provide a copy of all documents, data compilations, and tangible things that are in the possession, custody, or control of the party regarding any matter not privileged which is relevant to the subject matter involved in this dispute, regardless of whether it relates to the claim or defense of a party or that of the other party. No party has demonstrated good cause justifying the need for any other pre-arbitration discovery. The decision not to allow further discovery is made without prejudice.

The parties will file and serve their initial expert witness disclosures and reports, if at all, on or before **January 4, 2021**. Expert reports will set forth each expert's opinions and the reasons for them. Rebuttal expert witness disclosures and reports will be disclosed on or before **January 25, 2021**. The substance of each expert's direct testimony must fairly and reasonably be addressed in the expert's report. There will be no additional discovery of experts, except on good cause shown

to the Arbitrator.

8. Confidentiality: Any party may make a request to the Arbitrator for any measures required to protect confidential information.

9. Subpoenas: Subpoenas for the attendance of witnesses at the Final Hearing will be submitted no later than **March 12, 2021**.

10. Final Witness Disclosures: The parties will file a disclosure of all witnesses reasonably expected to be called at the Final Hearing by **March 22, 2021**.

11. Exhibits: The parties will exchange copies of all exhibits to be offered and all schedules, summaries, diagrams, and charts to be used at hearing not later than **April 2, 2021**.

a. The Association does not require a copy of the exhibits for our file.

b. Each party will bring sufficient copies to the hearing for opposing parties, the Arbitrator, and the witness.

c. Each proposed exhibit will be bound in binders and pre-marked for identification using the following designations:

Party	Exhibit #	To Exhibit #
Joint	J1	J___
Claimant	C1	C___
Respondent	R1	R___

d. The parties will attempt to agree upon and submit a jointly-prepared, consolidated and comprehensive set of joint exhibits.

12. Arbitration Hold: Counsel for the Parties are directed to inform their clients that the Arbitrator has ordered an arbitration hold which applies to all documents related to the all documents, however stored, relating to the transaction at issue herein, and that the clients should take steps to prevent the destruction of all documents, both paper and electronic. If any party has

an automatic document deletion/destruction program in place, that system should be overridden until the case is completed.

13. Stipulation of Uncontested Facts: The parties will file a stipulation of uncontested facts by **April 2, 2021**.

14. Pre-Hearing Briefs: Each party may serve and file a pre-hearing brief on all significant disputed issues, setting forth briefly the party's position and the supporting arguments and authorities on or before **April 5, 2021**.

a. Briefs may be in summary form, including the use of bullet points rather than extensive text.

b. The Arbitrator requests that briefs not exceed 20 double-spaced pages, excluding copies of any authorities that the parties may submit at the same time. The parties are invited to highlight any authorities as they deem appropriate.

15. Stenographic Record: Claimant requests a stenographic record of the hearing. The party requesting a stenographic record will arrange for the presence and payment of a court reporter.

16. Award: The parties will submit any request for an award of fees and costs no later than 5 business days from the last day on which testimony is taken at the Arbitration hearing. A party may file an opposition no later than 5 business days after the filing of a request for an award of fees and costs. The Final Hearing will not be deemed closed until 10 days from the last day on which testimony is taken at the Arbitration hearing in order to allow for the submission of the matters discussed in this subparagraph. The Arbitrator will issue a standard award no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statement and proofs to the Arbitrator.

17. Mediation Services: Mediation and Judicial Settlement Conference Services are available from the AAA. There is no additional filing fee to initiate either service. Pursuant to Rule 9, the parties will mediate their dispute pursuant to AAA's Commercial Arbitration Rules, or

as otherwise agreed upon by the parties, in accordance with the Rules by **February 11, 2021**.

18. Communication: The parties agree to participate in Direct Exchange. Provided there is no *ex parte* communication with the Arbitrator, the parties may communicate directly with the Arbitrator by submitting documents to the Arbitrator and also sending copies to the other party(s) and originals to the AAA (except for hearing exhibits and discovery documents). Email submission of documents and email requests for action by the Arbitrator are allowed, provided that the AAA and all parties also receive copies of all of these. For convenience of the parties, the following are the email addresses to be used:

Arbitrator: jay@h2law.com; amc@h2law.com
Claimants: byronthomaslaw@gmail.com
Respondents: mcouvillier@kclawnv.com; mfeder@dickinsonwright.com
AAA: JulieCollins@adr.org

There will be no direct oral or written communication between the parties and the Arbitrator except as contemplated by this Order. Any communication to the Arbitrator will be copied to the AAA.

19. Disclosures of the Arbitrator: Each counsel and Party has a continuing obligation to protect the integrity of the arbitration proceeding by promptly providing the Arbitrator the information necessary to allow him/her to comply with his/her ongoing duties of disclosure pursuant to the Code of Ethics for Arbitrators in Commercial Disputes and the American Arbitration Association. Counsel, for themselves and for each of their clients, acknowledge the continuing obligation to supplement the identification of potential fact and expert witnesses, consulting experts, counsel participation and representation in any capacity, and any other individual or entity interested in the outcome of the arbitration. Any issues concerning disqualification of the Arbitrator will be raised promptly with the AAA.

20. File Destruction: The Arbitrator will destroy their files related to this matter 90 days after the filing of the Award unless otherwise notified by the parties.

21. Deadline Enforcement: All deadlines stated herein will be strictly enforced and

adhered to in order to avoid unnecessary delay and to ensure an expedient and fair resolution of this matter. This order will continue in effect unless and until amended by subsequent order of the Arbitrator.

Dated: November 24, 2020

Arbitrator Signature: */s/ Jay Young*

AMERICAN ARBITRATION ASSOCIATION FOR COMMERCIAL ARBITRATION RULES

In the Matter of Arbitration Between:
Case Number: 01-20-0005-4568

Zion Wood OB Wan Trust and Shawn Wright as Trustee
vs
MMAWC, LLC World Series of Fighting: Nancy and Bruce Deifik Family Partnership, LLP, MMAX Investment Partners, Inc. dba Professional Fighters League, Carlos Silva, an individual, LLC

Report of Preliminary Hearing and Scheduling Order of March 4, 2021

Pursuant to the Commercial Arbitration Rules of the American Arbitration Association (the "AAA") as amended and in effect October 1, 2013, a second preliminary hearing was conducted via telephone conference on March 4, 2021, before Arbitrator Mary S. Jones. Arbitrator Jones was appointed on February 19, 2021, taking the place of Arbitrator Jay Young, who accepted a judicial appointment. Appearing on behalf of Claimant, Zion Wood OB Wan Trust and Shawn Wright as Trustee, was Byron Thomas, Esq., and on behalf of Respondent MMAWC, LLC dba World Series of Fighting, Nancy and Bruce Deifik Family Partnership, LLP, was Maximiliano Couvillier, III Esq., and on behalf of Respondent MMAX Investment Partners, dba Professional Fighters League, was Michael Feder, Esq. There was no appearance by Carlos Silva or any other party.

Arbitrator Jones reviewed with Counsel the deadlines set forth in Preliminary Hearing and Scheduling Order #1 dated November 24, 2020, issued by former Arbitrator Young. All parties and Counsel agreed that the dates and schedule set forth in Preliminary Hearing #1, and specifically the Hearing dates of April 12, 13 and 14, 2021, shall remain as scheduled and for any deadline set in the Preliminary Hearing and Scheduling Order that has pasted, the parties shall endeavor to expeditiously complete the required action(s) without further delay.

By Order of the arbitrator and agreement of the parties, the following is now in effect:

1. Arbitrator Information.
   Mary S. Jones, Esq.
   mary@marysjones.com

2. Parties. Claimant's Counsel, Mr. Thomas requested leave to serve Respondent, Carlos Silva, who Mr. Thomas advised has not responded to prior service efforts, nor has Mr. Silva made an appearance in this action. Mr. Thomas shall have 2 weeks, until March 18, 2021 to effectuate service on Mr. Silva. Previously the parties represented that all necessary and appropriate parties to this matter have been added.

3. Exchange of Information. Claimant's Counsel, Mr. Thomas requested the opportunity to submit supplemental requests for production of documents. Mr. Thomas was granted leave to serve a supplemental request for production by Friday, March 5, 2021. All counsel shall meet and confer on Monday, March 8, 2021 between 11:00 a.m. and 3:00 p.m. and again, on March

11, 2021, for at least 30 minutes, to agree upon the additional documents to be produced and the specific date for production.

4. Missed Deadlines. Counsel shall meet and confer on any other previously set deadlines and exchange the required information as expeditiously as possible to avoid any further delays, including but not limited to witness lists and disclosures, experts witness disclosures and reports.

5. Status Conference. There will be an additional status conference held on **March 11, 2021 at 5:00 p.m. Pacific Time** to discuss any further scheduling, as well as set the place for the hearing, ie: virtual via ZOOM or bluejeans.com, if it is not safe yet for an in-person hearing.

6. Mediation. The parties are encouraged to meet and confer in an effort to try to reach a negotiated resolution to this dispute and if unsuccessful to seek the assistance of a mediator to help resolve and /or narrow any issues. Counsel are encouraged to engage in efforts to mediate this matter in any form or formality of the parties' choice. The AAA case administrator is able to assist the parties with mediator selection, if requested. At the next status conference counsel shall advise of the date and time, counsel have set for a mediation.

7. Subpoena Process. Should subpoenas be requested, the party requesting, shall send the subpoena, with all supporting information to the arbitrator, at mary@marysjones.com advising of the basis and need for the subpoena. A copy shall be sent to all other counsel. If no objection is received within 4 business days, the arbitrator shall, if appropriate, execute the subpoena and return it to the requesting party for service.

8. Accelerated Exchange/Transmission of Materials. The parties have agreed to participate in the AAA's Direct Exchange. Provided there is no ex parte communications with the Arbitrator, the parties may communicate directly with the Arbitrator by submitting documents to the Arbitrator and also sending copies to the other party and to the AAA at the same time and in the same manner. No hearing exhibits or discovery documents are required to be sent to the Arbitrator or the AAA, unless specifically requested. Email submissions of documents and email requests for action by the Arbitrator are allowed, provided that the AAA and all parties also receive copies. There shall be no direct oral or written communication between the parties and the Arbitrator except as contemplated by this Order. The Arbitrator advises 1) she does not accept faxed material, (2) information shall be transmitted via email, and 3) she will generally communicate with the parties through the case manager.

9. Resolution of Disputes. If during the case, issues arise which the parties cannot resolve after two meaningful meet and confer efforts, the parties shall contact the case manager with available dates for a telephone conference call with the arbitrator. Discovery disputes or other issues shall be presented to the arbitrator in a single, joint document of the parties, containing the specific matters in dispute, followed by the contentions of the parties as to each matter, along with a proposed resolution, and a proposed order, for each parties' suggested resolution of the matters in contention.

10. No Direct Contact with the Arbitrator. Except under the Accelerated Exchange Program, there shall be no oral or written communication between the parties and the Arbitrator other than at oral hearings.

11. Confidentiality and Data Protection. The parties are encouraged to enter into a non-disclosure/confidentiality agreement to address the protection of any confidential information that may be exchanged during the course of this matter.

12. Data Security. Counsel are reminded to review the AAA's cybersecurity and privacy guidelines for this case. It is understood that Counsel have agreed that the use of the AAA WebFile and Panelist eCenter for the exchange and storage of documents throughout the course of this case is acceptable and remains acceptable as relates to the exchange of information in this case and does not require special cybersecurity or privacy pre-cautions or enhanced levels of protection. If this changes the counsel and parties shall immediately advise the arbitrator.

13. Arbitrator Keeps No File. The parties are reminded it is the practice of the Arbitrator to keep no file respecting a matter after its conclusion. If at the conclusion of the hearings in this matter, any party wishes to collect its exhibits, please advise the Case Manager accordingly. Otherwise, all of the documents will be destroyed after the file is closed or an Award is rendered.

14. Disclosure Obligations. Counsel advised they received the arbitrator's C.V, disclosure statement, and supplemental disclosures and they had no objections, requested no further information and were not aware of any additional information that should be disclosed. Counsel are reminded of their continuing obligation, and that of their respective clients and firms, immediately to disclose to the Case Manager any facts of which they become aware during this Arbitration that could reasonably lead to the disqualification of the Arbitrator.

16. Deadlines Enforced. All deadlines stated herein will be strictly enforced except to the extent modified or excused for good cause shown.

This order shall continue in effect unless and until amended by subsequent order of the Arbitrator.

Dated: March 8, 2021

Mary S Jones

Mary S. Jones, Arbitrator

EXHIBIT 2
Stipulation to Adjudicate Arbitration Via Summary Judgment

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Attorneys for Defendants MMAWC LLC and The Nancy And Bruce Deifik Family Partnership LLLP

AMERICAN ARBITRATION ASSOCIATION

Zion Wood OB Wan Trust and Shawn Wright as Trustee, Claimant -vs MMAWC, LLC dba World Series of Fighting; Nancy and Bruce Deifik Family Partnership, LLLP, MMAX Investment Partners, Inc. dba Professional Fighters League; Carlos Silva, an individual, Respondents.	Case Number: 01-20-0005-4568 Arbitrator: Mary S. Jones, Esq. **STIPULATION AND ORDER REGARDING DISPOSITIVE MOTIONS**

The parties, by and through their respective undesigned counsel stipulate and agree as follows:

1. The parties believe and agree that the above-captioned Arbitration matter may be resolved through dispositive motions.

2. The parties waive AAA Rule 33, requiring an initial showing regarding the filing of dispositive motions.

3. The parties will serve and file with AAA dispositive motions on or before April 20, 2021, with courtesy copy email to Arbitrator.

4. Oppositions to be served and filed with AAA on or before May 4, 2021, with courtesy copy email to Arbitrator.

5. Replies to be served and filed with AAA on or before May 11, 2021, with

courtesy copy email to Arbitrator.

6. The parties will discuss oral argument regarding the dispositive motions with the Arbitrator during the April 6, 2021 Status Check conference.

7. The April 6, 2021, hearing on AAA-Rule 33 determination is vacated.

DATED: April 2, 2021.

KENNEDY & COUVILLIER, PLLC

/s/Maximiliano D. Couvillier III
Maximiliano D. Couvillier III, Esq. (Bar 7661)
mcouvillier@kclawnv.com
Attorneys for Respondents MMAWC LLC and The Nancy And Bruce Deifik Family Partnership LLLP

LAW OFFICES OF BYRON THOMAS

/s/Byron E. Thomas
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IT IS SO ORDERED

Dated: April ____, 2021

Arbitrator Mary S. Jones

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. ◆ Las Vegas, NV 89120
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From: Byron Thomas
To: Max Couvillier
Cc: Michael N. Feder; Gabriel A. Blumberg
Subject: Re: EXTERNAL: Re: Dispositive Motions
Date: Friday, April 2, 2021 3:56:59 PM

You have my consent to affix my e-signature and submit

On Friday, April 2, 2021, Max Couvillier <mcouvillier@kclawnv.com> wrote:

> Attached is a draft proposed Stipulation regarding dispositive motions.
>
> Please let me know if you have any questions or if I have your consent to affix your e-signature and submit.

Maximiliano D. Couvillier III, Esq.
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"In a lawsuit the first to speak seems right, until counsel comes forward to cross-examine."

Proverbs 18:17

From: Michael N. Feder <MFeder@dickinson-wright.com>
Sent: Friday, April 2, 2021 3:26 PM
To: Byron Thomas <byronthomaslaw@gmail.com>; Max Couvillier <mcouvillier@kclawnv.com>
Cc: Gabriel A. Blumberg <GBlumberg@dickinson-wright.com>
Subject: RE: EXTERNAL: Re: Dispositive Motions

From: Michael N. Feder
To: Max Couvillier; Byron Thomas
Cc: Gabriel A. Blumberg
Subject: RE: EXTERNAL: Re: Dispositive Motions
Date: Friday, April 2, 2021 4:01:31 PM

Looks fine Max if you want to email to the arbitrator and Julie at AAA.

Thanks,
Michael

Michael N. Feder Member

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DICKINSON WRIGHT PLLC

From: Max Couvillier <mcouvillier@kclawnv.com>
Sent: Friday, April 2, 2021 3:47 PM
To: Michael N. Feder <MFeder@dickinson-wright.com>; Byron Thomas <byronthomaslaw@gmail.com>
Cc: Gabriel A. Blumberg <GBlumberg@dickinson-wright.com>
Subject: RE: EXTERNAL: Re: Dispositive Motions

Attached is a draft proposed Stipulation regarding dispositive motions. Please let me know if you have any questions or if I have your consent to affix your e-signature and submit.

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EXHIBIT 3
Arbitration
Summary Judgment Order

AMERICAN ARBITRATION ASSOCIATION FOR COMMERCIAL ARBITRATION RULES

In the Matter of Arbitration Between:

Case Number: 01-20-0005-4568

Zion Wood OB Wan Trust and Shawn Wright as Trustee

vs

MMAWC, LLC dba World Series of Fighting: Nancy and Bruce Deifik Family Partnership, LLP, MMAX Investment Partners, Inc. dba Professional Fighters League, Carlos Silva, an individual

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RULING ON PARTIES' STIPULATED REQUEST SUMMARY ADJUDICATION

On April 2, 2021, the parties submitted a signed stipulation stating that this case may be resolved by adjudicated dispositive motions.[1] The Arbitrator set a briefing schedule and the parties timely submitted their proofs and arguments in support and opposition thereof.[2]

A telephone conference call was conducted on May 19, 2021, before Arbitrator Mary S. Jones, for the purpose of conducting oral argument on Claimant's Motion for Summary Judgment and on Respondents' MMAWC, LLC and MMAX Investment Partners, Inc.'s Joint Motion for Summary Judgment, subsequently further joined by Respondent Nancy and Bruce Deifik Partnership, LLP ("DFP") and together with MMAX Investment Partners Inc., and MMAWC, LLC the "Respondents").

Appearing on behalf of Claimant, Zion Wood OB Wan Trust and Shawn Wright as Trustee, (herein referred to as "Zion" or "Claimant") was Byron Thomas, Esq., of the Law Offices of Byron Thomas and on behalf of Respondent MMAWC, LLC ("MMAWC") and Nancy and Bruce Deifik Family Partnership, LLP, ("DFP") was Maximiliano Couvillier, III Esq., of Kennedy & Couvillier PLLC and on behalf of Respondent MMAX Investment Partners Inc, dba Professional Fighters League ("PFL" or "MMAX"), was Michael Feder, Esq. of Dickinson Wright, PLLC.

The Arbitrator, having carefully read and considered all of the submissions of the parties including, but not limited to Claimant's Specification of Claims, Amended Specification of Claims, the parties' dispositive motions, oppositions, responses thereto, voluminous exhibits, memorandum of points and authorities, declarations of Nathaniel Redleaf, James Bramson, Benjamin Winter, and oral argument, hereby makes the following finding, determinations and Ruling:

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[1] The Stipulation and Order Regarding Dispositive Motions was signed by all parties and dated April 2, 2021 (herein "Stipulation"). Rule R-1 allows the parties, by written agreement, to vary the procedures set forth in the Rules. Rule R-33 provides the arbitrator with authority to allow the filing of and make rulings upon a dispositive motion.

[2] Respondents' briefs, opposition and reply contained the following notice **"CONFIDENTIAL – ATTORNEYS' EYES ONLY PURSUANT TO PROTECTIVE ORDER ON FILE IN THIS ARBITRATION."**

PROCEDURAL BACKGROUND

This matter originally commenced in District Court in the State of Nevada where Respondents filed a motion to dismiss and to compel arbitration. The motion was originally granted, but thereafter reversed by the Supreme Court of the State of Nevada on September 5, 2019 and remanded to arbitration. Claimant filed the Demand for Arbitration in this case on June 2, 2020. Arbitrator Jay Young was appointed and conducted the first preliminary hearing on November 20, 2020, where the parties agreed that this dispute is governed by the Nevada Law and the parties were ordered to Exchange Information/Discovery "On or before December 11, 2020," and "disclose and provide a copy of all documents, data compilations, and tangible things .... relevant to the subject matter involved in this dispute...".

Thereafter, Arbitrator Young was unable to continue to serve and Mary S. Jones was appointed arbitrator on February 19, 2021. Several preliminary hearings were held, including on March 4 and 11, 2021, where Claimant was granted leave to serve supplemental requests for production of documents and was granted an extension of time to designate experts. At the March 16, 2021 Preliminary Hearing, both Counsel confirmed the parties had completed their exchange of all information in this case where upon Respondent requested leave to file a dispositive motion. Leave to file a Rule 33 showing, that a dispositive motion was likely to succeed and/or dispose of some or all of the issues was granted. The parties thereafter executed their April 2, 2021 Stipulation to resolve this matter by summary adjudication.

On March 30, 2021, Claimant filed an Amended Specification of Claims, alleging damages of $8,370,000 and $9,139,500, for two claims, 1) breach of contract of the Settlement Agreement, as against Respondents MMAWC, DFP, and Silva; hereinafter the ("Settlement Respondents") and Breach of the Implied Covenant of Good Faith and Fair Dealing, as against all Respondents. Claimant seeks summary adjudication on its claims against all Respondents and Respondents seek summary adjudication and dismissal of all of Claimant's claims against Respondents for failure to present facts upon which relief can be sought.

FACTS

MMAWC is a Nevada limited liability company. MMAWC operated a mixed martial arts promotion beginning in 2012 under the brand name "World Series of Fighting" or "WSOF" and its events were aired on NBC Sports. Zion invested in MMAWC and had an initial interest of 10.5%. In 2015, several disputes arose amongst the parties concerning the operation of the business and repayment of debt. Litigation ensued, and the parties were able to reach a settlement. On February 19, 2016, the parties to those prior lawsuits, including MMAWC and Zion, entered into a comprehensive Confidential Settlement Agreement ("Settlement Agreement") See Ex. 1-A.

1. Settlement Agreement

The Settlement Agreement provides for Zion's membership interest in MMAWC to be reduced to 4.5% of the total outstanding membership units of MMAWC, and for such 4.5% interest to "remain non-dilutable." Specifically, Section 1 of the Settlement Agreement provides:

> 1. AMENDED AND RESTATED WSOF OPERATING AGREEMENT
> Concurrently with the execution of this Agreement, Zion and DFP shall execute and deliver to the other an executed counterpart of an amended and restated operating agreement in the form attached here as Exhibit A (the "Operating Agreement"). The Operating Agreement shall supersede and terminate all previous operating agreements of WSOF,[3] including without limitation the

[3] The Settlement Agreement defines MMAWC, LLC as "WSOF."

> 11/01/12 Operating Agreement. Pursuant to and as a result of the execution of the Operating Agreement, Zion's membership interest shall be reduced to 4.50% of the total outstanding ownership units in WSOF (and any of its current or future subsidiaries, parents, successors or assigns), which interest shall remain non-dilutable, as set forth in the Operating Agreement. (See Ex 1-A)

To effectuate the reduction of Zion's interest in MMAWC to 4.5%, a Fourth Amended and Restated Operating Agreement of MMAWC, was prepared, and dated as of February 19, 2016 "4th Op. Agreement"), which was also an exhibit to the Settlement Agreement. (Ex. 1-B) Among other things, the recitals of the 4th Op. Agreement states:

> WHEREAS, as part of the settlement of the Zion Disputes and in consideration of the concessions and payments made in the Settlement Agreement, Zion has agreed to accept as its ownership interest in the Company the Units described in this Agreement;
>
> WHEREAS, as part of the Settlement Agreement and as part of the consideration for settlement of the Zion Disputes, the Members believe it to be in the best interests of the Company, for the Units owned by Zion as set out in this Agreement to be at no time less than four- and one-half percent (4.5%) of the issued and outstanding Units of the Company, without Zion's written consent. (Ex.1-B)

Section 5.05.b of the 4th Op. Agreement contains the following language regarding non-dilution of Zion's interest:

> b. Notwithstanding anything contained in this Agreement, the Members agree that Zion's interest in the Company shall be deemed non-dilutable (unless Zion agrees in writing that such interest may be diluted). Accordingly, if at any time after the Effective Date additional Units of the Company are issued, Units of the Company shall also be issued to Zion so that Zion at all times holds four- and one-half percent (4.5%) of the issued and outstanding Units of the Company. Zion will have no obligation to make any future capital calls.

Thus, if additional units of MMAWC are ever issued, then Zion is to be issued additional units of MMAWC so that Zion's interest in MMAWC remains at 4.5%. It is undisputed that no new units of MMAWC have been issued since the Settlement Agreement was signed. (Ex.1)

Schedule A of the 4th Op. Agreement identifies the number of units for each member of MMAWC, including providing that Zion holds 13.34 units of the 296.64 total units of MMAWC (which is 4.5%). (Ex. 1-B) It is undisputed that the 4th Op. Agreement has not been amended.

Zion owned 4.5% of MMAWC units after the Settlement Agreement was signed and Zion still has an ownership interest of 4.5% in MMAWC.

Respondents have produced evidence that MMAWC has a current Nevada business license, is current on its filings with the Nevada Secretary of State, continues to file tax returns and issue K-1's. (Ex. 1, Ex. 1-D MMAWC's Federal Tax returns for 2016); 1- E (MMAWC's Federal Tax returns for 2017); 1-F (MMAWC's Federal Tax returns for 2018); and 1-G (MMAWC's Federal Tax returns for 2019). (Ex. 1, 1-D, 1-E, 1-F)

It is undisputed that MMAWC was, at the time the Settlement Agreement was entered into and remains today, a Nevada limited liability company, in good standing and Zion is currently the

owner of 4.5% of MMAWC. Claimant has presented no evidence that the Settlement Agreement was breached.

2. The 4th Amended Operating Agreement

Claimant next asserts that Section 13.01 of the 4th Op. Agreement was designed and intended to protect Claimant from attempts to dilute its 4.5% ownership interest in MMAWC and that Respondents breached section 13.01 of the 4th Op Agreement. See Amended Statement of Claims.

Section 13.01 states:

> 13.01 With the vote or consent of the Members holding a Super Majority of the Units, the Board may upon any initial Public Offering, and the Board shall upon a qualified Public Offering, elect to cause the Company to reorganize as a corporation (the "Successor") in accordance with this Article XIII in anticipation of registration of the common stock of such Successor. The method of effecting such reorganization, whether by merger with and into a corporate subsidiary of the Company or otherwise, shall (subject to the remaining provisions of this Article XIII) be determined by the Board in its discretion; provided that (i) the Company shall to the extent feasible under the circumstances effect any such reorganization in a manner which avoids creation of a taxable income for the Company or any Member and (ii) the Company shall not effect any such reorganization in a way that would adversely affect a Member in a manner disproportionate to any adverse effect such reorganization would have on other Members (not including any disproportionate adverse effect on the particular tax status or attributes of a Member), without the written consent of such Member.(Ex. 1)

Section 13.01 is clear and unambiguous. It allows the Board of MMAWC, "upon any initial Public Offering" and requires the Board "upon a qualified Public Offering," to elect to cause the Company to reorganize as a corporation, (the "Successor") in anticipation of registration of the common stock, provided that, the Company shall not effect any such reorganization in a way that would adversely affect a Member in a manner disproportionate to any adverse effect such reorganization would have on other Members, without the written consent of such Member.

Section 13.01 specifically relates to effecting a reorganization "of the Company" meaning MMAWC, into a corporation in connection with a Public Offering of MMAWC shares.[4] There was no evidence presented that MMAWC authorized or ever entered into a Public Offering of its shares and certainly no evidence MMAWC reorganized from a limited liability company to a corporation, in the first place. The evidence is undisputed that MMAWC is and remains today, a Nevada limited liability company, not a corporation. Zion's ownership interest has not been adversely affected, since Zion still owns 4.5% of MMAWC and MMAWC still exists as a limited liability company.

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[4] Public Offering is a defined term on page 6 of the 4th Op. Agreement which states:

"Public Offering" means and underwritten public offering and sale of Successor Stock pursuant to an effective registration statement under the Securities Act; provided that a Public Offering shall not include an offering made in connection with a business acquisition or combination pursuant to a registration statement on a Form S-4 or any similar form, or an employee benefit plan pursuant to a registration statement on Form S-8 or any similar form."

Since there was no evidence presented that MMAWC ever entered into the type of transaction described or contemplated by Section 13.01 of the 4th Op. Agreement, no consent was required of any member of MMAWC, including Zion for a transaction that did not happen. Claimant has presented no evidence that Section 13.01 of the 4th Op. Agreement was breached.

Claimant next asserts that Respondents breached Sections 13.02(b) and 1303(a) of the 4th Op Agreement. Sections 13.02(b) and 13.03(a) of the 4th Op. Agreement describe further details of the same proposed transaction described in 13.01, a reorganization of MMAWC in connection with a public offering of MMAWC's stock. Since there is no evidence whatsoever that such a transaction was ever considered, approved or consummated by MMAWC, there certainly can be no breach of Sections 13.02(b) or 1303(a) of the 4th Op. Agreement for a transaction that did not happen.[5]

3. Formation of MMAX, Inc.

Next, Claimant asserts that "instead of complying with the terms of Section 13 of the 4th Op Agreement, MMAWC simply formed a new entity, MMAX, Inc, to raise more capital, and retained only 38% of what it owned before the transfer and Respondents admittedly paid Zion no cash, and gave Zion no stock, which Claimant asserts is therefore a legal admission that a fraudulent transfer occurred, damaging Zion."[6] (Opposition to Respondent's Motion for Summary Judgment at pages 4 and 7).

The facts do not specifically support Zion's assertions that MMAWC formed the entity MMAX, Inc. The Certificate of Incorporation, of MMAX, Inc, shows it was filed on Nov. 3, 2016 by MMAX Investment Partners LLC, an entity unrelated to MMAWC. (See Ex. 2). MMAX, Inc., was formed in connection with the Term Sheet and Asset Contribution Agreement to which MMAWC was a party and the MMAWC Board and a Super Majority of the members approved. (See Ex. 1) The facts do not support Zion's allegation of a fraudulent transfer.

Claimant asserts in its Opposition to Respondents Motion for Summary Judgment that "MMAX, Inc., was supposed to be a vehicle that would allow MMAWC to go public, so all the members of MMAWC could reap the benefits of going public" citing as authority Section 13 of the 4th

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[5] Section 13.02(b) of Op. Agreement states:

> Each Unit shall (effective upon and subject to the consummation of such initial Public Offering) convert into shares of common stock of the Successor (the "Successor Stock"), and the shares of Successor Stock shall be allocated among the holders in exchange for their respective Units such that each holder shall receive a number of shares of Successor Stock equal to the quotient of (i) the amount such holder would have received in respect of such holder's Units in a liquidation or dissolution at the time of the initial Public Offering, divided by (ii) the price per share at which the common stock is being offered to the public in the initial Public Offering, in each case net of underwriting discounts and commissions. (Ex.1)

Section 13.03(a) states:

> The organizational documents of the Successor and/or a stockholders' or other agreement, as appropriate, shall provide that the rights and obligations of the Members hereunder (to the extent such rights and obligations survive consummation of an initial Public Offering) shall continue to apply in accordance with the terms thereof unless the parties thereto otherwise agree in writing pursuant to the terms thereof. (Ex. 1)

[6] Claimant raises the allegation of a fraudulent transfer for the first time in Claimant's summary adjudication submissions. Although no facts were presented to support a fraud claim, fraud was not pled in Claimant's Amended Specification of Claims Demand. Fraud is not a claim before this Arbitrator.

Op. Agreement. Claimant has provided no facts to support that assertion. The transaction described in Section 13 of the 4th Op. Agreement did not happen.

Section 13 of the 4th Op. Agreement only relates to a going public scenario where MMAWC would be the successor corporation, not a third party, unrelated to MMAWC. It is undisputed that MMAWC is still in existence, thus MMAX, Inc., is not the successor to MMAWC. Furthermore, the 4th Op. Agreement expressly authorizes the Board, with the advance consent of a Super Majority of the Members of MMAWC, to be able to sell, dispose, or transfer all of the Company Property or otherwise change the business of the Company. See Section 9.02 of the 4th Op. Agreement. The ACA was validly authorized. (See Ex. 1).

4. The Asset Contribution Agreement

The facts relating to the Asset Contribution Agreement ("ACA") are as follows:

On October 5, 2016, MMAWC entered into a Term Sheet with MMAX Investment Partners LLC ("MMAX LLC"), a Delaware limited liability company that was formed in September 2016. Ex. 2 at ¶ 3. As part of the Term Sheet, MMAX LLC formed MMAX Inc., a Delaware corporation that was incorporated on November 3, 2016 ("MMAX"). Ex. 2 at ¶ 4; Ex. 2-A. MMAX LLC also adopted Bylaws governing the MMAX. Ex. 2 at ¶ 5; Ex. 2-B.

On November 14, 2016, MMAX LLC and MMAWC entered into an Amended and Restated Term Sheet (the "Amended Term Sheet"). Ex. 2-C; Ex. 2 at ¶ 6; Ex. 1 at ¶22. Pursuant to the Amended Term Sheet, MMAX LLC would invest $15,500,000 into MMAX Inc. to obtain 62% of the shares of Series A Preferred Stock in MMAX Inc. (15,500,000 shares) and MMAWC would sell certain of its assets in exchange for, *inter alia*, the remaining 38% of the shares of Series A Preferred Stock (9,500,000 shares) in MMAX Inc. Ex. 2-C; Ex. 2 at ¶ 7. The Series A Preferred Stock was valued at $25,000,000, meaning each share was valued at $1.00. *Id.*

The Amended Term Sheet was incorporated into the January 6, 2017 Asset Contribution and Series A Preferred Stock Purchase Agreement. ("ACA"). Ex. 2-D; Ex. 2 at ¶ 8; Ex. 1 at ¶ 10. The ACA identified thirty (30) separate investors that combined to contribute $15,500,000 in cash in exchange for a total of 15,500,000 shares of Series A Preferred Stock in MMAX Inc. Ex. 2-D at MMAX-AAA000585. These thirty (30) other investors included trusts, limited liability companies, and limited partnerships, as well as several, notable high net worth individuals, who were not directly related MMAWC or its members.

MMAWC received both cash and 9,500,000 shares of Series A Preferred Stock in MMAX Inc. in exchange for selling most of its assets to MMAX Inc. Ex. 2 at ¶ 11. The cash component of the transaction was comprised of: (1) $5,500,000 plus (2) $1,056,974.87 minus the revenues received by MMAWC from the MMAWC's Dec 31, 2016 event in New York City plus $99,543 (collectively the "Contributed Cash"). Ex. 2-D at MMAX-AAA000247; Ex. 2 at ¶ 11. Out of these funds, $1,100,000 was paid to NBC on behalf of MMAWC and $3,300,000 was paid to specific holders of MMAWC debt on behalf of MMAWC. The remainder of the Contributed Cash went directly to MMAWC. (Ex. 2 @ ¶ 11)

The ACA also established the initial Board of Directors for MMAX Inc. Ex. 2-D; Ex. 2 at ¶ 12. The majority of the five-member Board of Directors consisted of the founder members of MMAX Inc. who are unrelated to MMAWC. Ex. 2 at ¶ 12. Two of the initial Board Members were related to MMAWC, Carlos Silva, MMAWC's CEO and Ray Sefo President of MMAWC. (See Ex 2)

On January 6, 2017, the Board of Directors for MMAX Inc. approved the ACA via unanimous written consent. (Ex. 2-E at MMAX-AAA000004; Ex. 2 at ¶ 14)

On the same day, the members of MMAWC executed a written consent:

> "approv[ing] and authoriz[ing] in all respects MMAWC's (1) entry into, and execution and delivery of the Contribution Agreement [the ACA], the Escrow Agreement, the Stockholders Agreement, and such other agreements, certificates, and other documents as are reasonably necessary or advisable in connection with the Asset Contribution (collectively, the "Contribution Transaction Documents"), (ii) completion of the Asset Contribution in accordance with the Contribution Agreement and such other transactions contemplated thereby and by the Contribution Transaction Documents, (iii) paying or causing the Paydown Amount to be paid to Deifik, and (iv) entry into, and execution and delivery of the New Loan Documents." (Ex. 1 at ¶ 23; Ex. 1-I)

The managers of MMAWC also executed a written consent:

> approv[ing] and authoriz[ing] in all respects MMAWC's (1) entry into, and execution and delivery of the Contribution Agreement [the ACA], the Escrow Agreement, the Stockholders Agreement, and such other agreements, certificates, and other documents as are reasonably necessary or advisable in connection with the Asset Contribution (collectively, the "Contribution Transaction Documents"), (ii) completion of the Asset Contribution in accordance with the Contribution Agreement and such other transactions contemplated thereby and by the Contribution Transaction Documents, (iii) paying or causing the Paydown Amount to be paid to Deifik, and (iv) entry into, and execution and delivery of the New Loan Documents. (Ex. 1 at ¶ 23; Ex. 1-J)

On January 20, 2017, MMAX Inc. filed a Form D with the United States Security and Exchange Commission ("SEC") regarding its exempt offering of securities in the form of $25,000,000 in equity relating to the ACA. Ex. 2-F; Ex. 2 at ¶ 15. Pursuant to its SEC filing, MMAX Inc. fully funded the $25,000,000 it had offered. *Id.* Furthermore, and contrary to assertions by Claimant, MMAX Inc.'s Form D stated in that public filing with the regulating SEC that the offering was not being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer." (Ex. 2-F; Ex. 2 at ¶ 15)

A review of the Amended Term Sheet, the ACA, MMAX Inc.'s January 6, 2017 Unanimous Written Consent, MMAX Inc.'s Bylaws, and MMAWC's 4th Op. Agreement, indicates there was no relationship between MMAX Inc. and MMAWC prior to the ACA transaction. (Ex. 2-C, 2-D, (2-E, 2-F, Ex. 2 at ¶ 20)

5. Claimant's Allegations Regarding the ACA Transaction

A. Claimant asserts the ACA resulted in MMAX becoming a successor to MMAWC.

The clear and unambiguous reading of the ACA reveal no such finding. The ACA was an asset contribution by MMAWC of its assets, in exchange for 38% of MMAX's stock representing 9,500,000 shares plus the payment to MMAWC of $5.5 million in cash, plus, $1,056,974.87 minus the revenues received by MMAWC and debt forgiveness. The ACA transaction also involved 30 other investors who acquired the remaining 63% of MMAX for $15,000,0000. (See Ex.2-D).

There was no merger of MMAWC into MMAX. Both entities continue to exist as separate entities after the conclusion of the ACA transaction. As proof of existence, Zion has admitted receiving copies of MMAWC's Federal Tax Returns and acknowledged MMAWC has continued

to issue K-1's to its members following the ACA transaction and that Zion received it's K-1's showing that Zion still has a 4.5% membership interest in MMAWC, through 2019, over 2 years after the consummation of the ACA transaction.

B. Claimant asserts the ACA required MMAX to distribute MMAWC stock to Zion.

Zion points to no provision in the ACA, that required MMAX to distribute stock directly to Zion, or any other MMAWC member, as a result of the consummation of the ACA transaction. Zion was and remains a member of MMAWC and MMAWC, not its members, received 38% of the stock of MMAX pursuant to the terms of the ACA transaction. Zion received the benefit of the ACA transaction as the owner of 4.5% of MMAWC, who received 38% of the stock and net cash, after debt payoff, that MMAX transferred to MMAWC as a result of the ACA transaction.

C. Claimant asserts its ownership interest in MMAWC was diluted by the ACA.

The ACA transaction did not dilute Zion's membership interest in MMAWC. Zion's ownership interest in MMAWC remained the same, before and after the ACA transaction. As a result of the Settlement Agreement, Zion's ownership interest was reduced to 4.5% of MMAWC. Zion's 4.5% ownership of MMAWC did not change as a result of the ACA transaction. No additional ownership interests were issued as a result of the ACA. Zion still remains a 4.5 percent owner of MMAWC. There is no denying that the value of Zion's membership interest in MMAWC changed as a result of the ACA, but whether that value went up or down is a completely different issue from alleged dilution of Zion's percentage ownership interest. MMAWC asserts the value of a single ownership interest of MMAWC increased after the ACA, as evidenced by MMAWC's tax returns and K-1's submitted in this case indicting MMAWC's income increased after the ACA transaction as did distributions to its members due to an increase in revenues generated from the MMAX stock owned by MMAWC. (See Tax returns and K-1's).

D. Claimant asserts the ACA had a disproportionate effect on Zion as relates to other MMAWC Members

Claimant has presented no evidence to support this assertion. The ACA did not and could not have had a disproportionate effect on Zion's 4.5% ownership, as relates to other unit owners of MMAWC, since no additional shares were issued and each MMAWC ownership unit is valued the same as all of the other ownership units of MMAWC for purposes of income distribution. Whatever the overall impact the ACA had on MMAWC, each ownership unit was impacted exactly the same, since no additional units or preferences of MMAWC were issued or made. The impact of the ACA, on all MMAWC owners was the same; assets of MMAWC were exchanged for shares of MMAX stock and cash.

The ACA did not breach of the Settlement Agreement or 4th Op. Agreement because Zion has maintained its 4.5% interest in MMAWC after the consummation of the ACA. *See* Respondents Motion for Summary Judgment at pp. 11-12 (citing Exhibits 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, and 2-D) establishing that: (1) MMAWC has not issued any additional units of MMAWC that would dilute Zion's interest below 4.5% of MMAWC's membership units; (2) MMAWC continues to file annual tax returns and K1s showing Zion has continued to maintain its 4.5% interest in MMAWC; and (3) MMAWC remains in existence and active with the Nevada Secretary of State); Ex. 3 at ¶ 5.

6. CLAIMANT ASSERTS MMAX INC., ENGAGED IN A DE FACTO MERGER WITH MMAWC

Claimant next asserts that MMAX Inc., engaged in a de facto merger with MMAWC as a result of the ACA transaction. To determine whether there has been a de facto merger, Nevada courts

apply the following four-factor test: (1) whether there is a continuation of the enterprise, (2) whether there is a continuity of shareholders, (3) whether the seller corporation ceased its ordinary business operations, and (4) whether the purchasing corporation assumed the seller's obligations. *Village Builders 96, L.P. v. U.S. Labs., Inc.*, 121 Nev. 261, 269, 112 P.3d 1082, 1087 (2005). In weighing the four factors, the Nevada Supreme Court has held that "a de facto merger does not exist when only two of the four factors exist." *Id.* At least three of the four factors must be met for a plaintiff to demonstrate prima facie case of de facto merger.

A. Was there a Continuation of the Enterprise

To determine whether there is a continuation of the enterprise, courts analyze whether there is a "continuity of management, personnel, physical location, assets and general business operations" between the purchaser and the seller. *Village Builders*, 121 Nev. at 272 (quoting *Kleen Laundry & Dry Cleaning v. Total Waste Mgt.*, 817 F.Supp. 225, 230 (D.N.H. 1993)).

Zion asserts that the first factor, continuation of enterprise, has been meet because (1) MMAX Inc. purchased all of the assets of MMAWC; (2) Ray Sefo and Carlos Silva, became officers of both MMAWC and MMAX Inc.; and (3) MMAX Inc. operates the same type of business as MMAWC, (Zion Motion at 5:8-12).

Viewing these facts in the light most favorable to Claimant, tips the scale in favor of Claimant, however there are other facts.

Zion's assertion that MMAX purchased all of the assets of MMAWC, including all contracts, including verbal contracts, does not take into consideration the terms of the ASC that detail the "Excluded Liabilities" not assumed by MMAX, which include numerous contractual and contingent obligations of MMAWC, the totality of which is not insignificant, ie: WSOP Operations, the Contributor's event, employee and service agreements.... all liabilities not assumed. *See the ACA.* Section III.C. In addition, MMAX did not assume the Settlement Agreement or any liabilities related to the 4th Op. Agreement.

The evidence reveals that MMAWC received significant consideration in the form of both cash and 9,500,000 shares of Series A Preferred Stock in MMAX Inc. in exchange for selling most of its assets to MMAX Inc. Ex. 2 at ¶ 11. The ACA also identified the following "Excluded Assets" that MMAWC kept, following the consummation of the ACA: (1) cash of $686,350.31; (2) any and all equity interests in WSOF Operations; and (3) any and all rights to and under its two abandoned trademark applications, dated as of July 12, 2016, with application numbers 85687865 and 85687795. Ex. 2-D at MMAX-AAA000324.

As for MMAWC's president, Ray Sefo and CEO, Carlos Silva, it is true, they both entered into employment contracts with MAXX after the ACA, which listed each of their positions as "Executive." (See Employment Agreements, exhibits to the ACA). Russ Ramsey, who was unrelated to MMAWC, was hired as Executive Chairman of MAXX. It is not entirely clear how long and in what positions Silva served, other than Silva was an initial board member of MMAWC, and Ray Sefo was a full-time, exempt employee who served as president of MMAX's Fighting Operations. Ex. 2-D at MMAX-AAA000354. Respondents assert Carlos Silva is no longer employed as an officer for MMAX Inc. Ex.2at¶13.

It is undisputed that the majority of MMAX Inc.'s Board of Directors, as well as its shareholders, had no ties to MMAWC prior to the ACA. Silva and Sefo were 2 of the 5 initial Board members Ex. 2-D at MMAX-AAA000559; Ex. 2 at ¶¶ 12-13.

Although MMAX Inc. and MMAWC both operate in the mixed martial arts world, MMAC Inc.

retained its principal place of business in Virginia immediately following the consummation of the ACA and later moved its principal place of business to New York rather than using MMAWC's headquarters in Nevada. Ex. 2 at ¶ 21. MMAX Inc. began using the trademarks "Professional Fighters League" and "PFL" soon after the consummation of the ACA. Ex. 2 at ¶ 22.

Most importantly, MMAWC has continued to operate as a separate company. It is undisputed that MMAWC: (1) remains an active entity with the Nevada Secretary of State; (2) is operated and was controlled by individuals unassociated with MMAX Inc.; (3) is governed by its own Operating Agreement; and (4) continues to file annual tax returns and issue K1s to its members. Ex. 1 at ¶¶ 11-17; Exs. 1-C, 1-D, 1-E, 1-F, 1-G. Indeed, it is separately participating in this arbitration with separate, independent counsel.

When viewed in totality, giving all inferences in favor of Claimant, the evidence demonstrates that the first factor tips ever so slightly against a finding of de facto merger.

B. Was there Continuity of Shareholders Between MMAWC and MMAX Inc.

Zion asserts that every member of MMAWC now owns, shares in MMAX., LLC. Claimant is mistaken. Aside from MMAWC's ownership interest in MMAX, Inc., none of MMAWC's member separately purchased or obtained any shares of MMAX, Inc. The ACA led to thirty (30) separate and distinct shareholders in MMAX Inc. who had no interest in MMAWC prior to the ACA. Ex. 2-D and See *Village Builders*. Zion has been unable to establish a continuity of shareholders between MMAWC and MMAX Inc.

C. Did MMAWC Cease Business Operations

In evaluating the cessation-of-ordinary-business-operations factor, the Nevada Supreme Court looks to whether the business that sold its assets continued to exist after the transaction closed. "A business continues to exist when it is maintained as a corporate entity and is amenable to suit." "Even when a business's existence is transcendental and the business does not engage in any business operations, it still exists for the purposes of meeting this factor." *Village Builders*.

The facts establish that MMAWC is an active corporate entity in Nevada that is amenable to suit. MMAWC has continued to file its annual lists with the Nevada Secretary of State as well as its tax returns every year, following the execution of the ACA. *See* Exs. 1-C, 1-D, 1-E, 1-F, and 1-G to Respondents Motion for Summary Judgment.

Respondent also notes, this arbitration undoubtedly evidences that MMAWC is amenable to suit. MMAWC's existence as an ongoing and viable entity weighs heavily against a finding of de facto merger.

Viewing the facts and evidence in the light most favorable to Claimant, Claimant did not prevail on this factor.

D. Whether the Purchasing Company Assumed the Sellers Liabilities or Any of MMAWC's Alleged Liability to Zion

Courts look to the asset purchase agreement to determine whether the purchasing corporation agreed to assume a particular liability. Here, MMAWC did not assign to MMAX Inc. the Settlement Agreement or the Operating Agreement. *See* Ex. 1 at ¶ 14. The ACA specifically identified the exact liabilities MMAX Inc. was assuming pursuant to the ACA. Ex. 2-D Section 1.1.2; Ex. 2 at ¶ 17. The Settlement Agreement was not listed as an assumed liability, nor was there any provision in the ACA, requiring MMAX Inc. to assume any liabilities not specifically

listed. In fact, the ACA required MMAWC to keep and maintain all liabilities not specifically assumed by MMAX Inc. *See* Ex. 2-D. In addition, the ACA contains a lengthy list of specific assets not assumed. (See ACA Ex. 2-D).

Zion has not established the fourth required element of its de facto merger claim, because there were significant liabilities MMAX Inc. did not expressly assume. Most significantly MMAX did not assume the Settlement Agreement in the ACA or the 4th Op. Agreement.

For the foregoing reasons, Claimant's has failed to present evidence sufficient to establish a de facto merger between MMAX, Inc., and MMAWC.

Viewing the facts in a light most favorable to Claimant, the Arbitrator finds there is no genuine issues of material facts. Respondents request for summary judgment against Claimant's on its breach of contract and breach of the covenant of good faith and fair dealing must be granted.

7. MMAX Inc. Is Not a Mere Continuation of MMAWC

The undisputed evidence also demonstrates that MMAX Inc. is not a mere continuation of MMAWC. Nevada follows the general rule requiring the following two elements be established to show mere continuation: (1) only one corporation remains after the transfer of assets, and (2) there is a carryover of stock, stockholders, and directors between the two corporations. *Village Builders*, 121 Nev. at 274 (citing *U.S. v. Carolina Transformer Co.*, 978 F.2d 832, 838 (4th Cir. 1992)). "[T]he gravamen of the 'mere continuation exception is the continuation of corporate control and ownership, rather than continuation of business operations." *Id.* at 275 (citing *East Prairie R-2 School Dist. v. U.S. Gypsum Co.*, 813 F. Supp. 1396, 1400 (E.D. Mo. 1993)

Zion has not set forth any evidence whatsoever establishing that MMAX Inc. is the mere continuation of MMAWC. Rather, the undisputed facts demonstrate, among other things, that (1) both entities are still in existence today, more than four years after the consummation of the ACA, *see* Section V.F.3.c, *supra*, (2) the majority of MMAX Inc.'s Board of Directors and shareholders have no ties to MMAWC, and (3) MMAWC does not maintain (and never maintained) corporate or operational control of MMAX Inc., *see* Section V.F.3.a, *supra*. Ex. 2 at ¶ 12.

Thus, Zion cannot establish either of the two required elements to prove the mere continuation exception for successor liability.

8. ZION CLAIMS IT WAS DAMAGED BY THE ACA TRANSACTION

Zion submitted for consideration it's expert report, the opinion of Douglas S. Winters, CPA, who's accompanying curriculum vitae as a Certified Public Accountant for over thirty years, plus professional experience, affiliations and work as a certified expert witness are impressive.[7] In summary, Mr. Winters opines that Zion has suffered economic damages as a result of the ASA transaction in an amount between $8,370,000 to $9,139,500, concluding that Zion was diluted between 2.79% and 3.05% based upon the publicly stated value of MMAX at $300.000. Mr. Winters bases his opinion on inaccurate facts and false assumptions, stating on page 4, "Prior to the transfer of assets to MMAX, Zion held a non-dilutable ownership in 100% of the WSOP assets and the business owned by MMAWC." This statement is not accurate. The facts

[7] Respondents' the objections to Mr. Winter's opinions on numerous grounds have been noted by the Arbitrator.

are undisputed that Zion owns a 4.5% ownership interest in MMAWC and MMAWC owns 100% of the assets and business of the WSOP assets.

Pursuant to Section 8.01 of the 4th Op. Agreement, "All business and affairs of the Company, shall be managed under the direction of the Board of Managers." "The Board shall have full, exclusive and complete discretion to manage and control the business and affairs of the Company, to make all decisions affecting the business and affairs of the Company and to take all such action as it deems necessary or appropriate to accomplish the purposes of the Company...". Furthermore, Section 9.02 states that an affirmative vote of not less than a Super Majority (75%) of the issued and outstanding Units, is required, prior to engaging in the following matters:

"a. Conveying, selling assigning, licensing, leasing or otherwise disposing of or transferring, in one transaction or a series of transactions, all or substantially all of the Company Property or otherwise changing the business of the Company....," and

"c. Merging or consolidating the Company with another, or converting the Company into a corporation or any other form of Entity"

There is no dispute that 1) the ACA was approved by a Super Majority of the unit ownership of MMAWC, or that, 2) Zion objected and did not approve the ACA, or that 3) Zion's vote of 4.5% was not needed to approve the ACA. What the Settlement Agreement granted Zion was a non-dilutable right to unit ownership in MMAWC at "no time less than four-and one-half percent (4.5%) of the issued and outstanding Units of the Company, without Zion's written consent." There was no grant of voting rights in excess of Zions's 4.5% unit ownership, no blocking rights in the event of a sale of assets, or any other authority or rights requiring Zion's approval other than in accordance with its minority 4.5 % voting right.

Respondents on the other hand assert not only was Zion not diluted, but that the evidence reveals Zion received a substantial financial benefit from the ACA transaction, as opposed to suffering any damages via dilution. In his recent deposition in the other matter, Mr. Hesser testified under oath that MMAWC was having financial difficulties and hemorrhaging money throughout its existence prior to the ACA. See Ex. 4-A at 126:3-7; 154:3-9. This undisputed fact is corroborated by MMAWC's tax returns, which demonstrate that MMAWC had negative income of $6,238,914 in 2016, the year preceding the execution of the ACA. *See* Ex. 1-D at MMAWC-AAA 300329. Then, in 2017, following MMAWC's entry into the ACA with MMAX Inc., MMAWC's tax return revealed an increase in income of over $3 million dollars; lowering its income deficit to negative $3,156,657. *See* Ex. 1-E at MMAWC-AAA 400014. By 2018, MMAWC's income and value had increased another $3 million dollars to an income deficit of only negative $69,424. *See* Ex. 1-F at MMAWC-AAA 400353. Finally, MMAWC's most recently available 2019 tax return shows only negative income of $31,389. *See* Ex. 1-G at MMAWC-AAA 400392. In sum, MMAWC's business income has increased $6,207,525 since MMAWC and MMAX Inc. entered into the ACA and thus Zion has benefitted financially from the MMAX Inc. transaction rather than being harmed in any way.

Thus, in addition to Zion's argument on dilution and damages being factually flawed, it is also legally flawed based on the evidence submitted by Respondents. As a result, summary judgment cannot be entered in favor of Zion as Zion has presented no facts upon which to base a damage claim. Rather, summary judgment must be entered in favor of the Settling Respondents.

9. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR

Zion alleges as against all Respondents, a claim for breach of the implied covenant and fair dealing. First, Zion has failed to establish facts establishing that the underlying Settlement Agreement was breached. A claim for a breach of the implied covenant of good faith and fair dealing usually cannot be maintained in the absence of a breach of an express term of a contract. *D&L Framing, LLC v. Clarendon Am. Ins. Co.*, 2007 WL 9725258, at *9 (D. Nev. Sept. 13,

2007) Zion has not established Section 13 of the 4th Op. Agreement was breached. (no action for breach of the implied covenant of good faith and fair dealing lies absent a breach of the contract)). *D&L Framing, LLC v. Clarendon Am. Ins. Co.*, 2007 WL 9725258, at *9 (D. Nev. Sept. 13, 2007).

Second, to the extent such a claim may exist without a breach of the underlying contract, there is no evidence that MMAWC somehow performed the Settlement Agreement in an unfaithful manner with respect to Zion's 4.5% interest in MMAWC, or otherwise.[8] In *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, the Nevada Supreme Court observed that a breach of the implied covenant of good faith and fair dealing could occur in the absence of a contract breach in the limited scenario where one party acts to "destroy or injure the right of the other to receive the benefits of the contract." *Id.*, 107 Nev. 226, 233, 808 P.2d 919, 923 (1991). Here, Claimant has presented no facts that indicate Respondents, and more particularly MMAX or MMAWC, have done anything to deny or interfere with Zion's rights to its 4.5% membership interest in MMAWC. Factually that did not happen, Zion still has a 4.5% membership interest.

There are no facts to establish a claim for breach of the implied covenant of good fair and fair dealing as against any of the Respondents.

The terms of the ACA, did not breach the Settlement Agreement or Section 13 of 4th Op. Agreement. The terms of Section 13 of the 4th Op. Agreement only discussed a reorganization of MMAWC where MMAWC would reorganize into a successor corporation and thereafter engage in a public offering of MMAWC stock. No such transaction was approved by the MMAWC Board and in fact no such transaction happened. Instead, MMAWC engaged in the ACA transaction, the terms of which were not prohibited by the Settlement Agreement or the 4th Op. Agreement. MMAWC has not issued any additional membership units in MMAWC, MMAWC has not attempted to issue any new membership units, and the ACA did not result in any additional membership units of MMAWC being issued. MMAWC remains in existence and Zion still maintains its 4.5% interest in MMAWC. (See Ex.2-D) The Settlement Agreement gave Claimant the right to a non-dilutable 4.5% ownership in MMAWC, but it did not give Claimant any additional voting or blocking rights in the event of a sale of certain assets or substantially all of the assets of MMWAC. The ACA at issue in this case was duly approved by the authorized vote of the Members and Managers of MMAWC.

Furthermore, the evidence reveals that Zion has hereto for, received a financial benefit from the ACA, as opposed to suffering any damages or dilution. Mr. Hesser, testified under oath at his deposition, that MMAWC was having financial difficulties and hemorrhaging money throughout its existence prior to the ACA. Ex. 4-A at 126:3-7; 154:3-9. This evidence is corroborated by MMAWC's tax returns, which shows that MMAWC had negative income of $6,238,914 in 2016, the year preceding the execution of the ACA. *See* Ex. 1-D to MMAWC-AAA 300329. Then, in 2017, following MMAWC's entry into the ACA with MMAX Inc., MMAWC's tax return revealed an increase in income of over $3 million dollars; lowering its income deficit to negative $3,156,657. *See* Ex. 1-E at MMAWC-AAA 400014. By 2018, MMAWC's income and value increased another $3 million dollars to an income deficit of only negative $69,424. *See* Ex. 1-F at MMAWC-AAA 400353. Finally, MMAWC's most recently available 2019 tax return shows only negative income of $31,389. *See* Ex. 1-G at MMAWC-AAA (See MMAWC Tax Returns)

The facts clearly show that Zion owns 4.5% of MMAWC as required by the Settlement Agreement, there are no genuine issues of material facts that Zion does not own 4.5% of

[8] MMAX Inc. is not a party to the Settlement Agreement and has no obligations thereunder. This notwithstanding, even assuming MMAX has any obligations under the Settlement Agreement, there was no evidence presented demonstrating that MMAX, Inc., performed deprived Claimant of unfaithfully thereunder.

MMAWC as required by the Settlement Agreement. There are no issues of material fact that support a triable issue of fact as relates to any of Claimant's claims asserted in this matter.

SUMMARY JUDGMENT STANDARD

A court must accept the nonmoving party's properly supported factual allegations as true, and it must draw all reasonable inferences in favor of the nonmoving party.

Summary judgment is only available "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law.

"[I]n the absence of ambiguity or other factual complexities, contract interpretation presents a question of law that the district court may decide on summary judgment." *Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013)

Based on the foregoing, the arbitrator finds that the terms of the Settlement Agreement, the 4th Op. Agreement and the ACA, with respect to the issues in the parties' competing motion for summary adjudication to be clear and unambiguous, and the Arbitrator hereby makes the following findings:

FINDINGS OF FACT

1. MMAWC is and remains an active Nevada limited liability company.

2. In 2015, several disputes arose regarding MMAWC that resulted in several lawsuits ("Prior Lawsuits"). In February 2016, the parties to those Prior Lawsuits, including MMAWC, Zion, and Shawn Wright (individually) entered into a comprehensive Confidential Settlement Agreement dated as of February 19, 2016 (the "Settlement Agreement"). The Settlement Agreement was jointly prepared by Zion's counsel, Byron Thomas, Esq., and counsel for DFP, Christopher Childs, Esq.

3. The Settlement Agreement provides for Zion's membership interest in MMAWC is to be reduced to 4.5% of the total outstanding ownership units of the company, and for such 4.5% interest to "remain non-dilutable."

4. To effectuate the reduction of Zion's interest in MMAWC to 4.5%, a Fourth Amended and Restated Operating Agreement of MMAWC dated as of February 19, 2016 (the "Operating Agreement") executed. Among other things, the recitals of the Operating Agreement state:

> WHEREAS, as part of the settlement of the Zion Disputes and in consideration of the concessions and payments made in the Settlement Agreement, Zion has agreed to accept as its ownership interest in the Company the Units described in this Agreement;
>
> WHEREAS, as part of the Settlement Agreement and as part of the consideration for settlement of the Zion Disputes, the Members believe it to be in the best interests of the Company, for the Units owned by Zion as set out in this Agreement to be at no time less than four- and one-half percent (4.5%) of the issued and outstanding Units of the Company, without Zion's written consent...

5. The Operating Agreement identifies and defines "Company" as MMAWC.

6. In compliance with the Settlement Agreement, Section 5.05.b of the Operating Agreement contains the following language regarding non-dilution of Zion's interest:

> b. Notwithstanding anything contained in this Agreement, the Members agree that Zion's interest in the Company shall be deemed non-dilutable (unless Zion agrees in writing that such interest may be diluted). Accordingly, if at any time after the Effective Date additional Units of the Company are issued, Units of the Company shall also be issued to Zion so that Zion at all times holds four-and one-half percent (4.5%) of the issued and outstanding Units of the Company. Zion will have no obligation to make any future capital calls.

7. Thus, if additional units of MMAWC are ever issued, then Zion is to be issued additional units of MMAWC so that Zion's interest in MMAWC remains at 4.5%.

8. On October 5, 2016, MMAWC entered into a Term Sheet with MMAX Investment Partners LLC ("MMAX LLC"), a Delaware limited liability company that was formed in September 2016. As part of the Term Sheet, MMAX LLC formed MMAX Inc., a Delaware corporation that was incorporated on November 3, 2016. MMAX LLC also adopted By-laws governing the entity.

9. On November 14, 2016, MMAX LLC and MMAWC entered into an Amended and Restated Term Sheet (the "Amended Term Sheet"). Pursuant to the Amended Term Sheet, MMAX LLC would invest $15,500,000 into MMAX Inc. to obtain 62% of the shares of Series A Preferred Stock in MMAX Inc. (15,500,000 shares) and MMAWC would sell certain of its assets in exchange for, *inter alia,* the remaining 38% of the shares of Series A Preferred Stock (9,500,000 shares) in MMAX Inc. The Series A Preferred Stock was valued at $25,000,000, meaning each share was valued at $1.00.

10. The provisions of the Amended Term Sheet were incorporated into that certain January 6, 2017 Asset Contribution and Series A Preferred Stock Purchase Agreement. ("ACA").

11. The ACA identified thirty (30) separate investors that combined to contribute $15,500,000 in cash in exchange for a total of 15,500,000 shares of Series A Preferred Stock in MMAX Inc. The thirty (30) other investors included trusts, limited liability companies, and limited partnerships, as well as several, high net worth individuals unrelated MMAWC.

12. MMAWC received both cash and 9,500,000 shares of Series A Preferred Stock in MMAX Inc. in exchange for selling certain assets to MMAX Inc. The cash component of the transaction was comprised of: (1) $5,500,000 plus (2) $1,056,974.87 minus the revenues received by MMAWC from MMAWC's December 31, 2016 event in New York City; plus (3) $99,543 (collectively, the "Contributed Cash"). Out of these funds, $1,100,000 was paid to NBC on behalf of MMAWC and $3,300,000 was paid to specific holders of MMAWC debt on behalf of MMAWC. The remainder of the Contributed Cash went directly to MMAWC.

13. The ACA also established the initial Board of Directors for MMAX Inc. The majority of the five member MMAX Inc. Board of Directors consisted of the following founders of MMAX Inc. who are unrelated to MMAWC: Donn Davis, a venture capitalist and former AOL executive, Russ Ramsey, CEO of hedge fund Ramsey Asset Management, and Mark Leschly, founding partner of Rho Capital Partners and Rho Ventures. Mr. Silva and Mr. Sefo were related to MMAWC.

14. On January 6, 2017, the Board of Directors for MMAX Inc. approved the ACA

via unanimous written consent. Similarly, that same day, the members and managers of MMAWC executed a written consent approving the ACA.

15. On January 20, 2017, MMAX Inc. filed a Form D with the United States Security and Exchange Commission ("SEC") regarding its exempt offering of securities in the form of $25,000,000 in equity relating to the ACA. Pursuant to its SEC filing, MMAX Inc. fully funded the $25,000,000 it had offered. Furthermore, MMAX Inc. specifically stated in that public filing with the regulating SEC that the offering was "not being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer."

16. Based on the Amended Term Sheet, the ACA, MMAX Inc.'s January 6, 2017 Unanimous Written Consent, MMAX Inc.'s Bylaws, and MMAWC's Operating Agreement, there was no relationship between MMAX Inc. and MMAWC prior to the ACA transaction.

17. MMAWC remains in existence and has remained in existence at all times following the ACA. MMAWC is registered and licensed by the Nevada Secretary of State as an active limited liability company. MMAWC also has continued to file tax returns and issue K-1s every year following the consummation of the ACA. These tax returns demonstrate that MMAWC's financial condition has improved dramatically following the ACA. Indeed, MMAWC went from having negative income of $6,238,914 in 2016 (the year before the ACA) to negative income of only $31,389 in 2019. Thus, the value of Zion's membership interest in MMAWC has increased as a result of the ACA rather than decreasing in any manner.

18. It is undisputed that Zion currently holds 4.5% of the membership units of MMAWC and has held 4.5% of the membership units of MMAWC at all times since the execution of the Settlement Agreement and Operating Agreement. Zion's interest in MMAWC therefore has not been diluted.

19. None of MMAWC's members is a shareholder in MMAX Inc.

20. MMAX Inc. did not assume any liability relating to the Settlement Agreement or the Operating Agreement.

21. On June 2, 2020, Zion submitted a demand for arbitration with the American Arbitration Association alleging that Respondents breached the Settlement Agreement and Operating Agreement.

22. On March 30, 2021, Zion submitted a Specification of Claims asserting two causes of action against MMAWC and MMAX, Inc.: (1) breach of the Settlement Agreement and (2) breach of the implied covenant of good faith and fair dealing. Zion sought to hold MMAX Inc. liable for MMAWC's alleged breaches solely under a theory of de facto merger successor liability. Zion's Specification of Claims did not identify any conduct or omission by DFP supporting or otherwise giving rise to Zion's two causes of action.

23. On April 14, 2021, Zion submitted an Amended Specification of Claims asserting the same two causes of action against MMAWC and MMAX, Inc. and asserting the same theory of de facto merger successor liability, and removed WSOF Global LLC as a party to this action. Zion's Amended Specification of Claims does not identify any conduct or omission by DFP supporting or otherwise giving rise to Zion's two causes of action.

24. In its summary judgment briefs, Zion further argued that MMAWC and MMAX, Inc. breached the Operating Agreement by diluting Zion's 4.5% interest provided therein.

25. Section 11 of the Settlement Agreement provides the following attorneys' fees

and costs provision:

> In the event that any legal proceeding is commenced for the purpose of interpreting or enforcing any provision of this Agreement, the prevailing Party in such proceeding shall be entitled to recover, in addition to all other awards, judgments, and amounts, such Party's reasonable attorneys' fees and costs in such proceeding. For the purposes of this provision, the "prevailing Patty" shall be that Party who has been successful with regard to the main issue, even if that Party did not prevail on all the issues.

26. Section 14.16 of the Operation Agreement provides the following attorneys' fees and costs provision:

> In the event of an action or other proceeding to enforce any rights arising under this Agreement, the party prevailing in such Action or Proceeding shall be paid all reasonable costs and attorneys' fees by the other party, such fees to be set by the court and not by a jury and to be included in any order entered in such Action or Proceeding.

27. On March 4, 2021, Claimant alleged all relevant information in connection this matter had not been exchanged. On March 16, 2021, Claimant advised all information in connection with the disputes in this matter had finally been exchanged. MMAWC has an obligation, independent of this proceeding, including under Article X of the 4th Op. Agreement to allow Claimant to inspect the Company's books and records. The parties' behavior in connection with the exchange of requested Company information may be relevant to the recovery of reasonable attorneys' fees and costs.

28. Zion's Opposition to Respondents' Motion for Summary Judgment mentioned a license agreement between MMAWC and WSOF Global Limited and alleged violations of the licensing agreements. WSOF Global Limited is not a party to this arbitration and any alleged violations of such license agreement are not part of this arbitration.

CONCLUSIONS OF LAW

1. Summary judgment is proper if the pleadings and all other evidence demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). Once the moving party satisfies its burden, "then the party opposing summary judgment assumes a burden of production to show the existence of a genuine issue of material fact." *Id.*

2. A breach of contract claim requires Zion to establish: (1) a valid contract; (2) performance or excuse of performance by Zion; (3) material breach by the Respondents; and (4) damages.

3. Every contract in the state of Nevada has an implied covenant of good faith and fair dealing." *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 109 Nev. 1043, 1046, 862 P.2d 1207, 1209 (1993) (citations omitted) A party breaches said covenant by acting in a manner unfaithful to the purpose of the contract or denying the justified expectations of the other contracting party. *Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335, 338 (1995) (citations omitted). The covenant of good faith and fair dealing prohibits "unfair acts by one party that disadvantage the other." *Frantz v. Johnson*, 116 Nev. 455, 465, 999 P.2d 351, 358 n. 4 (citations

omitted).

4. There are four exceptions to the general rule that a purchaser of assets does not become liable for all of the seller's debts: (1) the purchaser expressly or impliedly agrees to assume such debts; (2) the transaction was fraudulently made to escape liability for debts; (3) the transaction is really a consolidation or a merger; and (4) the purchasing entity is merely a continuation of the selling corporation. Zion only addresses the de facto merger exception in its Amended Specification of Claims and in the summary judgment briefing.

5. To determine whether there has been a de facto merger, Nevada courts apply the following four-factor test: (1) whether there is a continuation of the enterprise, (2) whether there is a continuity of shareholders, (3) whether the seller corporation ceased its ordinary business operations, and (4) whether the purchasing corporation assumed the seller's obligations. *Village Builders 96, L.P. v. U.S. Labs., Inc.*, 121 Nev. 261, 269, 112 P.3d 1082, 1087 (2005). In weighing the four factors, the Nevada Supreme Court has held that "a de facto merger does not exist when only two of the four factors exist." *Id.* at 273.

6. The Arbitrator concludes that the evidence demonstrates that no genuine issue of material fact exists and that Respondents are entitled to judgment as a matter of law on Zion's claim for breach of contract claim.

7. MMAX Inc. is not a party to the Settlement Agreement or Operating Agreement and therefore could not have breached either agreement.

8. MMAWC did not breach the Settlement Agreement or Operating Agreement because Zion has maintained its 4.5% membership interest in MMAWC at all times and therefore has not been diluted.

9. DFP did not breach the Settlement Agreement or the Operating Agreement. Neither Zion's Amended Specification of Claims, Motion for Summary Judgment, Reply nor any evidence in support thereof identify any conduct or omission by DFP supporting or otherwise giving rise to Zion's breach of contract cause of action. Moreover, DFP did not breach the Settlement Agreement or Operating Agreement because Zion has maintained its 4.5% membership interest in MMAWC at all times and therefore has not been diluted.

10. Furthermore, Zion has not established any damages for its breach of contract claim.

11. The Arbitrator concludes that the evidence demonstrates that no genuine issue of material fact exists and that Respondents are entitled to judgment as a matter of law on Zion's claim for breach of the implied covenant of good faith and fair dealing.

12. MMAX Inc. is not a party to the Settlement Agreement or Operating Agreement and therefore could not have breached the implied covenant of good faith relating to either agreement.

13. Moreover, based on the findings herein, MMAX Inc. did not act in a manner unfaithful to the purpose of the Settlement Agreement or the Asset Contribution Agreement, nor did MMAX Inc. deny the justified expectations of Zion.

14. There was no evidence presented showing that MMAWC acted in a manner unfaithful to the purpose of the contract, nor did MMAWC deny the justified expectations of Zion. Rather, it appears that MMAWC increased the value of Zion's 4.5% membership interest in MMAWC and therefore benefitted MMAWC.

15. DFP did not breach the implied covenant of good faith and fair dealing. Neither Zion's Amended Specification of Claims, Motion for Summary Judgment, Reply nor any evidence in support thereof identify any conduct or omission by DFP supporting or otherwise giving rise to Zion's breach of the implied covenant of good faith and fair dealing claim. Zion presented no evidence that DFP acted in a manner unfaithful to the purpose of a contract or deny the justified expectations of Zion.

16. Carlos Silva was named in this action, he has made no appearance, Claimant advised he was not served and Claimant has made no claims against Mr. Silva. This matter is dismissed as to all Respondents, including Carlos Silva.

17. Zion's Opposition mentions a license agreement between MMAWC and WSOF Global Limited and alleged violations of the licensing agreements, neither of which are at issue in this arbitration because WSOF Global Limited is not a party and Zion has not alleged any causes of action relating to any license agreement.

18. The Arbitrator concludes that the evidence as viewed most favorably to the Claimant results in no genuine issue of material fact and that Respondents are entitled to judgment in their favor as a matter of law on Claimant's claim for successor liability under the de facto merger exception. More specifically, there is no genuine issue of material fact that:

a. there was no continuation of the enterprise between MMAWC and MMAX Inc.

b. there was no continuity of shareholders because no members of MMAWC became shareholders of MMAX Inc.

c. MMAWC did not cease to exist.

d. MMAX Inc. did not assume MMAWC's obligations under the Settlement Agreement or the Operating Agreement, including any claim by Zion for dilution under these agreements.

19. No genuine issues of material fact exist as to Zion's failure to satisfy the four elements of the de facto merger exception, let alone the required three of four elements needed to prevail on its claim for de facto merger.

RULING

Based upon the foregoing, the Arbitrator, after viewing Zion's claims and properly supported factual allegations as true, and drawing all reasonable inferences in favor of the Zion, the Arbitrator finds there is no factual or legal basis to support Claimant's allegations that Respondents or any of them, breached the Settlement Agreement, that Claimant's ownership interest in MMAWC was diluted in any way or that the Respondents or any of them breached the covenant of good faith and fair dealing as relates to the agreements or transactions between the parties in this matter.

Claimant has failed to present sufficient credible evidence to meet its burden of establishing liability as alleged, against all Respondents.

All of Claimant's claims are denied and judgment is entered in favor of all Respondents.

Respondents are the prevailing parties in this matter and are entitled to reimbursement of their reasonable attorneys' fees and costs, permitted under and pursuant to the Settlement Agreement, the Operating Agreement and the Asset Contribution Agreement, where applicable.

Except for the amount, if any, of reimbursable, reasonable attorneys' fees and costs, this Ruling is in resolves of all claims submitted in this Arbitration. All claims not expressly granted herein are hereby denied.

Claimant's Motion for Summary Adjudication and Claimant's Opposition to Respondent's Motion for Summary adjudication fails to present sufficient evidence to create a genuine issue of material fact. As such, summary disposition is entered in favor of all Respondents.

AWARD

For the foregoing reasons, the Arbitrator hereby orders as follows:

1. Respondents' Motion for Summary Judgment is GRANTED in its entirety as to all Respondents.

2. Claimant's Motion for Summary Judgment is DENIED in its entirety;

3. Claimant's claims against all Respondents in this case are dismissed.

4. Respondents are the prevailing party.

5. The administrative fees and expenses of the American Arbitration Association, shall be borne as incurred, and shall be provided with the final costs determined by the administrator and included in the final award.

6. Zion shall pay the applicable and reasonable attorneys' fees and costs of Respondents that directly relate to the defense of the case as determined by the arbitrator in a final award, unless the parties agree otherwise.

Respondents shall provide to Claimant the amount and supporting information for the reasonable attorneys' fees and costs Respondents seek as reimbursement, within 7 days of the date of this Ruling. Counsel for the parties shall meet and confer in an effort to agree on the reasonable amount of reimbursement of attorneys' fees to be reimbursed within 15 days of the date of this Ruling. If Counsel for the parties are unable to agree on the reasonable amount of attorneys' fees within 15 days from the date of this award, Respondents and Claimant shall simultaneously submit to the AAA case administrator Julie Collins, their applications and oppositions regarding the amounts and basis for the attorneys' fees being sought, within 21 days date of this Ruling. Arbitrator will thereafter make the determination of the applicable fees and amounts.

The sums to be paid for reimbursement of reasonable attorneys' fees and costs shall be paid on or before 60 days from the date of this Ruling, unless otherwise ordered by the Arbitrator or mutually agreed by the parties.

This Ruling on Summary Adjudication resolves all claims and counterclaims submitted to this Arbitration, except for the amount of the attorneys' fees to be reimbursed. All claims not expressly granted herein are hereby denied.

Dated: June 25, 2021

Mary S. Jones, Arbitrator

EXHIBIT 4
Notice of Entry of Summary Judgment Order

AMERICAN ARBITRATION ASSOCIATION | INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

Western Case Management Center
Sandra Marshall
Vice President
45 E River Park Place West
Suite 308
Fresno, CA 93720
Telephone: (877)528-0880
Fax: (855)433-3046

June 25, 2021

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Maximiliano D. Couvillier III
Kennedy & Couvillier, PLLC
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Las Vegas, NV 89144
Via Email to: mcouvillier@kclawnv.com

Michael Feder, Esq.
Dickinson Wright PLLC
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Las Vegas, NV 89169
Via Email to: mfeder@dickinsonwright.com

Case Number: 01-20-0005-4568

Zion Wood OB Wan Trust
and Shawn Wright as Trustee
-vs-
MMAWC LLC
World Series of Fighting and
Nancy and Bruce Deifik Family Partnership, LLP
-vs-
MMAX MMAX Investment Partners, Inc.
dba Professional Fighters League
and Carlos Silva

Dear Parties:

By direction of the arbitrator attached please find the duly executed Interim Award in the above matter.

Costs shall be provided by July 2nd and the parties should meet and confer by July 12th.

The request for attorneys' fees should be submitted to the AAA by July 16th.

In addition, the arbitrator incurred significant time for the review and writing of the interim award. A copy of her invoice has been uploaded to the electronic file. Claimant is reminded of their past due invoices and each party has been billed an additional $1001.66 (or $1001.67) to cover the current time spent. Payment instructions will be

From: JulieCollins@adr.org
To: Max Conviller; mary@marystones.com; mfeder@dickinsonwright.com; bcpattorneylaw@gmail.com
Subject: Zion Wood OB Wan Trust v. MMAWC LLC - Case 01-20-0005-4558
Date: Friday, June 25, 2021 11:36:53 AM
Attachments: image001.png
image3bdf48.PNG
2021-06-25 AAA transmission of interim award.pdf
2021-06-25 Interim Ruling.pdf

Hello,

Please review the attached correspondence regarding the above-referenced case.

Feel free to contact me with any questions, comments or concerns you have related to this matter.

Thank you.

AAA Julie Collins
Manager of ADR Services

American Arbitration Association

T: 559 408 5713 F: 855 433 3046 E: JulieCollins@adr.org
45 E River Park Place W, Suite 300, Fresno, CA 93720
adr.org | icdr.org | aaamediation.org

EXHIBIT 5
Arbitration Fee & Costs Award

AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL ARBITRATION RULES

In the Matter of Arbitration Between:

Case Number: 01-20-0005-4568

Zion Wood OB Wan Trust and Shawn Wright as Trustee

vs

MMAWC, LLC dba World Series of Fighting, Nancy and Bruce Deifik Family Partnership, LLP, MMAX Investment Partners, Inc. dba Professional Fighters League, and Carlos Silva, an individual

Final Award
and Ruling on the Parties' Mutual Request for Reimbursement of Attorneys' Fees and Costs

I, Mary S Jones, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named parties, as determined by Order of the Supreme Court of the State of Nevada on September 5, 2019, and having been duly sworn, and having duly reviewed and considered the proofs and allegations presented by the Parties, and having previously rendered an Interim Ruling on the Parties' Stipulated Request For Summary Adjudication, dated June 25, 2021, which is confirmed, adopted, and attached hereto as Exhibit A, hereby, issue this FINAL AWARD[1].

Background

The Arbitrator issued a Ruling on the Parties' Stipulated Request for Summary Adjudication on June 25, 2021, declaring MMAWC, LLC dba World Series of Fighting, Nancy and Bruce Deifik Family Partnership, LLP, and MMAX Investment Partners, Inc. dba Professional Fighters League (collectively "Respondents")[2] the prevailing parties. For purposes of clarification, Zion OB Wan Trust and Shawn Wright as Trustee (herein "Zion" or "Claimant") is the sole Claimant in this arbitration. WSOF Global Limited, a Hong Kong Company ("WSOF Global Limited ") is a party to the license agreement that contains the arbitration provision in this arbitration case, but WSOF Global Limited was at no time, a party in this arbitration. The license agreement was assigned by MMAWC to MMAX as part of the Asset Contribution Agreement, between MMAWC and MMAX. Although Claimant asserted, in support of his request for summary adjudication, there are or were breaches of the license agreement, breach of the license agreement is not part of this arbitration and no rulings on breach of the license agreement have been made by this arbitrator.

The June 25, 2021 Ruling resolved all issues in this matter, except for the parties' requests for reimbursement of reasonable attorneys' fees and costs. Claimant asserted in this matter, breach of the Settlement Agreement between Zion and MMAWC, breach of MMAWC's 4th Amended Operating Agreement and breach of the covenant of good faith and fair dealing.

[1] Respondents filed their submissions in this case as **"CONFIDENTIAL – ATTORNEYS' EYES ONLY PURSUANT TO PROTECTIVE ORDER ON FILE IN THIS ARBITRATION."** To the extent such Protective Order applies to this Final Award, it hereby so designated.

[2] Carlos Silva, a named respondent, was never served or appeared in this arbitration.

The parties to this arbitration were requested to meet and confer in an effort to agree upon the proper amount and applicable basis, if any, to support an award of attorneys' fees and costs to Respondents as prevailing parties. Unable to agree, on July 16, 2021, the parties filed their fees motions, along with declarations in support and opposition thereto. After carefully considering the parties submissions, the parties were asked, on September 8, 2021, whether they had any additional submissions, information or issues to submit to the Arbitrator for resolution in this matter. Respondents advised in the negative, Claimant failed to respond after two inquiries. The hearing in this matter was thereafter declared closed on September 3, 2021.

1. **Commercial Arbitration Rule R-47 gives Arbitrators Authority to Award Reimbursement of Attorneys' Fees**

Claimant asserts the arbitrator has no authority to award attorney fees in this matter. There is no dispute the Commercial Rules of the American Arbitration Association ("AAA") apply to this case. AAA Rule R-47 authorizes the arbitrator to award reimbursement of attorneys' fees, and states at Section (d):

> "The arbitrator may include:
> ii. an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement."

The facts indicate all parties requested an award of attorneys' fees,[3] and in addition, the Parties' arbitration agreement, authorized reimburse of costs and expenses, including reasonable attorney's fees, incurred in judicially compelling arbitration.[4] The arbitration agreement did not contain a prevailing parties' right to reimbursement of attorney fees or costs in connection with the arbitration.

1. **The Parties' State Court Action was Compelled to Arbitration**

In 2017, Claimant filed a complaint in the Eighth Judicial District Court, Clark County, Nevada, ("District Court Action") alleging among other things, breach of the Settlement Agreement, which incorporated the license agreement. Thereafter, Respondent MMAWC sought to compel arbitration. On September 5, 2019, the matter was ordered to arbitration by The Supreme Court of the State of Nevada, upon an appeal from the District Court Action, denying a motion to dismiss and compelled the matter to arbitration. The Supreme Court specifically found "the claims in the underlying complaint are subject to arbitration..."[5] and stated "...we further conclude the arbitration clause in the licensing agreement applies to the claims alleged in the underlying complaint, we reserve and remand to the district court with instructions to grant MMAWC's motion to dismiss and enforce the arbitration clause."[6]

Section 18, of the license agreement requires the arbitration to be conducted in accordance with the Commercial Arbitration Rules of the AAA and states in relevant part:

> "If any party commences litigation in violation of this section 18, or refuses or neglects to timely submit to arbitration in accordance with the Section, then such party shall reimburse the other party(s) costs and expenses, including reasonable attorney's fees: (1) incurred in seeking abatement or dismissal of such litigation and/or; (2) incurred in judicially compelling arbitration."

---

[3] See Respondents MMAWC and MMAX Joint Reply in Support Motion for Summary Judgment page 19, lines 58, and Claimant's Amended Specification of Claims received April 14, 2021, page 6.
[4] License Agreement paragraph 18.
[5] Page 2 ¶3 of The Nevada Supreme Court of The State of Nevada Opinion, filed September 5, 2019.
[6] Page 9 Section IV of The Nevada Supreme Court of The State of Nevada Opinion, filed September 5, 2019.

Based upon the following established facts: 1) Claimant filed the District Court Action, which alleged breach of the settlement agreement, which referenced a license agreement,[7], and 2) the Nevada Supreme Court found that the arbitration clause in the licensing agreement applied to the claims alleged in Claimant's underlying District Court complaint, and 3) the Nevada Supreme Court ordered the District Court Action to arbitration, this Arbitrator must and does conclude, Claimant neglected or refused to timely submit to arbitration in accordance with the arbitration agreement, and/or Claimant commenced litigation in violation of Section 18 of the arbitration agreement. Either finding requires Claimant to reimburse the other party(s) costs and expenses, including reasonable attorney's fees incurred in judicially compelling arbitration.

The Arbitrator finds that Respondents are therefore entitled to reimbursement of their costs and expenses, including reasonable attorneys' fees incurred from the date the complaint was filed in the District Court Action, until just after September 5, 2019, when the Supreme Court granted MMAWC's motion to dismiss and judicially compelled arbitration.

2. Parties' Positions Regarding Reimbursement of Attorneys' Fees and Costs

The parties' submissions included the following:

On July 16, 2021, Counsel for Respondent, MMAX, Michael N. Feder, Esq., of Dickerson Wright PLLC filed a motion in support of attorneys' fees and costs, supporting declarations and copies of each bill in support thereof. MMAX seeks reimbursement of **$76, 415.50** in attorneys' fees and **$1,426.95** in costs, incurred in compelling the District Court Action to arbitration, pursuant to Section 18, of the license and an additional $110, 718.50 in attorneys' fee, $19,280 in costs incurred in this AAA proceedings, plus arbitrator fees of $15,080, and expert witness fees of $4,200.00 pursuant to Section 11 of the Settlement Agreement. Attached to MMAX's fees motion was a July 2, 2021, letter from Mr. Feder, sent to Byron Thomas, Counsel for Claimant, entitled Demand for Attorneys' Fees and Costs to Counsel for Claimant, which also included copies of all Dickenson/Wright invoices, with some redactions, supporting MMAX's request.

On July 16, 2021, Counsel for Respondents, MMAWC and Bruce Deifik and Nancy and Bruce Deifik Family Partnership, Maximiliano D. Couvillier, III, Esq., of Kennedy & Couvillier, PLLC, filed an Application and Points and Authorities in support of reimbursement for attorneys' fees and costs in the amount of $90,270.70, which included $75,190.70 for attorneys' fees and costs and AAA costs of $15,080 in connection with this arbitration, which included enforcing the Respondent's arbitration rights and compelling arbitration. Mr. Couvillier's submissions included his and attorney Christopher Child's, supporting declarations along with copies of all bills from the firms Childs Watson and Black LoBello, in support of their fees request. Attached to their motion, was a letter dated July 2, 2021, from Mr. Couvillier, to Byron Thomas, Counsel for Claimant, which included copies of all invoices, with some redactions, supporting MMAWC's request.

On July 16, 2021, Claimant filed its Omnibus Objection to Attorney Fees with Exhibits A-C, which included The Nevada Supreme Court Opinion of September 5, 2019 and Respondents' July 2, 2021 meet and confer letters with complete copies of all Respondents previously submitted bills.

Claimant does not agree that all of the attorneys' fees and costs requested by Respondents reimbursable. Claimant appears to concede that Zion's only obligation for reimburse of any of Respondents' attorneys' fees, costs or expenses would be solely limited to those fees and costs incurred to judicially compel arbitration, as required in the arbitration agreement in Section 18 of the licensing agreement. The arbitrator agrees. Claimant next asserts that "Respondents have, a) failed to comply with Nevada law related to the

[7] Page 2 ¶ 2 of The Nevada Supreme Court of The State of Nevada Opinion, filed September 5, 2019.

Brunzell and Cadle factors, b) are time barred (and in the wrong forum) to request attorney fees in the State Court action dismissed in 2019, thus any fees requested prior to the initiation of the arbitration should be denied and c) the arbitration provision has no prevailing party provision for reimbursement of fees and costs expended during arbitration, and Respondents' requests for costs and fees should be wholly denied."

Findings

The Arbitrator finds that pursuant to the parties' arbitration provision contained in paragraph 18 of the license agreement, only those costs and expenses, including reasonable attorney's fees: (1) incurred in seeking abatement or dismissal of such litigation and/or; (2) incurred in judicially compelling arbitration are reimbursable. Even thought the Settlement Agreement and 4th Amended Operating Agreement allow for prevailing party reimbursement for attorneys' fees and costs, the arbitration agreement limits reimbursement to fees and costs associated with judicially compelling arbitration.

Therefore, the arbitrator concludes that Respondents' request for reimbursement of attorneys' fees and costs beyond the amount incurred to abate or dismiss litigation and/or incurred to judicially compel arbitration is inconsistent with the clear and unambiguous language of parties' arbitration agreement, and will not be allowed. Each party shall bear their own attorneys' fees, costs and expenses as incurred, in this arbitration.

This Arbitrator finds no merit in Claimant's assertions that Respondents' request for reimbursement of attorneys' fees and costs in the State Court Action has been waived or is otherwise untimely because Respondents failed to seek reimbursement of attorney fees and costs in the State Court Action. Claimant's Opposition cites to Nevada Rules of Civil Procedure and the law of the case, which Claimant asserts requires a motion for fees to be filed within 21 days, "*unless a statute or court provides otherwise*..." The Supreme Court of the State of Nevada clearly "provided otherwise" by dismissing the case, and in doing, so eliminated the Eighth Judicial District Court's authority to proceed with the matter.[8] Claimant has alleged no facts and cited no authority to the contrary. Once the arbitration case was filed, the Rules of the AAA apply, giving the arbitrator the authority to decide reimbursement of attorneys' fees pursuant to Rule R-47.

Claimant's next objection, that Respondent's requests for reimbursement of attorneys' fees, costs and fees should be rejected for failure to provide declarations and discuss Brunzell factors and compliance with Cadle, is also without merit.

The Arbitrator has carefully reviewed Respondents' Counsels' supporting declarations which describe the training, education, experience, professional standing and hourly rates of each attorney and paralegal who worked on the Respondents' case. Respondents' entered into a joint defense agreement further demonstrating the importance of this multiparty litigation and Counsels' expertise and experience to efficiently and effectively provide and manage the delivery of legal services in an efficient and strategic manner. There were a few entries provided at "no charge" and some entries offered a 10% discount. The Arbitrator observed Respondent's Counsel during the course of this matter, reviewed thousands of pages of written submissions and supporting documents from Respondents' counsel over the course of this matter, and finds Respondents Counsel possess the required expertise to handle this complex matter and are skilled and experienced litigators and transactional lawyers, who have successfully represented their clients. Given the intricacies of the contracts at issue in this matter, the length of time it took to appeal to the Supreme Court and reach a successful result, this Arbitrator finds the overall amount of fees billed, to be reasonable and Respondents' counsel have all demonstrated more than the requisite expertise and skills to successfully handle the challenges of this case and prevail.

[8] Supreme Court Opinion at page 2 "We further conclude the claims in the underlying complaint are subject to arbitration and therefore the complaint must be dismissed."

Although Claimant was sent copies of the all bills supporting Respondents' request for reimbursement of attorneys' fees and costs on July 2, 2021, Claimant's July 16, 2021 Omnibus Objection to Attorneys' Fees made no specific objection to any line item entries in any of the bills.

The Arbitrator reviewed each entry of every bill submitted by Respondents relating to attorneys' fees and costs incurred, commencing in December 2017, after the District Court Action was filed until the fall of 2019, when the Supreme Court ordered the case to arbitration. All Bills after October 2019 related to this arbitration matter and pursuant to the terms of the parties' arbitration agreement, as previously addressed, are disallowed.

The Kennedy Couvillier, Childs Watson and Black LoBello law firm bills and detailed activity reports seek reimbursement of attorneys' fees and costs on behalf of MMAWC and Nancy and Bruce Family Partnership. The bills were detailed, described the work performed, the applicable hourly rates and the time involved. All such attorneys' fees and cost billed through October 23, 2019 were reasonable and shall be reimbursed. There were no fees or costs listed during the relevant time period that identified services on behalf of Nancy and Bruce Deifik Family Partnership.

Dickerson Wright submitted detailed bills that described the work performed, the hourly rates and the time involved for MMAX, but also included work identified as having been performed for Mr. Redman and Silva, which appeared unrelated to MMAX's representation in the District Court Action. Although Carlos Silva may have also been assisting the Dickerson Wright lawyers, as an officer, on behalf of MMAX, Silva was personally involved in the District Court Action. Silva was not a party to this arbitration and there is no fee application seeking reimbursement of Silva's personal fees. Dickenson Wright fees incurred for matters involving Carlos Silva personally and Redman unrelated to their positions with MMAX are disallowed.[9] Some entries did not identify one way or the other, which fees were on behalf of MMAX, or performed for Redman or Carlos Silva personally. The Dickerson Wright bills that listed work performed on the same day for both MMAX and Silva were divided 50/50.[10] The arbitrator has determined after carefully reviewing each billing entry, that a good portion of the bills contained entries clearly describing work related to Silva and Redman personally and are therefore disallowed.[11] In addition, several of the Dickenson Wright billing entries have redacted descriptions, making it difficult to determine whether the legal work performed was for the purpose of judicially compelling arbitration for MMAX or for some other person or purpose.[12] The arbitrator recognizes the confidentiality and attorney-client privilege concerns related to attorneys' bills, and chose to review the submitted redacted bills instead of trying to obtain unredacted versions that would not have been made available to Claimant for review or comment. The heavily redacted entries that could not be determined to specifically involve MMAX and the District Court Action are disallowed. The total amount of disallowed Dickenson Wright fees for the reasons stated is $28,570.

Based upon the Arbitrator's review and evaluation of the Respondents' motions, applications, supporting declarations and bills submitted, and after subtracting the disallowed fees for the reasons given above, the Arbitrator determines the reasonable attorneys' fees, costs and expenses incurred by Respondents' to abatement or dismissal the District Court Action and/or judicially compel arbitration are as follows:

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[9] For example, but not exhaustive, entries on 7/16/17, 8/29/18, 9/7/18, 10/04/17, 10/08/18, 10/10/18, 10/17/18, 10/22/18, 12/3/18, 12/11/18, 12/26/18, 1/17,19, 1/22/19, and 3/15/19, 3/28/19

[10] For, example, but not exhaustive, certain entries in August 2018, 10/9/18, 10/10/18, 10/23/18, 10/29/18

[11] For example, but not exhaustive, see entries on 7/16/18, 8/29/18, 9/7/18, 10/04/17, 10/08/18, 10/10/18, 10/17/18, 10/22/18, 12/3/18. 12/11/18, 12/13/18, 12/26/18 and3/28/19

[12] For example, see bills for May 2018, July 2018 and August, 2018.

Respondent MMAX Investment Partners Inc. dba Professional Fighters League:
Dickenson Wright reasonable attorneys' fees are $47,845.00 and fees and costs are $1,475.90 for a total of $49,320.90, and

For Respondents MMAWC dba World Series of Fighting
Kennedy Couvillier, reasonable attorneys' fees are $34,875.00 and fees and costs are $110.45 and,
Childs Watson, reasonable attorneys' fees are $1,082.00 and fees are $1,457.00
Black LoBello, reasonable fees attorneys' fees are $6,000 and fees are 162.75

Based upon the foregoing, the Arbitrator makes the following **awards in favor of Respondents on their motions for reimbursement of reasonable attorneys and Follows:**

1. Zion Wood OB Wan Trust and Shawn Wright as Trustee, is to pay to MMAX Investment Partners, Inc., the sum of $49,320.90 as reimbursement of reasonable attorneys' fees and costs and expenses, and
2. Zion Wood OB Wan Trust and Shawn Wright as Trustee is to pay to MMAWC, LLC dba World Series of Fighting, the sum of $43,687.20 as reimbursement of reasonable attorneys' fees and costs and expenses, and
3. Zion Wood OB Wan Trust and Shawn Wright Payment shall make payment within 30 days of the date of this Final Award. Any unpaid balance shall accrue interest at the applicable rate for unpaid judgments in the State of Nevada, until paid in full.
4. The administrative fees of the American Arbitration Association totaling $17,876.05 and the compensation of the Arbitrator totaling $52,087.50 shall be borne as incurred.

This Final Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

Dated: October 4, 2021

Mary S Jones
Mary S Jones
Arbitrator

EXHIBIT 6
Notice of Entry of
Arbitration Fee & Costs Award

AMERICAN ARBITRATION ASSOCIATION | INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

Western Case Management Center
Sandra Marshall
Vice President
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Telephone: (877)528-0880
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October 4, 2021

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Michael Feder, Esq.
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Case Number: 01-20-0005-4568

Zion Wood OB Wan Trust
and Shawn Wright as Trustee
-vs-
MMAWC LLC
World Series of Fighting and
Nancy and Bruce Deifik Family Partnership, LLP
-vs-
MMAX Investment Partners, Inc.
dba Professional Fighters League
and Carlos Silva

Dear Parties:

Thank you all for your prompt responses on the last minute billing on this matter. Confirming all have agreed and your potential refunds have been used against the amount due. MMAWC and MMAX will have balances due and have been sent both an invoice (to show the amount billed) and a statement (to show the amount due after the refund has been applied). Zion's refund will be issued from our corporate office in New York this week.

By direction of the arbitrator attached please find the duly executed Award in the above matter. Please remember there is to be no direct communication with the arbitrator(s). All communication shall be directed to the AAA.

Pursuant to the AAA's current policy, in the normal course of our administration, the AAA may maintain certain

electronic case documents in our electronic records system. Such electronic documents may not constitute a complete case file. Other than certain types of electronic case documents that the AAA maintains indefinitely, electronic case documents will be destroyed 18 months after the date of this letter.

We appreciate the opportunity to assist you in resolving your dispute. As always, please do not hesitate to contact me if you have any questions.

Sincerely,

/s/
Julie E Collins
Manager of ADR Services
Direct Dial: (559)408-5713
Email: JulieCollins@adr.org
Fax: (855)433-3046

cc: Mary S. Jones, Esq.

From: JulieCollins@adr.org <JulieCollins@adr.org>
Sent: Monday, October 4, 2021 4:20 PM
To: mcouvillier@kclawnv.com; mary@marysjones.com; Michael N. Feder <MFeder@dickinson-wright.com>; byronthomaslaw@gmail.com
Subject: EXTERNAL: Zion Wood OB Wan Trust v. MMAWC LLC • Case 01-20-0005-4568

Hello,

Please review the attached correspondence regarding the above-referenced case.

Feel free to contact me with any questions, comments or concerns you have related to this matter.

Thank you.

AAA Julie Collins
Manager of ADR Services

American Arbitration Association

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Las Vegas, Nevada 89146
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY NEVADA

ZION WOOD OBI WAN TRUST and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST; WSOF GLOBAL, LLC, a Wyoming limited liability company, Plaintiffs, v. MMAWC, LLC d/b/a WORLD SERIES OF FIGHTING a Nevada limited liability company; MMAX INVESTMENT PARTNERS, INC. dba PROFESSIONAL FIGHTERS LEAGUE, a Delaware corporation; BRUCE DEIFIK, an individual; CARLOS SILVA, an individual; NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP, a Colorado limited liability partnership; KEITH REDMOND, an individual; DOES I through X, inclusive; and ROE Corporations XX through XXX, inclusive, Defendants.	CASE NO.: A-17-764118-C DISTRICT COURT DEPT: 27 **OPPOSITION TO JOINT MOTION TO CONFIRM ARBITRATION AWARD**

COMES now Zion Wood Obi Wan Trust ("Zion") files this Opposition to the Joint Motion to Confirm Arbitration Award by and through its counsel Law Offices of Byron Thomas. The Opposition is based on the points of authorities and any argument ordered by the Court

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POINTS AND AUTHORITIES

A. FACTS

MMAWC, LLC and MMAX Partners d/b/a Professional Fighters League filed a Joint Motion to Reopen this Matter and to Confirm Arbitration Awards in Favor of Defendants ("Joint Motion"). Zion opposes the Joint Motion and incorporates by reference its Omnibus Opposition to Objection to Attorney Fees (the and its Opposition to Respondents' Motion for Summary Judgment. A true and correct copy of the Omnibus Opposition is attached as Exhibit A, and true and correct copy of the Opposition to Motion for Summary Judgment is attached hereto as Exhibit "B."

ARGUMENT

A. The Arbitration Award of Attorney Fees is Arbitrary and Capricious and Therefore Should be Vacated.

The common law basis for vacating an arbitration award are whether the arbitrator's award is capricious or whether the arbitrator manifestly disregarded the law:

> This court reviews a district court's decision to vacate or confirm an arbitration award de novo." *Washoe Cty. Sch. Dist. v. White*, 133 Nev. 301, 303, 396 P.3d 834, 838 (2017). Nevada recognizes two common-law grounds under which a district court may review private binding arbitration awards: the court determines "(1) whether the award is arbitrary, capricious, or unsupported by the agreement; and (2) whether the arbitrator manifestly disregarded the law." *Id.* at 306, 396 P.3d at 839 (quoting *Clark Cty. Educ. Ass'n v. Clark Cty. Sch. Dist.*, 122 Nev. 337, 341, 131 P.3d 5, 8 (2006)).

SVRE, LLC v. Queensridge Realty, LLC, 465 P.3d 1185 (Nev. 2020).

The arbitrary-and-capricious standard does not permit a reviewing court to vacate an arbitrator's award *based on a misinterpretation of the law.*" Clark Cty. Educ. Ass'n, 122 Nev. at 343–44, 131 P.3d at 9 (emphasis added). Instead, a court's review of the arbitrary and capricious standard is "limited to whether the arbitrator's findings are supported by substantial evidence in the record." *Id.* at 344, 131 P.3d at 9–10.A manifest disregard occurs when the arbitrator acknowledges the law and then simply disregards it:

("[T]he issue is not whether the arbitrator correctly interpreted the law, but whether the arbitrator, knowing the law and recognizing that the law required a particular result, simply disregarded the law." (quoting *Clark Cty. Educ. Ass'n*, 122 Nev. at 342, 131 P.3d at 8)); *see also Health Plan of Nev., Inc. v. Rainbow Medical, LLC*, 120 Nev. 689, 699, 100 P.3d 172, 179 (2004) ("Manifest disregard of the law goes beyond whether the law was correctly interpreted, it encompasses a conscious disregard of applicable law."). Because "[a] reviewing court should not concern itself with the correctness of an arbitration award[,] and thus[,] does not review the merits of the dispute," *Bohlmann v. Byron John Prints & Ash, Inc.*, 120 Nev. 543, 547, 96 P.3d 1155, 1158 (2004) (internal quotations omitted), *overruled on other grounds byBass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006), we conclude that the district court did not correctly apply the manifest-disregard-of-the-law standard. *See Health Plan of Nev.*, 120 Nev. at 699, 100 P.3d at 179 ("[E]ven if [an] arbitrator made an error of fact or misapplied the law on [an] issue, it would still not amount to a manifest disregard of the law.").

SVRE, LLC v. Queensridge Realty, LLC, 465 P.3d 1185 (Nev. 2020). There is no clearer example of an arbitrator ignoring the law than in this case. The arbitrator agreed with Zion that the parties agreement only allowed for attorneys fees concerning moving to compel arbitration award, but then made this stunning statement:

> This Arbitrator finds no merit in Claimant's assertions that Respondents' request for reimbursement of attorneys' fees and costs in the State Court Action has been waived or is otherwise untimely because Respondents failed to seek reimbursement of attorney fees and costs in the State Court Action. Claimant's Opposition cites to Nevada Rules of Civil Procedure and the law of the case, which Claimant asserts requires a motion for fees to be filed within 21 days, "unless a statute or court provides otherwise..." The Supreme Court of the State of Nevada clearly "provided otherwise" by dismissing the case, and in doing, so eliminated the Eighth Judicial District Court's authority to proceed with the matter. Claimant has alleged no facts and cited no authority to the contrary. Once the arbitration case was filed, the Rules of the AAA apply, giving the arbitrator the authority to decide reimbursement of attorneys' fees pursuant to Rule R-47.

Arbitrator Decision Exhibit 5 p. 4. The Nevada Supreme Court did not dismiss the action. Rather the Nevada Supreme Court remanded the action back to the district court and directed the district court to dismiss the case. This is not an instance where the arbitrator made an error of fact. There was simply no evidence in the record at all to support the arbitrator's conclusion. Nowhere in the opinion does the Nevada Supreme Court state that it is dismissing this case. See Exhibit C. The

ONLY evidence in the record is that the Nevada Supreme Court WAS remanding the case back to the district court and that the district court would dismiss the case.[1] Moreover, Zion laid out the proper law and the relevant documents which the arbitrator just disregarded. Exhibit A p. 5-7 Omnibus Objection. The arbitrator pulled the conclusion "Supreme Court of the State of Nevada clearly "provided otherwise" by dismissing the case, and in doing, so eliminated the Eighth Judicial District Court's authority to proceed with the matter" completely out of thin air.

Therefore, the arbitrator's award on attorney fees is completely arbitrary and capricious and the arbitrator manifestly disregarded the law, and there was no basis for the arbitrator to conclude that the order of the Supreme Court prevented the Joint Petitioners from requesting fees, and thus somehow preserving this matter for the arbitrator to decide fees.

B. The Joint Petitioners Should be Precluded From Disputing that the Award of Attorney Fees was Arbitrary or Capricious.

Zion raised the waiver argument in an opposition to the Motion to Attorney Fees see exhibit . After Zion filed the Motion for Attorney Fees, the arbitrator gave the parties the opportunity to supplement the record, and Joint Petitioner's declined to supplement the briefing:

> After carefully considering the parties submissions, the parties were asked, on September 8, 2021, whether they had any additional submissions, information or issues to submit to the Arbitrator for resolution in this matter. **Respondents advised in the negative**

(emphasis added). Moreover in the in the Joint Motion to Confirm they failed to address Zion's arguments as well. Multiple authorities have held when an issue is not brought before the arbitrator, the issue is waived for any future proceedings. See Teamsters, Chauffeurs, Salesdrivers & Helpers, Local Union No. 330 v. Elgin Eby-Brown Co., 670 F. Supp. 1393, 1397 (N.D. 111. 1987); United

[1] It must also be pointed out that arbitrator actually quoted the Nevada Supreme "...we further conclude the arbitration clause in the licensing agreement applies to the claims alleged in the underlying complaint, we reserve and remand to the district court with instructions to grant MMAWC's motion to dismiss and enforce the arbitration clause." Exhibit 5 p. 2. Once can there was no evidence to in the record to support the arbitrators conclusion that the Nevada Supreme Court supposed otherwise.

Food & Commercial Workers, Local 400 v. Marval Poultry *Co.*, 645 F. Supp. 1174, 1180 (W.D.Va. 1986). It would simply be unfair and unjust to give Joint Petitioners the right to respond when they have affirmatively waived that right below.

C. The Arbitrator's Ruling that MMAX was not a Successor of MMAWC was a Manifest.

Section of MMAWC's Operating Agreement provides as follows:

> Section 13.02(b) of Op. Agreement states: Each Unit shall (effective upon and subject to the consummation of such initial Public Offering) convert into shares of common stock of the Successor (the "Successor Stock"), and the shares of Successor Stock shall be allocated among the holders in exchange for their respective Units such that each holder shall receive a number of shares of Successor Stock equal to the quotient of (i) the amount such holder would have received in respect of such holder's Units in a liquidation or dissolution at the time of the initial Public Offering, divided by (ii) the price per share at which the common stock is being offered to the public in the initial Public Offering, in each case net of underwriting discounts and commissions. (Ex.1) Section 13.03(a) states: The organizational documents of the Successor and/or a stockholders' or other agreement, as appropriate, shall provide that the rights and obligations of the Members hereunder (to the extent such rights and obligations survive consummation of an initial Public Offering) shall continue to apply in accordance with the terms thereof unless the parties thereto otherwise agree in writing pursuant to the terms thereof. (Ex. 1).

Joint Motion Exhibit 3 p. 5:n.5. The arbitrator stated that Section 13 of the 4th Op stood for the following proposition:

> Agreement only relates to a going public scenario where MMAWC would be the successor corporation, not a third party, unrelated to MMAWC. It is undisputed that MMAWC is still in existence, thus MMAX, Inc., is not the successor to MMAWC. Furthermore, the 4th Op. Agreement expressly authorizes the Board, with the advance consent of a Super Majority of the Members of MMAWC, to be able to sell, dispose, or transfer all of the Company Property or otherwise change the business of the Company. See Section 9.02 of the 4th Op. Agreement. The ACA was validly authorized. (See Ex. 1).

Joint Motion Exhibit 3. p. Zion's argued that MMAWC Zion because it structured MMAX the way it did to get around the

The arbitrator that the a claim of good faith and fair dealing could exist even if the contract was performed, if there was bad faith. The arbitrator then expressly stated that because MMAWC engaged in conduct so as to not expressly breach the parties agreement it did not act in bad faith:

> Instead, MMAWC engaged in the ACA transaction, the terms of which were not prohibited by the Settlement Agreement or the 4th Op. Agreement. MMAWC has not issued any additional membership units in MMAWC, MMAWC has not attempted to issue any new membership units, and the ACA did not result in any additional membership units of MMAWC being issued. MMAWC remains in existence and Zion still maintains its 4.5% interest in MMAWC. (See Ex.2-D) The Settlement Agreement gave Claimant the right to a non-dilutable 4.5% ownership in MMAWC, but it did not give Claimant any additional voting or blocking rights in the event of a sale of certain assets or substantially all of the assets of MMWAC. The ACA at issue in this case was duly approved by the authorized vote of the Members and Managers of MMAWC.

Joint Motion Exhibit 3. p 13. So the arbitrator stated what the law was that there can be a breach of the covenant of good faith and fair dealing without a breach of the contract, but then concluded that because MMWAC and MMAX structured the ACA in such away as to avoid breach the settlement the contract the breach of the duty of good faith and fair dealing did not apply. So the arbitrator acknowledge the law and then simply ignored it.

CONCLUSION

For the foregoing reason the arbitration award should not be confirmed as to attorney fees or as to the conclusion that Zion's interest was not diluted.

DATED this 28th day of April 2022

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ZION WOOD OBI WAN TRUST and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST; WSOF GLOBAL, LLC, a Wyoming limited liability company, Plaintiffs, v. MMAWC, LLC d/b/a WORLD SERIES OF FIGHTING a Nevada limited liability company; MMAX INVESTMENT PARTNERS, INC. dba PROFESSIONAL FIGHTERS LEAGUE, a Delaware corporation; BRUCE DEIFIK, an individual; CARLOS SILVA, an individual; NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP, a Colorado limited liability partnership; KEITH REDMOND, an individual; DOES I through X, inclusive; and ROE Corporations XX through XXX, inclusive, Defendants.	CASE NO: A-17-764118-C DEPT NO: XXVII **JOINT REPLY IN SUPPORT OF DEFENDANTS' JOINT MOTION TO REOPEN THIS MATTER AND TO CONFIRM ARBITRATION AWARDS IN FAVOR OF DEFENDANTS AND FOR JUDGMENT THEREON** **[PUBLICLY FILED VERSION]** **Date of Hearing: May 11, 2022** **Time of Hearing: 9 a.m.**

Defendants MMAWC, LLC ("MMAWC"), The Nancy And Bruce Deifik Family Partnership LLLP ("DFP") and MMAX Investments Partners, Inc. dba Professional Fighters League ("MMAX," collectively with MMAWC and MMAC "Joint Movants"),[1] by and through their respective counsel of record, hereby file their Joint Reply in Support of Defendants' Joint Motion to Reopen this Matter and to Confirm Arbitration Awards in Favor of Defendants and for Judgment Thereon. This Reply is based on the following Memorandum of Points and Authorities, all papers and pleadings on file herein, and any oral argument at the hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On April 4, 2022, Joint Movants filed their Joint Motion to Reopen this Matter and to Confirm Arbitration Awards in Favor of Defendants and for Judgment Thereon ("Joint Motion") and requested that this Court re-open this action for the limited purpose of confirming the Arbitrator's June 25, 2021 summary judgment decision and the October 4, 2021 decision awarding attorneys' fees (collectively the "Arbitration Awards"). In the Joint Motion, Joint Movants explained that (i) the Arbitration Awards should be confirmed because Zion Obi Wan Trust ("Zion") failed timely to challenge the Arbitration Awards, and (ii) the Arbitration Awards did not represent a manifest disregard of the law.

Zion's opposition is inconsequential and does not meet Nevada law challenging arbitration awards. First, Zion's opposition is largely threadbare, stream of conscience arguments that are largely incomprehensible. Second, Zion does not oppose or even address many of the grounds raised by the Joint Movants compelling the confirmation of the Arbitration Awards. Indeed, Zion completely omits any discussion regarding its failure timely to challenge the Arbitrator Awards; which failure alone is fatal to its opposition and compels the granting of the Joint Motion. *See B.T. by & through Jackson v. Battle, 2020 WL 7864336, at *4 (N.D. Ga. Dec. 31, 2020)("*when a party fails to respond to an argument or otherwise address a claim, the [c]ourt deems such argument or claim abandoned...*")*; *see also e.g.*, EDCR 2.20(e) (failure to oppose "may be construed as an admission" ; EDCR 2.20(i) (opposition unsupported by legal argument "does not

[1] MMAX is now known as Professional Fighters League, LLC.

comply" with the rules and the court may decline to consider it). Zion had ample time and numerous extensions to prepare its Opposition. Under similar circumstances where a party fails to raise arguments, as Zion has done here, the Nevada Supreme Court directs the district courts not to speculate and consider such omitted arguments. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n. 38, 130 P.3d 1280, 1288 n. 38 (2006):

> Edwards neglected to address in his briefs or in his memoranda of supplemental authority the district court's dismissal of his claims that Cenicola–Helvin's conduct violated NRS 40.140(1), 41.600, 598.0918(3), 598.0923(3), and 598.073 and constituted intrusion. In this way, Edwards neglected his responsibility to cogently argue, and present relevant authority, in support of his appellate concerns. Thus, we need not consider these claims.

Id.

Moreover, even if this Court considers the untimely arguments contained in the Opposition, cogent or otherwise, since Zion failed to demonstrate by clear and convincing evidence that the Arbitrator exceeded the scope of her authority or manifestly disregarded the law in rendering her decisions in the Arbitration Awards, the Joint Motion should be granted.

II. LEGAL STANDARD

"[T]he scope of judicial review of an arbitration award is limited and is nothing like the scope of an appellate court's review of a trial court's decision." *Health Plan of Nevada, Inc. v. Rainbow Med., LLC.*, 120 Nev. 689, 695, 100 P.3d 172, 176 (2004). A reviewing court does not concern itself with whether the arbitrator made the "correct" ruling; rather, it will deny relief from an arbitrator's ruling unless it was "arbitrary, capricious, or unsupported by the agreement" [2] or the arbitrator "manifestly disregarded the law." [3] *Bohlmann v. Printz*, 120 Nev. 543, 546-47, 96 P.3d 1155, 1157-58 (2004) overruled on other grounds by *Bass-Davis v. Davis*, 122 Nev. 442, 452 n.32, 134 P.3d 103, 109 n.32 (2006). "The party seeking to attack the validity of an arbitration award has

[2] Whether the arbitrator's award was arbitrary, capricious, or unsupported by the agreement is to ensure only "that the arbitrator does not disregard the facts or terms of the arbitration agreement" *Clark County Educ. Ass'n v. Clark County School Dist.*, 122 Nev. 337, 341-42, 131 P.3d 5, 8-9 (2006).

[3] Whether the arbitrator manifestly disregarded the law is to ensure only that the arbitrator recognizes the applicable law and does not simply disregard it—not that the arbitrator correctly interpreted and applied the law. *Id.* ("neither standard permits a reviewing court to consider the arbitrator's interpretation of the law" (citing *Bohlmann*, 120 Nev. at 547, 96 P.3d at 1157-58); *see also* NRS 38.218; 38.241.

the burden of proving, by clear and convincing evidence, the statutory or common-law ground relied upon for challenging the award." *Health Plan of Nev., Inc.*, 120 Nev. at 695, 100 P.3d at 176. And like all appeal rights, such attack must be asserted timely or be waived and lost. *See Casey v. Wells Fargo Bank, N.A.*, 128 Nev. 713, 717-18, 290 P.3d 265, 268 (2012) ("[I]f a party fails to make a timely motion to vacate an award, the right to oppose confirmation on a statutory basis (that could have been raised in a timely vacatur petition but was not) is waived."); *see also* NRS 38.241(2).

III. ARGUMENT

A. Zion Failed Timely to Move to Vacate the Arbitration Award

As explained in the Joint Motion, Zion was required to file a motion to vacate or a motion to modify or correct the Arbitration Awards by no later than January 2, 2022, but completely failed to do so. (*See* Joint Mot. at 6-7). Tellingly, Zion does not even address its failure timely to move to correct, modify, or vacate the Arbitration Awards in its Opposition. That is because Zion knows that its failure timely to challenge the Arbitration Awards and move this Court for such relief equates to a waiver. *Id.*

Moreover, Zion's failure to address this argument in its Opposition operates as an admission that the Joint Motion is meritorious and, further, a consent to the granting of the Joint Motion. *See* EDCR 2.20(e); EDCR 2.20(i); *see also Kwist v. Chang*, 127 Nev. 1152, 373 P.3d 933 (2011) ("When a party fails to oppose a motion or present argument at the hearing on the motion, the district court is not obligated to pursue the nonopposing party in order to garner that party's opinion on the motion before deciding the outcome.").

Accordingly, since Zion failed timely to move to vacate or otherwise modify the Arbitration Awards, the Joint Motion must be granted.

B. The Arbitrator did not Exceed her Powers or Manifestly Disregard the Law

Even if this Court considers Zion's untimely Opposition, which it should decline to do, Zion has failed to come remotely close to demonstrating by any standard, much less by clear and convincing evidence, that the Arbitrator exceeded her powers or manifestly disregarded the law. That is because the evidence demonstrates otherwise.

1. The Arbitrator's Award of Attorneys' Fees Was Proper

Zion first argues that the Arbitrator's attorney fee award was "arbitrary and capricious" because the Arbitrator determined that she found "no merit in [Zion's] assertions that [Joint Movants'] request for reimbursement of attorneys' fees and costs in the State Court Action ha[d] been waived or is otherwise untimely because [Joint Movants] failed to seek reimbursement of attorney fees and costs in the State Court Action." (Opp'n at 3-4 (citing Joint Mot., Ex. 5 at 4)).[4] The Arbitrator's ruling is correct and supported by law: Zion's argument was meritless because it was based on the improper invocation of the Nevada Rules of Civil Procedure ("NRCP"). In other words, Zion's attorneys' fees opposition to the arbitrator was based on the NRCP but the NRCP does not apply to the arbitration.

Specifically, the Arbitrator correctly recognized that "[o]nce the arbitration case was filed, the Rules of the AAA apply and supersedes the NRCP, giving the arbitrator the authority to decide reimbursement for attorneys' fees pursuant to Rule R-47." (*Id.*). That is because, in order to provide a relatively expeditious and inexpensive dispute resolution, arbitration is governed by the AAA Rules, not the courts' strict procedural and evidentiary requirements. *See Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc.*, 473 U.S. 614, 628, 105 S. Ct. 3346, 87 L.Ed.2d 444 (1985); *Kyocera Corp. v. Prudential–Bache Trade Servs., Inc.*, 341 F.3d 987, 998 (9th Cir. 2003) (en banc); *see also, Rosensweig v. Morgan Stanley & Co.*, 494 F.3d 1328, 1333 (11th Cir. 2007) ("Arbitrators enjoy wide latitude in conducting an arbitration hearing, and they are not constrained by formal rules of procedure or evidence.") (citation and internal quotation marks omitted); *Oracle Corp. v. Wilson*, 276 F. Supp. 3d 22, 29 (S.D.N.Y. 2017) ("Arbitrators must give each of the parties to the dispute an adequate opportunity to present its evidence and argument, but need not follow all the niceties observed by the federal courts such as the Federal Rules of Civil Procedure or the Federal Rules of Evidence, nor hear all of the evidence proffered by a party.") (internal quotation marks omitted); *Commercial Risk Reinsurance Co. v. Sec. Ins. Co. of Hartford*, 526 F. Supp. 2d 424, 428 (S.D.N.Y.

[4] Tellingly, the Arbitrator awarded only a fraction of the Joint Movants requested attorneys' fees. While the Joint Movants requested their respective attorneys' fees and costs incurred in relation to compelling arbitration ***and*** the arbitration proceedings, (the Arbitrator only awarded the attorneys' fees associated with compelling arbitration because the Arbitrator concluded that the subject "arbitration agreement limits reimbursement to fees and costs associated with judicially compelling arbitration." (*See* Joint Mot., Ex. 5 at 3 and 4).

2007); *U.S. Life Ins. Co. v. Superior Nat'l Ins. Co.*, 591 F.3d 1167, 1173 (9th Cir.2010) ("[W]hen interpreting and applying the [Federal Arbitration Act], we are mindful not to impose the federal courts' procedural and evidentiary requirements on the arbitration proceeding; rather, our responsibility is to ensure that the [Federal Arbitration Act]'s due process protections were afforded.")).

Because Zion's argument lacks any merit and does not come remotely close to satisfying its burden of proof demonstrating that the Arbitrator manifestly disregarded the law or exceeded her powers in rendering her decisions on attorneys' fees, the Joint Motion must be granted in its entirety.

2. Zion's Contract-Based Argument is Meritless

While difficult to decipher, Zion ostensibly argues without any authority that the Arbitrator manifestly disregarded the law or exceeded her powers by determining that "because MMWAC and MMAX structured the ACA in such away [sic] as to avoid breach[ing] the settlement the contract [sic] the breach of the duty of good faith and fair dealing did not apply." (Opp'n at 6). Notwithstanding the substantive and grammatically confusing nature of this statement,[5] Zion is again wrong.

The Nevada Supreme Court has stated that judicial review of an Arbitrator's interpretation of a contract is extremely limited. *See Castaneda v. Palm Beach Resort Condominiums*, 127 Nev. 1124, 373 P.3d 901 (2011) ("... to the extent the Castanedas argue that the arbitrator misinterpreted the contract provision on financing, this argument evades judicial review.") (citing *Hill v. Norfolk and Western Ry. Co.*, 814 F.2d 1192, 1195 (7th Cir.1987) (citations omitted)). That is because "[a]rbitrators do not exceed their powers if their interpretation of an agreement, even if erroneous, is rationally grounded in the agreement." *Washoe Cty. Sch. Dist. v. White*, 396 P.3d 834, 838 (Nev. 2017) (internal quotation marks and citations omitted) (alteration in original).

Here, as with the entire Opposition, Zion has failed to come remotely close to carrying its burden of proof. Indeed, upon review of the Arbitration Awards, it is clear that the Arbitrator's

[5] *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument).

decisions were well grounded, and supported by the record and Nevada law; particularly, Nevada contract law.

Moreover, in relation to Zion's de facto merger and alter ego allegations, not only was the Arbitrator's decision well grounded, it is consistent with this Court's January 3, 2022, ruling in the matter of *170615 Alberta Ltd. v. MMAWC, LLC d/b/a World Series of Fighting, et al.*, Case No. A-19-789458-C, Docket 192 (filed under seal), wherein this Court, just like the Arbitrator, granted summary judgment in favor of MMAX on all asserted claims concluding there was no de facto merger between MMAX and MMAWC and, further, that MMAX was not the alter ego of MMAWC (the "Alberta MSJ Order"). A copy of the Court's Alberta MSJ Order is attached here as **Exhibit 7** (filed under seal).

As such, since Zion completely failed to demonstrate, and in fact cannot demonstrate, by clear and convincing evidence that the Arbitrator manifestly disregarded the law or exceeded her powers in entering the Arbitration Awards, the Joint Motion must be granted in its entirety.

IV. CONCLUSION

For the reasons set forth herein and in the Joint Motion, Joint Movants respectfully request that the Court enter an order granting the Joint Motion in its entirety.

Dated this 6th day of May 2022

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CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 6th day of May, 2022, she caused a copy of the foregoing **JOINT REPLY IN SUPPORT OF DEFENDANTS' JOINT MOTION TO REOPEN THIS MATTER AND TO CONFIRM ARBITRATION AWARDS IN FAVOR OF DEFENDANTS AND FOR JUDGMENT THEREON** to be transmitted by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve system addressed to:

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EXHIBIT INDEX

Exhibit No.	Description	No. of Pages (Exclusive of Exhibit Sheet)
7	Order Granting MMAX Investment Partners Inc.'s Motion for Summary Judgment (Case # A-19-789457-C)	15

EXHIBIT 7

"FILED UNDER SEAL"

ORDER GRANTING MMAX INVESTMENT PARTNERS INC.'S MOTION FOR SUMMARY JUDGMENT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

ZION WOOD OBI WAN TRUST, Plaintiff, vs. MMAWC, LLC, MMAX INVESTMENT PARTNERS, INC., Defendants.	)	CASE NO. A-17-764118-C DEPT. NO. XXVII **Transcript of Proceedings**

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

MMAX, LLC AND THE NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP'S JOINT MOTION TO REOPEN THIS MATTER AND TO CONFIRM ARBITRATION AWARDS IN FAVOR OF DEFENDANTS AND FOR JUDGMENT THEREON

WEDNESDAY, JUNE 8, 2022

APPEARANCES [ALL VIA VIDEO/TELEPHONE CONFERENCE]:

For the Plaintiff: BYRON E. THOMAS, ESQ.

For the Defendants: MICHAEL N. FEDER, ESQ.
MAXIMILIANO D. COUVILLIER, III, ESQ.

RECORDED BY: CHARISSE WARD, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript produced by transcription service.

WEDNESDAY, JUNE 8, 2022, AT 9:01 A.M.

MR. THOMAS: Byron Thomas for plaintiff, Zion Wood.

THE COURT: Thank you.

MR. COUVILLIER: Good morning, Your Honor. Max Couvillier on behalf of defendant, MMAWC.

THE COURT: Thank you.

MR. FEDER: Good morning, Your Honor. And, good morning, Your Honor. Michael Feder on behalf of MMax Investment Partners, Inc.

THE COURT: Thank you.

And, defendants, it's your Motion.

MR. COUVILLIER: Yes. Good morning, Your Honor. This is Max Couvillier.

Your Honor, we ask the Court to grant our Motion. It's -- there's three primary grounds that are into play, but, really, the reason the Court should grant the Motion is any Opposition is untimely and that's why operation of NRS 38.241 or 38.242 -- the deadline for the plaintiff to have moved to vacate or to challenge the awards that we seek the Court to confirm passed on January 2nd, 2022. The Nevada Supreme Court has been clear in the case we cited in our Motion, which is *Casey versus Wells Fargo* at 128 Nevada 713, says if the Opposition or the challenge to the award

is untimely, then the confirmation of the award is mandatory.

And, so, we ask the Court, for those reasons, to confirm the awards that we are seeking, which is the June 25th, 2021 summary judgment arbitration award and the October 4, 2021 fees award.

And, then, the other two issues that I address -- that we address in the Reply are the notion that the fees issue was somehow improper and that the Court's award for -- were capricious. Again, Your Honor, first of all, they're untimely. But, to the extent that the Court maybe wants to consider those, the burden on challenging the award is clear and convincing evidence. And we've pointed out that the arbitrator followed substantive law, Nevada law, on both the fees and on the substantive issues.

And, more importantly, as to the fees, the fees were not awarded under NRCP 54 and the Nevada Rules of Civil Procedure. The fees were awarded under the arbitration rules, which is entirely appropriate and left to the sole secretion there -- on that aspect, expressly -- not the sole discretion of the arbitrator but to the authority of the arbitrator under NRS 38.238.

And, so, we ask the Court to enter an Order affirming both of those awards. And, if the Court has any questions, I'd be happy to address them or Mr. Feder can

address them as well.

THE COURT: Thank you.

Mr. Feder, do you have anything to add before I hear from Mr. Thomas?

MR. FEDER: No, Your Honor. I -- just real quick with respect to the attorney fee component, as you can tell, from what we submitted, the arbitrator also did not award all fees that were requested in terms of that. So, you can tell the arbitrator took her time in reviewing and analyzing under the appropriate factors.

And, also, with respect to the summary judgment, as it relates to my client, it's also consistent, as Your Honor is aware, with the ruling that Your Honor made in another case relating to these attorneys. Most of the defendants, a different plaintiff, in relation to [indiscernible] represented, but also determined that there was no basis with respect to this -- the merger aspect or the merger arguments that were made. So, here, the ruling of the arbitrator was consistent with Your Honor's own ruling in denial of the case as well.

So, that's the only addition I would add. Otherwise, I join in what Mr. Couvillier has argued.

THE COURT: Thank you.

Mr. Thomas?

MR. THOMAS: Your Honor, the Court [indiscernible]

statutory and common law [indiscernible] to the -- both of the award of arbitrator. The statutory deadline Mr. -- that the defendants are referring to apply -- appear in the statute and doesn't appear in the common law. And there's no common law deadline that's set out that says, you know, that the Court cannot still consider the arbitrary and capricious statute.

And, also, manifest -- the -- manifestly unjust. And disregarded the law. And we talk about -- this particular award suffers both defects. It's manifestly unjust and disregarded the law. And it's arbitrary and capricious.

Now, for -- just going back to the actual award itself, for the manifest injustice to apply, you have to find that the arbitrator knew the law, but just disregarded it.

In this particular instance, what we've always argued is that we bargained for -- my clients bargained for a four percent undiluted interest in MMAWC and that the actions of MMAWC, PFL, destroyed what we bargained for, that four percent. And that they may have complied with the contract, but they didn't give us what we bargained for. And that's the theory for breach of the fiduciary -- breach of the duty of good faith and fair dealing.

Now, the Court -- the arbitrator actually cited

the case law that said that the breach of good faith and fair dealing could occur even if the parties have technically complied with the contract -- technically apply -- comply. And, then, the arbitrator said: Well, they technically complied, so there's no breach of the good faith and fair dealing. So, the arbitrator knew the law. They cited it in their opinion and then just decided to ignore it. So, manifestly -- it was manifestly unjust.

When you move to the award for attorneys' fees, we argued in the arbitration case itself that the Arbitration Agreement only provided for fees for contesting the arbitration award, if it was brought in District Court. And that was the case here. And they waived that right because they never petitioned the Court to -- for those fees in the District Court.

Now, the arbitrator, you know, recognized that there was a 21-day rule after the Notice of Entry of the Order to request attorneys' fees. The arbitrator then said that they couldn't waive it, that provision, because they would not -- they didn't have the opportunity to bring that issue up because it was the Supreme Court that entered -- that that overturned the decision and sent it to arbitration. That's literally not the case.

There is no evidence in the record whatsoever that that's what the Supreme Court did. Actually, all the

evidence is to the contrary. The evidence is that the Supreme Court considerably remanded the decision back to the District Court to make a determination about that, that award.

So, the District Court cited -- the arbitrator cited the correct law and they actually cited the provision from the Supreme Court decision where the Supreme Court actually remanded it back to the District Court to make that decision. So, the determination -- so, they knew the law. It disregarded that law and said somehow, some way, there was a waiver because the Supreme Court did the dismissal its own self.

Second point is it's arbitrary and capricious because there certainly is no evidence in the record that that's what the Supreme Court did. It's actually -- all of the evidence in the record is that the Supreme Court did the exact opposite, that they remanded it back to the District Court for the District Court to make -- to enter a dismissal, at which time the plaintiff -- or the defendants could have amended attorneys' fees, which they didn't. So, there was an actual waiver and the Court and the arbitrator disregarded that issue.

The second -- or another point that should be made is the arbitrator gave the defendants the opportunity to submit supplemental briefing or to add to it. So, they saw

-- back up a little bit.

So, we did [indiscernible] conditions. After the [indiscernible] conditions from the arbitrator, the arbitrator asks if you have anything to add. After seeing what we filed, our arguments, and the defendants said: No, we don't have anything to add. Then, when they filed this Motion, they again were aware of all of our arguments and they chose, again, not to address them. Your Honor, that's clearly a waiver. There should be no consideration put [inaudible].

As to the Motion for Attorneys' Fees, there should be absolutely no consideration of any kind of Reply, any -- or even the Motion itself should be deemed to have waived any arguments that were -- that I bring up as to the attorneys' fees, Your Honor.

If you have any questions --

THE COURT: I don't.

MR. THOMAS: -- I'd be happy to address them.

THE COURT: Thank you.

All right. Mr. Feder and Mr. Couvillier, you may be brief.

MR. COUVILLIER: Thank you, Your Honor.

First and foremost, this is -- the entire arguments, there's nothing that Mr. -- that the Zion cites on the record to support the arguments that they're

proffering at this time.

More importantly, this common law notion about the timeliness of their challenge to the arbitrator award, they cite nothing in their brief. Mr. Thomas cites nothing in his argument. The statutory provisions are clear. The Nevada Supreme Court case, *Casey versus Wells Fargo*, is clear. In fact, they don't address any of this in their Motion, Your Honor.

As far as the other arguments, Your Honor, what they're arguing is they disagree that -- there's been a disagreement with what the arbitrator says. The arbitrator had before her, not only the record that was developed in the arbitration, but also the record of the Nevada Supreme Court and how we got to arbitration so that we could advise the Court on that efforts. The Court gave all the parties fully an opportunity to brief all the issues, including the attorneys' fees.

MMAWC didn't need to provide any supplemental briefings because none of the arguments that Zion had presented were supported in law or in fact. And, so, we made that decision. And the arbitrator took all the submissions into consideration, giving everybody full and fair opportunity to develop their arguments, present facts, and so on and so forth, and she rendered her decision.

There has been no evidence before this Court on

this record or presented by Zion that there has been any clear, clear -- and it's a high burden. Clear manifest error. And we only get to that if the Court even entertains the timeliness of the Motion, that, at this point, *Casey v. Wells* says that the confirmation is mandatory.

Thank you, Your Honor.

THE COURT: Thank you.

Mr. Couvillier?

MR. FEDER: That was Mr. Couvillier, Your Honor. This is Michael Feder.

THE COURT: Oh. Sorry.

MR. FEDER: And I join. I join.

I just want the record to be clear with that, Your Honor. I apologize.

I join in what Mr. Couvillier stated. The Opposition that was submitted to this Motion, to the -- you know, I think many of the arguments that have been raised here today without even being stated in that Opposition or really stated in detail in the Opposition. But when you go back and you read the arbitrator's decisions, both on the Motion for Summary Judgment, as well as attorneys' fees, you see that they were well-reasoned. They were not arbitrary or capricious. And they met all standards, as required by law.

And for that reason, I join Mr. Couvillier. And, with respect, we motion that Your Honor reopen the matter and confirm both of the arbitration awards, as well as enter a judgment with attorneys' fees we were awarded by the arbitrator.

Thank you, Your Honor. Unless you have any questions, --

THE COURT: I don't.

MR. FEDER: -- I'll submit the arguments on what's been submitted.

THE COURT: All right. So, the matter is submitted.

This is the Motion -- Joint Motion of M max, LLC, and the Deifik Family Partnership's Motion to Reopen the Matter and to Confirm Arbitration Awards in Favor of the Defendants and for Judgment Thereon. The Motion will be granted in all respects. I find that the -- there was no manifest error or injustice in the arbitration decision. I don't find that the decision was arbitrary and capricious. And I find that the arbitrator did not disregard the law. So, for those reasons, the Motion will be granted in all respects.

The movants to prepare the Order. Mr. Thomas shall have the ability to review and approve the form of the Order. And, if you can't approve it, just let them

know and you can file an Objection to the Order if you wish.

MR. COUVILLIER: Thank you, Your Honor.

MR. FEDER: Thank you, Your Honor.

MR. THOMAS: Thank you, Your Honor.

PROCEEDING CONCLUDED AT 9:16 A.M.

* * * * *

CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.

KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

ORDR

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Attorneys for MMAWC LLC; Bruce Deifik; and The Nancy And Bruce Deifik Family Partnership LLLP

DISTRICT COURT

CLARK COUNTY, NEVADA

ZION WOOD OBI WAN TRUST and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST; WSOF GLOBAL, LLC, a Wyoming limited liability company, Plaintiff, vs. MMAWC, LLC d/b/a WORLD SERIES OF FIGHTING a Nevada limited liability company; MMAX INVESTMENT PARTNERS, INC. dba PROFESSIONAL FIGHTERS LEAGUE, a Delaware corporation; BRUCE DEIFIK, an individual; CARLOS SILVA, an individual; NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP, a Colorado limited liability partnership; KEITH REDMOND, an individual; DOES I through X, inclusive; and ROE Corporations XX through XXX, inclusive Defendants.	CASE NO. A-17-764118-C DEPT. XXVII **ORDER GRANTING DEFENDANTS' JOINT MOTION TO FILE EXHIBIT ATTACHED TO JOINT REPLY IN SUPPORT OF DEFENDANTS' JOINT MOTION TO REOPEN THIS MATTER AND TO CONFIRM ARBITRATION AWARDS IN FAVOR OF DEFENDANTS AND FOR JUDGMENT THEREON UNDER SEAL**

On May 6, 2022, Defendants MMAWC, LLC ("MMAWC"), The Nancy And Bruce Family Partnership LLLP ("DFP") and MMAX Investment Partners, Inc. dba Professional Fighters League ("MMAX," collectively with MMAWC and MMAC "Joint Movants"),[1] filed its Joint Motion to File Exhibit Attached to Joint Reply in Support of Defendants Joint Motion to Reopen This Matter and to Confirm Arbitration Awards in Favor of Defendants and for Judgment Thereon (the "Joint Motion to File Under Seal") Under Seal.

WHEREAS, pursuant to the Court's minute order of June 7, 2022 ("Minute Order"), the Court determined that pursuant to EDCR 2.20(e), failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and consent to granting the same.

WHEREAS, pursuant to the Minute Order, the Court also noted that no opposition had been filed to the Joint Motion to File Under Seal.

WHEREAS, based upon the Court's review of the Joint Motion to File Under Seal, the Court concludes that the sealing of the filing is justified by the privacy interests outlined in Nevada Supreme Court Rules Governing Sealing and Redacting Court Records 3(4)(b) and 3(4)(h).

Accordingly, good cause appearing therefore, the Court hereby orders as follows:

IT IS HEREBY ORDERED THAT the Joint Motion to File Under Seal is GRANTED as UNOPPOSED; and

IT IS HEREBY ORDERED THAT the clerk shall seal the unredacted version of Defendants MMAWC, LLP, The Nancy And Bruce Family Partnership LLLP and MMAX Investment Partners, Inc. dba Professional Fighters League's Joint Motion to File Exhibit Attached to Joint Reply in Support of Defendants Joint Motion to Reopen This Matter and to Confirm Arbitration Awards in Favor of Defendants and for Judgment Thereon Under Seal; and

IT IS HEREBY FURTHER ORDERED THAT the hearing scheduled on the Joint Motion File the Exhibit Attached to Joint Reply in Support of Defendants Joint Motion to

[1] MMAX is now known as Professional Fighters League, LLC.

DICKINSON WRIGHT PLLC
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 891

Reopen This Matter and to Confirm Arbitration Awards in Favor of Defendants and for Judgment Thereon Under Seal set for June 7, 2022, on Chambers Calendar is hereby vacated.

IT IS SO ORDERED.

Dated this 9th day of June, 2022

Nancy L Allf

TW

Submitted by:

Dated: this 9th day of June, 2022.

DICKINSON WRIGHT PLLC

/s/ Michael N. Feder
MICHAEL N. FEDER
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mfeder@dickinson-wright.com
GABRIEL A. BLUMBERG
Nevada Bar No. 12332
gblumberg@dickinson-wright.com
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169

Attorneys for Defendant MMAX Investment Partners, Inc. dba Professional Fighters League

Approved as to form and content:

DAA BE3 906B 67EC
Nancy Allf
District Court Judge

Dated: this 9th day of June, 2022.

KENNEDY & COUVILLIER, PLLC

/s/ Maximiliano D. Couvillier III
MAXIMILIANO D. COUVILLIER III
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Attorneys for Defendants MMAWC LLC; Bruce Deifik; and The Nancy And Bruce Deifik Family Partnership LLLP

Approved as to form only:

Dated: this 9th day of June, 2022.

LAW OFFICES OF BYRON THOMAS

/s/ Byron E. Thomas
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3275 S. Jones Blvd., Ste. 104
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Attorneys for Plaintiff 170615 Alberta Ltd.

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3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 891

From: Max Couvillier
To: Michael N. Feder; Byron Thomas
Cc: Gabriel A. Blumberg; Dianne M. Kelling
Subject: RE: EXTERNAL: Zion
Date: Thursday, June 9, 2022 10:46:25 AM

You have my permission to affix my e-sig and submit.

Maximiliano D. Couvillier III, Esq.
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"In a lawsuit the first to speak seems right, until counsel comes forward to cross-examine."
Proverbs 18:17

From: Michael N. Feder <MFeder@dickinson-wright.com>
Sent: Thursday, June 9, 2022 10:29 AM
To: Max Couvillier <mcouvillier@kclawnv.com>; Byron Thomas <byronthomaslaw@gmail.com>
Cc: Gabriel A. Blumberg <GBlumberg@dickinson-wright.com>; Dianne M. Kelling <DKelling@dickinson-wright.com>
Subject: RE: EXTERNAL: Zion

Counsel,

I am attaching a proposed order regarding the granting of the motion to file under seal as reflected in the recent minute order from the court. Please let us know if we have your consent to affix your e-signature to the order and submit it to chambers.

Due to our own scheduling, we intend to submit this order to chambers by 2 pm tomorrow, Friday June 10th.

Thanks
Michael

From: Byron Thomas
To: Michael N. Feder
Cc: Max Couvillier; Gabriel A. Blumberg; Dianne M. Kelling
Subject: Re: EXTERNAL: Zion
Date: Thursday, June 9, 2022 10:31:29 AM

You can affix my signature as to form

On Thu, Jun 9, 2022 at 10:29 AM Michael N. Feder <MFeder@dickinson-wright.com> wrote:

Counsel,

I am attaching a proposed order regarding the granting of the motion to file under seal as reflected in the recent minute order from the court. Please let us know if we have your consent to affix your e-signature to the order and submit it to chambers.

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Thanks

Michael

Michael N. Feder Member

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DICKINSON WRIGHT PLLC

From: Max Couvillier <mcouvillier@kclawnv.com>

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Zion Wood Obi Wan Trust, Plaintiff(s) vs. MMAWC LLC, Defendant(s)	CASE NO: A-17-764118-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Granting Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 6/9/2022

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Attorneys for Defendant
MMAX Investment Partners, Inc.
dba Professional Fighters League

DISTRICT COURT

CLARK COUNTY, NEVADA

ZION WOOD OBI WAN TRUST and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST; WSOF GLOBAL, LLC, a Wyoming limited liability company, Plaintiff, vs. MMAWC, LLC d/b/a WORLD SERIES OF FIGHTING a Nevada limited liability company; MMAX INVESTMENT PARTNERS, INC. dba PROFESSIONAL FIGHTERS LEAGUE, a Delaware corporation; BRUCE DEIFIK, an individual; CARLOS SILVA, an individual; NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP, a Colorado limited liability partnership; KEITH REDMOND, an individual; DOES I through X, inclusive; and ROE Corporations XX through XXX, inclusive Defendants.	CASE NO. A-17-764118-C DEPT. XXVII **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' JOINT MOTION TO FILE EXHIBIT ATTACHED TO JOINT REPLY IN SUPPORT OF DEFENDANTS' JOINT MOTION TO REOPEN THIS MATTER AND TO CONFIRM ARBITRATION AWARDS IN FAVOR OF DEFENDANTS AND FOR JUDGMENT THEREON UNDER SEAL**

PLEASE TAKE NOTICE that on the 9th day of June, 2022, an Order Granting Defendants' Joint Motion to File Exhibit Attached to Joint Reply In Support of Defendants' Joint Motion to Reopen This Matter and to Confirm Arbitration Awards in Favor of Defendants and

...

...

for Judgment Thereon Under Seal was entered by the Court. A copy of said Order is attached hereto as **Exhibit 1.**

Dated: this 9th day of June, 2022.

DICKINSON WRIGHT PLLC

/s/: Michael N. Feder
MICHAEL N. FEDER
Nevada Bar No. 7332
mfeder@dickinson-wright.com
GABRIEL A. BLUMBERG
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3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169

Attorneys for MMAX Investment Partners, Inc. dba Professional Fighters League

DICKINSON WRIGHT PLLC
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 891

CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 9th day of June 2022, she caused a copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' JOINT MOTION TO FILE EXHIBIT ATTACHED TO JOINT REPLY IN SUPPORT OF DEFENDANTS' JOINT MOTION TO REOPEN THIS MATTER AND TO CONFIRM ARBITRATION AWARDS IN FAVOR OF DEFENDANTS AND FOR JUDGMENT THEREON UNDER SEAL** to be transmitted by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve system addressed to:

Byron E. Thomas, Esq.
3275 South Jones Boulevard, Suite 104
Las Vegas, NV 89146
Email: byronthomaslaw@gmail.com

Attorney for Plaintiff

Maximiliano D. Couvillier III
KENNEDY & COUVILLIER, PLLC
3271 East Warm Springs Road
Las Vegas, NV 89120
Email: mcouvillier@kclawnv.com

Attorneys for Defendants MMAWC, LLC, Bruce Deifik and The Nancy and Bruce Deifik Family Partnership LLLP

/s/: Dianne M. Kelling
An Employee of DICKINSON WRIGHT PLLC

DICKINSON WRIGHT PLLC
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 891

EXHIBIT INDEX

Exhibit No.	Description	No. of Pages (Exclusive of Exhibit Sheet)
1	Order Granting Defendants' Joint Motion to File Exhibit Attached to Joint Reply in Support of Defendants' Joint Motion to Reopen This Matter and to Confirm Arbitration Awards in Favor of Defendants and For Judgment Thereon Under Seal	6

DICKINSON WRIGHT PLLC
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169

EXHIBIT 1

ELECTRONICALLY SERVED
6/9/2022 2:25 PM

Electronically Filed
06/09/2022 2:25 PM
CLERK OF THE COURT

ORDR

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Gabriel A. Blumberg
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Tel: (702) 605-3440
Fax: (702) 625-6367
Attorneys for MMAWC LLC; Bruce Deifik; and The Nancy And Bruce Deifik Family Partnership LLLP

DISTRICT COURT

CLARK COUNTY, NEVADA

ZION WOOD OBI WAN TRUST and SHAWN WRIGHT as trustee of ZION WOOD OBI WAN TRUST; WSOF GLOBAL, LLC, a Wyoming limited liability company, Plaintiff, vs. MMAWC, LLC d/b/a WORLD SERIES OF FIGHTING a Nevada limited liability company; MMAX INVESTMENT PARTNERS, INC. dba PROFESSIONAL FIGHTERS LEAGUE, a Delaware corporation; BRUCE DEIFIK, an individual; CARLOS SILVA, an individual; NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP, a Colorado limited liability partnership; KEITH REDMOND, an individual; DOES I through X, inclusive; and ROE Corporations XX through XXX, inclusive Defendants.	CASE NO. A-17-764118-C DEPT. XXVII **ORDER GRANTING DEFENDANTS' JOINT MOTION TO FILE EXHIBIT ATTACHED TO JOINT REPLY IN SUPPORT OF DEFENDANTS' JOINT MOTION TO REOPEN THIS MATTER AND TO CONFIRM ARBITRATION AWARDS IN FAVOR OF DEFENDANTS AND FOR JUDGMENT THEREON UNDER SEAL**

On May 6, 2022, Defendants MMAWC, LLC ("MMAWC"), The Nancy And Bruce Family Partnership LLLP ("DFP") and MMAX Investment Partners, Inc. dba Professional Fighters League ("MMAX," collectively with MMAWC and MMAC "Joint Movants"),[1] filed its Joint Motion to File Exhibit Attached to Joint Reply in Support of Defendants Joint Motion to Reopen This Matter and to Confirm Arbitration Awards in Favor of Defendants and for Judgment Thereon (the "Joint Motion to File Under Seal") Under Seal.

WHEREAS, pursuant to the Court's minute order of June 7, 2022 ("Minute Order"), the Court determined that pursuant to EDCR 2.20(e), failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and consent to granting the same.

WHEREAS, pursuant to the Minute Order, the Court also noted that no opposition had been filed to the Joint Motion to File Under Seal.

WHEREAS, based upon the Court's review of the Joint Motion to File Under Seal, the Court concludes that the sealing of the filing is justified by the privacy interests outlined in Nevada Supreme Court Rules Governing Sealing and Redacting Court Records 3(4)(b) and 3(4)(h).

Accordingly, good cause appearing therefore, the Court hereby orders as follows:

IT IS HEREBY ORDERED THAT the Joint Motion to File Under Seal is GRANTED as UNOPPOSED; and

IT IS HEREBY ORDERED THAT the clerk shall seal the unredacted version of Defendants MMAWC, LLP, The Nancy And Bruce Family Partnership LLLP and MMAX Investment Partners, Inc. dba Professional Fighters League's Joint Motion to File Exhibit Attached to Joint Reply in Support of Defendants Joint Motion to Reopen This Matter and to Confirm Arbitration Awards in Favor of Defendants and for Judgment Thereon Under Seal; and

IT IS HEREBY FURTHER ORDERED THAT the hearing scheduled on the Joint Motion File the Exhibit Attached to Joint Reply in Support of Defendants Joint Motion to

[1] MMAX is now known as Professional Fighters League, LLC.

DICKINSON WRIGHT PLLC
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 891

Reopen This Matter and to Confirm Arbitration Awards in Favor of Defendants and for Judgment Thereon Under Seal set for June 7, 2022, on Chambers Calendar is hereby vacated.

IT IS SO ORDERED.

Dated this 9th day of June, 2022

Nancy L Allf

TW

Submitted by:

Dated: this 9th day of June, 2022.

DICKINSON WRIGHT PLLC

/s/ Michael N. Feder
MICHAEL N. FEDER
Nevada Bar No. 7332
mfeder@dickinson-wright.com
GABRIEL A. BLUMBERG
Nevada Bar No. 12332
gblumberg@dickinson-wright.com
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169

Attorneys for Defendant MMAX Investment Partners, Inc. dba Professional Fighters League

Approved as to form and content:

DAA BE3 906B 67EC
Nancy Allf
District Court Judge

Dated: this 9th day of June, 2022.

KENNEDY & COUVILLIER, PLLC

/s/ Maximiliano D. Couvillier III
MAXIMILIANO D. COUVILLIER III
Nevada Bar No. 7661
mcouvillier@kclawnv.com
3721 E. Warm Springs Rd.
Las Vegas, Nevada 89120

Attorneys for Defendants MMAWC LLC; Bruce Deifik; and The Nancy And Bruce Deifik Family Partnership LLLP

Approved as to form only:

Dated: this 9th day of June, 2022.

LAW OFFICES OF BYRON THOMAS

/s/ Byron E. Thomas
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BYRON E. THOMAS
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3275 S. Jones Blvd., Ste. 104
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Attorneys for Plaintiff 170615 Alberta Ltd.

DICKINSON WRIGHT PLLC
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Date: Thursday, June 9, 2022 10:46:25 AM

You have my permission to affix my e-sig and submit.

Maximiliano D. Couvillier III, Esq.
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Michael

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Michael

Michael N. Feder Member

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DICKINSON WRIGHT PLLC

From: Max Couvillier <mcouvillier@kclawnv.com>

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Zion Wood Obi Wan Trust, Plaintiff(s) vs. MMAWC LLC, Defendant(s)	CASE NO: A-17-764118-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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