

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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3           ZION WOOD OBI WAN TRUST and  
4           SHAWN WRIGHT as trustee of ZION  
5           WOOD OBI WAN TRUST,

6                                   Appellant,

7                                   v.

8           MMAWC, LLC d/b/a WORLD SERIES  
9           OF FIGHTING a Nevada limited liability  
10          company; MMAX INVESTMENT  
11          PARTNERS, INC. dba PROFESSIONAL  
12          FIGHTERS LEAGUE, a Delaware  
13          corporation; NANCY AND BRUCE  
14          DEIFIK FAMILY PARTNERSHIP  
15          LLLP, a Colorado limited liability  
16          partnership,

17                                   Respondents.

**Supreme Court Case No. 85051**

**District Court Case No. A-17-**

**764118-C**

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18                   **ANSWERING BRIEF BY RESPONDENTS**

19           **MMAWC, LLC and OCEAN ASSETS PARTNERSHIP LLC f/k/a**  
20           **NANCY AND BRUCE DEIFIK FAMILY PARTNERSHIP LLLP**

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1                    *MMAWC, LLC and Ocean Assets Partnership LLC f/k/a Nancy and*  
2  
3                    *Bruce Deifik Family Partnership LLLP* have been represented in this appeal  
4 and the underlying matter by the following attorneys and law firms:  
5

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15                    Respectfully Submitted this 21<sup>st</sup> day of April, 2023.

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17                    */s/ Maximiliano D. Couvillier III, Esq.*

18                    Maximiliano D. Couvillier III, Esq. NSB 7661

19                    *Attorneys for Respondents MMAWC, LLC and*  
20                    *Ocean Assets Partnership LLC f/k/a Nancy and*  
21                    *Bruce Deifik Family Partnership LLLP*  
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## TABLE OF CONTENTS

STATEMENT OF THE ISSUES.....	vi
STATEMENT OF THE CASE.....	1
A. Nature Of The Case.....	1
B. The Course of The Proceedings.....	1
i. Commencement of Action and Prior Appeal.....	1
ii Arbitration.....	2
C. The Disposition Below.....	3
STATEMENT OF RELEVANT FACTS.....	6
SUMMARY OF ARGUMENT.....	12
ARGUMENT.....	14
Standard of Review.....	14
1. ZION DID NOT TIMELY CHALLENGE THE ARBITRATION AWARDS WHICH COMPELS CONFIRMATION.....	17
2. THE DISTRICT COURT PROPERLY CONFIRMED THE 10/4/21 FEE AWARD BECAUSE THE ARBITRATOR ISSUED THE AWARD PURSUANT TO AAA COMMERCIAL ARBITRATION RULE R-47, WHICH UNDISPUTEDLY GAVE THE ARBITRATOR THE AUTHORITY TO ISSUE REASONABLE ATTORNEYS' FEES AND COSTS.....	20
3. ZION HAS NOT, AND CANNOT, MEET ITS BURDEN TO CLEARLY AND CONVINCINGLY DEMONSTRATE THAT THE ARBITRATOR ARBITRARILY AND CAPRICIOUSLY DENIED ITS CLAIM FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING BECAUSE THE ARBITRATOR APPLIED NEVADA LAW AND ADJUDICATED ZION'S CLAIMS ON THE MERITS.....	27
CONCLUSION.....	30

## TABLE OF AUTHORITIES

### Cases

<i>Brunzell v. Golden Gate Nat. Bank</i> , 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).....	5
<i>Brunzell</i> , 85 Nev. 345, 455 P.2d 31.....	12
<i>Cadle Co. v. Woods &amp; Erickson, LLP</i> , 131 Nev. 114, 345 P.3d 1049 (2015).....	12
<i>Casey v. Wells Fargo Bank, N.A.</i> , 128 Nev. 713, 716–18, 290 P.3d 265, 267–68 (2012).....	19
<i>Clark Cnty. Educ. Ass’n v. Clark Cnty. Sch. Dist.</i> , 122 Nev. 337, 341, 131 P.3d 5, 8 (2006).....	15
<i>Clark Cnty. Educ. Ass’n</i> , 122 Nev. at 342, 131 P.3d at 8.....	16, 21
<i>Clark Cnty. Educ. Ass’n</i> , 122 Nev. at 344, 131 P.3d at 10.....	29
<i>Clark Cnty. Educ. Ass’n</i> , 122 Nev. at 342, 131 P.3d at 8.....	22, 30
<i>Clark Cnty. Educ. Ass’n</i> , 122 Nev. at 343–44, 131 P.3d at 9.....	22, 25
<i>Commercial Risk Reinsurance Co. v. Sec. Ins. Co. of Hartford</i> , 526 F. Supp. 2d 424, 428 (S.D.N.Y. 2007).....	24
<i>Dalal v. Goldman Sachs &amp; Co.</i> , 541 F. Supp. 2d 72, 76 (D.D.C. 2008), ....	18
<i>Dalal v. Goldman Sachs &amp; Co.</i> , 575 F.3d 725 (D.C. Cir. 2009).....	18
<i>Demoff v. Sharp</i> , 131 Nev. 1271, 2015 WL 4503959 (2015)(unpublished).....	18
<i>Elizondo v. Hood Mach., Inc.</i> , 129 Nev. 780, 784, 312 P.3d 479, 482 (2013).....	25
<i>Hilton Hotels Corp. v. Butch Lewis Prods., Inc.</i> , 107 Nev. 226, 234, 808 P.2d 919, 923 (1991).....	27
<i>Kyocera Corp. v. Prudential–Bache Trade Servs., Inc.</i> , 341 F.3d 987, 998 (9th Cir. 2003).....	23
<i>Lindauer v. Allen</i> , 85 Nev. 430, 433, 456 P.2d 851, 853 (1969).....	16
<i>LVCVA v. Secretary of State</i> , 124 Nev. 669, 689 n. 58, 191 P.3d 1138, 1151 n. 58 (2008).....	17
<i>LVCVA v. Secretary of State</i> , 124 Nev. at 689 n. 58, 191 P.3d at 1151 n. 58.....	27
<i>Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc.</i> , 473 U.S. 614, 628, 105 S. Ct. 3346, 87 L.Ed.2d 444 (1985).....	23
<i>MMAWC, LLC v. Zion Wood Obi Wan Tr.</i> , 135 Nev. 275, 448 P.3d 568 (2019);.....	2
<i>News+Media Cap. Grp. LLC v. Las Vegas Sun, Inc.</i> , 137 Nev. 447, 452, 495 P.3d 108, 115 (2021).....	15
<i>News+Media Cap. Grp. LLC</i> , 137 Nev. at 452, 495 P.3d at 115.....	26
<i>News+Media Cap. Grp.</i> , 137 Nev. at 452, 495 P.3d at 115.....	15, 16
<i>Oracle Corp. v. Wilson</i> , 276 F. Supp. 3d 22, 29 (S.D.N.Y. 2017).....	24
<i>Richardson v. Harris</i> , 107 Nev. 763, 765, 818 P.2d 1209, 1210 (1991).....	19
<i>Richardson</i> , 107 Nev. at 765, 818 P.2d at 1210.....	20
<i>Rosensweig v. Morgan Stanley &amp; Co.</i> , 494 F.3d 1328, 1333 (11th Cir. 2007).....	23
<i>Saavedra-Sandoval v. Wal-Mart Stores, Inc.</i> , 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010).....	17
<i>Saavedra-Sandoval</i> , 126 Nev. at 599, 245 P.3d at 1202.....	26
<i>Sylvester v. Regents Bank, N.A.</i> , 129 Nev. 282, 286, 300 P.3d 718, 721 (2013).....	16
<i>U.S. Life Ins. Co. v. Superior Nat’l Ins. Co.</i> , 591 F.3d 1167, 1173 (9th	

1	Cir.2010).....	24
2	<i>Vogel v. Parkway Manor, Inc.</i> , 128 Nev. 942, 381 P.3d 673	
3	(2012)(unpublished).....	18
4	<i>Washoe Cnty. v. Otto</i> , 128 Nev. 424, 435, 282 P.3d 719, 727 (2012) .....	17
5	<i>Wichinsky v. Mosa</i> , 109 Nev. 84, 89–90, 847 P.2d 727, 731 (1993) .....	14
6	<b>Statutes</b>	
7	NRS 38.241(2).....	18
8	NRS 38.242.....	19
9	9 U.S.C. §12.....	18
10	NRS 38.231(1).....	23, 25
11	NRS 38.237.....	17, 25
12	NRS 38.239.....	19
13	NRS 38.241.....	19
14	NRS 38.242(1).....	17, 18
15	NRS 38.238(2).....	24
16	<b>Rules</b>	
17	AAA Commercial Arbitration Rule R-47 .....	11, 13, 20, 23
18	AAA Commercial Rule R-47 .....	25
19	NRCP 54(d) .....	20

## STATEMENT OF THE ISSUES

1. Whether Appellant failed to timely challenge the arbitration awards at issue?
2. Whether the District Court properly concluded that the Arbitrator had authority and grounds for awarding respondents their reasonable attorneys' fees and costs?
3. Whether the District Court properly concluded that the Arbitrator adjudicated Appellant's claim for breach of implied covenant of good faith and fair dealing, on the merits, following Nevada law, supported by substantial evidence, and free from arbitrary and capricious action?

### A. Nature Of The Case

## B. The Course Of The Proceedings

Appellants/plaintiffs Zion commenced the underlying action on November 3, 2017, in the Eight Judicial District Court. *See AA002, Vol. 1*. On January 8, 2018, MMAWC filed a Motion to Dismiss And To Compel

<sup>1</sup> Zion's counsel did not confer with undersigned counsel for respondents regarding a possible joint appendix, as required by NRAP 30(a).

1 Arbitration. *See AA024, Vol. 1.*<sup>2</sup> On March 13, 2018, the District Court  
2 entered an order (“3/13/18 Order”) denying MMAWC’s Motion To Dismiss  
3 And To Compel Arbitration. *See AA205, Vol. 1.*

4  
5 MMAWC and Ocean appealed the District Court’s 3/13/18 Order. On  
6 September 5, 2019, this Court issued an opinion reversing the 3/13/18 Order  
7 and remanding the matter with instructions to grant MMAWC’s motion and  
8 to enforce the parties’ arbitration agreement. *MMAWC, LLC v. Zion Wood*  
9 *Obi Wan Tr.*, 135 Nev. 275, 448 P.3d 568 (2019); *see also AA497, Vol. 4.*  
10 On October 23, 2019, the Court entered an order (“10/23/19 Order”) compelling arbitration of all the claims asserted by plaintiffs and dismissing  
11 the action without prejudice pending completion of such arbitration. *See*  
12 *AA512-514, Vol. 4.*

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17 **ii. Arbitration**

18 On June 2, 2020, Zion, as claimant, commenced arbitration  
19 proceedings (“Arbitration”) with the American Arbitration Association  
20 (“AAA”). *See AA546, Vol.4.* The arbitrator (“Arbitrator”) was appointed  
21 and confirmed without objection from any of the parties. *See AA538, Vol. 4.*

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<sup>2</sup> On March 23, 2018, after it had been served, Ocean filed a joinder to  
26 MMAWC’s motion to dismiss to preserve its rights, including joining  
27 MMAWC in appealing the District Courts March 13, 2018, order denying  
28 MMAWC’s motion.



1 The parties agreed that the Arbitration would be conducted and governed by  
2 the AAA Commercial Arbitration Rules. *See AA529, Vol. 4.*

3  
4 The parties were required to conduct and disclose a considerable  
5 amount of discovery in the Arbitration, including producing all evidence  
6 supporting their claims or defenses. In addition, Zion was given the  
7 opportunity to conduct written discovery, including serving document  
8 requests and subpoenas. *See AA531, Vol. 4 and AA536-537.*

9  
10 After the conclusion of discovery, Zion, MMAX, MMAWC and  
11 Ocean all agreed to waive an arbitration hearing and, on April 2, 2021, filed  
12 a Stipulation with the AAA requesting that the Arbitration be adjudicated  
13 and resolved through summary judgment motions. *See AA540, Vol. 4.* The  
14 parties' stipulation included an agreed reasonable briefing schedule (*id.*), and  
15 the parties also agreed the merits of their disputes would be resolved by  
16 Nevada law. *See AA529 (Vol. 4).*

17  
18 On May 19, 2021, the Arbitrator held oral argument on the parties'  
19 summary judgment motions, allowing the parties' counsel ample time to  
20 present their argument. *See AA545 (Vol. 4).*

### 21 **C. The Disposition Below**

22  
23 On June 25, 2021, after carefully and thoughtfully considering the  
24 parties' briefs and argument, the Arbitrator issued her written 06/25/21  
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1 Award, which granted summary judgment in favor of MMAWC, Ocean and  
2 MMAX and against Zion. *See AA545, Vol. 4.* The Arbitrator's 06/25/21  
3 Award was a reasoned and thorough 20-page decision setting forth extensive  
4 findings of fact and conclusions of law that followed Nevada law and  
5 addressed all of Zion's allegations and claims. *Id.* On June 25, 2021, the  
6 parties received Notice of 06/25/21 Award from the AAA. *See AA5467,*  
7 *Vol. 4.*

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9  
10 The 06/25/21 Award Order further determined that MMAWC, Ocean  
11 and MMAX were entitled to their reasonable attorneys' fees and costs per  
12 the applicable written contracts and AAA Commercial Arbitration Rule R-  
13 47 ("AAA Rule-47"). *See AA545, Vol. 4.*<sup>3</sup> Thus, the 06/25/21 AAA  
14 Summary Judgment further instructed counsel to meet and confer about the  
15 fees and costs and see the parties could agree on the fees and costs. *Id. at*  
16 *AA564.* Specifically, the order required MMAWC, Ocean and MMAX to  
17 first present their fees and costs request to Zion along with all supporting  
18 documentation and thereafter for the parties' counsel to meet and confer. *Id.*  
19 The parties met and conferred in good faith but were not able to reach an  
20 agreement. Thus, on July 16, 2021, the parties simultaneously filed their  
21 briefs regarding attorneys' fees and costs: MMAWC, Ocean, and MMAX  
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28 <sup>3</sup> AAA amended its Commercial Rules following the Arbitration in this

1 filed and served their fee applications, and Zion filed its oppositions to those  
2 application. *See AA572, Vol. 4.* The parties were not given an opportunity to  
3 submit responses or any other further briefs regarding fees. *See AA564, Vol.*  
4 *4.*<sup>4</sup> The fee applications by MMAWC, Ocean and MMAX conformed and  
5 with and followed the factors set forth in *Brunzell v. Golden Gate Nat.*  
6 *Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), as did the Arbitrator's  
7 10/4/21 Award. *See AA573-575, Vol. 4.*

8 On October 4, 2021, the Arbitrator issued her detailed 10/4/21 Fee  
9 Award ordering Zion to pay: (a) MMAWC and Ocean \$43,687.20 for their  
10 reasonable attorneys' fees and costs; and (b) MMAX \$49,320.90 for its  
11 reasonable fees and costs. *See AA571, Vol. 4.* Again, the 10/4/21 Fee  
12 Award is consistent with *Brunzell* and disposed the merits of Zion's  
13 objections and arguments opposing such awards. *See AA573-575, Vol. 4.*  
14 On October 4, 2021, the parties received Notice of 10/4/21 Fee Award from  
15 the AAA. *See AA578, Vol. 4.*

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23 matter and what used to be AAA Rule-47d(ii) at the time of arbitration is  
24 now Rule R-49(d)(ii) in the current version of the AAA Commercial Rules.

25 <sup>4</sup> Zion claims that MMAWC and MMAX somehow waived arguments  
26 because they did not respond to Zion's fees oppositions. However, the  
27 Arbitrator required MMAWC and MMAX to submit their fees and costs  
28 application simultaneously with Zion's opposition and did not give the  
parties the right to further briefing. *See AA564, Vol. 4.* In any event, the  
Arbitrator expressly rejected Zion's "waiver argument." *See AA574, Vol. 4.*

The District Court then entered the 06/13/22 Order confirming the 06/25/21 Award and 10/4/21 Fee Award. *See AA627, Vol. 5.* On August 16, 2022, the Court entered an order (“08/16/22 Order”) awarding MMAWC, Ocean and MMAWC their additional reasonable attorneys’ fees and costs pursuant to NRS 38.245. *See AA715, Vol. 5.* The notice of entry of that order was filed and served on August 17, 2022. *See AA720, Vol. 5.* Zion filed its Notice of Appeal on July 14, 2022. *See AA686, Vol. 5.*

Zion’s Opening Brief only discusses and challenges the District Court’s 06/13/22 Order. Zion does not challenge or discuss the 08/16/22 Order awarding additional fees and costs per NRS 38.245.

### **STATEMENT OF RELEVANT FACTS**

In 2015, several disputes arose regarding MMAWC which resulted in several lawsuits (“Prior Lawsuits”). In February 2016, the parties to those Prior Lawsuits, including MMAWC, Ocean and Zion entered into the following three consolidated and tethered agreements to resolve those lawsuits: (1) *Confidential Settlement Agreement* (“Settlement Agreement”); (2) *Fourth Amended and Restated Operating Agreement of MMAWC, L.L.C.*, (“4<sup>th</sup> Operating Agreement”), which was attached as “Exhibit A” to the Settlement Agreement; and (3) *Amendment to Consulting and Master Licensing Agreement* (“Licensing Agreement”), which is attached as

1 “Exhibit B” to the Settlement Agreement. *See AA042- AA115, Vol. 1*. In a  
2 prior appeal of the underlying action regarding arbitrability, this Court read  
3 the Settlement Agreement and Licensing Agreement as one agreement,  
4 finding that the Licensing Agreement is incorporated within the Settlement  
5 Agreement. *MMAWC, LLC*, 135 Nev. at 279, 448 P.3d at 572.  
6

7  
8 Prior to 2016, MMAWC promoted and showcased mixed martial arts  
9 (“MMA”) events (*AA454, Vol. 3*) under the marks “Word Series of  
10 Fighting” and “WSOF.” In late 2016, MMAWC refocused its operations  
11 and ceased promoting its own MMA events and instead became a passive  
12 investor in another MMA promoter. Specifically, MMAWC sold  
13 substantially all of its rights and assets to respondent MMAX Investment  
14 Partners, Inc. (“MMAX”), an MMA promoter that operated the  
15 “Professional Fighters League” / “PFL”, in exchange for cash and 38%  
16 (9,500,000) of the shares of Series A Preferred Stock in MMAX. *See*  
17 *AA550, Vol. 4*. The transaction between MMAWC and MMAX was  
18 memorialized in that certain Asset Contribution Agreement (“ACA”). *Id.*  
19

20  
21 Zion claimed that its interest in MMAWC was somehow diluted as a  
22 result of the ACA and that it was entitled to an interest in MMAX.  
23

24  
25 Zion commenced the Arbitration on June 2, 2020. *See AA546, Vol.4*.  
26 On March 30, 2021, Zion, filed in the Arbitration its Amended Specification  
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of Claims (“Amended Specification of Claims”) which, similar to a complaint, set forth its allegations and two claims for relief (breach of contract and breach of the implied covenant of good faith and fair dealing). *See AA546, Vol. 4.* Zion additionally requested its reasonable attorneys’ fees in its Amended Specification of Claims. *See AA572 (Vol. 4).* Zion alleged that MMAWC and Ocean breached the Settlement Agreement and underlying covenant of good faith and fair dealing because the ACA diluted Zion’s interest in MMAWC. *See AA547-548 & AA557, Vol. 4.* Thus, Zion further claimed that it was entitled to a 4.5% interest in MMAX because MMAX was purportedly a successor of MMAWC. *See AA554, Vol. 4.*

Section 1 of the Settlement Agreement provides Zion’s with a “non-dilutable” 4.5% membership interest in MMAWC, stating in relevant part:

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").... 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 AA047, Vol. 1.*

1 Similarly, Section 5.05.b of the 4<sup>th</sup> Operating Agreement (attached  
2 and incorporated to the Settlement Agreement as “Exhibit A”) contains the  
3 following language regarding Zion’s 4.5% non-dilutable interest:

4  
5 b. Notwithstanding anything contained in this Agreement,  
6 the Members agree that Zion's interest in the Company  
7 shall be deemed non-dilutable (unless Zion agrees in  
8 writing that such interest may be diluted). Accordingly, **if**  
9 **at any time after the Effective Date additional Units of**  
10 **the Company are issued**, Units of the Company shall  
11 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....

12 *See AA075-AA075, Vol. 1* (emphasis added). Thus, if additional units of  
13 MMAWC are ever issued, then Zion is to be issued additional units of  
14 MMAWC so that Zion’s interest in MMAWC remains at 4.5%. No  
15 additional units of MMAWC have been issued. Thus, Schedule A of the 4<sup>th</sup>  
16 Op. Agreement, which identifies the number of units for each member of  
17 MMAWC, reflects that Zion still holds 13.34 units of the 296.64 total units  
18 of MMAWC, which is 4.5%. *See AA101, Vol. 1.*

### 21 **The Arbitrator’s Findings of Undisputed Facts**

22  
23 The Arbitrator ruled against Zion and its claims. As set forth in her  
24 06/25/21 Award, the Arbitrator determined that the undisputed facts  
25 established that Zion’s 4.5% in MMAWC had not been diluted by the ACA  
26 or otherwise. *See AA547, Vol. 4.* And thus, the Arbitrator further concluded  
27  
28

1 that neither MMAWC nor Ocean breached the Settlement Agreement or the  
2 4<sup>th</sup> Operating Agreement. *See AA547, AA549, AA552, AA557 & AA562 Vol.*

3  
4 4. The Arbitrator also found that neither MMAWC nor Ocean acted in a  
5 manner that was unfaithful to those agreements or to deny Zion's justifiable  
6 expectations and thus, did not breach the implied covenant of good faith and  
7 fair dealing. *AA562, Vol. 4*. Ultimately, the Arbitrator found that "Zion has  
8 presented no facts upon which to base a damage claim." *See AA556, Vol. 4*.  
9

10  
11 Zion had ample opportunity to conduct discovery and ultimately  
12 agreed that its claims should be determined via summary judgment. *See*  
13 *AA534 and AA540, Vol. 4*. This is significant because it manifested the  
14 parties' consensus that the material facts are not disputed.  
15

16 The Arbitrator issued her 06/25/21 Award (*AA545-AA564, Vol. 4*)  
17 after thorough deliberations in which she:  
18

19 [C]arefully read and considered all of the submissions of the  
20 parties including, but not limited to Claimant's Specification  
21 of Claims, Amended Specification of Claims, the parties'  
22 dispositive motions, oppositions, responses thereto,  
23 voluminous exhibits, memorandum of points and authorities,  
24 declarations of Nathaniel Redleaf, James Bramson,  
25 Benjamin Winter, and oral argument...

26 *See AA545, Vol. 4*

27 The Arbitrator's 06/25/21 Award is itself thorough, with 20 pages of  
28 discussion and analysis disposing of every single one of Zion's claims and



1 allegations via extensive findings of fact and conclusions of law. *See AA545-*  
2 *AA564, Vol. 4*

### 3 Arbitrator's Fee Award

4  
5 On October 4, 2021, the Arbitrator further issued the 10/4/21 Fee  
6 Award, awarding MMAWC \$43,687.20 in reasonable attorneys' fees and  
7 costs and MMAX \$49,320.90 in reasonable attorneys' fees and costs. *See*  
8 *AA571, Vol. 4*. Procedurally, the Arbitrator issued the 10/4/21 Fee Award  
9 pursuant to AAA Rule-47<sup>5</sup>, and not per the Nevada Rules of Civil Procedure  
10 or Nevada Revised Statutes. *See AA572, Vol. 4*. AAA Rule-47 provides that  
11 the Arbitrator may award reasonable attorneys' and costs if: [a] "all the  
12 parties have requested such an award"; or [b] "it is authorized by....their  
13 arbitration agreement." *Id.* The Arbitrator found that AAA Rule-47 applied  
14 because Zion, MMAWC and MMAX all requested attorney's fees. *Id. at n.*  
15  
16 3. The Arbitrator determined that AAA Rule-47 also applied because the  
17 related License Agreement further provides for the application of AAA rules  
18 and for attorneys' fees and costs. *Id. at n. 4.*

19  
20 The Arbitrator issued the 10/4/21 Fee Award pursuant to AAA Rule-  
21 47 and after determining that MMAWC and MMAX complied with Nevada  
22 substantive law establishing the reasonableness of their attorneys' fees and  
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<sup>5</sup> *See* Note 3, *supra*.

costs under *Brunzell*, 85 Nev. 345, 455 P.2d 31 and *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 345 P.3d 1049 (2015). *See AA574, Vol. 4.*<sup>6</sup>

### **Zion Did Not Timely Challenge The Arbitration Awards**

The parties received Notice of the 06/25/21 Award on the same day it issued, June 25, 2021. *See AA567-AA567, Vol. 4.* The parties also received a copy of the 10/4/21 Fee Award on the same day it issued, October 4, 2021. *See AA578-AA580, Vol. 4.* Neither award was changed or modified after it was issued (*see* NRS 38.237). Zion did not file a motion to vacate those awards per NRS 38.241. Zion also failed to file a motion to modify or correct those arbitration awards per NRS 38.242.

### **SUMMARY OF ARGUMENT**

Zion only raises two (2) issues on appeal. First, Zion claims the District Court should not have confirmed the Arbitrator's 10/4/21 Fee Award because the Arbitrator had no authority to issue such award since the NRCF 54(d) deadline had expired. Second, Zion claims that the Arbitrator denied its claim for breach of the implied covenant of good faith and fair dealing by disregarding Nevada law.

Zion's Opening Brief does not appeal or otherwise challenge the District Court's 08/16/22 Order awarding MMAWC \$7,323.00 in reasonable

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<sup>6</sup> Zion does not dispute or appeal the reasonableness of the fees awarded by the 06/4/21 Fee Award.

1 attorneys' fees and costs per NRS 38.243. Zion also does not appeal or  
2 otherwise contest the Arbitrator's findings of undisputed facts set forth in  
3 either the 06/25/21 Award or the 10/4/21 Fee Award, or the reasonableness  
4 of the fees and costs awarded by the 10/4/21 Fee Award.  
5

6  
7 Thus, MMAWC's responsive arguments to Zion's two appeal are:

8 1. The Court may affirm the District Court's 06/13/22 Order  
9 because Zion did not timely challenge the 10/4/21 Fee Award or 06/25/21  
10 Award. This Court has previously determined that failure to timely challenge  
11 arbitration awards compels confirmation of the awards.  
12

13 2. Zion does not meet its burden to demonstrate that the District  
14 Court's 06/13/22 Order confirming the 10/4/21 Fee Award was erroneous  
15 because Zion has not clearly and convincingly shown that the 10/4/21 Fee  
16 Award is arbitrary and capricious. Zion cannot meet such a burden because  
17 the record demonstrates that the Arbitrator issued the award pursuant to  
18 AAA Rule-47, which undisputedly gave the Arbitrator the authority to issue  
19 reasonable attorneys' fees and costs.  
20

21 3. Zion does not meet its burden to demonstrate that the District  
22 Court's 06/13/22 Order confirming the adjudication of its breach of the  
23 implied covenant of good faith and fair dealing by the 06/25/21 Award was  
24 erroneous. Zion has does not clearly and convincingly show that the  
25  
26  
27  
28

1 Arbitrator manifestly disregarded Nevada law. In fact, Zion unreasonably  
2 claims that the Arbitrator “dismissed” its claim, but the record demonstrates  
3 that the Arbitrator applied Nevada law and adjudicated Zion’s claim for  
4 breach of the covenant of good faith and fair dealing on the merits. The  
5 06/25/21 Award is based on substantial evidence, discussed in extensive  
6 findings of fact and conclusions of law, and a determination that Zion did  
7 not present any evidence to support that claim.

## 11 ARGUMENT

### 12 Standard of Review

13 “An arbitrator enjoys broad discretion in determining issues under an  
14 arbitration agreement.” *Wichinsky v. Mosa*, 109 Nev. 84, 89–90, 847 P.2d  
15 727, 731 (1993). Zion has a very high burden on appeal:

16 Although this court reviews a district court's decision to  
17 vacate or confirm an arbitration award de novo.... the scope  
18 of judicial review of [the underlying] arbitration award is  
19 limited and is nothing like the scope of an appellate court's  
20 review of a trial court's decision... **The party seeking to**  
21 **attack the validity of an arbitration award has the**  
22 **burden of proving, by clear and convincing evidence,**  
23 **the statutory or common-law ground relied upon for**  
24 **challenging the award....** Those grounds do not include  
25 that the [arbitrator] committed an error—or even a serious  
26 error..... Rather, the grounds are quite narrow and present a  
27 high hurdle. for petitioners to clear.... The limited  
28 availability of appellate review helps, in part, to preserve  
the efficiency and other benefits of arbitration.

*News+Media Cap. Grp. LLC v. Las Vegas Sun, Inc.*, 137 Nev. 447, 452, 495

1 P.3d 108, 115 (2021)(internal quotations and citations omitted)(emphasis  
2 added).

3  
4 Zion's attack of the 06/25/21 Award and 10/4/21 Fee Award is  
5 premised on common law. Nevada recognizes two common-law grounds  
6 under which a court may review private binding arbitration awards.  
7 Foremost, "either standard permits a reviewing court to consider the  
8 arbitrator's interpretation of the law." *Clark Cnty. Educ. Ass'n v. Clark Cnty.*  
9 *Sch. Dist.*, 122 Nev. 337, 341, 131 P.3d 5, 8 (2006). Instead, both common  
10 law grounds are factual in nature.  
11

12  
13 Thus, the first ground requires appellant to prove by clear and  
14 convincing evidence that the award is arbitrary and capricious.  
15  
16 *News+Media Cap. Grp.*, 137 Nev. at 452, 495 P.3d at 115; *Clark Cnty.*  
17 *Educ. Ass'n v. Clark Cnty. Sch. Dist.*, 122 Nev. 337, 341, 131 P.3d 5, 8  
18 (2006). An arbitrator does not act arbitrary or capricious were the  
19 arbitrator's findings are supported by substantial evidence. *Clark Cnty.*  
20 *Educ. Ass'n*, 122 Nev. at 341, 131 P.3d at 8.  
21

22  
23 The second common law ground requires a party attacking the  
24 arbitration award to prove by clear and convincing evidence that the  
25 arbitrator knew the law and recognized that the law required a particular  
26 result but disregarded the law. *News+Media Cap. Grp.*, 137 Nev. at 452,  
27  
28

1 495 P.3d at 115; *Clark Cnty. Educ. Ass'n*, 122 Nev. at 342, 131 P.3d at 8.

2  
3 Moreover, because Zion's brief improperly couches certain statements  
4 made by its counsel as "facts" or "the record" (*see Opening Brief at p.26<sup>7</sup>*), it  
5 is important to state that "statements made by counsel in their briefs,  
6 alleging facts or their arguments made in open court, portraying what might  
7 have occurred, will not be considered on appeal." *Lindauer v. Allen*, 85  
8 Nev. 430, 433, 456 P.2d 851, 853 (1969).

9  
10 Finally, in reviewing Arbitration awards here, the Court "must  
11 consider that [s]trong public policy favors arbitration because arbitration  
12 generally avoids the higher costs and longer time periods associated with  
13 traditional litigation." *Sylver v. Regents Bank, N.A.*, 129 Nev. 282, 286, 300  
14 P.3d 718, 721 (2013)(internal quotations & citation omitted).

15  
16  
17  
18 <sup>7</sup> At page 19 of its Opening Brief, Zion states that the Arbitrator gave  
19 MMAWC and MMAX an opportunity to supplement their attorneys' fees  
20 applications and respond to Zion's NRCP 54 "waiver argument" but  
21 MMAWC and MMAX refused. *Id.* Zion does not cite to any Arbitration  
22 order to support such statement but instead cites to argument made by its  
23 counsel during a hearing before the District Court on Respondents' Motion  
24 to Confirm the Arbitration Awards. *See AA603:23-23*. Moreover, the  
25 record belies Zion's statements. The Arbitrator did not give MMAWC,  
26 Ocean or MMAX an opportunity to supplement their fees applications. The  
27 Arbitrator required MMAWC, Ocean and MMAX to submit their  
28 applications simultaneously with Zion's oppositions and did not give the  
parties the right to further briefing. *See AA564, Vol. 4*. Finally, MMAWC,  
Ocean and Zion did in fact argue to the District Court that the Arbitrator's  
award was not based on NRCP 54, but instead on the AAA Commercial  
Arbitration Rules. *See AA591, Vol. 4*.

1       **1.       ZION DID NOT TIMELY CHALLENGE THE ARBITRATION**  
2       **AWARDS WHICH COMPELS CONFIRMATION**

3               While the District Court did not confirm the 06/25/21 Award and  
4  
5       10/4/21 Fee Award because Zion did not timely challenge them (*AA627*,  
6       *Vol. 5*), this Court may affirm and confirm such awards on any ground  
7       supported by the record, even if not relied upon by the District Court.  
8  
9       *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d  
10       1198, 1202 (2010); *Washoe Cnty. v. Otto*, 128 Nev. 424, 435, 282 P.3d 719,  
11       727 (2012); *LVCVA v. Secretary of State*, 124 Nev. 669, 689 n. 58, 191 P.3d  
12       1138, 1151 n. 58 (2008) (“[W]e will affirm the district court if it reaches the  
13       right result, even when it does so for the wrong reason.”).

14  
15               The record establishes that Zion received notice of the 06/25/21  
16       Award on the same day, June 25, 2021. *See AA567, Vol. 4*. The record also  
17       establishes that Zion received notice of the 10/4/21 Fee Award on the same  
18       day, October 4, 2021. *See AA578, Vol. 4*. The record also shows that  
19       neither of the awards were changed or modified under NRS 38.237. Per  
20       NRS 38.241(2), motions to vacate an arbitration award must be made within  
21       90 days. *Id.* Similarly, under NRS 38.242(1), motions to modify or correct  
22       an arbitration award must be made within 90 days. *Id.* The Federal  
23       Arbitration Act (“FAA”) also requires motions to vacate, modify or correct  
24       an award to be filed within three months after the award is filed or delivered.  
25  
26  
27  
28

1 *See 9 U.S.C. §12.* Thus, under the most generous application of such rules,  
2  
3 Zion was required to file any motion attacking the 06/25/21 Award or  
4 10/4/21 Fee Award by no later than January 2, 2022. Notably, “[t]here is no  
5 statutory or common law exception” to the three month time limitation under  
6 the FAA. *Dalal v. Goldman Sachs & Co.*, 541 F. Supp. 2d 72, 76 (D.D.C.  
7 2008), *aff’d sub nom. Dalal v. Goldman Sachs & Co.*, 575 F.3d 725 (D.C.  
8 Cir. 2009). MMAWC diligently searched but did not locate any Nevada  
9 authority extending or exempting the 90-day deadline for common law  
10 challenges to arbitration awards.<sup>8</sup> Indeed, Zion did not identify, or raise  
11 below with the District Court (*AA701, Vol. 5*) or in its Opening Brief in this  
12 appeal (*AA581, Vol. 4*), any authorities giving a longer deadline to challenge  
13 the Arbitration awards.  
14  
15  
16

17       **The record shows that Zion did not file any motion to vacate,**  
18 **modify or correct the 06/25/21 Award or the 10/4/21 Fee Award, let**  
19 **alone any such motion by the January 2, 2022, deadline. *See* NRS**  
20 **38.242(1); NRS 38.241(2); 9 U.S.C. §12.**  
21  
22

23 MMAWC filed its motion to confirm the 06/25/21 Award or 10/4/21  
24

---

25 <sup>8</sup> Respectfully, the Court has previously noted in unpublished determinations  
26 that there is no Nevada exemption to the 90-day deadline for common law  
27 challenges to arbitration awards. *See Demoff v. Sharp*, 131 Nev. 1271, No.  
28 63394, 2015 WL 4503959 (7/21/2015)(unpublished); *Vogel v. ParkwayCa*  
*Manor, Inc.*, No. 55434, 128 Nev. 942 (3/8/2012)(unpublished).



1 Fee Award on April 4, 2023 (*AA515, Vol 4*). At which time, no motion  
2 challenging the award had been filed by Zion<sup>9</sup> and the deadline to do so had  
3 long expired, and the awards had not otherwise been modified, corrected, or  
4 vacated. Therefore, confirmation of such awards was mandatory. *See* NRS  
5 38.239 (compelling that the “court shall issue a confirming order”); *Casey v.*  
6 *Wells Fargo Bank, N.A.*, 128 Nev. 713, 716–18, 290 P.3d 265, 267–68  
7 (2012)(if a party does not timely file motions to vacate or modify an  
8 arbitration award, the confirmation of such award is mandatory); *Richardson*  
9 *v. Harris*, 107 Nev. 763, 765, 818 P.2d 1209, 1210 (1991). Under virtually  
10 identical circumstances in *Richardson*, this Court held:

11  
12  
13  
14  
15 Richardson's application for confirmation of the award  
16 was opposed by Harris' motion to modify or correct the  
17 award, pursuant to NRS 38.155<sup>10</sup>. Therefore, had  
18 Harris' motion been timely, the district court would  
19 have been correct in refusing to confirm the award  
20 until it determined the merits of Harris' motion.  
21 However, as discussed below, we conclude that Harris'  
22 motion to correct or modify the award was not timely  
23 filed under NRS 38.155. Therefore, the district court  
24 erred in refusing to confirm the arbitration award upon  
25 Richardson's motion.

26  
27  
28  
<sup>9</sup> Zion's opposition (*AA581, Vol. 4*) to MMAWC's motion to confirm did not contain a countermotion to correct, vacate or modify the awards, and was not filed until April 28, 2022, 116 days after the expiration of the deadline to challenge the awards.

<sup>10</sup> NRS 38.155 was superseded and replaced by NRS 38.241 and 38.242, which provide identical language regarding 90-day deadlines. In this matter, Zion did not even file a motion to modify, correct, or vacate the 06/25/21 Award or 10/4/21 Fee Award. Instead, Zion merely filed an opposition (*AA581, Vol. 4*) to MMAWC's motion to confirm.

1 *Richardson*, 107 Nev. at 765, 818 P.2d at 1210.

2  
3 Accordingly, the Court should affirm the District Court's  
4 confirmation of the 06/25/21 Award and 10/4/21 Fee Award.

5 **2. THE DISTRICT COURT PROPERLY CONFIRMED THE**  
6 **10/4/21 FEE AWARD BECAUSE THE ARBITRATOR ISSUED**  
7 **THE AWARD PURSUANT TO AAA COMMERCIAL**  
8 **ARBITRATION RULE-47, WHICH UNDISPUTEDLY GAVE**  
9 **THE ARBITRATOR THE AUTHORITY TO ISSUE**  
10 **REASONABLE ATTORNEYS' FEES AND COSTS**

11 The sum and substance of Zion's attack of the 10/4/21 Fee Award is  
12 that the Arbitrator could not award fees because the deadlines under NRC  
13 54(d) expired and that there is nothing in the record to support the  
14 Arbitrator's determination that the dismissal of the action to compel  
15 arbitration eliminated the District Court's authority to proceed with  
16 determining fees and costs. *See Zion Opening Brief at pp. 15-16.*

17  
18 First, NRC 54(d) does not apply. The Arbitrator concluded that she  
19 had the authority to issue the 10/4/21 Fee Award pursuant to AAA Rule-47.

20 In rejecting Zion's identical arguments, the Arbitrator determined:

21  
22  
23 Claimant asserts the arbitrator has no authority to  
24 award attorney fees in this matter. There is no dispute  
25 the Commercial Rules of the American Arbitration  
26 Association ("AAA") apply to this case. AAA Rule R-  
27 47 authorizes the arbitrator to award reimbursement of  
28 attorneys' fees, and states at Section (d):

"The arbitrator may include:

1                   ii. an award of attorneys' fees if all parties  
2                   have requested such an award or it is  
3                   authorized by law or their arbitration  
4                   agreement."

5                   The facts indicate all parties requested an award of  
6                   attorneys' fees, and in addition, the Parties' arbitration  
7                   agreement, authorized reimburse of costs and  
8                   expenses, including reasonable attorney's fees,  
9                   incurred in judicially compelling arbitration.

10                  *See AA572, Vol. 4.* The record therefore supports the Arbitrator's  
11                  determination, and the District Court's confirmation.

12                  This is also not the case were the Arbitrator "knew the law and  
13                  recognized that the law required a particular result but disregarded the law."  
14                  *Clark Cnty. Educ. Ass'n*, 122 Nev. at 342, 131 P.3d at 8. Here, the  
15                  Arbitrator expressly rejected Zion's claim that NRCP 54 or its deadlines  
16                  applied or that MMAWC and Ocean somehow waived their right to fees. In  
17                  fact, the Arbitrator expressly noted that Zion failed to produce any facts or  
18                  authorities to rebut the Arbitrator's legal conclusions:  
19

20                         This Arbitrator finds no merit in Claimant's assertions  
21                         that Respondents' request for reimbursement of  
22                         attorneys' fees and costs in the State Court Action has  
23                         been waived or is otherwise untimely because  
24                         Respondents failed to seek reimbursement of attorney  
25                         fees and costs in the State Court Action. Claimant's  
26                         Opposition cites to Nevada Rules of Civil Procedure  
27                         and the law of the case, which Claimant asserts  
28                         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

1 “provided otherwise” by dismissing the case, and in  
2 doing, so eliminated the Eighth Judicial District  
3 Court’s authority to proceed with the matter.  
4 **Claimant has alleged no facts and cited no**  
5 **authority to the contrary.** Once the arbitration case  
6 was filed, the Rules of the AAA apply, giving the  
7 arbitrator the authority to decide reimbursement of  
8 attorneys’ fees pursuant to Rule R-47.

9 *See AA574, Vol. 4* (bold emphasis added).

10 Second, Zion’s primary appeal argument is simply a disagreement  
11 with the Arbitrator’s legal conclusion. That is not sufficient to overturn the  
12 District Court’s 06/13/22 Order and vacate the 10/4/21 Fee Award. *Clark*  
13 *Cty. Educ. Ass’n*, 122 Nev. at 342, 131 P.3d at 8. (“A party seeking to vacate  
14 an arbitration award based on manifest disregard of the law may not merely  
15 object to the results of the arbitration.”). Furthermore, even if the  
16 Arbitrator’s legal conclusion was erroneous, the common law standard of  
17 review “does not permit a reviewing court to vacate an arbitrator's award  
18 based on a misinterpretation of the law,” which Zion acknowledges. *See*  
19 *Zion Opening Brief at p. 13* (emphasis by Zion)(citing *Clark Cty. Educ.*  
20 *Ass’n*, 122 Nev. at 343–44, 131 P.3d at 9).

21 Third, the Arbitrator’s legal conclusion regarding her authority to  
22 award reasonable fees and costs is correct. Neither the parties nor Arbitrator  
23 were bound or limited by NRCP 54, or by any of the other Nevada Rules of  
24 Civil Procedure. “An arbitrator may conduct an arbitration in such manner  
25  
26  
27  
28

as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding.” See NRS 38.231(1). Here, the Arbitrator conducted the arbitration pursuant to the AAA Commercial Arbitration Rules, not NRCP, as the parties had expressly agreed. See *AA114* (“the arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association....”). Thus, the Arbitrator had authority to issue the 10/4/21 Award pursuant to AAA Rule-47.

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 Commercial Arbitration 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. 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.”)). Finally, NRS 38.238(2) empowered the Arbitrator with authority to order any “such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitral proceeding” regardless of whether “such a remedy could not or would not be granted by the court.” *Id.*

Fourth, the Arbitrator’s determination that the dismissal of the action to compel arbitration eliminated the District Court’s authority to proceed with the matter is supported by substantial evidence. “Substantial evidence

exists if a reasonable person could find the evidence adequate to support the [arbitrator]’s conclusion.” *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013) (internal citation and quotation marks omitted). As noted above, the substantial evidence here included AAA Rule-47, NRS 38.231(1), and NRS 38.238(2).

The Licensing Agreement is another evidentiary support. Section 18 of the Licensing Agreement confirms that Zion agreed that “the arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association....” *See AA114, Vol. 1 & AA572, Vol. 4*. The Arbitrator also considered evidence that Zion and the other parties requested attorneys’ fees and costs, which triggered AAA Rule-47 and empowered the Arbitrator, and not the District Court, to award the fees provided in the 10/4/21 Fee Award. *See AA572*. Moreover, the Arbitrator considered the Nevada Supreme Court opinion of September 5, 2019, which the Arbitrator concluded “eliminated the Eighth Judicial District Court’s authority to proceed with the matter.” *See AA573-574, Vol. 4*.<sup>11</sup> To be sure, it was Zion who failed to produce any evidence or authorities to the contrary

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<sup>11</sup> To be sure, the District Court quickly closed the matter on October 8, 2021 (*AA508, Vol. 4*) right after the September 19, 2019, hearing in which it verbally ordered dismissal of the action (*AA513, Vol. 4*). Moreover, even if the Arbitrator’s legal interpretation of this Court’s September 5, 2019, Opinion is somehow incorrect, such error is not grounds to vacate her awards. *Clark Cty. Educ. Ass’n*, 122 Nev. at 343–44, 131 P.3d at 9.

1 during the Arbitration (*AA574, Vol. 4*) and fails to produce the request “clear  
2 and convincing evidence”<sup>12</sup> to prevail on this appeal.

3  
4 Fifth and finally, the record supports the fees and costs awarded to  
5 MMAWC and Ocean by the 10/4/21 Fee Award. *See Saavedra-Sandoval*,  
6 126 Nev. at 599, 245 P.3d at 1202 (2010)(this Court may affirm on any  
7 grounds supported by the record); *LVCVA v. Secretary of State*, 124 Nev. at  
8 689 n. 58, 191 P.3d at 1151 n. 58 (“[W]e will affirm the district court if it  
9 reaches the right result, even when it does so for the wrong reason.”). While  
10 the Arbitrator relied on Section 18 of the Licensing Agreement, MMAWC  
11 and Ocean were entitled to their reasonable fees and costs under the  
12 Settlement Agreement, as prevailing parties, to which NRCP 54 does not  
13 apply (if it somehow applied). This Court previously determined that the  
14 Licensing Agreement and Settlement Agreement are read together as one  
15 combined agreement. *MMAWC, LLC*, 135 Nev. at 279, 448 P.3d at 572.  
16 Section 11 of the Settlement Agreements provides that MMAWC and Ocean  
17 are entitled to their reasonable attorneys’ fees and costs as prevailing parties.  
18 *See AA053, Vol. 1*. Thus, this Court may affirm the fees and costs awarded to  
19 MMAWC and Ocean by the 10/4/21 Fee Award based on the Settlement  
20 Agreement. *See Saavedra-Sandoval*, 126 Nev. at 599, 245 P.3d at 1202;  
21  
22  
23  
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<sup>12</sup> *News+Media Cap. Grp. LLC*, 137 Nev. at 452, 495 P.3d at 115.



1 *LVCVA v. Secretary of State*, 124 Nev. at 689 n. 58, 191 P.3d at 1151 n. 58.

2  
3 **3. ZION HAS NOT, AND CANNOT, MEET ITS BURDEN TO**  
4 **CLEARLY AND CONVINCINGLY DEMONSTRATE THAT**  
5 **THE ARBITRATOR ARBITRARILY AND CAPRICIOUSLY**  
6 **DENIED ITS CLAIM FOR BREACH OF THE IMPLIED**  
7 **COVENANT OF GOOD FAITH AND FAIR DEALING**  
8 **BECAUSE THE ARBITRATOR APPLIED NEVADA LAW**  
9 **AND ADJUDICATED ZION’S CLAIMS ON THE MERITS**

10 Zion suggests that the Arbitrator somehow denied Zion the  
11 opportunity to maintain a claim for breach of the implied covenant of good  
12 faith and fair dealing after the Arbitrator found that neither MMAWC nor  
13 Ocean breached the parties’ written agreements. Zion argues that the  
14 Arbitrator ignored Nevada law, which recognizes that such claim may exist  
15 even if there is no technical breach of contract. *See Zion Op. Brief at p. 21.*  
16 Zion’s claims and arguments are not reasonable because they are manifestly  
17 belied by the record.

18 “A claim for breach of the implied covenant of good faith and fair  
19 dealing exists when one party performs a contract in a manner that is  
20 unfaithful to the purpose of the contract and the justified expectations of the  
21 other party are thus denied....” *Hilton Hotels Corp. v. Butch Lewis Prods.,*  
22 *Inc.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991). In *Hilton Hotels*, this  
23 Court further observed that a breach of the implied covenant of good faith  
24 and fair dealing could occur in the absence of a contract breach in the  
25  
26  
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28

1 limited scenario where one party acts to “destroy or injure the right of the  
2 other to receive the benefits of the contract.” *Id.*, 107 Nev. at 233, 808 P.2d  
3 at 923. Contrary to Zion’s claims, the Arbitrator did not disregard such  
4 authority or “deny” its breach of the implied covenant of good faith and fair  
5 dealing claim.  
6

7  
8 The Arbitrator applied *Hilton Hotels* and adjudicated Zion’s claim on  
9 the merits, finding that Zion did not present any evidence to support its  
10 claim:  
11

12 There was no evidence presented showing that  
13 MMAWC acted in a manner unfaithful to the purpose  
14 of the contract, nor did MMA WC deny the justified  
15 expectations of Zion...

16 \*\*\*\*\*

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

26 *See AA562-563, Vol. 4.*

27 To be sure, the Arbitrator’s 06/25/21 Award (*AA545-564, Vol. 4*)  
28 consists of 20 pages of detailed findings of facts that address every  
allegation and claim asserted by Zion. In *Clark County Educ. Ass’n*, this  
Court reviewed a similarly detailed arbitration award and observed: “[H]ere

1 the arbitrator's seventeen-page opinion and award specifically recounts the  
2 factual underpinning of the award in favor of the District. Thus, we conclude  
3 that the arbitrator's decision is supported by substantial evidence and  
4 therefore is not arbitrary and capricious.” *Clark Cnty. Educ. Ass'n.*, 122  
5 Nev. at 344, 131 P.3d at 10.  
6

7  
8 Based on the evidence, or failure by Zion to produce any evidence,  
9 viewed in the light most favorable to Zion, the Arbitrator thus concluded:  
10

11 Based upon the foregoing, the Arbitrator, after viewing  
12 Zion's claims and properly supported factual allegations  
13 as true, and drawing all reasonable inferences in favor  
14 of the Zion, the Arbitrator finds there is no factual or  
15 legal basis to support [Zion's] allegations that  
16 Respondents or any of them, breached the ... covenant  
17 of good faith and fair dealing as relates to the  
18 agreements or transactions between the parties in this  
19 matter.

20 [Zion] has failed to present sufficient credible evidence  
21 to meet its burden of establishing liability as alleged,  
22 against all Respondents.

23 *See AA563.*

24 As the record clearly demonstrates, the Arbitrator's 06/25/21 Award is  
25 not capricious or in disregard of the law. The Arbitrator did not dismiss or  
26 deny Zion's claim for breach of the implied covenant of good faith on and  
27 fair dealing but adjudicated the claim on the merits and in accordance with  
28 Nevada law. *Id.* In reality, Zion seeks reversal because it disagrees with

1 the Arbitrator's conclusion, which the law precludes. "Judicial inquiry  
2 under the manifest-disregard-of-the-law standard is extremely limited. A  
3 party seeking to vacate an arbitration award based on manifest disregard of  
4 the law may not merely object to the results of the arbitration." *Clark Cty.*  
5 *Educ. Ass'n*, 122 Nev. at 342, 131 P.3d at 8.  
6  
7

### 8 CONCLUSION

9 The Court should affirm the 06/25/21 Award and 10/4/21 Fee Award.  
10 First, Zion did not timely challenge those arbitration awards which  
11 necessitates confirmation. Second, Zion has not met, and cannot meet, its  
12 high burden on its appeal. Zion has not clearly and convincingly shown that  
13 the 06/25/21 Award and 10/4/21 Fee Award are arbitrary, capricious, or in  
14 manifest disregard of the law. On the contrary, the record demonstrates that  
15 the 06/25/21 Award and 10/4/21 Fee Award are based on substantial  
16 evidence, are not arbitrary and capricious, and must be confirmed. The  
17 Court should therefore affirm the District Court's 06/13/22 Order confirming  
18 the 06/25/21 Award and 10/4/21 Fee Award.  
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23 Respectfully,

24 **KENNEDY & COUVILLIER, PLLC**

25 /s/ Maximiliano D. Couvillier III

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**CERTIFICATES OF COMPLIANCE**

**PURSUANT TO NRAP 32**

Pursuant to NRAP 32, I certify that:

1. This Respondents' Answering Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5)(A) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word, 2023 Edition, Times New Roman in 14-point font; and

2. This Respondents' Answering Brief complies with the page or type-volume limitations of NRAP 32(a)(7), excluding the parts exempted by NRAP 32(a)(7)(C), because it does not exceed 30 pages and it is proportionately spaced, has a typeface of 14 points or more and contains approximately **6915 words**.

**PURSUANT TO NRAP 28.2**

Pursuant to NRAP 28.2, I certify that:

1. I hereby certify that I have read this appellate brief;

2. To the best of my knowledge, information and belief, the brief is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

3. The brief complies with all applicable Nevada Rules of Appellate Procedure, including the requirement of Rule 28(e) that every assertion in the

1 briefs regarding matters in the record be supported by a reference to the page  
2 and volume number, if any, of the appendix where the matter relied on is to be  
3 found; and  
4

5 4. The brief complies with the formatting requirements of Rule  
6 32(a)(4)-(6), and either the page- or type-volume limitations stated in Rule  
7 32(a)(7).  
8

9 I understand that I may be subject to sanctions in the event that the  
10 accompanying brief is not in conformity with the requirements of the Nevada  
11 Rules of Appellate Procedure.  
12

13 Dated: April 21, 2023.

14 **KENNEDY & COUVILLIER, PLLC**

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**CERTIFICATE OF SERVICE**

I certify that on **April 21, 2023**, I electronically filed the foregoing document with the Court's electronic filing and service system, which provides electronic service to the following registered users:

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