

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 68700

District Court Case No. A715008

DR PARTNERS, a Nevada General Partnership,
d/b/a STEPHENS MEDIA GROUP,

Appellant,

vs.

LAS VEGAS SUN, INC., a Nevada Corporation,

Respondent.

Appeal from an Order of the Eighth Judicial District Court
Clark County, Nevada
Judge Elizabeth Gonzalez

APPELLANT'S APPENDIX

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(b-d) and NEFCR Rule 9, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I caused the following document to be served via the Court's E-Flex filing system: **APPELLANT'S APPENDIX – Volume II**. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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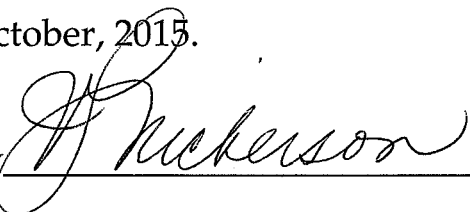
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DATED this 5th day of October, 2015.

By



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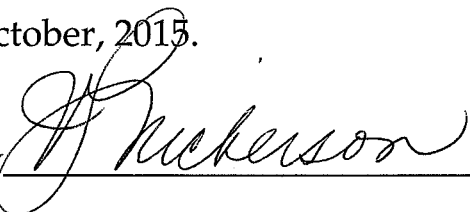
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DATED this 5th day of October, 2015.

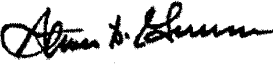
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15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 **LAS VEGAS SUN, INC., a Nevada**
18 **corporation,**

19 **Plaintiff,**

20 **v.**

21 **DR PARTNERS, a Nevada General**
22 **Partnership, d/b/a STEPHENS**
23 **MEDIA GROUP; DOES 1-X,**
24 **inclusive,**

25 **Defendants.**

Case No.: A-15-715008-B
Dept. No.: XI


**RENEWED MOTION TO
COMPEL ARBITRATION**

DATE: _____
TIME: _____

26 Defendant DR Partners d/b/a Stephens Media Group
27 ("Stephens Media") hereby moves the Court, under NRS 38.221(1), for an
28 order compelling arbitration and for a stay of these judicial proceedings.

1 This Motion is based on the papers and pleadings on file, the following
2 points and authorities, and any oral argument the Court may allow.

3
4 MORRIS LAW GROUP


5
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8 Akke Levin, Bar No. 9102
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10 300 South Fourth Street
11 Las Vegas, Nevada 89101

12 Attorneys for Defendant DR Partners
13 d/b/a Stephens Media Group

14 NOTICE OF MOTION

15 PLEASE TAKE NOTICE that the undersigned will bring the
16 foregoing Renewed Motion to Compel Arbitration on before the above-
17 named Court on the 11 day of AUGUT, 2015 at the hour of
18 8:30A a.m.

19 MORRIS LAW GROUP

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26 Attorneys for Defendant Dr. Partners
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POINTS AND AUTHORITIES

I. INTRODUCTION

Las Vegas Sun Inc.'s First Amended Complaint is an example of "creative" pleading to avoid its obligation to submit its claim that it has been underpaid annual profits payments under Appendix D of the 2005 Amended JOA to arbitration. Although the financial dispute between the parties has been disingenuously recharacterized and pleaded as a "justiciable controversy" as to the "meaning" of section 4.2 and "the obligations it places on the Parties' performance" of the 2005 Amended and Restated Agreement ("JOA"), the fact is that the Sun wants the Court to declare, as a matter of law, that it has been underpaid several million dollars in annual profits since 2005.

The Sun is asking the Court to rule that under the alleged "plain language of section 4.2" that requires the parties to "each bear their respective editorial costs," Stephens Media cannot treat its editorial costs it bears as a business expense when calculating EBITDA "for purposes of determining the Annual Profits Payment owed to Las Vegas Sun, Inc." Compl. ¶ 26; First Am. Compl. ¶¶ 20, 26. But the Court cannot make this determination in a vacuum without also interpreting Appendix D, which sets out how the Sun's annual compensation is determined. The parties agreed to have an arbitrator—not a court—decide compensation disputes under the commercial arbitration rules of the American Arbitration Association ("AAA").

At best, the alleged "justiciable controversy" as to the meaning of section 4.2 is a false controversy. This is a computation dispute that is indisputably subject to arbitration under Appendix D. If, as the Sun contends, section 4.2 is "explicit" and its language "plain," then why couldn't it ask the arbitrator to confirm its reading during the arbitration process?

Any Court interference with the merits of the dispute would deprive Stephens Media of the mutually bargained-for benefits of arbitration and result in an impermissible judicial determination of the merits of the dispute. See *Steelworkers v. Am. Mfg. Co.*, 363 US 564, 569 (1960) ("When the judiciary undertakes to determine the merits of a grievance under the guise of interpreting the . . . collective bargaining agreements, it usurps a function which under that regime is entrusted to the arbitration tribunal").

The Court should reject the Sun's theatrical pleading to avoid arbitration, compel arbitration, and stay this case until an arbitration award has been entered.

II. ARGUMENT

A. The Arbitration Agreement Covers the Claim for Declaratory Relief.¹

Arbitration clauses should be liberally construed to provide the parties with the benefits of arbitration they bargained for. *Kindred v. Dist. Ct.*, 116 Nev. 405, 996 P.2d 903, 907 (2000). All doubts "concerning the arbitrability of the subject matter of a dispute" should be decided "in favor of arbitration." *Int'l Ass'n of Firefighters v. City of Las Vegas*, 104 Nev. 615, 618, 764 P.2d 478, 480 (1988); *Pacificare of Nevada, Inc. v. Rogers*, 127 Nev. __ n.3, 266 P.3d 596, 600 n.3 (2011) (holding same).

Here, the arbitration agreement of the JOA provides, in relevant part:

If . . . there is a dispute between Sun and the Review-Journal as to amounts owed to Sun and they are not able to resolve the dispute within 30 days, they shall select a certified public accountant to arbitrate the dispute. The arbitration shall be conducted according to the commercial arbitration rules of the American Arbitration Association ["AAA"], including such rules

¹ There is no dispute between the parties that a valid arbitration agreement exists. The parties only dispute the scope of the arbitration clause.

1 for the selection of a single arbitrator if Sun and the Review-
2 Journal are not able to agree upon an arbitrator.

3 JOA App. D at 20.

4 Thus, the arbitration clause covers **all** disputes about the Las
5 Vegas Sun's compensation; not just factual disputes about the calculation of
6 the amounts owed. If the parties had meant to leave legal issues relevant to
7 compensation disputes to the Court, they could have done so, as in
8 *Countrywide Home Loans, Inc. v. Mortg. Guar. Ins. Corp.*, where the parties'
9 arbitration agreement provided:

10 [A]ll controversies, disputes, or other assertions of liability or
11 rights arising out of or relating to this Policy, including the
12 breach, interpretation or construction thereof, shall be settled by
13 arbitration. **Notwithstanding the foregoing, [MGIC] or**
14 **[Countrywide] both retain the right to seek a declaratory**
judgment from a court of competent jurisdiction on matters of
interpretation of the [Flow] Policy.

15 642 F.3d 849, 851 (9th Cir. 2011) (emphasis added).

16 Here, by contrast, the arbitration clause of the JOA does not
17 provide for a right to seek a declaratory judgment in court. Such right
18 cannot be read into the arbitration clause. *See Reno Club v. Young Inv. Co.*, 64
19 Nev. 312, 324, 182 P.2d 1011, 1017 (1947) ("The Court has no power by
20 interpretation to engraft on a contract a limitation inconsistent with the
21 apparent object of the parties Neither a court of law nor a court of
22 equity can interpolate in a contract what the contract does not contain.").

23 The parties agreed to arbitrate under the commercial arbitration
24 rules of the American Arbitration Association ("AAA"). These rules give the
25 arbitrator the express authority "to determine the existence or validity of a
26 contract of which an arbitration clause forms a part." AAA Rule R-7(b).
27 Nothing in the arbitration clause limits the arbitrator to entering a monetary
28 award, as the Sun mistakenly contends. Hrg. Tr. at 5 (on file). Thus, any

1 question as to the meaning of contract provisions that may bear on
2 compensation disputes is for the arbitrator to decide, not the Court. *See*
3 *Benson Pump Co. v. South Cent. Pool Supply, Inc.*, 325 F. Supp. 2d 1152 (D.
4 Nev. 2004) (the "interpretation of the underlying contract is an issue for the
5 [independent auditor] to decide, even though contract construction is
6 generally a question of law"); *see also Nitro-Lift Techs., LLC v. Howard*, 568 US
7 ___, ___, 133 S. Ct. 500, 503 (2012) ("the validity of the remainder of the
8 contract (if the arbitration provision is valid) is for the arbitrator to decide").

9 **1. The Alleged "Justiciable Controversy" Over the Meaning**
10 **of § 4.2 is Subject to Arbitration.**

11 "Whether a particular claim is arbitrable depends not upon the
12 characterization of the claim, but upon the **relationship of the claim to the**
13 **subject matter of the arbitration clause.**" *In re Oil Spill By Amoco Cadiz, etc.*,
14 659 F. 2d 789, 794 (7th Cir. 1981) (emphasis added). "Were the rule
15 otherwise, a party could frustrate any agreement to arbitrate simply by the
16 manner in which it framed its claims." *Id.* (citations omitted); *accord Phillips*
17 *v. Parker*, 106 Nev. 415, 418, 794 P.2d 716, 718 (1990) (compelling arbitration
18 despite the plaintiff's "clear effort to avoid the [arbitration] agreement" by
19 amending his complaint to plead only tort claims where the amended
20 complaint was in part "dependent upon the terms of the agreement"
21 containing the arbitration clause).²

22 Here, the Sun alleges a "justiciable controversy" exists between
23 the parties as to "whether Section 4.2 of the 2005 Amended JOA requires
24 Defendant to bear its respective [sic] editorial costs." First Am. Compl. ¶ 25;

25
26 ² During argument on Plaintiffs' Motion for Leave to File First Amended
27 Complaint, counsel for Plaintiff made much about the factual distinctions
28 between *Phillips* and this case. Hrg. Tr. at 4. In so doing, the Sun misses the
point that in *Phillips*, as here, the plaintiff tried to avoid its agreement to
arbitrate by "creative" repleading of his complaint.

1 *see also id.* ¶ 26 ("A justiciable controversy exists . . . as to the meaning and
2 interpretation of Section 4.2 . . ."). Section 4.2 provides that "Review-
3 Journal and the Sun shall each bear their own respective editorial costs and
4 shall establish whatever budgets each deems appropriate." First Am.
5 Compl. Ex. 2 (JOA § 4.2). Apparently, they have done so.

6 According to the Sun's own allegations, this alleged "justiciable
7 controversy" is directly related to the compensation dispute that Appendix
8 D addresses, which is undisputedly subject to arbitration. Although the Sun
9 endeavors to avoid Appendix D of the JOA by omitting to acknowledge it,
10 the Sun is seeking a declaration that Section 4.2 does not permit the Review
11 Journal to deduct its editorial costs in calculating EBITDA. *See id.* ¶ 26 ("A
12 justiciable controversy exists . . . as to the meaning . . . of Section 4.2 and the
13 obligations it places upon the parties' performance under the [] JOA"). The
14 Sun does not merely ask for a judicial "interpretation" of Section 4.2; it seeks
15 a determination of all of its "rights . . . as to these justiciable controversies
16 concerning the terms and conditions of the 2005 Amended JOA"—*not* just
17 Section 4.2. *Id.* ¶ 27 (emphasis added); *see also id.* at 5 (Prayer for Relief § A)
18 (seeking a "Declaratory Judgment . . . determining and declaring Plaintiff's
19 rights . . . under the [] JOA").

20 The Court cannot declare the parties' rights under the JOA
21 without considering Appendix D and engaging in an accounting analysis,
22 which is not a judicial function. To be sure, Section 4.2 is not even
23 concerned with the Sun's compensation: it is part of Article 4, which
24 addresses "News and Editorial Copy, Features And Services." *Id.* Ex. 2 (JOA
25 at 2). The Sun's compensation is addressed in Article 7 ("Payment") and
26 Appendix D of the JOA. Appendix D requires, *inter alia*, that "EBITDA be
27 calculated in a manner consistent with the computation of 'Retention' as that
28

1 line item appears on the profits and loss statement for Stephens Media
2 Group for the period ended [sic] December 31, 2004." App. D of JOA at 19.

3 Thus, Section 4.2—if it must be considered at all—must be read
4 in context with the compensation terms of Appendix D of the JOA. *See*
5 *Galardi v. Naples Polaris, LLC*, 129 Nev. Adv. Op. 33, 301 P.3d 364 (2013)
6 ("Contract interpretation strives to discern and give effect to the parties'
7 intended meaning [] Words derive meaning from usage and context")
8 (internal citation omitted). There is no reason why an arbitrator cannot be
9 entrusted with interpreting (what the Sun calls) "the plain language of
10 Section 4.2" if necessary to the parties' compensation dispute. First Am.
11 Compl. ¶ 20. That is what the law requires, and it is what the parties
12 bargained for in 2005. The Court cannot determine the Sun's rights under
13 the JOA without engaging in a comprehensive accounting analysis under
14 Appendix D and thereby displacing the arbitrator's role and exclusive
15 jurisdiction.

16 2. The Meaning of § 4.2 of the JOA is a False Issue.

17 Courts should be skeptical of amendments to complaints that are
18 designed to avoid arbitration. *See Phillips*, 106 Nev. at 418, 794 P.2d at 718
19 (amended complaint was a "clear effort to avoid the [arbitration]
20 agreement"); *cf. Soebbing v. Carpet Barn, Inc.*, 109 Nev. 78, 84, 847 P.2d 731,
21 736 (1993) ("courts should be cautious of . . . amendments alleging meritless
22 claims in an attempt to save a case from summary judgment").

23 The Las Vegas Sun's First Amended Complaint is a clear attempt
24 to avoid the arbitration clause. In its initial complaint, the Sun took the
25 position that Section 4.2 is clear, alleging that it "states *explicitly* that the
26 LVRJ and The Sun" are to "bear their own respective editorial costs." Compl.
27 ¶ 18. It sought a declaratory judgment "as to the *relationship* between the
28 responsibilities of the parties to bear their own editorial costs *and* the

1 calculation of EBITDA for purposes of determining the Annual Profits
2 Payment owed to Las Vegas Sun, Inc." *Id.* ¶ 26 (emphasis added).

3 The First Amended Complaint presents a legal issue to the Court
4 that did not arise until *after* the Court compelled arbitration. There is no
5 genuine dispute as to the meaning of Section 4.2 of the JOA. The issue is
6 whether Stephens Media may treat its editorial costs as an expense in
7 calculating annual profits and applying EBITDA, which determines the
8 Sun's compensation. *At best*, Section 4.2 is ancillary to the compensation
9 dispute that is unmistakably subject to arbitration. The Sun's attempt to
10 create a "non-issue" by re-pleading is nothing more than an attempt to avoid
11 the arbitration clause, as it was in *Phillips v. Parker, supra*. It failed there, and
12 it should fail here.

13 III. CONCLUSION

14 For the reasons stated above and those in Stephens Media's
15 initial motion papers, the Court should compel arbitration and stay these
16 judicial proceedings until the arbitrator has entered an award, as the parties
17 intended when they executed the JOA 10 years ago.

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24 900 Bank of America Plaza
25 300 South Fourth Street
26 Las Vegas, Nevada 89101

27 Attorneys for Defendant DR Partners
28 d/b/a Stephens Media Group

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I caused the following documents to be served via the Court's Odyssey E-Filing system: **RENEWED MOTION TO COMPEL ARBITRATION**. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

TO:

Lewis Roca Rothgerber LLP

Leif Reid lreid@lrrlaw.com

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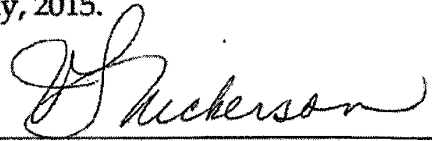
Moran Brandon Bendavid Moran

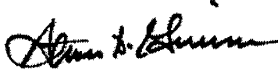
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DATED this 10th day of July, 2015.

By





CLERK OF THE COURT

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23 *Attorneys for Plaintiff*

24 **DISTRICT COURT**
25 **CLARK COUNTY, NEVADA**

26 LAS VEGAS SUN, INC., a Nevada
27 Corporation,

28 Plaintiff,

vs.

DR PARTNERS, a Nevada General
Partnership, d/b/a STEPHENS MEDIA
GROUP; DOES I-X, inclusive,

Defendants.

CASE NO.: A-15-715008-B

DEPT.: XI

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT ON
PLAINTIFF'S DECLARATORY
RELIEF ACTION**

Hearing Date: 8 / 11 / 15

Hearing Time: 8 : 30 am

Plaintiff Las Vegas Sun, Inc. (the "Sun"), through counsel of Lewis Roca Rothgerber
LLP and Moran Brandon Bendavid Moran, moves this Court for an Order granting summary
judgment in favor of the Sun on the Sun's First Amended Complaint. This Motion is made
pursuant to Nevada Rule of Civil Procedure 56(a) and is based upon the following Memorandum

///

///

50 West Liberty Street, Suite 410
Reno, NV 89501

LEWIS ROCA
ROTHGERBER

1 of Points and Authorities, the pleadings and papers on file herein, and any argument that this
2 Court entertains.

3 DATED this 10th day of July, 2015.

4 LEWIS ROCA ROTHGERBER LLP

5
6 BY: /s/ E. Leif Reid

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16 *Attorneys for Plaintiff*

17
18 PLEASE TAKE NOTICE that Defendants will bring the above and foregoing motion on
19 for decision on the 11 day of August, 2015, in Department XI, Judge
20 Gonzalez, of the above-entitled Court, 200 Lewis Avenue, Las Vegas, Nevada 89155.

21 Dated this 10th day of July, 2015.

22 LEWIS ROCA ROTHGERBER LLP

23
24 BY: /s/ E. Leif Reid

25 E. LEIF REID
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Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

The Sun seeks summary judgment on its First Amended Complaint for declaratory relief. The Sun initiated this declaratory relief action pursuant to NRS 30.040 due to a controversy between the Sun and DR Partners regarding the meaning of, and obligations imposed by, Section 4.2 of the 2005 Amended and Restated [Operating] Agreement (the "2005 JOA"). No genuine issue of material fact exists. Therefore, the 2005 JOA must be enforced according to its plain meaning and the parties should be declared obligated to bear their own editorial costs, without qualification or exception. Ignoring Section 4.2's clear language and permitting DR Partners to unilaterally deduct its news and editorial expenses as chargeable to the 2005 JOA nullifies Section 4.2 and forces the Sun to underwrite a portion of DR Partners' news and editorial expenses. For these reasons, as further explained below, an Order granting summary judgment in favor of the Sun on its First Amended Complaint is warranted as a matter of law.

I. STATEMENT OF UNDISPUTED MATERIAL FACTS.

In June 1989, the Sun and DR Partners' predecessor-in-interest, Donrey of Nevada, Inc., entered into a joint operating agreement (the "1989 JOA"). *See generally* First Am. Compl. ("FAC") at Ex. 1. The parties entered into the 1989 JOA in accordance with the Newspaper Preservation Act of 1970. *See id.* at 1-4; 15 U.S.C. §§ 1801-04 (authorizing the formation of joint operating agreements among competing newspaper operations within the same market area).

Pursuant to the 1989 JOA, together the parties operated separate daily news publications. *See generally* FAC at Ex. 1. The 1989 JOA specifically discussed how the parties were to share and allocate the news and editorial costs related to their separate news operations. *Id.* § 4.2. Under Section 4.2 of the 1989 JOA, entitled "News and Editorial Allocations," both parties' news and editorial expenses were explicitly approved deductions from the parties' joint operations. Section 4.2 of the 1989 JOA read as follows:

The Review-Journal and the Sun shall establish, in accordance with the provisions of Appendix A attached hereto and made a part hereof by reference, the amounts to be allocated to Agency Expense, as hereinafter defined, for each for news and editorial expenses.

1 *Id.* (emphasis added). Under this 1989 provision the Sun was allocated a minimum amount of
2 funds for editorial expenses and compensated on a monthly basis for its editorial costs. *See id.* at
3 App'x A § A.1.

4 In 2005, the Sun and DR Partners (as Donrey of Nevada, Inc.'s, successor-in-interest)
5 renegotiated and restated their 1989 agreement. They did so in the form of the 2005 Amended
6 and Restated [Joint Operating] Agreement, *i.e.*, the 2005 JOA. *See generally* FAC at Ex. 2.
7 While the parties to the 1989 JOA had previously shared news and editorial expenses in
8 accordance with the allocation formula set forth in Appendix A, Section A.1., the Sun and DR
9 Partners changed that provision, and several related provisions, during their 2005 amendment:
10 they agreed in that 2005 amendment that each party would bear their own editorial costs. *See*
11 FAC at Ex. 1 § 4.2.

12 Section 4.2 was changed in the 2005 JOA to read as follow:

13 News and Editorial Allocations. The Review-Journal and the Sun
14 shall each bear their own respective editorial costs and shall
establish whatever budgets each deems appropriate.

15 *Id.* (second emphasis added). In conformance with this amended Section 4.2, every other
16 reference to the parties' previous method of sharing editorial costs, and reference to those costs
17 as a joint expense before EBITDA was calculated, was deleted from the parties' amended and
18 restated agreement. These amendments were effective June 10, 2005. *See* FAC, Ex. 2 at 1. The
19 Sun initiated this declaratory relief action on March 10, 2015. *See generally* Compl.

20 II. STANDARD OF REVIEW.

21 Nevada Rule of Civil Procedure 56(a) provides, in pertinent part,

22 A party seeking to . . . obtain a declaratory judgment may, at any
23 time after the expiration of 20 days from the commencement of the
24 action . . . , move with or without supporting affidavits for a
summary judgment in the party's favor upon all or any part
thereof.

25 Summary judgment is appropriate when the pleadings and other evidence on file, construed in a
26 light most favorable to the non-moving party, demonstrate that no genuine issue as to any
27 material fact remains and the moving party is entitled to judgment as a matter of law. NRCP
28 56(c); *Wood v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). A factual dispute is

1 genuine “when the evidence is such that a rational trier of fact could return a verdict for the non-
2 moving party.” *Id.*

3 The Nevada Supreme Court has approved summary judgment as the appropriate
4 procedural mechanism to resolve a declaratory relief action where the facts are not in dispute and
5 the issue is one of contract interpretation, *i.e.*, a question of law. *See, e.g., Galardi v. Naples*
6 *Polaris, LLC*, 129 Nev. Adv. Op. 33, ___, 301 P.3d 364, 366 (May 16, 2013) (“[I]n the absence
7 of ambiguity or other factual complexities, contract interpretation presents a question of law that
8 the district court may decide on summary judgment.”) (alteration in original) (internal quotations
9 omitted); *see also Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 486, 117 P.3d
10 219, 223 (2005) (stating that the construction of a contractual term is a question of law).

11 **III. SUMMARY JUDGMENT IN FAVOR OF THE SUN IS WARRANTED.**

12 DR Partners previously argued to this Court that Section 4.2 is unambiguous and agreed
13 that the parties must bear their own editorial costs. *E.g.*, Tr. of Proceedings 5:22-6:22 (June 9,
14 2015) (“Tr.”) (where DR Partners admitted that the provision is “perfectly clear” and agreed that
15 “[i]t says each party shall bear its own editorial costs and that has been done”); Def.’s Opp’n to
16 Pltf.’s Mot. for Leave to File First Am. Compl. on Order Shortening Time 6-7 (“Def.’s Opp’n to
17 Mot. for Leave”) (where DR Partners asserted that it has borne its own editorial expenses).
18 However, DR Partners has continued to simultaneously argue that Section 4.2 means something
19 different, inferring that Section 4.2 is ambiguous, and stemming the instant declaratory relief
20 action.

21 More specifically, DR Partners has argued that, although Section 4.2 plainly states that
22 each party shall bear its own editorial costs, Section 4.2 does not prohibit DR Partners from
23 including its editorial costs “as an expense of operations [under the 2005 JOA] for accounting
24 purposes, such as in calculating EBITDA,” as the parties previously did under the 1989 JOA. Tr.
25 at 5:22-6:22; Def.’s Opp’n to Mot. for Leave 6-7. DR Partners cites to Appendix D of the JOA
26 to support this interpretation of Section 4.2. Tr. at 6:5-22; Def.’s Opp’n to Mot. for Leave 7.
27 The portion of Appendix D on which DR Partners specifically relies provides as follows:

28 The Parties intend that EBITDA be calculated in a manner
consistent with the computation of “Retention” as that line item

1 appears on the profit and loss statement for Stephens Media Group
2 for the period ended December 31, 2004.

3 FAC, Ex. 2 at 19.

4 According to DR Partners, this sentence somehow modifies Section 4.2's unequivocal
5 directive that each party "shall bear their own respective editorial costs," as well as all of the
6 other changes that were made to the 2005 JOA to account for this change. See Tr. at 6:5-22;
7 Def.'s Opp'n to Mot. for Leave 7. DR Partners' reliance on this sentence in Appendix D even
8 ignores the second paragraph of the same 2005 Appendix D, which explicitly forbids the
9 inclusion of editorial costs as an expense to the JOA and which provision is consistent with the
10 language and intent of Section 4.2. DR Partners' argument is made in error and its interpretation
11 of Section 4.2 is unreasonable. Section 4.2 is not ambiguous. It clearly requires each party to
12 bear its own editorial costs—without exception.

13 Even examining the 2005 JOA as if it were an ambiguous contract, the result is the same.
14 Whether a contract is ambiguous is, like general issues of contract interpretation, a question of
15 law appropriately decided by the district court. *Galardi v. Naples Polaris, LLC*, 129 Nev. Adv.
16 Op. 33, ___, 301 P.3d 364, 366 (May 16, 2013). The fact that the parties disagree as to the
17 interpretation of a contract term does not render the contract ambiguous. *Id.*

18 An ambiguous contract is one that is "obscure in meaning through indefiniteness of
19 expression, or having a double meaning," where both interpretations are reasonable. *Id.* (internal
20 quotations omitted); *Agric. Aviation Eng'g Co. v. Bd. of Clark Cnty.*, 106 Nev. 396, 398, 794
21 P.2d 710, 712 (1990) (holding that an ambiguity existed in the contract because the paragraphs in
22 question were "reasonably susceptible to different constructions or interpretations"). When
23 examining a contract for ambiguity, the document must be considered as a whole, not in isolated
24 parts, also bearing the apparent purpose of the contract in mind. 17A C.J.S. Contracts § 387
25 (updated June 2015). Courts will begin with the plain language of the contract, construing it in
26 harmony with the plain and generally accepted meaning of the words used, with reference to all
27 of the agreement's provisions, and solely looking to the face of the agreement. 11 Williston on
28 Contracts § 30:5 (4th ed. updated May 2015).

1 Despite DR Partners' inference otherwise, the 2005 JOA is not ambiguous with respect to
2 the parties' new obligation to bear their own editorial costs. When considering the 2005 JOA as
3 a whole, Section 4.2's mandate that each party bear its own editorial costs wholly comports with
4 the portion of Appendix D relied upon by DR Partners. No obscure meaning through
5 indefiniteness, contradiction, or otherwise is found within the 2005 JOA.

6 Appendix D's articulation that "EBITDA shall be calculated in a manner consistent with
7 the computation of 'Retention' as that line item appears on the profit and loss statement for
8 Stephens Media Group for the period ended December 31, 2004," neither requires nor suggests
9 that the inputs to the formula for calculating Retention in 2004 (e.g., editorial costs) remain
10 consistent or unchanged when calculating EBITDA. See FAC, Ex. 2 at 13 (emphasis added).
11 Appendix D's articulation regarding the calculation of EBITDA in a manner consistent with the
12 computation of "Retention" merely requires that the method of calculating EBITDA remain
13 consistent with the method used to calculate Retention in 2004. Logic and reason prove the
14 verity of this proposition.¹

15 More specifically, it would be unreasonable and impractical for the 2005 JOA to demand
16 that the inputs that were used in the formula for calculating Retention in 2004 be identically
17 applied during the entire duration of the 2005 JOA. Throughout the decades-long relationship
18 between the Sun and DR Partners contemplated by the 2005 JOA, it is guaranteed that the inputs
19 used to compute Retention in 2004 would not remain the same. New and eliminated expenses
20 must be accounted for. This is particularly true when the 2005 JOA explicitly prohibits editorial
21 costs as a chargeable joint operating expense. To hold otherwise would be to read the 2005 JOA
22 as mandating that the calculation of EBITDA be based on a preset formula that contains
23 disallowed expenses and fails to include new, permitted expenses. This interpretation is entirely
24 unreasonable. DR Partners' conflation of the manner of computing Retention and EBITDA with
25 the inputs appropriate to include in the formula to calculate Retention and EBITDA is improper.

26 ¹ While the actual calculation of EBITDA, itself, may be a matter for arbitration, all agree that
27 the actual calculation is not the issue before this Court now. Instead, the issue before this Court
28 whether Section 4.2 directs the parties to bear their own editorial fees in all respects, which
necessarily includes rejecting DR Partners' position that Section 4.2 allows DR Partners to
include its editorial costs as a chargeable expense and proper input to the EBITDA/2004
Retention formula.

1 As clearly laid out in Section 4.2 and other elements of the 2005 JOA, including Appendix D,
2 neither party's news and editorial costs can be deducted as inputs (*i.e.*, expenses) under the 2005
3 JOA.

4 The unreasonableness of DR Partners' interpretation of these provisions is further
5 emphasized by taking a broader look at Appendix D. From the outset, Appendix D provides that
6 the fiscal year under the 2005 JOA begins on April 1, 2005. FAC, Ex. 2 at 18. The next
7 paragraph of Appendix D provides that when calculating EBITDA for any period that includes
8 earnings *prior* to the April 1, 2005 (the start of the fiscal year under the 2005 JOA), "such
9 earnings shall not be reduced by any amounts that during such period may have been otherwise
10 deducted from earnings under section A.1 of Appendix A . . . of the 1989 Agreement." *Id.*
11 (emphasis added). Those amounts referenced which "may have been otherwise deducted from
12 earnings under section A.1 of Appendix A . . . of the 1989 Agreement" include the editorial costs
13 that were previously shared by the parties. *See* FAC, Ex. 1 at App'x A § A.1 & Ex. 1 § 4.2.
14 Those costs, however, are no longer allowed to be included to reduce any earnings under the
15 2005 JOA. In line with the new Appendix D's prohibition on reducing earnings that were
16 previously allowed under Section A.1. of the 1989 JOA, the new Appendix A of the JOA
17 "Intentionally omit[s]" the former subsection A.1. *Id.*, Ex. 2 at App'x A § A.1.

18 Section 4.2 and Appendix D of the 2005 JOA parallel and complement each other in
19 iterating and reiterating the requirement that each party bear its own editorial costs. Nothing in
20 Appendix D requires or even suggests that the inputs used in the formula for calculating
21 Retention in 2004, including editorial costs, be applied now in calculating EBITDA. *See* FAC,
22 Ex. 2 at 13 (emphasis added). Any suggestion otherwise is simply not reasonable. For DR
23 Partners' argument to prevail based on a single sentence in Appendix D, all of Section 4.2 must
24 be nullified and all of the intentionally-omitted portions of the 1989 JOA must be reinstated. DR
25 Partners' argument further requires the Court to ignore the opening paragraphs of Appendix D,
26 in total, which clearly disallow news and editorial expenses as chargeable to the 2005 JOA.

27 Instead, the reasonable reading of the "Retention" language from Appendix D that is
28 relied upon by DR Partners is that the parties are required to use the same method, *i.e.*, formula,

1 for calculating EBITDA as was used to calculate Retention in 2004: not that they are required to
2 use the same inputs that were used in the Retention formula in 2004, which are specifically
3 detailed elsewhere in the 2005 JOA. Only this interpretation harmonizes all portions of the JOA.
4 Section 4.2 is not “obscure in meaning through indefiniteness of express, or having a double
5 meaning.” *See Galardi v. Naples Polaris, LLC*, 129 Nev. Adv. Op. 33, ___, 301 P.3d 364, 366
6 (May 16, 2013); *Parman v. Petricciani*, 70 Nev. 427, 430-432, 272 P.2d 492, 493-94 (1954)
7 (holding that when one party’s interpretation of the contract is unreasonable, the contract
8 contains no ambiguity).

9 For these reasons, the 2005 JOA is not ambiguous. Because the 2005 JOA is
10 unambiguous, it must be construed on its face, and according to its plain language. *See The*
11 *Power Co. v. Henry*, 130 Nev. Adv. Op. 21, ___, 321 P.3d 858 (March 27, 2014); *Sheehan &*
12 *Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 487-88, 117 P.3d 219, 223-224 (2005). The
13 parties’ intent is determined solely from the language of the 2005 JOA, without reference beyond
14 its four corners, *see Ringle v. Bruton*, 120 Nev. 82, 93, 86 P.3d 1032, 1038 (2004); 17A C.J.S.
15 Contracts § 394 (updated June 2015), and the 2005 JOA must be enforced as written. *Buzz Stew,*
16 *LLC v. City of N. Las Vegas*, 131 Nev. Adv. Op. 1, ___, 341 P.3d 646, 650 (Jan. 29, 2015).

17 Section 4.2 of the 2005 JOA is plain on its face. The Sun and DR Partners agreed that
18 each would bear its own editorial costs. There is no exception contained in Section 4.2 or
19 anywhere else in the 2005 JOA. There is no qualification. Neither party is permitted to charge
20 its editorial costs against the 2005 JOA in any instance. This prohibition is absolute. An Order
21 declaring the plain meaning of Section 4.2 as set forth above is proper.

22 IV. CONCLUSION.

23 Summary judgment in favor of the Sun on its First Amended Complaint is warranted as a
24 matter of law. There are no material facts in dispute. The 2005 JOA is unambiguous. A plain
25 reading of Section 4.2 directs that each party bear its own editorial costs. Nothing in Section 4.2

26 ///

27 ///

28 ///

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ROTHGERBER

1 or any other part of the 2005 JOA modifies this directive or otherwise permits DR Partners to
2 expense its editorial costs against the 2005 JOA. An Order declaring the parties' rights and
3 obligations in this regard is appropriate.

4 DATED this 10th day of July, 2015.

6 LEWIS ROCA ROTHGERBER LLP

7 BY: /s/ E. Leif Reid

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LEWIS ROCA
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CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b), I certify that I am an employee of
LEWIS ROCA ROTHGERBER LLP, and that on July 10, 2015, I caused the foregoing
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S
DECLARATORY RELIEF ACTION to be served:

— by placing an original or true copy thereof in a sealed envelope placed for
collection and mailing in the United States Mail at Reno, Nevada, postage
prepaid, following ordinary business practices, addressed as follows:

X by electronically filing the foregoing with the Wiznet electronic filing
system, which will send a notice of electronic filing to the following:

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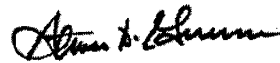
— by placing an original or true copy thereof in a sealed envelope and causing
the same to be personally hand-delivered, addressed as follows:

/s/ Laura J. Heath

Laura J. Heath

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07-15-15P04:34 RCVD

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12 Attorneys for Defendant
13 DR Partners d/b/a Stephens
14 Media Group

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 **LAS VEGAS SUN, INC., a Nevada**
18 **Corporation,**
19 **Plaintiff,**
20 **vs.**

21 **DR PARTNERS, a Nevada General**
22 **Partnership, d/b/a STEPHENS**
23 **MEDIA GROUP; DOES 1-X,**
24 **inclusive,**

25 **Defendants.**

) **Case No.: A-15-715008-B**
) **Dept. No.: XI**

) **MOTION TO STAY**
) **AND**
) **APPLICATION FOR ORDER**
) **SHORTENING TIME AND**
) **ORDER SHORTENING TIME**

) **DATE:**
) **TIME:**

26 Defendant DR Partners d/b/a Stephens Media Group
27 ("Stephens Media") hereby moves the Court to stay these proceedings,
28 including briefing on Las Vegas Sun Inc.'s Motion for Summary Judgment,
including after the Court renders a final decision on Stephens Media's Renewed
Motion to Compel Arbitration. This Motion is based on NRS 38.221(6), the

1 papers and pleadings on file, the following points and authorities, and any
2 oral argument the Court may allow.

3 MORRIS LAW GROUP

4
5 By: 

6 Steve Morris, Bar No. 1543
7 Akke Levin, Bar No. 9102
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9 300 South Fourth Street
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11 Attorneys for Defendant
12 DR Partners d/b/a Stephens
13 Media Group

14 **DECLARATION OF AKKE LEVIN IN SUPPORT OF**
15 **APPLICATION FOR ORDER SHORTENING TIME**

16 I, Akke Levin, declare as follows:

17 1. I am an attorney with Morris Law Group. I have personal
18 knowledge of the facts stated in this declaration. I would be competent to
19 testify to them if called upon to do so.

20 2. On July 10, 2015, Stephens Media filed its Renewed
21 Motion to Compel Arbitration ("Renewed MTC") of Las Vegas Sun's claim
22 for Declaratory Relief. That same day, Las Vegas Sun filed a Motion for
23 Summary Judgment ("MSJ") on its claim for Declaratory Relief. Both
24 motions are currently set for hearing on August 11, 2015.

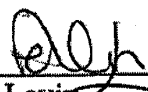
25 3. Good cause exists for shortening the time for hearing on
26 this Motion to Stay. Stephens Media's opposition to the MSJ is due July 27,
27 2015. If this Motion to Stay is set on the regular calendar, Stephens Media
28 would be required to file an opposition to the MSJ before the Court has
heard argument or entered a final decision on the Renewed MTC. The
purpose of Stephens Media's Renewed MTC would be defeated if Stephens

1 Media were required to simultaneously defend itself against the merits of
2 the Sun's claim in Court.

3 4. This Motion to Stay is brought in good faith and not to
4 unduly delay the proceedings.

5 I declare under penalty of perjury under the laws of the State of
6 Nevada that the foregoing is true and correct.

7 Executed on the 15th day of July, 2015

8 
9 _____
10 Akke Levin

11 **ORDER SHORTENING TIME**

12 Upon application of counsel and good cause appearing,

13 IT IS HEREBY ORDERED that the hearing on this Motion to


14 Stay is shortened to 23rd July, 2015 at 5³⁰ a.m./p.m.

15 Dated: July 16th, 2015.

16 
17 _____
18 Elizabeth Gonzalez
19 District Judge

20 Submitted by:

21 MORRIS LAW GROUP

22 By: 
23 Steve Morris, Bar No. 1543
24 Akke Levin, Bar No. 9102
25 900 Bank of America Plaza
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27 Las Vegas, Nevada 89101

28 Attorneys for Defendant
DR Partners d/b/a Stephens
Media Group

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Las Vegas Sun filed its Motion for Summary Judgment ("MSJ") on the same day Stephens Media, in response to the Sun's first amended complaint, filed its Renewed Motion to Compel Arbitration ("Renewed MTC"). The Court should stay proceedings on the MSJ, including briefing on the Sun's premature MSJ, until after the Court enters a final decision on Stephens Media's Renewed MTC, because: (1) NRS 38.221(6) mandates a stay; (2) Stephens Media should not be exposed to a waiver of its right to arbitrate by opposing the Sun's MSJ; and (3) the MSJ makes clear that the Sun does not merely seek to litigate the meaning of Section 4.2, but asks the Court to interpret Appendix D of the JOA and decide issues clearly reserved for the arbitrator.

II. ARGUMENT

A. The Uniform Arbitration Act Requires the Court to Stay the Proceedings Pending Final Decision of Stephens Media's Renewed Motion to Compel Arbitration.

"If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section." NRS 38.221(6) (emphasis added). This statutory, mandatory stay pending the outcome of a motion to compel arbitration conveys Nevada's strong public policy in favor of arbitration: It avoids that a party seeking to compel arbitration is deprived of the bargained-for benefits of arbitration by having to defend itself against the claims in court. *See DR Horton, Inc. v. Green*, 120 Nev. 549, 96 P.3d 1159, 1162 (2004) ("Strong public policy favors arbitration because arbitration generally avoids the higher costs and longer time periods associated with

1 traditional litigation"); cf. *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251,
2 89 P.3d 36, 39 (2004) ("The object of an appeal [from an order denying a
3 motion to compel arbitration] is to enforce the arbitration agreement and
4 attain the bargained-for benefits of arbitration. . . . because the object of an
5 appeal seeking to compel arbitration will likely be defeated if a stay is
6 denied, a stay is generally warranted"). A stay avoids that a party seeking
7 arbitration has to "sequentially proceed in both judicial and arbitral
8 forums." *McCrea*, 89 P.3d at 39.

9 Here, the Court must stay the judicial proceedings pending the
10 final outcome of Stephens Media's Renewed MTC. In the absence of a stay,
11 Stephens Media would lose the benefits of the arbitration it bargained for:
12 It would have to defend against Las Vegas Sun's Declaratory Relief claim in
13 Court *before* a final decision on its Renewed MTC, including by
14 immediately preparing and filing an Opposition to Las Vegas Sun's MSJ.

15 **B. A Stay is Warranted.**

16 Even assuming a stay were not mandatory, it is warranted
17 under the circumstances of this case. Stephens Media now faces a
18 Hobson's choice: If it files an Opposition to the MSJ, it risks a waiver of its
19 right to arbitrate. "[A] waiver may be shown when the party seeking to
20 arbitrate (1) knew of his right to arbitrate, (2) acted inconsistently with that
21 right, and (3) prejudiced the other party by his inconsistent acts." *Nevada*
22 *Gold & Casinos, Inc. v. American Heritage, Inc.*, 121 Nev. 84, 90, 110 P.3d 481,
23 485 (2005). Although the filing of an answer is not tantamount to a waiver
24 and prejudice to the other side is the main consideration, *Cnty. of Clark v.*
25 *Blanchard Constr. Co.*, 98 Nev. 488, 653 P.2d 1217, 1219 n.2 (1982), a party
26 may show prejudice when the parties "litigate *substantial issues on the merits*,
27 or [] when compelling arbitration would require a duplication of efforts."
28 *Nevada Gold & Casinos*, 121 Nev. at 90, 110 P.3d at 485 (emphasis added).

1 Conversely, if Stephens Media does not file an Opposition to
2 the MSJ and does not ultimately prevail on its Renewed MTC, it risks entry
3 of summary judgment on the merits against it. Nev. R. Civ. P. 56 (e).
4 Stephens Media should not be put in a position where it has no choice but
5 to file an opposition to the MSJ to preserve its rights and defenses and
6 prevent a judgment against it, yet simultaneously risk its right to seek
7 arbitration.

8 **C. Las Vegas Sun's MSJ Supports a Stay Pending Final Decision**
9 **on Stephens Media's Renewed MTC.**

10 Las Vegas Sun's MSJ makes clear that it seeks declaratory relief
11 on an arbitrable issue. Las Vegas Sun does not merely ask the Court to
12 interpret Section 4.2 of the JOA; it expressly asks the Court to interpret
13 Appendix D—which governs the calculation of EBITDA—and declare that
14 Stephens Media is not permitted to deduct its editorial costs in calculating
15 EBITDA under Appendix D of the JOA:

16 Ignoring Section 4.2's clear language and permitting DR
17 Partners to unilaterally deduct its news and editorial expenses
18 as chargeable to the 2005 JOA nullifies Section 4.2 and forces the
19 Sun to underwrite a portion of DR Partners' news and editorial
20 expenses. . . .

21 Indeed, the issue before this Court whether Section 4.2 directs
22 the parties to bear their own editorial fees in all respects, which
23 necessarily includes rejecting DR Partners' position that Section
24 4.2 allows DR Partners to include its editorial costs as a
25 chargeable expense and proper input to the EBITDA/2004
Retention formula.

26 Nothing in Section 4.2 or any other part of the 2005 JOA
27 modifies this directive or otherwise permits DR Partners to
28 expense its editorial costs against the 2005 JOA.

MSJ at 3; *id.* at 7 n.1; *id.* at 9-10 (emphasis added).

 As Stephens Media pointed out in its Renewed MTC, the Court
cannot interpret Appendix D without treading on territory reserved for the

1 arbitrator. To "reject" Stephens Media's "position that Section 4.2 allows [it]
2 to include its editorial costs as a chargeable expense and proper input to
3 the EBITDA/2004 Retention formula," the Court would have to engage in a
4 comprehensive accounting analysis under Appendix D and thereby
5 displace the arbitrator's role and exclusive jurisdiction. Thus, the Sun's MSJ
6 only confirms Stephens Media's arguments in its Renewed MTC and
7 further supports staying these proceedings.

8 III. CONCLUSION

9 For the three reasons stated above, the Court should stay the
10 proceedings pending final decision of Stephens Media's Renewed Motion
11 to Compel Arbitration.

12 MORRIS LAW GROUP

13
14 By: 

15 Steve Morris, Bar No. 1543
16 Akke Levin, Bar No. 9102
17 900 Bank of America Plaza
18 300 South Fourth Street
19 Las Vegas, Nevada 89101

20 Attorneys for Defendant
21 DR Partners d/b/a Stephens
22 Media Group
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I caused the following documents to be served via the Court's Odyssey E-Filing system: **MOTION TO STAY AND APPLICATION FOR ORDER SHORTENING TIME AND ORDER SHORTENING TIME**. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

TO:

Lewis Roca Rothgerber LLP

Leif Reid lreid@lrrlaw.com

Kristen Martini kmartini@lrrlaw.com

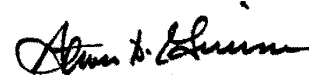
Moran Brandon Bendavid Moran

John Moran john.moran@moranlawfirm.com

Jeffrey Bendavid j.bendavid@moranlawfirm.com

Dated this 17th day of July, 2015.

By: 



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

LAS VEGAS SUN, INC.

Plaintiff

vs.

DR PARTNERS

Defendant

CASE NO. A-715008

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON DEFENDANT'S MOTION TO STAY

THURSDAY, JULY 23, 2015

APPEARANCES:

FOR THE PLAINTIFF:

LEIF REID, ESQ.
KRISTEN MARTINI, ESQ.

FOR THE DEFENDANT:

AKKE LEVIN, ESQ.

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, THURSDAY, JULY 23, 2015, 9:02 A.M.

2 (Court was called to order)

3 THE COURT: That takes me to Las Vegas Sun versus DR
4 Partners.

5 MR. REID: Leif Reid and Kristen Martini from Lewis
6 and Roca on behalf of the Sun. Mr. [inaudible].

7 THE COURT: 'Morning.

8 MS. LEVIN: Good morning, Your Honor. Akke Levin on
9 behalf of Stephens Media.

10 THE COURT: Before you argue let me tell you what
11 I'm inclined to do because of the procedural issues. I'm
12 inclined to move the summary judgment a week and do the motion
13 to compel arbitration and then a week later do the motion for
14 summary judgment. And the reason I'm inclined to do that is
15 they're slightly different issues, and technically I have to
16 make the determination on the compel arbitration before I hear
17 argument on the summary judgment. So I want to hear them on
18 different days. So is a week enough for you guys?

19 MR. REID: It is. The issue we would have with
20 that, just --

21 THE COURT: Well, you know what they're going to do.
22 They're going to then file an appeal, because they're entitled
23 to file an appeal to a denial of a motion to compel
24 arbitration. They could have already filed an appeal on the
25 other part of the denial of the arbitration if they wanted to.

1 And then they're going to ask me to stay, and if I don't grant
2 the stay, then they're going to ask the Nevada Supreme Court
3 to stay. I know what they're going to do, you know what
4 they're going to do. But I've got to go through the process I
5 have to follow.

6 MR. REID: Well, I understand that. I guess the --
7 our preference would be because this issues been argued -- the
8 arbitrability issue has been argued really twice before you
9 already and in order to avoid having a delay in having the --

10 THE COURT: I think you just need to recognize
11 there's going to be a delay. Because they're going to do it.

12 MR. REID: I understand that. But as currently
13 scheduled both issues, to the extent that both motions -- an
14 appeal arises from both motions, that there not be a stay that
15 prevents the determination of that issue.

16 I would also tell the Court that if our motion is
17 decided, we wouldn't object to the dispute being sent to
18 arbitration. So --

19 THE COURT: Okay. So here's what we're going to do.
20 I'm going to separate them by -- you can pick to have them
21 separated by the next hearing date or a week. I suggest a
22 week, because that just gives me time to read anything if you
23 file any supplemental briefs after the motion. And then
24 something's going to happen and as a result of that thing
25 happening you're going to go to the Supreme Court settlement

1 conference program and somebody's going to talk to you about
2 stuff. And that's, unfortunately, the reality of what happens
3 when I have a motion to compel arbitration. And it happens
4 all the time.

5 MS. LEVIN: Your Honor, if I may. I'm not sure if a
6 week is going to be enough --

7 THE COURT: I'm not giving any more than a week.

8 MS. LEVIN: Okay. Well, I just think it's important
9 to recall the record here, what we have.

10 THE COURT: I know what the record is.

11 MS. LEVIN: And the Court ordered initially
12 arbitration, and then we have an order --

13 THE COURT: No, I didn't. I granted your motion as
14 the complaint was currently framed and told them they had the
15 right to amend.

16 MS. LEVIN: Correct.

17 THE COURT: They amended, and then I -- there was a
18 -- you opposed the motion to amend. I wrote on the motion to
19 amend that as they had currently pled it they did not get into
20 the arbitrability. But I understand that's not an appealable
21 order --

22 MS. LEVIN: Correct.

23 THE COURT: -- so you have to go to the motion to
24 compel for me to then say something then. And then you can
25 ask me for a stay. But I'm not going to move the summary

1 judgment out.

2 Anything else? I want it fully briefed before you
3 guys go up there.

4 MR. REID: I would suggest -- because looking at the
5 statute 30A, the statute they rely on, because the Court has
6 already decided that as pled -- as the Court just said, as
7 pled the issue doesn't implicate the arbitration provision --
8 that instead of delaying the decision on the summary judgment
9 motion that the decision be delayed on the renewed motion to
10 compel, that that be stayed until after the summary judgment
11 is heard.

12 THE COURT: Okay. So what we're going to do is on
13 August 18th I'm going to hear the renewed motion to compel
14 arbitration. On August 25th I'm going to hear the motion for
15 summary judgment.

16 MS. LEVIN: Your Honor, can I just for clarification
17 purposes -- even when the hearing is moved out we still would
18 have to file an opposition to motion for summary judgment --

19 THE COURT: Absolutely.

20 MS. LEVIN: -- on Monday.

21 THE COURT: Absolutely.

22 MS. LEVIN: Well, but, Your Honor, here's the
23 problem. And this is what we're trying to say in our brief.
24 What the motion for summary judgment does --

25 THE COURT: You just need to say what your position

1 is. And you can't take two positions and talk out of both
2 sides of your mouth depending on how I rule on the motion to
3 compel.

4 MS. LEVIN: We will not, Your Honor.

5 THE COURT: Because you know what I'm going to rule
6 on the motion to compel, because I've already said.

7 MS. LEVIN: Well, then we would have to force --
8 then we'd be forced to seek a mandamus --

9 THE COURT: I want you to file your opposition
10 before I decide the motion the compel arbitration so your
11 position is clear in the record when you go up to the Nevada
12 Supreme Court and see the settlement conference program up
13 there.

14 MS. LEVIN: Okay.

15 THE COURT: Okay. Anything else? Separate them a
16 week.

17 MR. REID: Thank you.

18 MS. LEVIN: Thank you, Your Honor.

19 THE COURT: Uh-huh. Have a nice day.

20 THE PROCEEDINGS CONCLUDED AT 9:08 A.M.

21 * * * * *

22

23

24

25

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.

FLORENCE HOYT
Las Vegas, Nevada 89146


FLORENCE M. HOYT, TRANSCRIBER

9/18/15

DATE

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REGISTER OF ACTIONS

CASE NO. A-15-715008-B

Las Vegas Sun Inc, Plaintiff(s) vs. DR Partners, Defendant(s) §
§
§
§
§
§
§

Case Type: **Other Business Court Matters**
Date Filed: **03/10/2015**
Location: **Department 11**
Cross-Reference Case Number: **A715008**
Supreme Court No.: **68700**

PARTY INFORMATION

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As Stephens Media Group

Lead Attorneys
Steve L. Morris
Retained
7024749400(W)

Plaintiff **Las Vegas Sun Inc**

Leif Reid
Retained
7027845631(W)

EVENTS & ORDERS OF THE COURT

07/23/2015 **Motion to Stay (8:30 AM)** (Judicial Officer Gonzalez, Elizabeth)

Defendant's Motion to Stay and Application for Order Shortening Time and Order Shortening Time

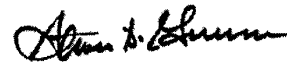
Minutes

07/23/2015 8:30 AM

- Also present: Brian Greenspun, Client Representative for the Plaintiff. Following discussion on procedural issue, COURT ORDERED, Renewed Motion to Compel Arbitration will REMAIN on August 18, 2015, and Plaintiff's Motion for Summary Judgment on Plaintiff's Declaratory Relief Action RESET one week out on August 25, 2015. Counsel for Defendant PERMITTED to file an opposition even though the hearing has been moved out and DIRECTED to do so before the Court decides on the motion to compel arbitration.

Parties Present

[Return to Register of Actions](#)


CLERK OF THE COURT

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Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LAS VEGAS SUN, INC., a Nevada
Corporation,

Plaintiff,

vs.

DR PARTNERS, a Nevada General
Partnership, d/b/a STEPHENS MEDIA
GROUP; DOES I-X, inclusive,

Defendants.

CASE NO.: A-15-715008-B

DEPT.: XI

**OPPOSITION TO DR PARTNERS'
RENEWED MOTION TO COMPEL
ARBITRATION**

Hearing Date: August 18, 2015
Hearing Time: 8:30 a.m.

Plaintiff Las Vegas Sun, Inc. ("the Sun"), opposes Defendant DR Partners' Renewed Motion to Compel Arbitration ("Renewed Motion") as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

On June 19, 2015, this Court ruled on the Sun's motion for leave to amend its Complaint. In its ruling, this Court expressly concluded that the instant dispute is not arbitrable:

Here, allowing Plaintiff Las Vegas Sun, Inc., to file its First Amended Complaint would not be futile. The proposed First

1 Amended Complaint sets forth a controversy as to the meaning of
2 Section 4.2 of the parties' Amended and Restated Joint Operating
3 Agreement ("JOA"). Plaintiff Las Vegas Sun, Inc.'s, claim for
4 declaratory relief alleged in its proposed First Amended
Complaint does not implicate the arbitration provision
contained in Appendix D of the JOA.

5 Order Gr. Pltf.'s Mot. for Leave to File First Am. Compl. 2 (June 19, 2015) ("Order") (emphasis
6 added). Nonetheless, DR Partners now asks this Court to reconsider its ruling and hold the
7 opposite; that is, that the dispute raised in the Sun's First Amended Complaint is subject to the
8 arbitration provision contained in Appendix D of the JOA. *See generally* Renewed Mot. DR
9 Partners has formally reasserted this already-determined position for the sole purpose of obtaining
10 an immediately appealable order. DR Partners is trying to take advantage of every opportunity to
11 delay these proceedings. The ancient and oft-quoted legal maxim, "justice delayed, justice
12 denied," appropriately characterizes DR Partners' motivation.

13 Importantly, DR Partners' Renewed Motion contains improper reargument and is devoid of
14 any valid rationale supporting its request. Once again, DR Partners attempts to persuade this Court
15 that this action is really a "financial dispute" having nothing to do with Section 4.2, which requires
16 this Court to engage in extensive and comprehensive accounting analyses appropriate for a
17 certified public accountant-arbitrator.¹ *See generally* Renewed Mot. In fact, DR Partners has gone
18 so far as to assert that the Sun "wants the Court to declare as a matter of law, that it has been
19 underpaid several million dollars in annual profits since 2005." *Id.* at 3. The most cursory review
20 of the Sun's First Amended Complaint reveals the hollowness of these assertions. *See generally*
21 First Am. Compl. Nowhere does the Sun request an award of monetary damages in its First
22 Amended Complaint. DR Partners' Renewed Motion contains several such leaping and
23 unsubstantiated assertions.

24
25
26 ¹ DR Partners twice questions why the Sun "couldn't [] ask the arbitrator to confirm its reading [of
27 Section 4.2] during the arbitration process," if Section 4.2 is "explicit" and its language "plain."
28 Renewed Mot. 3, 8. DR Partners' knows better than to question why a party would not agree to
subject a dispute to arbitration that it never agreed to arbitrate, particularly in this instance. The
appropriate question is why DR Partners is so tirelessly attempting to avoid a judicial declaration on
the meaning of Section 4.2, an issue of law appropriate for this Court to decide. Then again, the
answer to that question, too, is clear as discussed in this opposition.

1 Importantly, this dispute has not changed. Regardless of how DR Partners creatively
2 stretches the facts to argue otherwise, this dispute still falls outside the arbitration provision
3 contained in Appendix D of the JOA. DR Partners' Renewed Motion must be denied.

4 **L. STANDARD GOVERNING MOTIONS TO COMPEL ARBITRATION.**

5 As this Court is already aware, whether this dispute is subject to arbitration is an issue of
6 contract interpretation. *Clark Co. Pub. Employees v. Pearson*, 106 Nev. 587, 590, 798 P.2d 136,
7 137 (1990). Because the arbitration provision in this case is a product of the JOA, "its legal basis
8 depends entirely upon th[at] particular contract," as agreed to by the parties. See *City of Reno v.*
9 *IAFF, Local 731*, 130 Nev. Adv. Op. 100, ___, 340 P.3d 589, 593 (Dec. 31, 2014) (internal
10 quotations and citation omitted). When interpreting the arbitration provision, this Court must
11 construe it from the written language, as a whole, and enforce it as written. See *State ex rel. Masto*
12 *v. Second Judicial Dist. Ct.*, 125 Nev. 37, 44, 199 P.3d 828, 832 (2009).

13 While DR Partners enjoys reasserting the proposition that any doubts of arbitrability should
14 be resolved in favor of arbitration, see Renewed Mot. 4, the law is equally settled that arbitration
15 provisions "must not be so broadly construed as to encompass claims and parties that were not
16 intended by the original contract." *Truck Ins. Exch. v. Palmer J. Swanson, Inc.*, 124 Nev. 629,
17 634, 189 P.3d 656, 660 (2008) (quoting *Thomson-CSF, S.A. v. Am. Arbitration Ass'n*, 64 F.3d 773,
18 776 (2d Cir. 1995)). This is particularly true when, as here, the arbitration provision is narrow and
19 not all-encompassing. "[A] party cannot be required to submit to arbitration any dispute which he
20 has not agreed so to submit." *City of Reno*, 130 Nev. Adv. Op. at ___, 340 P.3d at 593 (quoting
21 *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 648 (1986)). Despite DR Partners'
22 several inferences to the contrary, the existence of an arbitration provision in a contract does not
23 mean that every dispute between the contracting parties is arbitrable. See *id.*

24 Indeed, the instant dispute is not arbitrable. This Court has already held that this dispute is
25 not subject to the arbitration provision contained in Appendix D of the JOA. This Court's holding
26 was well-reasoned and should stand as correct. DR Partners' Renewed Motion fails to
27 demonstrate otherwise. For these reasons, discussed further below, DR Partners' Renewed
28 Motion should be denied.

1 **II. THIS DISPUTE DOES NOT FALL WITHIN THE PURVIEW OF THE**
2 **ARBITRATION PROVISION CONTAINED IN APPENDIX D OF THE JOA.**

3 In its Renewed Motion, DR Partners' quotes the following language as what it contends is
4 the "relevant part" of the arbitration provision contained in Appendix D of the JOA:

5 If . . . there is a dispute between Sun and the Review-Journal as to
6 amounts owed to Sun and they are not able to resolve the dispute
7 within 30 days, they shall select a certified public accountant to
8 arbitrate the dispute. The arbitration shall be conducted according
9 to the commercial arbitration rules of the American Arbitration
Association ["AAA"], including such rules for the selection of a
single arbitrator if Sun and Review-Journal are not able to agree
upon an arbitrator.

10 Renewed Mot. 5 (ellipses and alteration in original) (quoting First Am Compl. Ex. 2 at 20). From
11 this language alone, DR Partners posits these three conclusions: (1) "the arbitration clause covers
12 all disputes about the Las Vegas Sun's compensation; not just factual disputes about the
13 calculation of the amounts owed"; (2) "[n]othing in the arbitration clause limits the arbitrator to
14 entering a monetary award, as the Sun mistakenly contends"; and (3) the parties did not intend to
15 leave legal issues relevant to compensation disputes to the Court because they otherwise "could
16 have done so as [the parties did] in *Countrywide Home Loans, Inc. v. Mortg. Guar. Ins. Corp.*" *Id.*
17 Good reasons exist as to why DR Partners fails to offer any analysis in support of these summary
18 conclusions. *See generally id.* The good reasons are gleaned from the plain language of the
19 arbitration provision, when properly viewed in total.

20 The following quotation includes all of the pertinent portions of the arbitration provision
21 (which DR Partners fails to address and deliberately omits in its recitation of the provision):

22 The Sun shall have the right, exercisable not more than once every
23 twelve months and after providing written notification no less than
24 thirty days prior thereto, to appoint a certified public accounting
25 firm or law firm as the Sun's representative to examine and audit
26 the books and records of the Review-Journal and other
27 publications whose earnings are included in EBITDA for purposes
28 of verifying the determinations of the changes to the Annual Profit
Payments. . . . If as a result of such audit, there is a dispute
between the Sun and Review-Journal as to amounts owed to Sun
and they are not able to resolve the dispute within 30 days, they
shall select a certified public accountant to arbitrate the dispute.
The arbitration shall be conducted according to the commercial

1 arbitration rules of the American Arbitration Association,
2 including such rules for the selection of a single arbitrator if Sun
3 and Review-Journal are not able to agree upon an arbitrator. . . .
4 The arbitrator shall make an award to Sun in the amount of
5 the arrearage, if any, found to exist, together with interest thereon
6 from the date any arrearage was due until paid at the corporate
7 prime rate as quoted by the Wall Street Journal on the first
8 business day of each month. The arbitrator shall also make an
9 award of fees and costs among the parties in a manner
10 determined by the arbitrator to be reasonable in light of the
11 positions asserted and the determination made.

12 First Am. Compl. Ex. 2 at 19-20 (emphasis added).

13 The fact that the arbitration process was intended by the parties to be contingent on the Sun
14 first auditing the Review-Journal's books and records through its certified public accountant to
15 verify any changes to the Sun's Annual Profit Payment, and then disputing those changes and the
16 amounts owed to the Sun, is conclusive. The arbitration provision is specifically and narrowly
17 tailored to resolve factual, accounting disputes. The arbitration provision precisely states that
18 arbitration is only required for accounting disputes that arise from a formal audit of the Review-
19 Journal's books and records and a dispute as to the amounts owed the Sun. Simply because DR
20 Partners continuously elects to ignore this important language does not nullify its existence or
21 meaning.²

22 Turning DR Partners' bald assertion that "[n]othing in the arbitration clause limits the
23 arbitrator to entering a monetary award," this argument is likewise erroneously premised on DR
24 Partners' selective reading of the arbitration provision. See Renewed Mot. 5. After providing for
25 the rules governing the arbitration process, the parties expressly spelled out what the arbitrator is
26 capable of doing. The parties provided that the arbitrator may make two types of monetary
27 awards: (1) a monetary award to the Sun in the amount of arrearage, if any, plus interest; and (2) a
28 monetary award among the parties for fees and costs. First Am. Compl. Ex. 2 at 20. The "very
reasonable maxim" *expressio unius est exclusio alterius* (the expression of one thing excludes the
other) instructs that the parties' expression of these two forms of monetary relief that the arbitrator

² To the extent that DR Partners will again suggest that an arbitrator—not the Court—must decide if
a condition precedent to arbitrability has been fulfilled, see Reply in Support of Mot. to Compel
Arb. 5, this argument does nothing to change the plain language of the arbitration provision, which
evidences the parties' intent to limit its scope.

1 shall award excludes all other relief that would otherwise generally be available. *See, e.g., Flyge v.*
2 *Flynn*, 63 Nev. 201, 243, 166 P.2d 539, 557 (1946) ("By including in the assignment all the
3 vendor's rights under the contract, and using the language equivalent in meaning to the term
4 'improvements and ranch equipment', that is to say the term 'real and personal property situated
5 on the real property', and omitting the land, the intention to exclude the land is clear.").

6 Had the parties to the JOA intended the arbitrator to have authority to (1) issue binding,
7 declaratory rulings on issues of contract interpretation, which necessarily govern the parties' future
8 conduct; (2) enter a ruling directing specific performance; or (3) provide any other form of relief,
9 they would not have expressly included the provision detailing the arbitrator's authority to enter
10 monetary awards. Such awards would have been implied. Yet, "[t]hat which is expressed makes
11 that which is implied cease." *Flyge*, 63 Nev. at 243, 166 P.2d at 557.

12 This is in contrast to cases relied on by DR Partners—all of which include broad, all-
13 inclusive arbitration provisions. *See generally* Renewed Mot. (citing the following cases: *United*
14 *Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564, 565 & n.1 (1960) (covering "[a]ny disputes,
15 misunderstandings, differences or grievances arising between the parties 'as to the meaning,
16 interpretation and application of the provisions of this [collective bargaining³] agreement'");
17 *Pacificare of Nev., Inc. v. Rogers*, 127 Nev. Adv. Op. 71, ___, 266 P.3d 596, 599 (Oct. 27, 2011)
18 (mandating arbitration for "any and all disputes"); *Countrywide Home Loans, Inc. v. Mortg. Guar.*

19 ³ Every citation to a case concerning a collective bargaining agreement made by DR Partners in its
20 Renewed Motion is not persuasive, as those agreements concern a specific industry standard
21 pertaining to arbitration, which "special heed" is given. *United Steelworkers of Am. v. Am. Mfg.*
22 *Co.*, 363 U.S. 564, 568 (1960); *see generally* Renewed Mot. (citing *id.*; *Int'l Ass'n of Firefighters v.*
City of Las Vegas, 104 Nev. 615, 619, 764 P.2d 478, 480-81 (1988)). The United States Supreme
Court aptly explained,

23 [T]he arbitrators under these collective agreements are
24 indispensable agencies in a continuous collective bargaining
25 process. They sit to settle disputes at the plant level—disputes that
26 require for their solution knowledge of the custom and practices of
27 a particular factory or of a particular industry as reflected in
28 particular agreements. When an arbitrator is commissioned to
interpret and apply the collective bargaining agreement, he is to
bring his informed judgment to bear in order to reach a fair
solution of a problem. This is especially true when it comes to
formulating remedies. There the need is for flexibility in meeting a
wide variety of situations.

United Steelworkers of Am. v. Enter. Wheel & Car Corp., 363 U.S. 593, 596-97 (1960).

1 *Ins. Corp.*, 642 F.3d 849, 851 (9th Cir. 2011) (applying to “all controversies, disputes or other
2 assertions of liability or rights arising out of or relating to this Policy, including the breach,
3 interpretation or construction thereof”); *Nitro-Lift Technologies, L.L.C. v. Howard*, 133 S. Ct. 500,
4 502 (2012) (governing “[a]ny dispute, difference or unresolved question” between the parties); *In*
5 *re Oil Spill by Amoco Cadiz Off Coast of France March 16, 1978*, 659 F.2d 789, 791 (1981)
6 (applicable to “any difference arising out of this Agreement or the operations thereunder”);⁴ and
7 *Phillips v. Parker*, 106 Nev. 415, 416, 794 P.2d 716, 717 (concerning “[a]ny controversy [sic] or
8 claim arising [sic] out of or relating to this agreement, or breach thereof”) (second and third
9 alterations in original)).

10 DR Partners’ argument that the arbitration provision encompasses “all disputes about the
11 Las Vegas Sun’s compensation” also violates another contract interpretation principle. This
12 reading renders the monetary award-directive totally superfluous and meaningless, which is
13 unacceptable. *See, e.g., Musser v. Bank of Amer.*, 114 Nev. 945, 949-50, 964 P.2d 51, 54 (1998)
14 (quoting *Phillips v. Mercer*, 94 Nev. 279, 282, 579 P.2d 174, 176 (1978)) (“A court should not
15 interpret a contract so as to make meaningless its provisions”; “[h]ad the original parties intended
16 section (iii) to have no effect, they would not have included such a provision in the leases. . . . Th[e]
17 contrary] interpretation contradicts the principle discussed above, that contracts should be
18 construed so as to avoid rendering portions of them superfluous.”).

19 Finally, while ignoring the pertinent, limiting language of the arbitration provision, DR
20 Partners attempts to persuade this Court that the parties intended the arbitration clause to be all-
21 encompassing. *See* Renewed Mot. 5. DR Partners asserts that “had [the parties] meant to leave
22 legal issues relevant to compensation to the Court, they could have done so, as in *Countrywide*
23 *Home Loans, Inc. v. Mortg. Guar. Ins. Corp.*” *Id.* DR Partners’ reliance on the *Countrywide* case
24 is unconvincing. In *Countrywide*, the arbitration provision was as broad as possible. Already cited
25 above, it provided that “all controversies, disputes, or other assertions of liability or rights arising
26 out of or relating to” the contract, “including the breach, interpretation or construction thereof,
27

28 ⁴ This case, too, is unpersuasive for similar reasons discussed *supra* note 3, as the arbitration
provision in this case was a standard provision to the industry, and actually included in a standard
industry form, Lloyd’s Standard Form Salvage Agreement.

1 shall be settled by arbitration.” 642 F.3d 849, 851 (9th Cir. 2011). Due to the breadth of the
2 arbitration provision at issue in *Countrywide*—ranging from actual disputes and controversies to
3 mere “assertions of liability or rights” that had any relation to the contract whatsoever (including
4 breach and interpretation thereof)—the parties to that provision were required to carve out any
5 issues that they sought to be heard before a court. *See generally id.* at 850. The arbitration
6 provision in Appendix D of the JOA is simply incomparable to the provision in *Countrywide*.

7 The limited scope of the arbitration provision contained in Appendix D of the JOA
8 establishes that no “carve-out” provision was warranted, let alone necessary. Stated before, the
9 arbitration provision is narrowly tailored to resolve factual, accounting disputes. The arbitrator’s
10 authority to only enter monetary awards to the Sun for arrearages and to the parties for arbitration
11 fees and costs reinforces this proposition. Accordingly, this Court need not “read into the
12 arbitration clause” the parties’ right to seek declaratory relief as to the meaning of Section 4.2, *see*
13 *Renewed Mot. 5*, as it already excludes that right.

14 In no event can the arbitration provision in Appendix D of the JOA be construed as broadly
15 as DR Partners desires. The plain language of the arbitration provision, reading it in its entirety,
16 establishes that the provision does not encompass the instant dispute. DR Partners’ *Renewed*
17 *Motion* must be denied.

18 **III. THE SUN HAS NOT “FRAMED” ITS FIRST AMENDED COMPLAINT TO**
19 **AVOID THE ARBITRATION PROVISION.**

20 DR Partners argues that the Sun has artfully pleaded its declaratory relief action in an effort
21 to avoid the arbitration provision of Appendix D to the JOA. *Renewed Mot. 6-9*. DR Partners
22 recycles its prior argument made in Opposition to Plaintiff’s Motion for Leave to File First
23 Amended Complaint on Order Shortening Time. *Compare id.* at 8-9 with Def.’s Opp’n to Pltf.’s
24 Mot. for Leave to File First Am. Compl. on Order Shortening Time (“Def.’s Opp’n to Mot. for
25 Leave”). Besides that this dispute does not fall within the limited arbitration provision contained
26 in Appendix D of the JOA, *see discussion supra* § II, DR Partners’ argument has already been
27 rejected by this Court and remains meritless.
28

1 As stated before, on June 19, 2015, this Court entered its Order rejecting the very
2 arguments that DR Partners' presents in its Renewed Motion. *See* Order 2. In its opposition to the
3 Sun's motion for leave to amend, DR Partners recited the very same authority and analysis that it
4 presents in its Renewed Motion. *Compare* Def.'s Opp'n to Mot. for Leave with Renewed Mot. 6-
5 9. More precisely, DR Partners argued that leave to amend should have been denied for futility
6 because the dispute was subject to the arbitration provision contained in Appendix D. Def.'s
7 Opp'n to Mot. for Leave 3-7. This Court disagreed. Order 2. This Court held that "allowing
8 Plaintiff Las Vegas Sun, Inc., to file its First Amended Complaint would not be futile because
9 Plaintiff Las Vegas Sun, Inc.'s, claim for declaratory relief alleged in its proposed First Amended
10 Complaint does not implicate the arbitration provision contained in Appendix D of the JOA." *Id.*
11 DR Partners presents nothing new in its Renewed Motion. Its request fails again.

12 In any event, addressing DR Partners' contention that the "Court cannot declare the parties'
13 rights under the JOA without considering Appendix D and engaging in an accounting analysis,"
14 *see* Renewed Mot. 7-10, DR Partners is wrong. In support of its position, DR Partners states that
15 "Section 4.2—if it must be considered at all—must be read in context with the compensation terms
16 of Appendix D of the JOA," which, according to DR Partners, renders the dispute arbitrable. *Id.* at
17 8.

18 As the Sun asserted in its summary judgment motion, Section 4.2 is clear and
19 unambiguous, and the JOA must be enforced according to its plain meaning. *See* Pltf.'s Mot. for
20 Summ. J. on Pltf.'s Decl. Relief. Action 2. This requires that a judicial declaration that the parties
21 are obligated to bear their own editorial costs, without qualification or exception. *Id.* From the
22 inception of this dispute, however, DR Partners has insinuated that Section 4.2 is ambiguous, and
23 that its language does not mean that DR Partners cannot charge its editorial expenses against the
24 JOA. *See, e.g.,* Tr. at 5:22-6:22; Def.'s Opp'n to Mot. for Leave 6-7. In support of its
25 unreasonable reading of Section 4.2, DR Partners has attempted to find support in Appendix D. As
26 a result, DR Partners uses its reliance on Appendix D to attempt to squeeze this dispute into the
27 limited confines of the arbitration provision. But, the only connection that the instant dispute has
28

1 with the arbitration provision in Appendix D is DR Partners' unreasonable and unsupportable
2 position stating so. The asserted link is disjointed at best.

3 The Sun's First Amended Complaint was not made under any misleading guise. No artful
4 pleading or inappropriate "framing" of claims has occurred here. This Court can, and
5 appropriately should, decide the plain meaning of Section 4.2 without partaking in any accounting
6 analysis whatsoever. DR Partners' suggestion that this Court cannot declare the parties' rights
7 under Section 4.2 without doing so is self-serving and false. *See* Renewed Mot. 7, 8. DR Partners'
8 renewed request for arbitration fails.

9 **IV. DENIAL OF DR PARTNERS' RENEWED MOTION IS WARRANTED.**

10 DR Partners' repeated assertion that the arbitration provision contained in Appendix D of
11 the JOA is all-encompassing for every issue regarding compensation renders substantial,
12 governing portions of the provision superfluous and without meaning. Universally-accepted tenets
13 of contract interpretation, and the parties' clear, expressed intentions, do not permit such a result.
14 DR Partners' request for relief in its Renewed Motion has already been rejected by this Court and
15 DR Partners does not articulate any viable reason for reconsideration. This declaratory relief
16 action is not subject to arbitration. DR Partners' Renewed Motion must be denied.

17 DATED this 29th day of July, 2015.

18 LEWIS ROCA ROTHGERBER LLP

19 BY: /s/ E. Leif Reid

20 E. LEIF REID
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CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b), I certify that I am an employee of LEWIS ROCA ROTHGERBER LLP, and that on July 29, 2015, I caused the foregoing **OPPOSITION TO DR PARTNERS' RENEWED MOTION TO COMPEL ARBITRATION** to be served:

— by placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail at Reno, Nevada, postage prepaid, following ordinary business practices, addressed as follows:

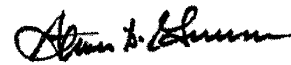
X by electronically filing the foregoing with the Wiznet electronic filing system, which will send a notice of electronic filing to the following:

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— by placing an original or true copy thereof in a sealed envelope and causing the same to be personally hand-delivered, addressed as follows:

/s/ Autumn McDannald
An Employee of Lewis Roca Rothgerber LLP


CLERK OF THE COURT

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13 DR Partners d/b/a Stephens
14 Media Group

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 LAS VEGAS SUN, INC., a Nevada	) Case No.: A-15-715008-B
18 Corporation,	) Dept. No.: XI
19 Plaintiff,)
20 vs.	) REPLY IN SUPPORT OF
21	) RENEWED MOTION TO
22 DR PARTNERS, a Nevada General	) COMPEL ARBITRATION
23 Partnership, d/b/a STEPHENS)
24 MEDIA GROUP; DOES 1-X,	) DATE: August 18, 2015
25 inclusive,	) TIME: 8:30 a.m.
26)
27 Defendants.)

28 **I. INTRODUCTION**

29 The Sun's Motion for Summary Judgment ("MSJ") demonstrates
30 that Stephens Media was right in renewing its Motion to Compel
31 Arbitration: the Sun's claim for declaratory relief goes beyond the meaning
32 of Section 4.2 of the JOA and squarely implicates the parties' arbitration
33 agreement. The Sun admits that "the issue before this Court whether
34 Section 4.2 directs the parties to bear their own editorial fees in all respects

1 ... necessarily includes rejecting DR Partners' position that Section 4.2
2 allows DR Partners to include its editorial costs as a chargeable expense
3 and proper input to the EBITDA/2004 Retention formula." MSJ at 7 n.1
4 (emphasis added). In other words, the Sun seeks a declaration that
5 Stephens Media cannot deduct its editorial costs as an expense in
6 calculating EBITDA. But this requires an interpretation of Appendix D—
7 not Section 4.2—and the "2004 Retention Formula," which in turn requires
8 an accounting analysis the parties agreed to submit to an arbitrator.

9 Of course the Sun does not seek damages in its First Amended
10 Complaint. It carefully avoids doing so to avoid arbitration. But a
11 declaration that Stephens Media cannot deduct its editorial costs in
12 calculating EBITDA—based solely on Section 4.2 of the JOA—in disregard
13 of Appendix D (in which EBITDA appears) that provides express directives
14 as to this calculation is no different than a declaration that the Sun was
15 underpaid and is entitled to damages. The "arbitration" would be reduced
16 to calculating the amount of the Sun's alleged damages instead of deciding
17 whether the Sun is owed damages in the first place. This is not what the
18 Sun bargained for, and it is too late to back out of that bargain now.

19 The Sun should be compelled to arbitrate this compensation
20 dispute and should not be indulged in its mission to avoid arbitration. The
21 "meaning" of Section 4.2 is a false issue that is unrelated to the Sun's
22 compensation under Appendix D of the JOA.

23 II. ARGUMENT

24 "In Nevada, disputes concerning the arbitrability of a subject
25 matter are resolved *under a presumption in favor of arbitration.*" *City of Reno v.*
26 *IAFF, LOCAL 731*, 130 Nev. Adv. Op. 100, 340 P.3d 589, 593 (2014) (citing
27 *Clark Cnty. Pub. Emps. Ass'n v. Pearson*, 106 Nev. 587, 591, 798 P.2d 136, 138
28 (1990)) (emphasis added); see also *Assoc. Firefighters v. City of Las Vegas*, 104

1 Nev. 615, 618, 764 P.2d 478, 480 (1988) (holding same). This presumption
2 means that courts should "order arbitration of particular grievances *unless*
3 it may be said with *positive assurance* that the arbitration clause is *not*
4 *susceptible of an interpretation that covers the asserted dispute.*" *City of Reno*, 340
5 P.3d at 593 (internal quotation marks and citations omitted) (emphasis
6 added).

7 Thus, while the Sun is correct that it cannot be compelled to
8 arbitrate a dispute it did not agree to arbitrate, Opp'n at 3, any doubts as to
9 the scope of the parties' arbitration clause should be resolved against the
10 Sun in favor of arbitration. The Court should order arbitration of this
11 dispute unless the Court can say "with positive assurance that the
12 arbitration clause is not susceptible of an interpretation that covers the
13 asserted dispute." *City of Reno*, 340 P.3d at 593. This compensation dispute
14 falls squarely within the scope of the arbitration clause in Appendix D.

15 **A. This Compensation Dispute is Subject to Arbitration.**

16 The question whether a dispute is arbitrable is a question of
17 interpretation of the contract. *Int'l Ass'n of Firefighters, Local No. 1285 v.*
18 *City of Las Vegas*, 112 Nev. 1319, 1323, 929 P.2d 954, 956 (1996). In
19 interpreting a contract, courts endeavor "to discern and give effect to the
20 parties' intended meaning." *Galardi v. Naples Polaris, LLC*, 129 Nev. Adv.
21 Op. 33, 301 P.3d 364, 367 (2013). The parties' intent is discerned by looking
22 at the contract *as a whole* and giving effect to *all* contract provisions. *Rd. &*
23 *Highway Builders, LLC v. N. Nev. Rebar, Inc.*, 128 Nev. Adv. Op. 36, 284 P.3d
24 377, 380-81 (2012). Courts have no power to insert or substitute words, or
25 "to engraft on a contract a limitation inconsistent with the apparent object
26 of the parties." *Reno Club v. Young Inv. Co.*, 64 Nev. 312, 324, 182 P.2d 1011,
27 1017 (1947). The Sun's "analysis" of the arbitration clause ignores these
28 established principles of contract interpretation.

1 **1. The Arbitration Clause Covers This Compensation**
2 **Dispute.**

3 The scope of the arbitration clause is not as narrow as the Sun
4 wishes it to be. Although the clause does not cover all disputes arising
5 under the JOA, it covers any unresolved dispute between the Sun and
6 Review Journal about "amounts owed to Sun" under Appendix D. By its
7 terms, the clause is not limited to "factual, accounting disputes," as the Sun
8 contends. Opp'n at 5, 8. Such limiting words are not present in the
9 arbitration agreement and cannot be read into it.

10 This is a dispute about alleged "amounts owed to Sun." The
11 Sun seeks a declaration that Stephens Media is precluded under Section 4.2
12 to deduct its editorial costs in calculating EBITDA because the Sun believes
13 it was underpaid in the past ten years. Although the Sun frames the
14 dispute as one involving the interpretation of Section 4.2, that section is not
15 concerned with the Sun's compensation and the calculation of EBITDA.
16 Appendix D is the *only* place in the JOA that addresses the Sun's
17 compensation. The fact that Appendix D—which is exclusively dedicated
18 to the terms of the Sun's compensation—contains an arbitration clause for
19 disputes about alleged amounts owed to the Sun evidences the parties'
20 clear intent to arbitrate their compensation disputes.

21 **2. The Audit Provision in Appendix D Evidences the**
22 **Parties' Intent to Avoid Protracted Litigation.**

23 The Sun's argument that the parties intended arbitration to be
24 contingent upon the Sun first seeking an audit and thereafter disputing the
25 amounts owed is self-serving, wishful thinking. The audit right is the Sun's
26 *first* remedy: it gives the Sun a yearly right "to examine and audit the books
27 and records of the Review-Journal . . . for purposes of verifying the
28 determinations of the changes to the Annual Profits Payments," JOA at 19-

1 20, which determinations are at the heart of this compensation dispute.
2 The right to audit only underscores the parties' intent to resolve disputes
3 about the Sun's compensation expeditiously outside of Court: Mandatory
4 arbitration before a CPA follows if "as a result of such an audit, there is a
5 dispute . . . as to amounts owed" that the parties are unable to resolve
6 "within 30 days. . . ." *Id.* at 20 (emphasis added). The arbitrator must render
7 a decision "within sixty (60) days of his or her selection" *Id.* (emphasis
8 added). Thus, when read in context with the arbitration clause, the audit is
9 not a condition precedent to arbitration; it is a remedy aimed at avoiding
10 time-consuming litigation.

11 Even assuming *arguendo* that an audit is a condition to
12 arbitration, a party who "voluntarily prevents the occurrence of a condition
13 established for his or her benefit is estopped from seeking relief from a
14 contract on the grounds that the condition precedent to his obligation
15 failed to occur." *NGA # 2 LLC v. Rains*, 113 Nev. 1151, 1160, 946 P.2d 163,
16 169 (1997) (internal quotation marks and citation omitted). In other words,
17 the Sun cannot avoid its arbitration agreement by declining to invoke its
18 right to request an audit. Moreover, the Sun argued previously that a
19 "formal audit of Review-Journal's books and records" was not "necessary to
20 determine whether [Stephens Media] failed to perform under Section 4.2."
21 *Opp'n to Motion to Compel Arbitration*, on file, at 7:19-20. Thus, the Sun
22 has waived its right: (1) to seek an audit; and (2) to invoke the audit as an
23 alleged condition precedent to arbitration.

24 **3. The Arbitration Clause Does Not Limit the Arbitrator to**
25 **Awarding Monetary Relief.**

26 The Sun's "*expressio unius est exclusio alterius*" argument entirely
27 overlooks that the parties *expressly* agreed to arbitrate "according to the
28 commercial arbitration rules of the American Arbitration Association

1 ("AAA") JOA at 20. The AAA commercial rules grant arbitrators
2 authority to make rulings on dispositive issues in the case, AAA
3 Commercial Rule R-33, and as part of an award to "grant any remedy or
4 relief that the arbitrator deems just and equitable and within the scope of
5 the agreement of the parties, including, but not limited to, specific
6 performance of a contract." AAA Commercial Rule R-47(a) ("Scope of
7 Award"); *see also* NRS 38.231(2) (permitting arbitrator to "decide a request
8 for summary disposition of a claim or particular issue . . .").

9 Where, as here, the parties did not foreclose equitable or
10 declaratory relief and agreed to arbitrate under the AAA's commercial
11 rules, nothing precludes the arbitrator from awarding such relief. *Cf. Clark*
12 *County Sch. Dist. v. Rolling Plains*, 117 Nev. 101, 16 P.3d 1079, 1082 (2001)
13 (*"Rolling Plains"*), *disapproved of on other grounds by Sandy Valley Assocs. v.*
14 *Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 955-56 n.7, 35 P.3d 964, 969
15 n.7 (2001), *partially abrogated on other grounds by Horgan v. Felton*, 123 Nev.
16 577, 586, 170 P.3d 982, 988 (2007) (where the parties' contract was silent on
17 consequential damages, the parties contracted to arbitrate under the AAA
18 Rules, and (former) AAA Rule 43 explicitly granted the arbitrator authority
19 to award "just and equitable" damages, an arbitrator's award for attorneys'
20 fees was within the scope of the parties' agreement).¹

21 This does not make the monetary relief provisions of the
22 arbitration clause "superfluous and meaningless," as the Sun contends.

23
24 ¹ Compare (former) AAA Rule 43 ("arbitrator may grant any remedy or
25 relief, including equitable relief, that the arbitrator deems just and
26 equitable and within the scope of the agreement of the parties") (quoted in
27 *Rolling Plains*, 16 P.3d at 1082), with AAA Rule 47(a) ("The arbitrator may
28 grant any remedy or relief that the arbitrator deems just and equitable and
within the scope of the agreement of the parties, including, but not limited
to, specific performance of a contract").

1 Opp'n at 7. Those provisions are mandatory in that the arbitrator "shall"
2 make a monetary award to the Sun and award fees and costs, if warranted.
3 But that does not mean the arbitrator lacks power to make other rulings in
4 the process. See *Rolling Plains*, 16 P.3d at 1082 (parties' failure to "delineate
5 whether attorney fees could be awarded as a measure of damages" coupled
6 with parties' agreement to arbitrate under the AAA Rules did not foreclose
7 such damages). Thus, the "*expressio unius est exclusio alterius*" maxim has no
8 application here whatsoever, and, in any event, it does not alter the
9 meaning of any term in Appendix D.

10 **4. The Parties Did Not Bargain to Leave Legal Issues**
11 **Ancillary to Compensation Disputes to the Court.**

12 The Sun's argument that the powers of the arbitrator are limited
13 due to the limited scope of the arbitration clause is refuted by a case
14 directly on point—*Benson Pump Co. v. South Cent. Pool Supply, Inc.*, 325 F.
15 Supp. 2d 1152 (D. Nev. 2004), which the Sun neglected to mention in its
16 Opposition. In *Benson Pump*, the arbitration clause provided that "disputes
17 concerning the Accounts Receivable Adjustment [of the purchase price]
18 would be taken to an independent auditor for resolution" *Id.* at 1155.
19 Although the arbitration clause was arguably limited in scope, the court
20 held that "the parties bargained to have an independent auditor decide all
21 issues concerning the Accounts Receivable Adjustment, including issues
22 of contract construction." *Id.* (emphasis added).²

23
24
25
26 ² On page 6 of its Opposition, the Sun argues that all cases on which
27 Stephens Media relies involved "broad, all-inclusive arbitration
28 provisions." Opp'n at 6:13-7:9 (citing cases).

1 **B. The Sun Seeks a Declaration of Its Rights Under Appendix D.**

2 It is too late for the Sun to argue that this dispute is confined to
3 the meaning of Section 4.2 of the JOA and does not implicate the arbitration
4 clause; the real dispute is whether the Sun was underpaid under the terms
5 of Appendix D, as the Sun admitted in its initial complaint. Even there,
6 however, the Sun dissembled by mischaracterizing its claim for payment as
7 a claim for "specific performance." At best, Section 4.2 is an ancillary issue
8 to the compensation dispute under Appendix D that the Sun has
9 camouflaged in its First Amended Complaint as an abstract claim for
10 declaratory relief.

11 The Sun's MSJ underscores this effort to obfuscate. The Sun
12 does not merely ask the Court to "interpret" 4.2; it asks the Court to go
13 further and declare that: (1) Section 4.2—which does not address the Sun's
14 compensation—requires Stephens Media to pay its editorial costs, but
15 (2) the editorial costs cannot be considered an expense of doing business to
16 determine EBITDA, which is addressed in Appendix D. *See* MSJ at 7 n.1
17 ("the issue . . . whether Section 4.2 directs the parties to bear their own
18 editorial fees . . . necessarily includes rejecting DR Partners' position that
19 **Section 4.2 allows DR Partners to include its editorial costs as a**
20 **chargeable expense and proper input to the EBITDA/2004 Retention**
21 **formula")** (emphasis added). What's "necessary" about requiring Stephens
22 Media to contribute its editorial expense to the Sun as compensation for the
23 Sun? That would mean Stephens Media pays twice for its editorial costs:
24 once when incurred and again at year end as manna for the Sun.

25 Thus, the Sun's disingenuous argument that Stephens Media is
26 relying on "Appendix D to squeeze this dispute into the limited confines of
27 the arbitration provision," Opp'n at 9, while doubtless comforting to the
28 Sun, asks the Court to rule against reason—as a matter of law—that Section

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1 4.2 requires the R-J to pay its editorial costs twice! The Court cannot
2 reasonably "interpret" Section 4.2 to reach this result.

3 **III. CONCLUSION**

4 For the reasons stated above and those set out in the principal
5 motion, as well as Stephens Media's initial motion to compel arbitration,
6 the Court should stay these proceedings and send this dispute where it
7 belongs—to arbitration.

8
9 MORRIS LAW GROUP

10
11 By: 
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17 Attorneys for Defendant
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19 Media Group
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I caused the following documents to be served via the Court's Odyssey E-Filing system: **REPLY IN SUPPORT OF RENEWED MOTION TO COMPEL ARBITRATION**. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

TO:


Lewis Roca Rothgerber LLP

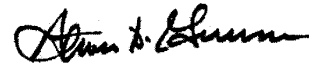
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Dated this 11th day of August, 2015.

By: 



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

LAS VEGAS SUN, INC.

Plaintiff

vs.

DR PARTNERS

Defendant
.....

CASE NO. A-715008

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON DEFENDANT'S RENEWED MOTION TO COMPEL ARBITRATION

TUESDAY, AUGUST 18, 2015

APPEARANCES:

FOR THE PLAINTIFF:

LEIF REID, ESQ.
KRISTEN MARTINI, ESQ.
JEFFREY A. BENDAVID, ESQ.

FOR THE DEFENDANT:

STEVE L. MORRIS, ESQ.
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COURT RECORDER:

JILL HAWKINS
District Court

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FLORENCE HOYT
Las Vegas, Nevada 89146

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1 LAS VEGAS, NEVADA, TUESDAY, AUGUST 18, 2015, 9:17 A.M.

2 (Court was called to order)

3 THE COURT: Good morning.

4 MR. REID: Good morning, Your Honor. For the
5 plaintiff Leif Reid, Kristen Martini, and Jeffrey Bendavid.
6 And Mr. Greenspun is here.

7 THE COURT: 'Morning.

8 Mr. Morris, how are you today?

9 MR. MORRIS: Good morning, Your Honor. I'm fine.
10 I'm here representing Stephens Media.

11 THE COURT: It's your motion.

12 MR. MORRIS: I don't need the 10-minute rule to
13 articulate what I'm about to say.

14 THE COURT: Not this time, huh?

15 MR. MORRIS: That's right. This started as a
16 dispute over compensation. The complaint has been amended,
17 but it continues to be a dispute over compensation. To
18 determine compensation of the Sun on an annual basis requires
19 resort to Appendix D, which has an arbitration clause in it.

20 I can summarize the position we're taking here today
21 by pointing to the Sun's signature allegation. They say in
22 their motion for summary judgment that the issue is whether
23 Section 4.2 directs the parties to bear their own editorial
24 fees, necessarily includes rejecting DR's position that
25 Section 4.2 allows DR partners to include its editorial costs

1 as a chargeable expense and proper input to EBITDA/2004
2 retention formula. What the Sun is contending here, Your
3 Honor, is this. The parties have been in a relationship under
4 that 2005 agreement for 10 years. There have been audits by
5 the Sun during that period of time, and there has been no
6 recognition or contention that editorial costs should now be
7 treated as they ask you to treat them.

8 Here's what the Sun comes to court asking you to do,
9 we want you to take a look at 4.2, which has been in this
10 contract since day one and has not become controversial until
11 today, and rather than send us to arbitration as we ask you to
12 -- or as we were subject to when we filed our first complaint
13 we want to take out of our complaint the allegation that we've
14 been underpaid and we want to come back to court for a
15 declaration a matter of law that if we go to arbitration under
16 Appendix D we will prevail on editorial costs. They want you
17 to rule that as a matter of law. Rather than present that to
18 the arbitrator as they would be required to do and as I
19 suggest to you the law requires, they want you to rule as a
20 matter of law, one, that the R-J paid its editorial expenses
21 as they were incurred; and, two, under 4.2, which doesn't
22 refer to Appendix D in any way, shape, or form, which does not
23 refer to earnings before depreciation, interest, taxes, and
24 assessments, we want you to rule as a matter of rule that the
25 expense that the R-J has incurred to support its Editorial

1 Department may not be considered for tax and compensation
2 purposes in determining under Appendix D what we are owed as a
3 result of operations for the preceding year. That's their
4 position. They want you to just simply step into the shoes of
5 the arbitrator and rule as a matter of law that we do not have
6 to address the R-J paying editorial expenses twice, once when
7 it incurred them and again at the end of the year, when it
8 must give us what it incurred as editorial expense before we
9 got here as compensation.

10 Now, when you look at the papers that underlie the
11 motion for summary judgment, as we have, among other things
12 what you will find is that the parties have been in this
13 relationship, as I mentioned a moment ago, for several years,
14 there have been audits, there's been no contest about 4.2 and
15 the deduction of editorial costs under the 2004 retention
16 formula, none at all, okay; and now over time revenues have
17 decreased for the R-J. The consequence of that is from the
18 time they entered this in 2005, when this really was a
19 different market for media and everything else than it is
20 today, they traded, they traded out the obligation they
21 benefitted by under the pre-2005 joint operating agreement
22 that required the R-J every it spent a dollar for editorial
23 costs to give 65 cents to the Las Vegas Sun. That got traded
24 out and eliminated from the 2005 joint operating agreement
25 which says, as you have seen and is before you, that the

1 parties are to bear their own editorial costs. It doesn't say
2 that 65 cents out of every dollar that the R-J incurs will be
3 paid as reimbursement or as mana, as I describe it in these
4 papers, to the Las Vegas Sun. That's not an issue.

5 What is an issue is whether under the 2005 amended
6 joint operating agreement the Las Vegas Sun is entitled to
7 payment from the R-J for the R-J's payment of its own
8 editorial expenses. And they torture that contention out of
9 the language of 4.2, which says the parties will bear their
10 own editorial expenses. Which they have done. 4.2 does not
11 go further and say, with respect to compensating the Sun at
12 the end of the year what the R-J bears as the editorial
13 expense of its operations on an ongoing basis, as they are
14 incurred, may not be considered in calculating the earnings at
15 year end which then are divided between The Review-Journal and
16 the Las Vegas Sun in accordance with their agreement.

17 If there is an issue here on that, it is not, I
18 submit to you -- and I don't say this as a challenge to you, I
19 say this to you as a matter of law -- it's an issue for the
20 arbitrator. And that is and remains our position. Thank you.

21 THE COURT: Thank you, Mr. Morris.

22 Mr. Reid.

23 MR. REID: This is the fourth time, essentially,
24 we've made this argument to you. I'm not going to go back
25 over all of those points. I think the bulk of what you just

1 heard is more germane to the motion for summary judgment that
2 will be heard next week.

3 Specific to the motion that is before the Court
4 today, this is a renewed motion to compel arbitration.
5 Nothing that has been heard hasn't already been heard. The
6 arguments do not meet the re-hearing standard under the law
7 under the Eighth Judicial District Rule 2.24.

8 The question is --

9 THE COURT: But there's a procedural process that
10 has to happen, and this motion has to be decided before
11 certain other things occur that Mr. Morris is going to do in
12 Carson City.

13 MR. REID: Of course. So in that context the Court
14 has ruled that the amended complaint does not implicate the
15 arbitration provision. There's been nothing presented that
16 hasn't already been heard that should cause the Court to
17 modify its prior order with this regard.

18 Because the Court has found that the amended
19 complaint doesn't implicate the arbitration provision under
20 the same statute that Mr. Morris has moved, NRS 30A.221(3),
21 this Court should not -- or cannot pursuant to that provision
22 order -- grant their motion and compel this case to be
23 arbitrated. That's our argument.

24 THE COURT: Thanks.

25 The motion to compel arbitration is denied. My

1 determination that the dec relief claim as stated in the first
2 amended complaint does not invoke the arbitration provision
3 remains.

4 Now, Mr. Morris, are you going to ask me for a stay
5 of further proceedings in the case while you seek appeal of
6 this matter? Because this is now an appealable order.

7 MR. MORRIS: It is an appealable order, and I would
8 ask you for a stay.

9 THE COURT: Okay. Since we know he's going to file
10 a notice of appeal, because he's told us that a couple of
11 times, and he has to ask me for the stay first, I'm going to
12 grant it and I'm not going to deal with a bond for five days.
13 If for any reason he doesn't file the notice of appeal, my
14 stay will be dissolved.

15 After the five days if you think there is an issue
16 that requires a bond, please let me know, file a motion, and
17 we'll hear it, okay.

18 MR. MORRIS: Thank you, Your Honor.

19 THE COURT: Have a nice day.

20 MR. REID: Can I be heard on the stay briefly?

21 THE COURT: No. 'Bye.

22 THE PROCEEDINGS CONCLUDED AT 9:28 A.M.

23 * * * * *

24

25

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.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

9/18/15

DATE

ORDD
MORRIS LAW GROUP
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08/19/2015 03:01:30 PM



CLERK OF THE COURT

Attorneys for Defendant
DR Partners d/b/a Stephens
Media Group

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS SUN, INC., a Nevada Corporation,	)	Case No.: A-15-715008-B
Plaintiff,	)	Dept. No.: XI
vs.	)	ORDER DENYING RENEWED
	)	MOTION TO COMPEL
DR PARTNERS, a Nevada General Partnership, d/b/a STEPHENS MEDIA GROUP; DOES 1-X, inclusive,	)	ARBITRATION AND STAYING PROCEEDINGS
	)	DATE: August 18, 2015
Defendants.	)	TIME: 8:30 a.m.

DR Partners', d/b/a Stephens Media Group ("Stephens Media"), motion to compel arbitration and for a stay of proceedings came on for a hearing on August 18, 2005. Jeffrey Bendavid, Kristen Martini, and Leif Reid appeared for the Las Vegas Sun; Steve Morris appeared for Stephens Media.

Now, having considered the motion and heard the arguments of counsel, and good cause appearing, the Court hereby

08-19-15A10:49 RCVD

MORRIS LAW GROUP

900 BANK OF AMERICA PLAZA · 300 SOUTH FOURTH STREET · LAS VEGAS, NEVADA 89101
702/474-9400 · FAX 702/474-9422


- 1 (1) denies the motion to compel arbitration;
2 (2) stays all proceedings for five days from the date of this
3 Order to allow Stephens Media time to file a Notice of Appeal to the
4 Nevada Supreme Court. In the event the Notice of Appeal is filed within
5 five days, the stay will not expire but will continue pending disposition of
6 the appeal by the Supreme Court. In the event the Notice of Appeal is not
7 filed within five days of this Order, the stay shall expire without further
8 proceedings, and *It may seek a bond for the stay if appropriate* (12)
9 (3) the hearing on the Sun's motion for summary judgment,
10 scheduled for August 25, 2015, is vacated.

11
12 Dated this 19th day of August, 2015.

13
14 
15 ELIZABETH GONZALEZ
16 DISTRICT COURT JUDGE - DEPT. 11
17

18 Submitted by:

19 MORRIS LAW GROUP

20
21 By: 
22 Steve Morris, No. 1543
23 Akke Levin, No. 9102
24 900 Bank of America Plaza
25 300 South Fourth Street
Las Vegas, Nevada 89101

26 Attorneys for Defendant
27 DR Partners d/b/a
28 Stephens Media Group

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13 DR Partners d/b/a Stephens
14 Media Group

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 **LAS VEGAS SUN, INC., a Nevada**
18 **Corporation,**
19 **Plaintiff,**

20 **vs.**

21 **DR PARTNERS, a Nevada General**
22 **Partnership, d/b/a STEPHENS**
23 **MEDIA GROUP; DOES 1-X,**
24 **inclusive,**

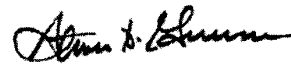
25 **Defendants.**

Case No.: A-15-715008-B

Dept. No.: XI

NOTICE OF ENTRY OF
ORDER DENYING RENEWED
MOTION TO COMPEL
ARBITRATION AND
STAYING PROCEEDINGS

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08/19/2015 04:08:14 PM



CLERK OF THE COURT

26 **PLEASE TAKE NOTICE** that an Order Denying Renewed
27 **Motion to Compel Arbitration and Staying Proceedings** was entered in this
28 **action on August 19, 2015.**

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A copy of the Order is attached.

MORRIS LAW GROUP

By /s/ STEVE MORRIS

Steve Morris, Bar No. 1543
Akke Levin, Bar No. 9102
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

Attorneys for Defendant
DR Partners d/b/a Stephens
Media Group

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I
certify that I am an employee of MORRIS LAW GROUP and that on the
date below, I caused the following document(s) to be served via the Court's
Odyssey E-Filing System: NOTICE OF ENTRY OF ORDER DENYING
RENEWED MOTION TO COMPEL ARBITRATION AND STAYING
PROCEEDINGS. The date and time of the electronic proof of service is in
place of the date and place of deposit in the mail.

TO:

Lewis Roca Rothgerber LLP

Leif Reid lreid@lrrlaw.com

Kristen Martini kmartini@lrrlaw.com

Moran Brandon Bendavid Moran

John Moran john.moran@moranlawfirm.com

Jeffrey Bendavid j.bendavid@moranlawfirm.com

DATED this 19th day of August, 2015.

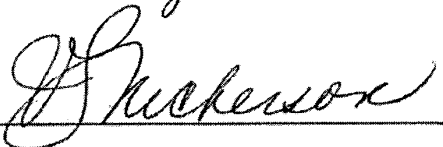
By 

EXHIBIT A

EXHIBIT A

1 **ORDD**
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12 Attorneys for Defendant
13 DR Partners d/b/a Stephens
14 Media Group

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08/19/2015 03:01:30 PM


CLERK OF THE COURT

15 DISTRICT COURT
16 CLARK COUNTY, NEVADA

17 LAS VEGAS SUN, INC., a Nevada
18 Corporation,
19 Plaintiff,
20 vs.

21 DR PARTNERS, a Nevada General
22 Partnership, d/b/a STEPHENS
23 MEDIA GROUP; DOES 1-X,
24 inclusive,
25 Defendants.

Case No.: A-15-715008-B
Dept. No.: XI

ORDER DENYING RENEWED
MOTION TO COMPEL
ARBITRATION AND
STAYING PROCEEDINGS

DATE: August 18, 2015
TIME: 8:30 a.m.

26 DR Partners', d/b/a Stephens Media Group ("Stephens
27 Media"), motion to compel arbitration and for a stay of proceedings came
28 on for a hearing on August 18, 2005. Jeffrey Bendavid, Kristen Martini, and
Leif Reid appeared for the Las Vegas Sun; Steve Morris appeared for
Stephens Media.

Now, having considered the motion and heard the arguments
of counsel, and good cause appearing, the Court hereby

08-19-15A10:49 RCVD

MORRIS LAW GROUP

900 BANK OF AMERICA PLAZA - 300 SOUTH FOURTH STREET - LAS VEGAS, NEVADA 89101
702/474-9400 - FAX 702/474-9422

- 1 (1) denies the motion to compel arbitration;
2 (2) stays all proceedings for five days from the date of this
3 Order to allow Stephens Media time to file a Notice of Appeal to the
4 Nevada Supreme Court. In the event the Notice of Appeal is filed within
5 five days, the stay will not expire but will continue pending disposition of
6 the appeal by the Supreme Court. In the event the Notice of Appeal is not
7 filed within five days of this Order, the stay shall expire without further
8 proceedings and *the may seek a bond for the stay if appropriate* (22)
9 (3) the hearing on the Sun's motion for summary judgment,
10 scheduled for August 25, 2015, is vacated.

11 Dated this 19th day of August, 2015.

12 *Elizabeth Gonzalez*
13 ELIZABETH GONZALEZ
14 DISTRICT COURT JUDGE - DEPT. 11
15

16 Submitted by:
17

18 MORRIS LAW GROUP
19

20 By: *Steve Morris*
21 Steve Morris, No. 1543
22 Akke Levin, No. 9102
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25 Las Vegas, Nevada 89101

26 Attorneys for Defendant
27 DR Partners d/b/a
28 Stephens Media Group

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14 Media Group

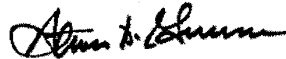
15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 **LAS VEGAS SUN, INC., a Nevada**
18 **Corporation,**
19 **Plaintiff,**
20 **vs.**

21 **DR PARTNERS, a Nevada General**
22 **Partnership, d/b/a STEPHENS**
23 **MEDIA GROUP; DOES 1-X,**
24 **inclusive,**
25 **Defendants.**

26 Case No.: A-15-715008-B
27 Dept. No.: XI
28 **NOTICE OF APPEAL**

Electronically Filed
08/21/2015 09:49:06 AM



CLERK OF THE COURT

29 Notice is hereby given that defendant DR Partners, d/b/a
30 Stephens Media Group ("Stephens Media"), hereby appeals to the Supreme
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MORRIS LAW GROUP

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1 Court of Nevada from the order denying Stephens Media's Renewed
2 Motion to Compel Arbitration entered in this action on August 19, 2015.

3
4 MORRIS LAW GROUP

5
6 By: 

7 Steve Morris, Bar No. 1543
8 Akke Levin, Bar No. 9102
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300 South Fourth Street
Las Vegas, Nevada 89101

10 Attorneys for Defendant
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12 Media Group
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MORRIS LAW GROUP

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I
certify that I am an employee of MORRIS LAW GROUP and that on the
date below, I caused the following documents to be served via the Court's
Odyssey E-Filing system: **NOTICE OF APPEAL**. The date and time of the
electronic proof of service is in place of the date and place of deposit in the
mail.

TO:

Lewis Roca Rothgerber LLP

Leif Reid lreid@lrrlaw.com

Kristen Martini kmartini@lrrlaw.com

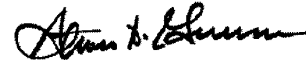
Moran Brandon Bendavid Moran

John Moran john.moran@moranlawfirm.com

Jeffrey Bendavid j.bendavid@moranlawfirm.com

Dated this 21st day of August, 2015.

By: 



CLERK OF THE COURT

1 **ERR**

2 E. LEIF REID, ESQ.

3 Nevada Bar No. 5750

4 KRISTEN L. MARTINI, ESQ.

5 Nevada Bar No. 11272

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22 j.bendavid@moranlawfirm.com

23 *Attorneys for Plaintiff*

24 **DISTRICT COURT**

25 **CLARK COUNTY, NEVADA**

26 LAS VEGAS SUN, INC., a Nevada
27 Corporation,

28 Plaintiff,

vs.

DR PARTNERS, a Nevada General
Partnership, d/b/a STEPHENS MEDIA
GROUP; DOES I-X, inclusive,

Defendants.

CASE NO.: A-15-715008-B

DEPT.: XI

**ERRATA TO AFFIDAVIT OF
SERVICE [OF SUMMONS AND
COMPLAINT]**

Plaintiff Las Vegas Sun, Inc. (the "Sun"), by and through their counsel of Lewis Roca Rothgerber LLP, hereby files this ERRATA to the AFFIDAVIT OF SERVICE of the Summons and Complaint in order to attach Exhibit 1, the issued Summons, which was inadvertently omitted from the original filing.

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DATED this 30th day of September, 2015.

LEWIS ROCA ROTHGERBER LLP

BY: /s/ Kristen L. Martini
E. LEIF REID
KRISTEN L. MARTINI
50 West Liberty Street, Suite 410
Reno, Nevada 89501

In Association With:

JOHN T. MORAN, JR., ESQ.
JEFFERY A. BENDAVID, ESQ.
630 South 4th Street
Las Vegas, Nevada 89101

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b), I certify that I am an employee of LEWIS
ROCA ROTHGERBER LLP, and that on September 30, 2015, I caused the foregoing **ERRATA**
TO AFFIDAVIT OF SERVICE [OF SUMMONS AND COMPLAINT] to be served:

— by placing an original or true copy thereof in a sealed envelope placed for
collection and mailing in the United States Mail at Reno, Nevada, postage
prepaid, following ordinary business practices, addressed as follows:

X by electronically filing the foregoing with the Wiznet electronic filing system,
which will send a notice of electronic filing to the following:

Steve Morris, Esq.
Akke Levin, Esq.
Morris Law Group
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101
Email: sm@morrislawgroup.com
Email: al@morrislawgroup.com

Jeffrey Bendavid, Esq.
Moran Brandon Bendavid Moran
630 South 4th Street
Las Vegas, Nevada 89101
Email: j.bendavid@moranlawfirm.com

— by placing an original or true copy thereof in a sealed envelope and causing the
same to be personally hand-delivered, addressed as follows:

/s/ Autumn McDannald

50 West Liberty Street
Suite 410
Reno, NV 89501-1922

LEWIS ROCA
ROTHGERBER

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EXHIBIT LIST

NO.	DESCRIPTION	PAGES
1	Issued Summons	2

EXHIBIT 1

EXHIBIT 1

1 **SUMM**

2 E. Leif Reid

3 Nevada Bar No. 5750

4 LEWIS ROCA ROTHGERBER LLP

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6 Reno, Nevada 89501

7 Telephone Number: (775) 823-2900

8 Fax Number: (775) 823-2929

9 lreid@lrrlaw.com

10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 Las Vegas Sun, Inc., a Nevada Corporation,

14 Plaintiff,

15 vs.

Case No. A-15-715008-B

16 DR Partners, a Nevada General Partnership,
17 d/b/a Stephens Media Group; DOES I-X,
18 inclusive,

19 Defendant.

Dept. No. XI

20 **SUMMONS - CIVIL**

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

24 **TO THE DEFENDANT(S):** A civil Complaint has been filed by the Plaintiff(s) against you for
25 the relief set forth in the Complaint.

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

- 28 a) File with the Clerk of this Court, whose address is shown below, a formal written
response to the Complaint in accordance with the rules of the Court, with the
appropriate filing fee.
- b) Serve a copy of your response upon the attorney whose name and address is shown
below.

- 1 2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and
2 failure to so respond will result in a judgment of default against you for the relief
3 demanded in the Complaint, which could result in the taking of money or property or other
4 relief requested in the Complaint.
5 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so
6 that your response may be filed on time.
7 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board
8 members, commission members and legislators each have 45 days after service of this
9 Summons within which to file an Answer or other responsive pleading to the Complaint.
10

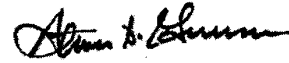
11 Steven D. Grierson
12 Clerk of Court

13 By LISAMARIE VAQUERO
14 Deputy Clerk Date
15 LISAMARIE VAQUERO 3-11-2015

16 Submitted by:

17 LEWIS ROCA ROTHGERBER LLP

18 By E. Leif Reid
19 State Bar No. 5750
20 50 West Liberty Street, Suite 410
21 Reno, NV 89501-1922
22 Attorneys for Plaintiff
23
24
25
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27
28



CLERK OF THE COURT

50 West Liberty Street
Suite 410
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

16 LAS VEGAS SUN, INC., a Nevada
17 Corporation,

18 Plaintiff,

19 vs.

20 DR PARTNERS, a Nevada General
21 Partnership, d/b/a STEPHENS MEDIA
22 GROUP; DOES I-X, inclusive,

Defendants.

CASE NO.: A-15-715008-B

DEPT.: XI

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT ON
ORDER SHORTENING TIME

23 This matter came before the Court on June 4, 2015, on Plaintiff Las Vegas Sun, Inc.'s,
24 Motion for Leave to File First Amended Complaint on Order Shortening Time. E. Leif Reid and
25 Jeffrey A. Bendavid appeared on behalf of Plaintiff Las Vegas Sun, Inc. Steve Morris appeared on
26 behalf of Defendant DR Partners.

27 ///

28 ///

1 The Court, having considered the papers filed in support of and in opposition to the Motion
2 for Leave to File First Amended Complaint on Order Shortening Time, having heard oral
3 argument, and for good cause appearing, **FINDS AS FOLLOWS:**

4 1. Pursuant to Nevada Rule of Civil Procedure 15, leave shall be freely granted to
5 parties seeking to amend their pleadings when justice so requires, unless the filing of the proposed
6 amended pleading would be futile.

7 2. Here, allowing Plaintiff Las Vegas Sun, Inc., to file its First Amended Complaint
8 would not be futile. The proposed First Amended Complaint sets forth a controversy as to the
9 meaning of Section 4.2 of the parties' Amended and Restated Joint Operating Agreement ("JOA").
10 Plaintiff Las Vegas Sun, Inc.'s, claim for declaratory relief alleged in its proposed First Amended
11 Complaint does not implicate the arbitration provision contained in Appendix D of the JOA.

12 **ACCORDINGLY, IT IS HEREBY ORDERED** that Plaintiff's Motion for Leave to File
13 First Amended Complaint is **GRANTED**.

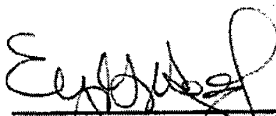
14 **IT IS ORDERED** that Plaintiff shall file and serve the First Amended Complaint within 5
15 days following entry of this Order.

16 **IT IS FURTHER ORDERED** that Defendant shall have 10 days after service of the
17 amended pleading in which to plead or otherwise move in response to the First Amended
18 Complaint.

19 **IT IS FURTHER ORDERED** that after Defendant has answered or otherwise move in
20 response to the First Amended Complaint, Plaintiff shall file a motion for summary adjudication of
21 the claim asserted in the First Amended Complaint.

22 **IT IS FURTHER ORDERED** that counsel for the parties shall inform the Court if they
23 need discovery or an evidentiary hearing related to the determination of Plaintiff's declaratory
24 relief claim.

25 DATED this 19th day of JUNE, 2015.

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27
28

ELIZABETH GONZALEZ
DISTRICT COURT JUDGE

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21 *Attorneys for Plaintiff*

22 **DISTRICT COURT**

23 **CLARK COUNTY, NEVADA**

24 LAS VEGAS SUN, INC., a Nevada
25 Corporation,

26 Plaintiff,

27 vs.

28 DR PARTNERS, a Nevada General
Partnership, d/b/a STEPHENS MEDIA
GROUP; DOES I-X, inclusive,

Defendants.

**FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT**

**(EXEMPT FROM ARBITRATION:
DECLARATORY RELIEF
REQUESTED)**

**BUSINESS COURT REQUESTED
PURSUANT TO
E.D.C.R. 1.61(a)(2)(iv)**

COMES NOW Plaintiff Las Vegas Sun, Inc. ("Plaintiff"), and complains against
Defendants DR Partners, doing business as Stephens Media Group, and Does I through X
("Defendants") as follows:

JURISDICTION AND VENUE

1. This is an action for declaratory relief pursuant to NRS 30.040. This Court has
subject matter jurisdiction over this action under Article 6, Section 6 of the Nevada Constitution.

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CLERK OF THE COURT

AA 171

1 10. In 1989, Plaintiff entered into a joint operating agreement (the "1989 JOA"),
2 attached hereto and incorporated herein as **Exhibit 1**, with Defendant's predecessor, Donrey of
3 Nevada, Inc.

4 11. The 1989 JOA became effective, pursuant to 15 U.S.C. section 1803(b), only after
5 it was determined by the Attorney General of the United States that the 1989 JOA would effectuate
6 the policy and purpose set forth by Congress in the Newspaper Preservation Act.

7 12. Under the 1989 JOA, the LVRJ was required to, among other things, print The Sun,
8 and handle all advertising and circulation functions for both print newspapers. The 1989 JOA
9 ensured that The Sun would be in existence and publication until at least 2040.

10 13. Thereafter, Defendant assumed all of the rights and obligations of the 1989 JOA
11 from its predecessor, Donrey of Nevada, Inc.

12 14. In 2005, Plaintiff renegotiated the 1989 JOA with Defendant.

13 15. At this time, Plaintiff and Defendant entered into the valid and existing written
14 Amended and Restated Agreement ("2005 Amended JOA"), attached hereto and incorporated
15 herein as **Exhibit 2**, which forever amended the terms and conditions of the 1989 JOA.

16 16. The 2005 Amended JOA was approved by the Attorney General of the United
17 States in the same manner as the 1989 JOA, and was found to effectuate similarly the policy and
18 purpose set forth by Congress in the Newspaper Preservation Act. The 2005 Amended JOA
19 requires that The Sun continue in publication until at least 2040.

20 17. The 2005 Amended JOA required the LVRJ to print both the LVRJ and The Sun
21 together in its facilities and to fund and execute payments to all costs, including capital
22 expenditures of operations, with the exception of operation of The Sun's news and editorial
23 department.

24 18. Specifically, Section 4.2 of the 2005 Amended JOA states: "The Review-Journal
25 and the Sun shall each bear their own respective editorial costs and shall establish whatever
26 budgets each deems appropriate."

27 19. Section 4.2's requirement that Plaintiff and Defendant were required to bear their
28 own editorial costs was not an obligation under the 1989 JOA.

1 20. Despite the plain language of Section 4.2 requiring otherwise, Defendant has failed
2 or refused to comply with its requirement that Plaintiff and Defendant bear alone their respective
3 editorial costs, thereby breaching Section 4.2 of the 2005 Amended JOA.

4 **FIRST CLAIM FOR RELIEF**

5 **(Declaratory Judgment)**

6 21. Plaintiff realleges and incorporates by reference the allegations contained in the
7 above paragraphs as though fully set forth herein.

8 22. Plaintiff is a party to the written 2005 Amended JOA.

9 23. Pursuant to NRS 30.040, Plaintiff, as a party to the written 2005 Amended JOA, is
10 entitled to a declaration of its rights, status, and legal relations under the 2005 Amended JOA.

11 24. Section 4.2 of the 2005 Amended JOA expressly states: "The Review-Journal and
12 the Sun shall each bear their own respective editorial costs and shall establish whatever budgets
13 each deems appropriate."

14 25. Since Defendant has expensed its editorial costs for the LVRJ, in direct violation of
15 Section 4.2 of the 2005 Amended JOA, a justiciable controversy presently exists between Plaintiff
16 and Defendant as to whether Section 4.2 of the 2005 Amended JOA requires Defendant to bear its
17 respective editorial costs.

18 26. A justiciable controversy exists between Plaintiff and Defendant as to the meaning
19 and interpretation of Section 4.2 and the obligations it places upon the Parties' performance under
20 the 2005 Amended JOA.

21 27. As such, Plaintiff is entitled to a Declaratory Judgment determining the rights,
22 interests, and obligations of Plaintiff as to these justiciable controversies concerning the terms and
23 conditions of the 2005 Amended JOA, and in particular, whether Section 4.2 of the 2005 Amended
24 JOA requires Plaintiff and Defendant to bear their respective editorial costs.

25 28. Plaintiff has been forced to obtain the services of counsel to prosecute this action
26 and is entitled to an award of attorneys' fees and costs incurred herein pursuant to NRS 18.010, *et*
27 *seq.*

28 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court provide the following relief:

A. A Declaratory Judgment in the manner permitted by NRS 30.040(1) determining and declaring Plaintiff's rights, status, and legal relations under the 2005 Amended JOA as alleged and requested above.

B. An award to Plaintiff of its cost of suit, including reasonable attorney's fees; and

C. An order granting to Plaintiff such other and further equitable or injunctive relief to which it may be entitled and which this Court finds to be just and appropriate.

DATED this 22nd day of June, 2015.

LEWIS ROCA ROTHGERBER LLP

BY: 
E. NEIF REID

KRISTEN L. MARTINI
50 West Liberty Street, Suite 410
Reno, Nevada 89501

In Association With:

JOHN T. MORAN, JR., ESQ.
JEFFERY A. BENDAVID, ESQ.
630 South 4th Street
Las Vegas, Nevada 89101

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b), I certify that I am an employee of LEWIS
ROCA ROTHGERBER LLP, and that on June 22, 2015, I caused the foregoing **FIRST**
AMENDED COMPLAINT to be served:

— by placing an original or true copy thereof in a sealed envelope placed for
collection and mailing in the United States Mail at Reno, Nevada, postage
prepaid, following ordinary business practices, addressed as follows:

X by electronically filing the foregoing with the Wiznet electronic filing system,
which will send a notice of electronic filing to the following:

Steve Morris
Akke Levin
Morris Law Group
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101
Email: sm@morrislawgroup.com
Email: al@morrislawgroup.com

Jeffrey Bendavid, Esq.
Moran Brandon Bendavid Moran
630 South 4th Street
Las Vegas, Nevada 89101
Email: j.bendavid@moranlawfirm.com

— by placing an original or true copy thereof in a sealed envelope and causing the
same to be personally hand-delivered, addressed as follows:

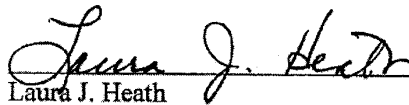

Laura J. Heath

EXHIBIT 1

EXHIBIT 1

AGREEMENT

This Agreement is dated as of June 12, 1989, between Donrey of Nevada, Inc., a Nevada corporation ("Donrey"), and the Las Vegas Sun, Inc., a Nevada corporation ("Sun").

PRELIMINARY STATEMENT

Donrey owns and publishes in Las Vegas, Nevada, an all day newspaper on weekdays, a morning newspaper on Saturdays and holidays, and a Sunday newspaper, each known as the Las Vegas Review-Journal (hereinafter referred to as the "Review-Journal"). Sun owns and publishes in Las Vegas, Nevada, a morning newspaper on weekdays and Saturdays and a Sunday newspaper, each known as the Las Vegas Sun (hereinafter referred to as the "Sun"). The Sun presently operates and for a number of years has operated at a substantial loss, and is in probable danger of financial failure. It is the firm belief of the parties that the continued publication of at least two newspapers of general circulation, editorially and reportorially separate and independent, is of paramount importance to the citizens of Las Vegas and its environs. The parties further believe that publication of the Sun can be carried on profitably, and its continued editorial existence and independence thereby assured, if its production, distribution and advertising functions and related non-news and non-editorial activities are conducted and performed by the Review-Journal, through a single staff of Review-Journal employees utilizing Review-Journal's plant and equipment under a joint

Pages 12-23 subject to complete redaction

newspaper operating arrangement (hereinafter referred to as "Agreement"), under which the Review-Journal will act on its own behalf with respect to the Las Vegas Review-Journal and on behalf of the Sun with respect to the Las Vegas Sun.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

TERM

1.1 Effective Date. The term of this Agreement shall begin at 12:01 a.m. on the 10th day (or on such later day as the parties may agree) after the filing of written consent of the Attorney General of the United States to this Agreement under the Newspaper Preservation Act, which shall be known as "the Effective Date". The parties agree to pursue diligently the filing of the application for approval of this Agreement to the Department of Justice and to use their best efforts and take all action necessary to obtain such written consent as expeditiously as possible within the procedures set forth in applicable regulations of the Department of Justice. This Agreement does not constitute any limitation on either party's obligation to engage in good faith labor negotiations if and as required by the National Labor Relations Act, and to implement any understandings it may reach in such negotiations.

Upon execution hereof, each party shall furnish to the other a written opinion of its counsel that all necessary

corporate action has been taken to authorize this Agreement and that, subject to the conditions of the preceding paragraph, this Agreement shall constitute the valid and binding obligation of the respective party. The parties agree to cooperate in coordinating meetings with government officials, community leaders, employees and their representatives, advertisers and others to explain the Agreement.

If, within eighteen (18) months after the filing of the application with the Department of Justice, the application has neither been approved by the Attorney General without a hearing nor been the subject of an order for a hearing, or if, within eighteen (18) months after the Attorney General has issued an order for a hearing, the application has not been approved by the Attorney General, the parties shall discuss the feasibility of continuing to seek approval of the application and either party may, after notification to the other, withdraw from the application. The Review-Journal and Donrey intend to make a request, at the time of filing the application, under 28 CFR Section 48.5 for a protective order withholding from public disclosure their financial and other privileged and confidential commercial information to be filed with this application and restricting access to such materials to the applicants and the Department of Justice. If the request is not granted the Review-Journal and Donrey reserve the right to unilaterally withdraw the application. If the protective order is initially granted but, at a later date, access to or inspection of the protected information is to be afforded anyone other than the

applicants, the Department of Justice, or an administrative law judge, and their respective employees, without restrictions as to disclosure acceptable to the Review-Journal and Donrey, then the Review-Journal and Donrey shall have the unilateral right to withdraw the application and dismiss any further hearing or proceedings concerning the application.

Each party shall pay its own costs and professional fees in connection with the formulation and drafting of this Agreement and the preparation and filing of the application to the Department of Justice. From and after the filing of such application all costs and professional fees shall be borne equally by the parties with each party having reasonable approval of costs and fees to be incurred.

1.2 Duration. Subject to the termination provisions set forth in Article 9, this Agreement shall continue for an initial period ending at the close of business on the ~~last day of~~ ~~December or the fiftieth (50th)~~ year following the Effective Date. The Agreement shall automatically renew for succeeding renewal periods of ten (10) years each unless either party shall notify the other in writing at least two (2) years prior to the end of the initial period that it elects to terminate the Agreement at the end of said fiftieth (50th) year, or unless either party shall notify the other in writing at least two (2) years prior to the end of the renewal period that it elects to terminate the Agreement as of the end of said renewal

period. The phrase "term of this Agreement" as used hereafter shall mean the initial period and any renewal period or periods.

ARTICLE 2

AGENCY

Donrey of Nevada, Inc. now owns and operates the Review-Journal, together with other unrelated business operations in the State of Nevada. In order to facilitate management, administration, record keeping and tax administration under this Agreement, Donrey, as of the effective date of this Agreement, shall have established a separate Nevada business corporation which shall own or lease all assets related to the operation of the Las Vegas Review-Journal. Donrey shall cause such corporate entity to assume and agree to perform all duties and obligations of the Review-Journal under the terms of this Agreement.

ARTICLE 3

TRANSFER OF CONTRACTS AND SALE OF SUPPLIES, INVENTORY AND EQUIPMENT BY SUN TO REVIEW-JOURNAL

3.1 Transfer to and Assumption by Review-Journal of Certain Contracts. To enable Review-Journal to perform its functions hereunder on behalf of Sun, Sun shall (as of the Effective Date) transfer certain assets and assign certain contracts to Review-Journal subject to the procedures and conditions hereinafter specified in this Section 3.1.

3.1.1 Delivery of Contracts and Data to Review-Journal.
Upon consent of the Attorney General as specified in Section 1.1, Sun shall furnish to the Review-Journal:

3.1.1.1 Circulation Contracts. All subscription, bulk sales, circulation, dealer and sub-dealer, and delivery agent lists and contracts related to the Sun in the possession or control of Sun, and all books and statements of account, records and other information relating to or concerning routes, daily draws by editions, distribution, delivery, sales returns, or prepaid subscriptions of the Sun in any territory, but not including the Sun's general books of account.

3.1.1.2 Contracts for Supplies. All contracts and other available information as may be reasonably necessary to form business judgments respecting such contracts, then held by Sun for the purchase of newsprint, film, ink and supplies for the Sun's mechanical departments, and all other similar contracts (other than those relating to the Sun's news and editorial departments) which would be helpful or beneficial to the Review-Journal in fulfilling its obligations hereunder.

3.1.1.3 Advertising Contracts. A list of all contracts then outstanding for publication of advertising in the Sun, which list shall indicate in each case the date of the contract, the name and address of the advertiser, the amount of space used up to that time, the amount unpaid and owing the Sun for advertising run to that time, the amount prepaid as of the Effective Date, the frequency of insertions, the rate, the expiration date, and any special conditions, records, requirements or publication orders with the date thereof, and any special instructions, agreements or commitments made by the Sun with

the advertiser with respect thereto, and all insertion orders for advertising subsequent to the Effective Date. Sun shall make available to the Review-Journal at the Review-Journal's request copies of any or all such contracts.

3.1.2 Analysis of Contracts and Assumption by Review-Journal. As soon as possible after such information and documents shall have been furnished to the Review-Journal, and in any event prior to the Effective Date, Review-Journal shall designate in writing to Sun those contracts that Sun shall assign to Review-Journal and which Review-Journal shall assume as of the Effective Date (excluding all portions which Sun had a duty to perform prior to the Effective Date); provided, that with respect to advertising contracts Review-Journal shall have no obligation to assume any advertising contract that is on a trade-out basis, and Review-Journal agrees that it will not refuse the assumption of any advertising contract solely on the basis of the contract rate. However, for advertising contracts containing rates which Review-Journal determines to be unreasonable, Review-Journal shall have the right to charge to Sun the difference between the contract rate and a rate determined by Review-Journal to be reasonable, effective ninety (90) days after the date of assumption and continuing for the balance of such contracts. Subject to the foregoing, Review-Journal shall use its best efforts to maximize its designation of such contracts

to be assigned to and assumed by Review-Journal. Review-Journal pre-assumption analysis of such contracts and information may include consultation with the contracting parties, and Sun agrees to assist Review-Journal in that process. Sun shall remit to Review-Journal (a) all dealers', vendors' and carriers' cash deposits (to the extent that the same shall not be due and owing to such depositors on the Effective Date) and (b) all sums in respect of prepaid subscriptions and prepaid advertising received by Sun but not earned prior to the Effective Date. As to any assigned and assumed advertising contracts, Review-Journal shall have the right to make adjustments, such as rebates or short ratings of any of same so long as this shall not alter indebtedness due Sun prior to the Effective Date without Sun's approval. All such contracts to be assumed by Review-Journal shall be assigned to Review-Journal by Sun as of the Effective Date, and such contracts shall be assumed by Review-Journal as of that date and thereafter shall be performed by Review-Journal, and Sun shall be relieved from any and all performance obligations under such contracts accruing after the Effective Date.

3.2 Newsprint. Review-Journal shall procure, as of the Effective Date and thereafter, a supply of newsprint adequate to produce the Newspapers as defined in Section 5.1 below;

provided, that Review-Journal shall have the purchase and assumption obligations specified in Section 3.3 as to Sun newsprint.

3.3 Sale of Supplies, Inventory and Equipment. As of the Effective Date, Review-Journal agrees to purchase Sun's inventory of newsprint and supplies common to or usable in the operations of both newspapers (i.e., newsracks, production film, rubber bands, plastic bags, etc.). Upon the consent of the Attorney General as specified in Section 1.1, Sun shall deliver to Review-Journal a schedule identifying all supplies, inventory (on hand or in transit) and equipment owned or leased by Sun and used or available to be used in the production and distribution of the Sun. On or before the Effective Date, Review-Journal shall designate in writing which of the scheduled items of supplies, inventory and equipment it wishes to purchase or sublease, as the case may be.

As to such of the equipment as is owned by Sun, which Review-Journal determines to purchase, Sun shall be obligated to sell and deliver same and Review-Journal shall be obligated to buy at a purchase price equal to the purchase cost of such equipment or its then market value, whichever is lower.

As to such of the supplies and inventory which Review-Journal is obligated to purchase or designates for purchase by it, Sun shall be obligated to sell and deliver same and Review-Journal shall be obligated to buy at a purchase price equal to the cost of same to Sun, or its then market value, whichever is lower.

Any newspaper production equipment of the Sun which is not purchased by the Review-Journal may be sold by the Sun to a third party, provided that the sale of any such equipment to any party within the State of Nevada shall require Donrey's prior approval.

ARTICLE 4

NEWS AND EDITORIAL COPY, FEATURES AND SERVICES

4.1 Maintenance of News and Editorial Staff; Feature Materials. Review-Journal and Sun each shall maintain a staff of news and editorial employees, and shall license such feature materials (including, but not limited to, news and editorial services supplied by third parties), adequate to provide its respective newspaper with all of the news and editorial copy and related services deemed necessary by each of them as to its respective newspaper.

4.2 News and Editorial Allocations. The Review-Journal and the Sun shall establish, in accordance with the provisions of Appendix A attached hereto and made a part hereof by reference, the amounts to be allocated to Agency Expense, as hereinafter defined, for each for news and editorial expenses.

4.3 Furnishing News and Editorial Copy and Services. In furnishing features, news and editorial copy, and like materials to Review-Journal for publication in the Sun or the Sun portion of jointly published newspapers as provided in Section 4.4, and in providing layout for such material, Sun shall provide all such material in a form appropriate for the production of its

newspaper or its portion of jointly published newspapers hereunder, in conformity with the mechanical standards, deadlines and production requirements which prevail in the Review-Journal plant from time to time, including page sizes, column widths, and cut-offs established by Review-Journal, upon reasonable notice to Sun. Sun shall acquire and maintain at its expense such newsroom equipment (including, but not limited to, typewriters, video terminals and news editing systems) as may be required as of the Effective Date to interface with Review-Journal production facilities. ~~Any changes or additions thereafter required in such equipment shall be covered by Appendix B hereto.~~ Newshole limitations and other matters for separate and jointly published newspapers are set forth in Appendix A hereto.

4.4 Furnishing Copy, Features and Services for Jointly Published Newspapers. Sun shall furnish editorial copy, features and comics to permit the Review-Journal to include them within jointly published newspapers, which shall be Sundays, Saturdays, holidays, other special editions and total market coverage editions. The Sun portion of jointly published newspapers shall be in accordance with Appendix A hereto. All components of jointly published newspapers shall bear the Review-Journal's headress, typeface and style. The front page logo of all jointly published newspapers shall read "Las Vegas REVIEW-JOURNAL and SUN," and all folios shall similarly refer to both papers, except for editorial and other pages described in Appendix A as being for the use of only one newspaper, which

pages shall bear only the name of such newspaper. The Review-Journal shall provide all of the news content of jointly published newspapers, except for stories and features included on those pages described in Appendix A as being only for the use of the Sun. The Review-Journal reserves the right to print conspicuous notices in jointly published newspapers to the effect that the news content of the non-Sun portion of the newspaper, including locally produced supplements, is produced by Review-Journal personnel.

4.5 Showbiz Magazine. Showbiz Magazine, which is owned or controlled by Sun, is carried as an insert by the Sun and distributed to hotels in Las Vegas. As of the Effective Date, Showbiz Magazine shall be a department or division of the Sun and subject to the terms of this Agreement. If the Review-Journal determines that it no longer desires Showbiz Magazine to be governed by the terms of this Agreement and/or no longer desires to carry Showbiz Magazine as an insert in the jointly published Sunday newspaper, Review-Journal shall give sixty (60) days prior written notice to Sun, and Sun shall have the right to transfer Showbiz Magazine out of Sun, or continue publication and distribution of Showbiz Magazine, and in either case, outside the terms of this Agreement. In this event, Review-Journal agrees to perform, at the request of Sun, composition, production and printing services at reasonable costs and further agrees not to engage in the production of an entertainment magazine for distribution to Las Vegas hotels for a period of two (2) years.

ARTICLE 5

CONTINUING PUBLICATION AND NEWS AND EDITORIAL AUTONOMY

5.1 Production and Promotion of the Newspapers. Subject to the terms of this Agreement, and as of the Effective Date, Sun shall be a daily afternoon newspaper and Review-Journal shall be a daily morning newspaper and on Saturday, Sunday, holidays, and other special editions the newspapers shall be jointly published as provided in Section 4.4. So long as Sun furnishes news and editorial copy, features and services to Review-Journal in accordance with Article 4 of this Agreement, Review-Journal agrees to produce the Sun daily as an afternoon newspaper as provided herein, to include the Sun copy and features in jointly published newspapers as specified in Article 4 above, and to sell all advertising for, promote and circulate such newspapers as provided herein. Review-Journal agrees that the afternoon Sun and the Sun portion of jointly published newspapers shall contain no editorial content other than that furnished by Sun. Also subject to the terms of this Agreement, Review-Journal further agrees to publish and produce for the term of this Agreement the Las Vegas Review-Journal daily as a morning newspaper and to produce jointly published newspapers as provided herein. The daily Sun and the Sun portion of jointly published newspapers, and the daily Review-Journal and the balance of the jointly published newspapers are hereinbefore and hereinafter referred to as the "Newspapers".

Review-Journal shall print the Newspapers on equipment owned or leased by the Review-Journal in the Review-Journal plant or plants located at such place or places as Review-Journal may determine, and all operations under this Agreement, except the operation of the Sun's news and editorial department, shall be carried on and performed by the Review-Journal with Review-Journal employees and equipment and in the Review-Journal's said plant or plants or by independent contractors selected by the Review-Journal.

The Review-Journal shall control, supervise, manage and perform all operations involved in managing and operating under this Agreement, including printing, selling and distributing the Newspapers, shall determine page sizes, number of columns per page, cut-offs, page makeup of non-news and non-editorial content (subject to the newshole formula set forth in Appendix A), and all other mechanical and technical functions of the Newspapers, shall purchase newsprint, materials and supplies as required (subject to Sun's obligations under Section 3.2), shall determine the rates for, solicit and sell all advertising space in the Newspapers, shall determine circulation rates, collect the Newspapers' circulation and advertising accounts receivable which come into existence after the Effective Date, and shall make all determinations and decisions and do any and all acts and things related to the foregoing activities, provided:

5.1.1 Format. Review-Journal shall not change the format of the Sun to any size or format different from that of the Review-Journal without approval of Sun.

5.1.2 Editions. The number of Sun editions shall not be changed without approval of Sun.

5.1.3 Best Efforts. Review-Journal agrees that it will use its best efforts, using the same degree of diligence, to sell advertising space in the Sun and the Review-Journal and to promote and circulate the Sun and the Review-Journal.

5.1.4 Promotional Activities. Review-Journal shall establish for each fiscal year a budget for promotional activities which shall be allocated between the Review-Journal and the Sun in accordance with the provisions of Appendix A, attached hereto and made a part hereof by reference. Promotional activities may include radio and television, outdoor advertising, in-paper or house advertisements, and other advertising media. All expenses of such promotional activities shall be Agency Expense, up to the amount of the promotional budget allocation. If either the Review-Journal or the Sun determines that it wishes to incur expenses in excess of those in the promotional budget, such expenses shall not be included in Agency Expense. Direct circulation sales expenses, including such items as carrier premiums and expenses of order generation shall not be included in the promotional budget and shall be allocated by Review-Journal between the newspapers so as to maximize the maintenance and enhancement of the circulation of the newspapers to the

extent economically feasible. The newsroom of each newspaper shall determine the nature, extent and timing of its promotional activities and shall supply basic information therefor. Review-Journal promotion management shall be responsible for all final promotional copy preparation and placements.

5.1.5 Rates. Review-Journal shall not increase the single copy or subscription prices of the daily edition of the Sun to an amount higher than the comparable rates for the Review-Journal. Review-Journal shall not change the rates for advertising to be run solely in the Sun in relation to the rates charged for comparable advertising to be run solely in the Review-Journal, unless such change is justified by the then-relative circulation of the Sun and the Review-Journal and other factors considered relevant in the industry.

5.1.6 Meetings of JOA Participants. Periodically, not less than four times per year, Donrey senior management shall meet with Sun senior management to discuss operations under this Agreement and future plans and opportunities.

5.1.7 Advertising Acceptability. Sun may reject any advertising or types of advertising for the Sun which is in the opinion of Sun undesirable or inappropriate for publication therein, and shall notify Review-Journal in writing of any specific advertising or types of advertising that Sun deems undesirable for publication. Review-Journal shall accept all advertising for the Sun other than the advertising indicated on

Sun's written notice, subject to all laws affecting the acceptability of advertising.

5.1.8 Sun Distribution. To the extent economically feasible, Review-Journal shall use its best efforts to substantially maintain the historical area and extent of distribution of the Sun.

5.2 News and Editorial Autonomy. Preservation of the news and editorial independence and autonomy of both the Review-Journal and the Sun is of the essence of this Agreement. Sun shall have exclusive and complete control, authority and direction over the news and editorial content, features and services to be furnished by Sun to Review-Journal to be included in its newspaper and in its portion of the jointly published newspapers, including without limitation the right of selection of all its news and editorial employees, and the exclusive right to hire and discharge such employees. Review-Journal shall have exclusive and complete control, authority and direction over the news and editorial content, features and services in its newspapers and in its portion of the jointly published newspapers, including without limitation the right of selection of all its news and editorial employees, and the exclusive right to hire and discharge such employees. The Review-Journal and Sun each hereby agrees to preserve high standards of newspaper quality throughout the term of this Agreement. All news and editorial expense of the Sun or the Review-Journal in excess of the amounts set forth in Appendix A shall be borne by the respective newspaper.

5.3 Performance and Cooperation. Sun and Review-Journal agree to take all corporate action necessary to carry out and effectuate the intent, purposes and provisions of this Agreement, and to cooperate with the other party in every reasonable way that will promote successful and lawful operation under this Agreement for both parties.

5.4 Sun Office Space. The Sun shall have the option to provide its own offices for its news and editorial department and senior management, or to occupy office space, to be provided by the Review-Journal, adjacent to the Review-Journal's newspaper building.

ARTICLE 6

PAYMENT OF EXPENSES, DISTRIBUTION OF REVENUES, AND OTHER FINANCIAL PROVISIONS

6.1 Expenses and Revenues. Review-Journal shall pay and record all Agency Expense, as defined in Appendix B hereto, and collect and record all Agency Revenues as defined in Appendix C hereto, and shall pay to Sun, monthly, a sum for Sun news and editorial expense as provided in Appendix A hereto.

6.2 Accounting Records. Accounting records of Agency Revenues and Agency Expense shall be maintained by Review-Journal. Accounting records of news and editorial expense shall be separately maintained by the Review-Journal and the Sun for their respective newspapers. All such records shall be kept on a fiscal year basis in reasonable detail and in accordance with generally accepted accounting principles. Financial statements to be provided under Section 6.3 shall be prepared

in accordance with generally accepted accounting principles and the applicable provisions of this Agreement.

6.3 Financial Statements. Within ninety (90) days following the close of each fiscal year, Review-Journal shall furnish to Sun financial statements in respect of such year which summarize Agency Revenues and Agency Expense hereunder. Within thirty (30) days after the end of each month, except the last month of the fiscal year, Review-Journal shall furnish to Sun a monthly financial statement summarizing Agency Revenues and Agency Expense. All Agency financial statements furnished by Review-Journal shall be certified by a financial officer of Review-Journal.

6.4 Distributions. Payments of Sun's share of operating profit, pursuant to Appendix D, shall be made with each financial statement to be furnished to Sun under the provisions of Section 6.3 above.

ARTICLE 7

TRANSITIONAL MATTERS

7.1 Collection of Sun Receivables. After the Effective Date, Review-Journal shall use its best efforts (without any obligation to institute legal proceedings) to collect Sun advertising and circulation accounts receivable which are outstanding on the Effective Date and shall remit same to Sun on a monthly basis, less the Agency's reasonable collection costs specifically incurred in connection therewith. Such collections and collection costs recovered by Review-Journal shall not be Agency Revenues or Agency Expense. Any such

advertising accounts which have not been collected by Review-Journal within sixty (60) days after the Effective Date shall be returned to Sun. Collections from particular subscribers shall first be applied to circulation accounts receivable unless otherwise agreed by Sun. As to any Sun advertising or circulation contracts assumed by Review-Journal under Section 3.1 above, Review-Journal will remit to Sun the portion of the receipts thereunder reflecting advertising run or circulation delivered by Sun prior to the Effective Date but not payable until on or after that date, and such portion shall not be Agency Revenues.

7.2 Termination Obligations. Sun shall be solely responsible for all notices, severance allowances, accrued benefits, or other related payments or obligations which may become due or payable to any terminated employee or agent of Sun.

7.3 Sun Personnel. Review-Journal shall be under no obligation to employ any terminated Sun employee.

ARTICLE 8

NONLIABILITY PROVISIONS

8.1 Defense of Claims and Indemnification. Any claim, demand, suit, action, obligation or other liability asserted against or sustained by Review-Journal and Sun, or either of them, in respect of any third party ("Claims") shall be dealt with as provided in this Article 8. For all purposes of this Article 8, the term "cost or expense" shall include reasonable attorneys' fees.

8.1.1 Claims Related to the Joint Operation. Review-Journal shall defend and shall control the defense or settlement of any third party Claims related to the joint operations or to its performance or non-performance under this Agreement (including but not limited to Claims arising from any advertising published in, or excluded from, any of the Newspapers -- except as provided in Section 8.1.2 -- and Claims in respect of feature, news and editorial content furnished by Sun hereunder arising as a result of any act or omission on the part of Review-Journal other than republication in the form furnished by Sun), devoting reasonable efforts to minimizing any resulting liability and related cost or expense. Any such liability, and the cost or expense related thereto, shall be an Agency Expense, except to the extent any such Claim shall be covered by insurance. Review-Journal shall give written notice to Sun of any material Claims arising under this Section 8.1.1.

8.1.2 Other Claims. Except as specifically provided in Section 8.1.1. or elsewhere in this Agreement, neither party hereto shall be charged with or held responsible for any third party Claims (except to the extent certain Sun contracts shall be assumed by Review-Journal under Article 3), arising before or after the Effective Date by reason of any act or omission on the part of the other party, and the responsible party shall indemnify and hold the other party harmless therefrom, including all related cost or expense. The responsible party shall defend, settle, pay or discharge any such Claim and shall indemnify and hold harmless

the other party against any such Claim, and from any liability, cost or expense arising therefrom. By way of example under this Section 8.1.2 and without limitation, the entire cost or expense of defending, settling or paying and discharging Claims relating to any feature, news or editorial copy published in, or excluded from the daily Review-Journal or the Review-Journal portion of the jointly published newspaper, or arising by reason of anything done or omitted by the news and editorial department of the Review-Journal in regard to its daily newspaper or the Review-Journal portion of the jointly published newspaper, or arising by reason of any advertising rejected by the Review-Journal or accepted by the Review-Journal in situations where such advertising would be rejected pursuant to Sun guidelines, shall be borne by the Review-Journal, and any such liability, cost or expense on account of Claims relating to any feature, news or editorial copy published in, or excluded by Sun from the daily Sun or the Sun portion of any jointly published newspaper, or arising by reason of anything done or omitted by the news and editorial department of the Sun, or arising by reason of any advertising rejected by the Review-Journal pursuant to Sun guidelines, or accepted in situations where such advertising would be rejected pursuant to Review-Journal guidelines, shall be borne by Sun, unless such Claims shall be an Agency Expense by reason of the operation of Section 8.1.1.

8.1.3 Insurance. For the purposes of this Article 8, each party shall separately maintain and pay for, as an item of

news and editorial expense, insurance to the extent reasonably available protecting against losses from libel, invasion of privacy, copyright or trademark infringement and other matters related to the gathering or preparation of news and editorial matter for publication, in such amounts as the parties may agree upon from time to time, but in no event less than Ten Million Dollars (\$10,000,000), and the other party shall be named as an additional insured.

8.2 Force Majeure. Neither party shall be liable to the other for any failure or delay in performance under this Agreement, occasioned by war, riot, government action, act of God or public enemy, damage to or destruction of facilities, strike, labor dispute, failure of suppliers or workers, inability to obtain adequate newsprint or supplies, or any other cause substantially beyond the control of the party required to perform, provided that in the event partial performance under this Agreement is feasible, notwithstanding the occurrence of one or more of the foregoing, performance shall be allocated between the newspapers by the Review-Journal, in its sole judgment, and if it is feasible to publish only one newspaper product, Review-Journal shall exercise its best efforts to produce a jointly published newspaper in which the Sun portion shall be determined by Review-Journal, notwithstanding the provisions of Appendix A hereto, provided, that the Sun portion shall not be less than two (2) pages.

ARTICLE 9

TERMINATION

9.1 Events of Termination. This Agreement shall continue in full force and effect unless and until it may be terminated by the occurrence of one of the following events of termination:

9.1.1 Voluntary Termination. Voluntary termination under the provisions of Section 1.1.

9.1.2 Bankruptcy or Default. If either party hereto makes an assignment of its assets for the benefit of creditors, is adjudged a bankrupt or has a receiver appointed for its business by a court of competent jurisdiction (provided, that such adjudication shall continue unstayed on appeal or otherwise in effect for a period of ninety (90) days after the entry of the decree related thereto before such adjudication becomes an event of termination, and further provided that the appointment of the receiver must continue unvacated, not set aside, not stayed or otherwise in effect for a period of ninety (90) days after such appointment before such appointment becomes an event of termination), or if either party defaults in the performance of any of its material obligations hereunder and does not cure such default within sixty (60) days after receiving written notice thereof from the other party, then such other party may, at its election, and in addition to all other remedies available to it at law or in equity, terminate this Agreement upon thirty (30) days' written notice by the Sun and sufficient notice by the Review-Journal to enable the Sun to arrange for the separate

production of the Sun, but not to exceed six (6) months; provided, that in the event of default, the other party shall have the additional option to cure such default and, on demand, be reimbursed by the defaulting party for all costs and expenses related thereto.

9.1.3 Change of Controlling Interest. In view of the nature of the relationship established by this Agreement and the fact that the Sun is published under the direction and control of Herman M. Greenspun and Brian L. Greenspun, the Review-Journal shall not be required to carry out the terms of this Agreement or be associated with another party to which it objects. Accordingly, ownership or control of the Sun shall not be transferred to any other entity or person without notice to and prior approval by the Review-Journal, provided that the Review-Journal will not object to any transfer of the ownership or control of Sun to any entity under the immediate direction and control of Herman M. Greenspun, or Brian L. Greenspun, or any other lineal descendant of Herman M. Greenspun. If, following an approved or permitted change of control of Sun, a subsequent change of control occurs, notice as hereinabove shall be given and the Review-Journal may exercise the rights provided herein.

9.1.4 Loss Operation. If there are any two (2) consecutive years in which the Agency does not have an operating profit (Agency Expenses in excess of Agency Revenues), despite the Review-Journal's good faith efforts to produce an operating

profit, the Review-Journal may terminate this Agreement upon ninety (90) days written notice.

9.2 Mechanics of Termination. Upon termination of this Agreement, Review-Journal shall take appropriate action to transfer to Sun: (a) all then current circulation contracts, agreements or lists concerning bulk sales, subscriptions, dealers and sub-dealers, distributions, deliveries, sales returns and prepaid subscriptions of the Sun's daily newspaper, and of all jointly published newspapers, plus all pertinent portions of then current records and data pertaining thereto, and all sums received by Review-Journal in respect of prepaid subscriptions and cash deposits relating to daily Sun circulation, and a pro rata portion of all sums received by Review-Journal in respect of such subscriptions and deposits relating to the jointly published newspaper circulation, and (b) all then current advertising contracts and all pertinent portions of then current records and data relating to advertising to be published in the Sun and in all jointly published newspapers. Review-Journal shall further provide Sun with the originals and all copies of all contracts relating solely to circulation and advertising of the daily Sun, and copies of all other contracts referred to in the immediately preceding sentence.

ARTICLE 10

MISCELLANEOUS

10.1 Notices. Each notice or other communication given pursuant to this Agreement shall be given in writing, delivered

in person or mailed by registered or certified mail, addressed to the respective parties as follows:

Review-Journal: Donrey, Inc.
P. O. Box 410
Las Vegas, NV 89125
Attention: Fred W. Smith

Sun: Las Vegas Sun, Inc.
P. O. Box 4279
Las Vegas, NV 89127
Attention: Brian L. Greenspun

or, in the case of either party hereto, at such other address or marked for the attention of such other person, as such party may set forth in a written notice to the other party.

10.2 Disclaimer of Labor Related Obligations. The parties specifically agree that neither party hereby assumes any obligations of the other party related to its employment practices or to any of its employees, whether or not arising under any collective bargaining agreements or arising prior to, on or subsequent to the Effective Date.

10.3 Inspection of Books and Records. Either party shall have the right to authorize its independent certified public accountants or any of its corporate officers to inspect the books and records of the other party hereto at reasonable times and intervals in regard to the financial statements specified in Article 6, but only as to the three (3) years preceding the exercise of the right of inspection, commencing with the year immediately preceding the year in which the right is exercised. The expenses of any such inspection shall be borne by the party

causing such inspection to be made and shall not be included in Agency Expenses.

10.4 Limited Effect. Nothing herein contained shall constitute the parties hereto partners, joint venturers, successors, alter egos, joint employers, an unincorporated association, or as having any relationship other than as specifically provided by this Agreement. This Agreement is intended solely for the benefit of the parties hereto, and their permitted successors and assigns and not for the benefit of any other person or party. This Agreement, including Appendices A through D hereto, and contracts and agreements supplemental hereto, comprises the entire understanding and agreement of the parties hereto on the subject matter herein contained and any and all other representations or agreements, which heretofore may have been made on such subject matter, whether oral or in writing, by any agent of either party shall be null, void and of no effect whatsoever. Time is of the essence of this Agreement.

10.5 Community Cable TV. As of the Effective Date, Sun shall assign or cause to be assigned to Donrey the right to receive ten percent (10%) of all dividends or distributions of any kind paid or made by Community Cable TV ("CCTV"), a Nevada corporation which owns and operates a cable television system serving Las Vegas and surrounding communities and certain unincorporated areas of Clark County, Nevada, to any of its shareholders, including any payments in excess of current salaries or current percentages of income as management or

consultant fees paid by CCTV to any of its shareholders. With respect to payments to be made to Donrey hereunder, Sun shall cause CCTV to make such payments, or make such payments directly to Donrey. As soon as permitted under the terms of certain shareholder and financing agreements, CCTV shall issue to Donrey ten percent (10%) of the total issued and outstanding common stock of CCTV, which shall be issued as fully paid and nonassessable. In addition, at such time as Sun or its affiliates have purchased all of the issued and outstanding common stock of CCTV owned by third parties, Donrey shall have the right to purchase an additional thirty-five percent (35%) of the issued and outstanding common stock of CCTV on the same terms and conditions, including price, as those on which Sun or its affiliates acquired such stock, which shall be issued as fully paid and nonassessable. In the event of the sale by Sun or its affiliates of any interest in CCTV prior to Donrey's acquisition of stock, Donrey shall be entitled to receive ten percent (10%) of the net sale proceeds, and Donrey's right to receive its ten percent (10%) stock interest shall be ratably reduced. Donrey's rights with respect to CCTV as herein provided shall survive the expiration or termination of this Agreement, provided, in the event the Review-Journal and Donrey withdraw from the application to the Department of Justice, pursuant to Section 1.1 of this Agreement, or if the Review-Journal terminates this Agreement pursuant to Section 9.1.4. within the first three (3) years of the term of this Agreement, Donrey's rights with

respect to CCTV shall terminate, and in the event Donrey has received any payments, issuances, or transfers of or with respect to CCTV stock pursuant hereto prior to Donrey's withdrawal from the application to the Department of Justice or the Review-Journal's termination of this Agreement as herein provided, such payments, issuances or transfers of or with respect to CCTV stock shall be refunded or rescinded.

10.6 Sun Trademark, Tradenames, Service Marks and Copyrights.

In its use of such Sun trademarks, tradenames, service marks and copyrights as may be required to perform its obligations under this Agreement, Review-Journal shall use its best efforts to comply substantially with all relevant laws of the State of Nevada and of the United States pertaining to trademarks, tradenames, service marks and copyrights in force at any time during the term of this Agreement. Sun shall use its best efforts to maintain in effect said trademarks, tradenames, service marks and copyrights, and shall make applications for the registration and/or renewal thereof if and when required by law. Review-Journal acknowledges Sun's right, title and interest in and to said trademarks, tradenames, service marks and copyrights and all renewals thereof, and agrees that it shall not at any time permit, take, or cause to be taken any action within its control in any way impairing or tending to impair any part of such right, title and interest. Review-Journal agrees to publish such notices in the Sun and the jointly published newspapers as Sun reasonably may request in order to protect

said trademarks, tradenames, service marks and copyrights, or any of them. Review-Journal shall not in any manner represent that it has any ownership interest in said trademarks, tradenames, service marks or copyrights or in the registration thereof, and Review-Journal acknowledges that its use hereunder of said trademarks, tradenames, service marks or copyrights shall not create in its favor any right, title or interest in or to same beyond those created by this Agreement.

10.7 Tax Treatment of Payments to Sun. It is contemplated by the parties that the payments to Sun under Section 6.4 of this Agreement will be, for federal income tax purposes, ordinary income to Sun and will be deductible by Review-Journal as a business expense.

10.8 Specific Performance. Because of the public interest of maintaining editorially and reportorially independent and competitive newspapers in Las Vegas and its environs, and because of the inadequacy of damages in the event of default in the performance of material obligations hereunder, each party shall have the right to seek specific performance of the material provisions of this Agreement, provided, that in the event of any action by Sun for specific performance against Review-Journal, if Sun does not obtain an order of specific performance, Review-Journal shall be entitled to recover in such action its attorneys' fees and costs.

10.9 Successors and Assignment. This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and their permitted successors and assigns.

10.10 Governing Law; Modification. This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. This Agreement may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, modification or discharge shall be sought.

10.11 Headings. Headings have been inserted in this Agreement for the purpose of convenience only. They shall not be used to interpret or construe the meaning of any Articles or Sections, nor shall they have the effect of limiting or enlarging the meaning thereof.

IN WITNESS WHEREOF, this Agreement has been executed by the parties' respective corporate officers thereto duly authorized as of the day and year first above written.

DONREY, INC.

By 
Fred W. Smith
President

LAS VEGAS SUN, INC.

By 
Brian L. Greenspan
President

APPENDIX A

A.1. Pursuant to Section 4.2 of this Agreement, for each fiscal year after the Effective Date Review-Journal shall establish an allocation for Review-Journal news and editorial expenses, and the allocation for, news and editorial expenses for the Sun shall be equal to sixty-five percent (65%) of the Review-Journal allocation, subject to a minimum of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) per fiscal year, which shall be increased each year by a percentage equal to the percentage increase in the CPI for the Las Vegas metro area. Such allocations shall be prorated for any period less than a full fiscal year. The aggregate allocations for news and editorial expenses shall constitute Agency Expense. On the first day of each month following the Effective Date, Review Journal shall pay to Sun an amount equal to one-twelfth (1/12th) of the Sun's annual allocation for news and editorial expenses as herein provided.

A.2. Pursuant to Sections 4.3 and 4.4 of this Agreement, the reading content of the newspapers shall be in accordance with the following formulas:

(a) For Monday through Friday editions, the number of pages of the Sun and the number of pages of the Review-Journal shall be determined by the ratio of the number of inches of advertising to be printed in each newspaper and the size of the newshole in each newspaper shall be determined by the same ratio, provided that in no event

shall the average newshole of the Sun in any month be less than eighty-five percent (85%) of the newshole of the Review-Journal in such month.

(b) For the jointly published Sunday edition, Sun shall be entitled to a separate section of three (3) open pages (one cover page, one editorial page and one op. ed. page), plus four hundred fifty (450) column inches, provided, that the Review-Journal may add additional pages to the Sun section comprised of news and advertising, as may be required by composition or printing requirements. The Review-Journal shall attempt to place the Sun section within the first four (4) sections of the Sunday edition. The Review Journal shall determine the number of pages for a comic section for jointly published Sunday editions which shall consist of strips and features selected equally by the Review-Journal and the Sun.

(c) For jointly published Saturday and holiday editions, the Sun shall be entitled to one editorial or op. ed. page and one comic page.

A.3. Pursuant to Section 5.1.4 of this Agreement, the Review-Journal shall establish for each fiscal year after the Effective Date a budget for promotional activities of the Review-Journal and the Sun and at least forty percent (40%) of each total budget shall be allocated to the Sun.

A.4. Edition times for Monday through Friday issues of the Review-Journal and the Sun and for jointly published Sunday,

Saturday and holiday editions shall be established by the Review-Journal in accordance with normal industry standards.

A.5. If the Review-Journal determines that it is feasible to publish an "extra" edition, such edition shall be a jointly published edition, but the content of any "extra" edition shall be determined solely by the Review-Journal.

APPENDIX B

B.1. Except as otherwise expressly provided for in this Agreement, the term "Agency Expense" shall mean and include all costs and expenses of the performance of the Review-Journal's obligations under this Agreement, including but not limited to:

~~But not the amounts allocated to Review-Journal and sum for news and editorial expenses and for promotional expenses as set forth in Appendix A.~~

B.1.2. Costs and expenses incurred by Review-Journal, with respect to the newspapers, supplements and Showbiz Magazine, for composition, printing, and distributing; news content of Showbiz Magazine; solicitation and sale of advertising; circulation sales expenses; collection of circulation and advertising accounts receivable, including a reasonable allowance for doubtful receivables and write-offs of receivables deemed uncollectible.

B.1.3. Compensation of Review-Journal's non-news and non-editorial employees, including, without limitation, salaries, commissions, payroll taxes, the cost of group insurance, retirement benefits, workers' compensation coverage, and other benefits for such employees as may be customary in the newspaper industry from time to time.

B.1.4. Accrued vacation or severance pay for Review-Journal's non-news and non-editorial employees.

~~agency costs~~ s/n/ include
insurance costs
RJ liable for it

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B.1.5. Costs for supplies, postage, private couriers, freight, Sunday comics and supplements, film, photo paper and chemicals, ink, newsprint, plates, cuts and mats and contract trucking, and similar costs for all Review-Journal newspaper departments, ~~other than news and editorial~~

B.1.6. Expenses for travel, auto allowances, mileage reimbursement, employee relations, recruiting, and attendance at seminars and conventions for Review-Journal's non-news and non-editorial employees.

B.1.7. Sales and use taxes^{on} on equipment and personal property purchased for use by Review-Journal or otherwise applied to Agency operations under this Agreement to the extent that such taxes are not capitalized for purposes of depreciation or amortization.

B.1.8. Taxes, license or permit fees paid by Review-Journal with respect to or resulting from the conduct of business under this Agreement or with respect to property used by Review-Journal in the operations under this Agreement, ~~except federal, state or local taxes, if any, measured by net income~~

B.1.9. The cost of membership for Review-Journal and Sun and their non-news and non-editorial employees in the Better Business Bureau, Las Vegas Chamber of Commerce, and other business-oriented



memberships which shall be determined by Review-Journal to be in the best interests of the Agency.

B.1.10. The cost of Review-Journal and Sun membership in the Newspaper Advertising Bureau, American Newspaper Publishers Association, and other similar newspaper organizations.

B.1.11. The cost of public liability insurance, insurance against interruption or suspension of publication of the newspapers, carrier insurance, and libel, invasion of privacy and related insurance covering advertising printed in the newspapers. Insurance costs relating to the news or editorial activities of the Review-Journal or the Sun shall not be considered Agency Expense and such costs shall be borne separately by the parties, provided, that each party shall attempt to add the other as an additional named insured under such insurance, but Review-Journal may procure libel, invasion of privacy and related insurance to cover any otherwise inadequately insured exposure it may have as a republisher of Sun news, editorial or advertising copy, and the cost of such additional insurance shall be an Agency Expense.

B.1.12. The cost of fire and casualty insurance on buildings, equipment, and other property utilized by Review-Journal in the performance of the Agreement.



B.1.13. The cost of all utilities related to the Review-Journal's performance of the Agreement.

B.1.14. Costs and expenses incurred in connection with hazardous waste materials.

B.1.15. Costs and expenses incurred by Review-Journal in obtaining ~~legal and other~~ professional services which it deems necessary in performing its obligations under this Agreement, including but not limited to the costs and fees related to any defense against third party claims, charges, complaints and related matters asserted against the Review-Journal related to the Agreement or Review-Journal's performance of the Agreement; provided, that such costs and fees ~~related to news and editorial liabilities~~ as defined in Section 8.1.2 shall not be "Agency Expense," except insofar as such liabilities are asserted against Review-Journal solely due to its republication of Sun news, editorial or feature material or advertising copy.

B.1.16. A monthly charge of Five Hundred Fifty Thousand Dollars (~~\$550,000~~) for the rental value of all Review-Journal real property, plant and equipment (including the value of Sun office space provided by Review-Journal under Section 5.4 of the Agreement), except that devoted to non-agency activities such as the Review-Journal's news and editorial operations. The rental charge would be adjusted each five (5)

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years on the basis of the change in the CPI for the Las Vegas, Nevada, market.

B.1.17. A monthly charge equal to one and one-half percent (~~1-1/2%~~) of the cost of all equipment acquired, expansion or remodeling of buildings, or other capital expenditures, in connection with Agency activities, subsequent to the date of the Agreement. The monthly charge would be subject to adjustment at any time on the basis of increases in the prime interest rate at First Interstate Bank, Las Vegas, Nevada. The Review-Journal shall have sole discretion regarding the purchase of equipment or other necessary capital expenditures for the performance of the Agreement.

B.1.18. A monthly charge for ~~general management~~ services equal to three and one-half percent (~~3-1/2%~~) of Agency Revenues.

B.2. All costs and expenses in connection with the news content, composition, production, distribution and advertising sales in connection with Showbiz Magazine shall be included in Agency Expense for the period Showbiz Magazine is governed by the terms of this Agreement, pursuant to Section 4.5.

B.3. Changes or additions in the Sun's newsroom equipment which may be required after the Effective Date to interface with Review-Journal production facilities shall be purchased or paid for by Review-Journal and a monthly charge equal to one and one-half percent (1-1/2%) of the cost thereof shall be

included in Agency Expense. This monthly charge would be subject to adjustment at any time on the basis of increases in the prime interest rate at First Interstate Bank, Las Vegas, Nevada.

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APPENDIX C
AGENCY REVENUES

C.1. Except as otherwise expressly provided in this Agreement, the term "Agency Revenues" shall mean and include:

C.1.1. All advertising and circulation revenues of the newspapers, subject to the provisions of Section 7.1 of this Agreement with respect to accounts receivable outstanding on the Effective Date.

C.1.2. All revenues from sales incidental to the publication of the newspapers or involving either the facilities used to produce the newspapers or personnel whose compensation is included in Agency Expense, such as sales of commercial printing, waste paper, press plates, and other production materials.

Handwritten signature

APPENDIX D

Operating profit under the Agreement shall mean the excess of Agency Revenues over Agency Expense, and shall be distributed as follows:

For each fiscal year during the term of the Agreement the operating profit shall be distributed ninety percent (90%) to the Review-Journal and ten percent (10%) to the Sun, with payment to be made to the Sun pursuant to the provisions of Section 6.4 of the Agreement, provided, that for the first fiscal year the Sun shall be guaranteed a minimum operating profit distribution of Three Million Dollars (\$3,000,000).

APPENDIX D

Operating profit under the Agreement shall mean the excess of Agency Revenues over Agency Expense, and shall be distributed as follows:

For each fiscal year during the term of the Agreement the operating profit shall be distributed ninety percent (90%) to the Review-Journal and ten percent (10%) to the Sun, with payment to be made to the Sun pursuant to the provisions of Section 6.4 of the Agreement.

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EXHIBIT 2

EXHIBIT 2

AMENDED AND RESTATED AGREEMENT

This Amended and Restated Agreement ("Restated Agreement") dated as of June 10, 2005 between DR Partners, a Nevada General Partnership, the successor-in-interest to Donrey of Nevada, Inc. ("DR") and the Las Vegas Sun, Inc., a Nevada corporation ("Sun").

PRELIMINARY STATEMENT

WHEREAS, DR owns and publishes in Las Vegas, Nevada, a morning newspaper on weekdays, a morning newspaper on Saturdays and holidays, and a Sunday newspaper, each known as the Las Vegas Review-Journal (hereinafter referred to as the "Review-Journal"); and

WHEREAS, Sun owns in Las Vegas, Nevada, an afternoon newspaper on weekdays, known as the Las Vegas Sun (hereinafter referred to as the "Sun") and a combined Saturday and Sunday paper with the Review-Journal; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE I **REGULATORY FILING AND TERM**

1.1 **Regulatory Filing.** Within ten business days (or on such later day as the parties may agree) the Parties agree to file the Restated Agreement with the Attorney General of the United States under the Newspaper Preservation Act within the Department of Justice and to use their best efforts and take all action necessary to effect the intent of this Restated Agreement. In the event of any action by the United States Department of Justice after the filing of the Restated Agreement which, in the sole opinion of either party, hinders, impairs, seeks to halt or otherwise materially impacts this Restated Agreement, then either party may declare the Restated Agreement null and void, and the 1989 Agreement between the parties shall be reinstituted and remain in full force and effect. The Restated Agreement does not constitute any limitation on either party's obligation to engage in good faith labor negotiations if and as required by the National Labor Relations Act, and to implement any understandings it may reach in such negotiations.

Upon execution hereof, each party shall furnish to the other a written opinion of its counsel that all necessary corporate or partnership action has been taken to authorize this Restated Agreement and that, subject to the conditions of the preceding paragraph, this Restated Agreement shall constitute the valid and binding obligation of the respective party. The parties agree to cooperate in coordinating meetings with government officials, community leaders, employees and their representatives, advertisers and others to explain the Restated Agreement.

Each party shall pay its own costs and professional fees in connection with the formulation and drafting of the Restated Agreement and the preparation and filing of the Restated Agreement with the Department of Justice. From and after the filing of such Restated Agreement, all costs and professional fees in connection with seeking any required approval by the Department of Justice shall be controlled and approved by the Review-Journal and such cost and shall be borne solely by Review-Journal.

1.2 Term. The term of this Restated Agreement shall begin at 12:00 a.m. on June 10, 2005 ("the Effective Date"). The 1989 Agreement shall remain in full force and effect through September 30, 2005 (the "Transition Date"). Subject to the termination provisions set forth in Article 9, the Restated Agreement shall continue for an initial period ending at the close of business on the 31st day of December of the fiftieth (50th) year from July 1, 1990. The Restated Agreement shall then automatically renew for succeeding periods of ten (10) years unless either party shall notify the other in writing at least two (2) years prior to the end of the then current period that it elects to terminate the Restated Agreement at the end of said period. The phrase "term of this Agreement" as used hereafter shall mean the initial period and any renewal period or periods.

ARTICLE 2

AGENCY

Intentionally omitted

ARTICLE 3

Intentionally omitted

ARTICLE 4

NEWS AND EDITORIAL COPY, FEATURES AND SERVICES

4.1 Maintenance of News and Editorial Staff, Feature Materials. Review-Journal and Sun each shall maintain a staff of news and editorial employees, and shall license such feature materials (including, but not limited to, news and editorial services supplied by third parties), adequate to provide its respective newspaper with all of the news and editorial copy and related services deemed necessary by each of them as to its respective newspaper. Review-Journal shall use commercially reasonable efforts to cause third party suppliers of feature materials and professional associations to provide such feature materials and association memberships to Sun at rates equivalent to those currently charged to Sun.

4.2 News and Editorial Allocations. The Review-Journal and the Sun shall each bear their own respective editorial costs and shall establish whatever budgets each deems appropriate.

4.3 Furnishing News and Editorial Copy and Services. In furnishing features, news and editorial copy, and like materials to Review-Journal for publication in the Sun, and in providing layout for such material, Sun shall provide all such material in a form appropriate for the production of its newspaper, in conformity with the mechanical standards, deadlines and production requirements which prevail in the Review-Journal plant from time to time, including

deadlines, page sizes, column widths, and cut-offs established by Review-Journal, upon reasonable notice to Sun. Sun shall acquire and maintain at its expense such newsroom equipment (including, but not limited to, newspaper production systems, i.e., "front-end" systems) as may be required to interface with Review-Journal production facilities. In the event that the newspaper production system used by the Review-Journal is changed and (i) the Sun has utilized a production system that is current with systems commonly employed in the newspaper industry; (ii) the change by the Review-Journal results in any loss of a fully functional interface with the Sun newspaper production system, the Review-Journal shall be responsible to furnish such additional software, hardware and technical services to the Sun as may be necessary to establish such an interface. The Review-Journal shall give Sun ninety (90) days advance notice of anticipated changes to the Review-Journal's production system, including technical specifications for the new or modified system. The Sun shall treat any software provided as confidential and conform to all applicable licensing requirements for such software. Newshole limitations and other matters are set forth in Appendix A hereto. The parties agree to begin the publication cycle changes for the Sun on the Transition Date (or on such latter day as the parties may agree). The Review-Journal reserves the right to print conspicuous notices to the effect that the news content of the non-Sun portion of the Newspapers, including locally produced supplements, is produced by Review-Journal personnel. The Sun reserves the right to print conspicuous notices to the effect that the news content of the non-Review-Journal portion of the Newspapers, including locally produced supplements, is produced by Sun personnel.

4.4 Intentionally omitted.

ARTICLE 5

CONTINUING PUBLICATION AND
NEWS AND EDITORIAL AUTONOMY

5.1 Production and Promotion of the Newspapers. Subject to the terms of the Restated Agreement, and as of the Transition Date, Sun shall be a daily morning newspaper as specified in Appendix A. The Review-Journal shall be a daily morning newspaper, as specified in Appendix A, including such sections and materials as are consistent with custom and practice in the United States metropolitan daily newspaper industry. So long as Sun furnishes news and editorial copy, features and services to Review-Journal in accordance with Article 4 of this Restated Agreement, Review-Journal agrees to produce the Sun daily as a morning newspaper as provided herein to include the Sun copy and to sell all advertising for, promote and circulate such newspapers as provided herein. The daily Sun and the daily Review-Journal are hereinbefore and hereinafter referred to as the "Newspapers". Review-Journal shall print the Newspapers in the Review-Journal plant or plants located at such place or places as Review-Journal may determine, and all operations under this Restated Agreement, except the operation of the Sun's news and editorial department, shall be carried on and performed by the Review-Journal with Review-Journal employees and equipment and in the Review-Journal's said plant or plants or by independent contractors selected by the Review-Journal. All costs, including capital expenditures, of operations under this Restated Agreement, except the operation of the Sun's news and editorial department, shall be borne by Review-Journal.

The Review-Journal shall control, supervise, manage and perform all operations involved in managing and operating under this Restated Agreement, including the need, if any, for Sunday supplements and comics, total or zoned market coverage, direct mail or other publication programs, zoned editions, and printing, selling and distributing the Newspapers, shall determine page sizes, number of columns per page, cut-offs, page makeup of non-news and non-editorial (subject to Appendix A), and all other mechanical and technical functions of the Newspapers, shall purchase newsprint, materials and supplies as required and shall determine the rates for, solicit and sell all advertising space in the Newspapers, shall determine circulation rates, collect the Newspapers' circulation and advertising accounts receivable, and shall make all determinations and decisions and do any and all acts and things related to the foregoing activities, provided:

5.1.1 Format. Review-Journal shall not change the format of the Sun to any size or format different from that of the Review-Journal without approval of Sun.

5.1.2 Sun Editions. The number of Sun editions shall not be changed without approval of Sun.

5.1.3 Circulation. Review-Journal shall use commercially reasonable efforts to maximize the circulation of the Newspapers.

5.1.4 Promotional Activities. Review-Journal shall use commercially reasonable efforts to promote the Newspapers. Any promotion of the Review-Journal as an advertising medium or to advance circulation shall include mention of equal prominence for the Sun. Either the Review-Journal or Sun may undertake additional promotional activities for their respective newspaper at their own expense. For all promotional activities for the Newspapers paid for by the Review-Journal, the Review-Journal shall be responsible for all promotional copy preparation and placement, provided however, that the Sun shall have the right to approve all promotional copy for the Sun that does not generically and concurrently promote both Newspapers.

5.1.5 Intentionally omitted.

5.1.6 Meetings of JOA Participants. DR senior management shall meet quarterly with Sun senior management to discuss performance under this Restated Agreement.

5.1.7 Advertising Acceptability. Sun may reject any advertising or types of advertising for the Sun which is, in the opinion of Sun, undesirable or inappropriate for publication therein, and shall notify Review-Journal in writing of any specific advertising or types of advertising that Sun deems undesirable for publication. Review-Journal shall accept all advertising for the Sun other than the advertising indicated on Sun's written notice, subject to all laws affecting the acceptability of advertising.

5.1.8 Intentionally omitted.

5.2. News and Editorial Autonomy. Preservation of the news and editorial independence and autonomy of both the Review-Journal and the Sun is of the essence of this Restated Agreement. Sun shall have exclusive and complete control, authority and direction over the news and editorial content, features and services to be furnished by Sun to Review-Journal to be included in its newspaper, including without limitation the right of selection of all its news and editorial employees, and the exclusive right to hire and discharge such employees. Review-Journal shall have exclusive and complete control, authority and direction over the news and editorial content, features and services in its newspapers, including without limitation the right of selection of all its news and editorial employees, and the exclusive right to hire and discharge such employees. The Review-Journal and Sun each hereby agrees to preserve high standards of newspaper quality throughout the term of this Restated Agreement consistent with United States metropolitan daily newspapers.

5.3. Performance and Cooperation. Sun and Review-Journal agree to take all corporate action necessary to carry out and effectuate the intent, purposes and provisions of this Restated Agreement, and to cooperate with the other party in every reasonable way that will promote successful and lawful operation under this Restated Agreement for both parties.

5.4. Sun Office Space. The Sun shall provide and pay for its own offices for its news and editorial department and management.

ARTICLE 6
Intentionally omitted

ARTICLE 7
PAYMENT

During the term of this Restated Agreement, DR and the Sun shall receive the amounts set forth in Appendix D.

ARTICLE 8
NON-LIABILITY PROVISIONS

8.1 Defense of Claims and Indemnification. Any claim, demand, suit, action, obligation or other liability asserted against or sustained by Review-Journal and Sun, or either of them, in respect of any third party ("Claims") shall be dealt with as provided in this Article 8. For all purposes of this Article 8, the term "cost or expense" shall include reasonable attorneys' fees and costs, whether or not taken to trial or appeal or in any bankruptcy or other related proceeding.

8.1.1 Claims Related to the Joint Operation. Review-Journal shall defend and shall control the defense or settlement of any third party Claims related to the joint operations or to its performance or non-performance under this Restated Agreement (including but not limited to Claims arising from any advertising published in, or excluded from, any of the Newspapers -

except as provided in Section 8.1.2 - and claims in respect of feature, news and editorial content furnished by Sun hereunder arising as a result of any act or omission on the part of Review-Journal other than republication in the form furnished by Sun), devoting reasonable efforts to minimizing any resulting liability and related cost or expense. Any such liability, and the cost of expense related thereto, shall be borne by the Review-Journal, except to the extent any such Claim shall be covered by insurance.

8.1.2 Other Claims. Except as specifically provided in Section 8.1.1. or elsewhere in this Restated Agreement, neither party hereto shall be charged with or held responsible for any third party Claims, arising before or after the Effective Date by reason of any act or omission on the part of the other party, and the responsible party shall defend and indemnify and hold the other party harmless therefrom, including all related cost or expense. The responsible party shall defend, settle, pay or discharge any such Claim and shall indemnify and hold harmless the other party against any such Claim, and from any liability, cost or expense arising therefrom. By way of example under this Section 8.1.2 and without limitation, the entire cost or expense of defending, settling or paying and discharging Claims relating to any feature, news or editorial copy published in, or excluded from the daily Review-Journal or arising by reason of anything done or omitted by the news and editorial department of the Review-Journal in regard to its daily newspaper or arising by reason of any advertising rejected by the Review-Journal or accepted by the Review-Journal in situations where such advertising would be rejected pursuant to Sun guidelines, shall be borne by DR and any such liability, cost or expense on account of claims relating to any feature, news or editorial copy published in, or excluded by Sun from the daily Sun or, or arising by reason of anything done or omitted by the news and editorial department of the Sun, or arising by reason of any advertising rejected by the Review-Journal pursuant to Sun guidelines, or accepted in situations where such advertising would be rejected pursuant to Review-Journal guidelines, shall be borne by Sun, unless such Claims shall be an expense of the Review-Journal by reason of the operation of Section 8.1.1.

8.1.3 Insurance. For the purpose of this Article 8, each party shall separately maintain and pay for, as an item of news and editorial expense, insurance to the extent reasonably available protecting against losses from libel, invasion of privacy, copyright or trademark infringement and other matters related to the gathering or preparation of news and editorial matter for publication, in such amounts as the parties may agree upon from time to time, but in no event less than Ten Million Dollars (\$10,000,000), and the other party shall be named as an additional insured.

8.2 Force Majeure. Neither party shall be liable to the other for any failure or delay in performance under this Restated Agreement, occasioned by war, riot, government action, act of God or public enemy, acts of terrorism, damage to or destruction of facilities, strike, labor dispute, failure of suppliers or worker, inability to obtain adequate newsprint or supplies, or any other cause substantially beyond the control of the party required to perform, provided that in the event partial performance under this Restated Agreement is feasible, notwithstanding the occurrence of one or more of the foregoing, performance shall be allocated between the newspapers by the Review-Journal, in its sole judgment, notwithstanding the provisions of Appendix A hereto, provided, that the Sun portion shall not be less than six (6) pages.

ARTICLE 9
TERMINATION

9.1 **Events of Termination.** This Restated Agreement shall continue in full force and effect unless and until it may be terminated by the occurrence of one of the following events of termination:

9.1.1 **Stated Duration.** Expiration of the term set forth in Section 1.1

9.1.2 **Bankruptcy or Default.** If either party hereto makes an assignment of its assets for the benefit of creditors, an order of relief is entered by any bankruptcy court or has a receiver appointed for its business by a court of competent jurisdiction (provided, that such assignment, order of relief or adjudication shall continue unstayed on appeal or otherwise in effect for a period of ninety (90) days after the assignment, the entry of the order of relief or decree related thereto before such assignment or adjudication becomes an event of termination, and further provided that the appointment of the receiver must continue unvacated, not set aside, not stayed or otherwise in effect for a period of ninety (90) days after such appointment before such appointment becomes an event of termination), or if either party defaults in the performance of any of its material obligations hereunder and does not cure such default within sixty (60) days after receiving written notice thereof from the other party, then such other party may, at its election, and in addition to all other remedies available to it at law or in equity, terminate this Restated Agreement. In the event of the entry of an unstayed order of relief in an involuntary bankruptcy by DR, the Sun shall have the right, at its option, to purchase from DR, the equipment necessary to publish the Sun. The value of the equipment shall be set by the bankruptcy trustee. In the event of an unstayed order of relief in an involuntary bankruptcy, the Sun may lease, at fair market value, for a period not to exceed five (5) years the assets necessary to the publish the Sun.

9.1.3. **Change of Controlling Interest.** In view of the nature of the relationship established by this Restated Agreement and the fact that the Sun is published under the direction and control of the Estate of Herman Greenspun and Brian L. Greenspun, the Review-Journal shall not be required to carry out the terms of this Restated Agreement or be associated with another party to which it reasonably objects. Accordingly, ownership or control of the Sun shall not be transferred to any other entity or person without notice to and prior approval by the Review-Journal, provided that the Review-Journal will not object to any transfer of the ownership or control of Sun to any entity under the immediate direction of Brian L. Greenspun, or any other lineal descendant of Herman M. Greenspun. Notwithstanding the foregoing, controlling interest of the Sun may be transferred to any person that can provide the necessary editorial background and expertise to produce the Sun pursuant to the terms of this Restated Agreement. Following an approved or permitted change of control of Sun, if a subsequent change of control occurs, notice as hereinabove shall be given and the Review-Journal may exercise the rights provided herein.

9.1.4 **Intentionally omitted.**

9.2 Intentionally omitted.

9.3 Duties Upon Termination. Upon termination of this Restated Agreement, either by expiration of its term or otherwise, the Review-Journal shall provide Sun with a complete list (including all contact information) of current newspaper subscribers and advertisers.

ARTICLE 10
MISCELLANEOUS

10.1 Notices. Each notice or other communication given pursuant to this Agreement shall be given in writing, delivered in person or mailed by registered or certified mail, addressed to the respective parties as follows:

Review-Journal: DR Partners
P. O. Box 70
Las Vegas, NV 89125
Attention: Sherman Frederick

Sun: Brian L. Greenspun, Esq.
President & Editor
Las Vegas Sun
2275 Corporate Circle Drive
Suite 300
Henderson, Nevada 89074

Or, in case of either party hereto, at such other address or marked for the attention of such other person, as such party may set forth in a written notice to the other party.

10.2 Disclaimer of Labor Related Obligations. The parties specifically agree that neither party hereby assumes any obligations of the other party related to its employment practices or to any of its employees, whether or not arising under any collective bargaining agreements or arising prior to, on or subsequent to the Effective Date.

10.3 Intentionally omitted.

10.4 Limited Effect. Nothing herein contained shall constitute the parties hereto partners, joint venturers, successors, alter egos, joint employers, an unincorporated association, or as having any relationship other than as specifically provided by this Restated Agreement. This Restated Agreement is intended solely for the benefit of the parties hereto, and their permitted successors and assigns and not for the benefit of any other person or party. This Restated Agreement, including Appendices A through D hereto, and the contracts and agreements supplemental hereto, comprises the entire understanding and agreement of the parties hereto on the subject matter herein contained and any and all other representations or agreements, which heretofore may have been made on such subject matter, whether oral or in

writing, by any agent of either party shall be null, void and of no effect whatsoever. Time is of the essence of this Restated Agreement.

10.5 Intentionally omitted.

10.6 Sun Trademark, Tradenames, Service Marks and Copyrights. In its use of such Sun trademarks, tradenames, service marks and copyrights as may be required to perform its obligations under this Restated Agreement, including promotion of the Newspapers, Review-Journal shall use commercially reasonable effort to comply substantially with all relevant laws of the State of Nevada and of the United States pertaining to trademarks, tradenames, service marks and copyrights in force at any time during the term of this Restated Agreement. Review-Journal shall have the exclusive right and the obligation to distribute the Sun through electronic replica technology (i.e. technology customarily used by metropolitan daily newspapers which transmits an entire Sun page to the subscriber or consumer in any form) to the same extent the Review-Journal distributes its own pages by such means provided, however, that Sun shall have the right to republish, license, or otherwise use its editorial content in any form or media, other than as an entire Sun page or pages, upon the earliest of: (i) 7:00 a.m., (ii) the time the Review-Journal guarantees delivery to its subscribers, or (iii) the time the Review-Journal first uses its editorial content in any form or media other than in the printed newspaper or replica technology. Sun shall use commercial reasonable efforts to maintain in effect said trademarks, trade names, services marks and copyrights, and shall make applications for the registration and/or renewal thereof if and when required by law. Review-Journal acknowledges Sun's right, title and interest in and to said trademarks, trade names, service marks and copyrights and all renewals thereof, and agrees that it shall not at any time permit, take, or cause to be taken any action within its control in any way impairing or tending to impair any part of such right, title and interest. Review-Journal agrees to publish such notices in the Sun as Sun reasonably may request in order to protect said trademarks, trade names, service marks and copyrights, or any of them. Review-Journal shall not in any manner represent that it has any ownership interest in said trademarks, trade names, services marks or copyrights or in the registration thereof, and Review-Journal acknowledges that its use hereunder of said trademarks, trade names, services marks or copyrights shall not create in its favor any right, title or interest in or to same beyond those created by this Restated Agreement. The Review-Journal shall have the right to republish, license, or otherwise use its editorial content in any form or media.

10.7 Tax Treatment of Payments to Sun. It is contemplated by the parties that the payments to Sun under Appendix D of this Restated Agreement will be, for federal income tax purposes, ordinary income to Sun and will be deductible by DR as a business expense.

10.8 Specific Performance. Because of the public interest in maintaining editorially and reportorially independent and competitive newspapers in Las Vegas and its environs, and because of the inadequacy of damages in the event of default in the performance of material obligations hereunder, each party shall have the right to seek specific performance of the material provisions of this Restated Agreement, provided, that in the event of any action by either party for specific performance, if that party does not obtain an order of specific

performance, the other party shall be entitled to recover in such action its attorneys' fees and costs.

10.9 Successors and Assignment. This Restated Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and their permitted successors and assigns.

10.10 Governing Law; Modification. This Restated Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. This Restated Agreement may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, modification or discharge shall be sought.

10.11 Headings. Headings have been inserted in this Restated Agreement for the purpose of convenience only. They shall not be used to interpret or construe the meaning of any Articles or Sections, nor shall they have the effect of limiting or enlarging the meaning thereof.

10.12 Ancillary Publications. Nothing in this Restated Agreement shall preclude either party from engaging in any lawful business outside of this Restated Agreement, except that neither Review-Journal, or any Affiliate of Review-Journal nor Sun, or any Affiliate of Sun, shall, outside of this Restated Agreement, publish a newspaper that is published three or more days per week and that is directed primarily to Clark, Nye, or Lincoln Counties, Nevada or any parts thereof. As used in this Restated Agreement, "Affiliate" means any person, corporation, partnership, trust or other entity which controls, is controlled by, or is under common control with either party.

10.13 Release. As a material inducement to DR to enter into this Restated Agreement, and for other good and valuable consideration, Sun, for itself, and its assigns, hereby unconditionally releases and forever discharges DR and the Las Vegas Review-Journal and their partners, predecessors, successors, assigns, agents, stockholders, directors, officers, current or former employees, representatives, attorneys, divisions, subsidiaries, affiliates, receivers, trustees, shareholders and all persons acting by, through, under or in concert with any of them from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses, including, but not limited to, attorneys' fees and costs actually incurred of any nature whatsoever with respect to all those claims asserted or which could have been asserted which arise out of, or are related to, operation of the Las Vegas Review-Journal or Sun between June 17, 1989, and June 10, 2005, known or unknown, including, but not limited to, any claims connected with operations under the 1989 Joint Operating Agreement between the parties, during that time period, including those items set forth on Exhibit C to a release agreement between the parties dated June 20, 2002 and any claims related to the conduct or operation of lvj.com, reviewjournal.com, lasvegasnewspapers.com.

As a material inducement to Sun to enter into this Restated Agreement, and for other good and valuable consideration, DR, for itself, its affiliates and assigns, hereby unconditionally releases and forever discharges Sun its partners, predecessors, successors, assigns, agents, stockholders, directors, officers, current or former employees, representatives, attorneys,

divisions, subsidiaries, affiliates, receivers, trustees, shareholders and all persons acting by, through, under or in concert with any of them from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses, including, but not limited to, attorneys' fees and costs actually incurred of any nature whatsoever with respect to all those claims asserted or which could have been asserted which arise out of, or are related to, operation of the Las Vegas Review-Journal or Sun between June 17, 1989, and June 10, 2005, known or unknown, including, but not limited to, any claims connected with operations under the 1989 Joint Operating Agreement between the parties, during that time period, including those items set forth on Exhibit D to a release agreement between the parties dated June 20, 2002 and any claims related to the conduct or operation of lasvegassun.com or lasvegasnewspapers.com.

IN WITNESS WHEREOF, this Restated Agreement has been executed by the parties' respective corporate officers thereto duly authorized as of the day and year first above written.

DR PARTNERS.

By: Stephens Group, Inc.
General Partner

By: Warren A. Stephens
Warren Stephens
Chief Executive Officer

LAS VEGAS SUN, INC.

By: Brian L. Greenspun
Brian L. Greenspun
President

APPENDIX A

A.1. Intentionally omitted

A.2. Pursuant to Section 4.3. of this Restated Agreement, the number, placement, and characteristics of Sun pages shall be in accordance with the following specifications:

- (a) For Monday through Friday editions, the Sun shall be composed of an open front page with the Las Vegas Sun flag and seven (7) additional editorial pages (or the lineage equivalent thereof) of which three (3) shall be open pages as determined by the Sun. The remaining pages may include advertising, subject to the restrictions in (d) below. For Monday-Friday editions, the Review-Journal shall be composed of as many pages as Review-Journal management determines in its sole discretion.
- (b) For the Sunday edition, the Sun shall be composed of an open front page with the Las Vegas Sun flag and nine (9) additional editorial pages (or the lineage equivalent thereof) of which three (3) shall be open pages as determined by the Sun. The remaining pages may include advertising, subject to restrictions in (d) below. The Review-Journal shall determine the number of pages for a comic section for the Sunday edition which shall consist of strips and features selected by the Review-Journal. The Sunday paper, including comics, shall be composed of as many Review-Journal pages as Review-Journal management determines in its sole discretion.
- (c) For Saturday and holiday editions, the Sun shall be composed of an open front page with the Las Vegas Sun flag and five (5) additional editorial pages (or the lineage equivalent thereof) of which three (3) shall be open pages as determined by the Sun. The Saturday and holiday editions shall be composed of as many Review-Journal pages as Review-Journal management determines in its sole discretion. The remaining pages may include advertising, subject to restrictions in (d) below.
- (d) The Sun shall not include any Review-Journal editorial content. Standard materials such as weather pages, comics, standardized television listings and the like shall not be considered Review-Journal editorial material and may be included in the Sun as additional pages unless the Sun objects in writing thereto. Other than open pages, the Sun may include advertising. No Sun page shall be more than 50% advertising, except for full page ads, and no advertising shall appear "above the fold" in the Sun, except for full page ads. Notwithstanding the foregoing, pages may contain, from time to time, more than 50% advertising due to production issues and advertising demands. Advertising will not be stacked in a pyramid format and shall be evened out in terms of height on the page. The Monday-Sunday editions of the Review-Journal shall include a noticeable mention of the

Sun, on the front page of the Review-Journal. The noticeable mention will appear in a box above the Review-Journal's masthead (the "Sun Box") and shall be in the form shown on Appendix B. The Sun Box shall not be smaller in proportion than shown in Appendix B. The Sun Box shall also include the Sun's masthead, and any emblem that is part of the Sun's masthead. The Sun Box shall include a promotion of a story in the Sun and refer readers to the Sun inside. The type face, editorial artwork, font, and editorial promotional content appearing in the Sun Box shall be determined by Sun, in its sole discretion. Any color in the Sun Box shall be restricted to constituent colors used by the Review-Journal on its front page. The Sun Box shall be the left-hand box unless it would be obscured by a spadea fold, in which case the Sun Box shall be the right-hand box. In the event of major breaking news or for exigent production circumstances, the Sun Box may be moved below the Review-Journal's masthead. The Sun, on average, will receive as much editorial color as the local news section of the Review-Journal.

A.3. Edition times for Monday through Sunday issues of the Review-Journal shall be established by the Review-Journal in accordance with normal industry standards. Deadlines for the Sun shall be the same as those established for the last local news sections of the Review-Journal. The Sun will be placed as the third section of the Newspapers except on occasions when exigent production circumstances require that it be placed as the fourth section. The Sun will be printed in the same press run as the Review-Journal local news section. The Review-Journal shall be solely responsible for determining the need for replating the Newspapers, and shall treat the Sun and the Review-Journal equally with respect to replating of page one for major breaking national or international news events

A.4. If the Review-Journal determines that it is feasible to publish an "extra" edition, such edition shall be a Review-Journal edition and the content of any "extra" edition shall be determined solely by the Review-Journal.

A.5. In the event the Review-Journal determines that the Sun's continued placement in the Review-Journal has a material and substantial negative financial impact on the revenue and profit of the Newspapers it may deliver the Sun separately from the Review-Journal but at the same time, place, and manner as the Review-Journal. The Review-Journal shall provide written notice to the Sun within fifteen (15) days of beginning such separate delivery specifying in detail the factual basis for its determination.

In the event the Sun disagrees with the Review-Journal's determination, it shall within seven (7) days of receipt of notice from the Review-Journal, request that the matter be submitted to arbitration by an arbiter mutually agreed upon by the parties. If Sun requests arbitration, the Review-Journal shall not deliver the Sun separately until sixty (60) days after selection of the arbitrator. In the event the parties are not able to agree upon an arbiter within seven (7) days, an arbiter shall be selected by the Chairman of the Department of Journalism of Northwestern University, Evanston, Illinois, or a similar journalism school if Northwestern University has ceased operations of its School of Journalism. The parties shall request the arbitrator to render a decision within sixty (60) days of his or her selection, and Sun and the Review-Journal each

hereby covenant to cooperate with the arbitrator to facilitate such request.

The arbitrator shall have experience in the senior management of metropolitan daily newspapers. In determining material and substantial negative financial impact, only the following factors shall be considered; advertiser abandonment of the Newspapers specifically due to the Sun's inclusion within the Review-Journal or subscriber cancellations of the Newspapers specifically due to the Sun's inclusion within the Review-Journal. The material and substantial negative financial impact shall be determined by reference to generally accepted standard newspaper industry sources. The decision of the arbitrator shall be final. The cost of the arbitration shall be borne by the non-prevailing party. The Review-Journal's rights under this section shall be cumulative and may not be exercised more often than once every eighteen (18) months.

In the event Sun determines, in its sole discretion, that the Sun's continued placement in the Review-Journal negatively impacts the Sun, the Review-Journal shall, upon fifteen (15) day written notice from Sun, thereafter deliver the Sun separately from the Review-Journal but at the same time, place and manner as the Review-Journal, provided that Sun shall pay any incremental expenditure reasonably incurred because of such separate delivery, which separate delivery shall be effected without any derogation in the publication, production, or delivery of the Review-Journal. Prior to giving its fifteen (15) day written notice, Sun may request and the Review-Journal shall provide a good faith estimate of such incremental expenditures and the parties shall meet and confer regarding the estimate. If the Sun is separately delivered, it will no longer receive noticeable mention in the Review-Journal.

APPENDIX B

[Sample to be attached]

LAS VEGAS SUN
DOE knew of Yucca
e-mails in December
DISASTERS SECTION 5



Batter Up

After finally breaking their 65-year-old
Curse, the Red Sox start the season in a
new role, defending champions
SEE SPORTS

Help pick the
new Las Vegas
city seal
DRAW YOUR OWN
SEE LIVING

APRIL 12, 1996

MONDAY

LAS VEGAS REVIEW-JOURNAL

THURSDAY

APRIL 12, 1996

PUBLIC VIEWING OF POPE

Agency pursued damage control

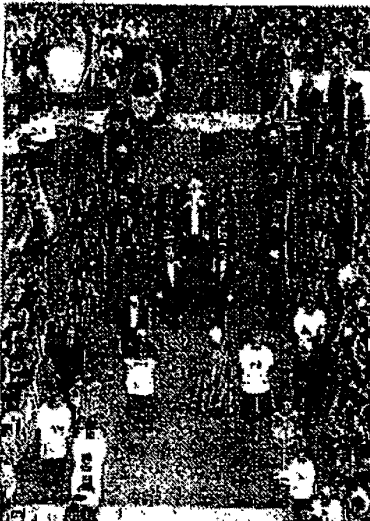
Lawmakers show
how they tried
with results about
Jared Bernstein

BY JEFFREY M. HARRIS

WASHINGTON — The White House's damage control efforts to prevent a major scandal over the firing of Jared Bernstein, a senior advisor to President Clinton, have failed. Lawmakers on Tuesday showed how they tried to control the damage, but the results were mixed. Bernstein was fired last week after a series of allegations that he had engaged in inappropriate behavior with a White House staffer. The White House initially denied the allegations, but later admitted that Bernstein had been fired for "inappropriate behavior." Lawmakers on Tuesday showed how they tried to control the damage, but the results were mixed. Bernstein was fired last week after a series of allegations that he had engaged in inappropriate behavior with a White House staffer. The White House initially denied the allegations, but later admitted that Bernstein had been fired for "inappropriate behavior." Lawmakers on Tuesday showed how they tried to control the damage, but the results were mixed.

Mourners pay respects

Thousands pack St. Peter's Square
to see John Paul II ahead of burial



BY JEFFREY M. HARRIS

ROME — The Pope's body was lying in state in St. Peter's Basilica, surrounded by thousands of mourners, as the Pope's body was lying in state in St. Peter's Basilica, surrounded by thousands of mourners.



AP Wirephoto

A mourner weeps outside as the Pope's body lies in state in St. Peter's Basilica.

And Pope John Paul II, a man
seen in Rome, after the end
of his 26-year reign, is laid to rest.

"He was a saint," said
John Paul II, a man seen in Rome, after the end of his 26-year reign, is laid to rest.

"He was a saint," said
John Paul II, a man seen in Rome, after the end of his 26-year reign, is laid to rest.

"He was a saint," said
John Paul II, a man seen in Rome, after the end of his 26-year reign, is laid to rest.

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John Paul II, a man seen in Rome, after the end of his 26-year reign, is laid to rest.

The Pope's body was lying in state in St. Peter's Basilica, surrounded by thousands of mourners.

AP Wirephoto

Oil concerns increase as prices soar to record level

Increased supply
could mean
a drop in prices
of \$15 a barrel

Oil prices have soared to a record level, raising concerns about a global oil shortage. Analysts predict that prices could drop to \$15 a barrel if supply increases.

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Oil prices have soared to a record level, raising concerns about a global oil shortage. Analysts predict that prices could drop to \$15 a barrel if supply increases.

Supreme Court rules IRAs protected from bankruptcy

BY JEFFREY M. HARRIS

WASHINGTON — The Supreme Court has ruled that Individual Retirement Accounts (IRAs) are protected from bankruptcy.



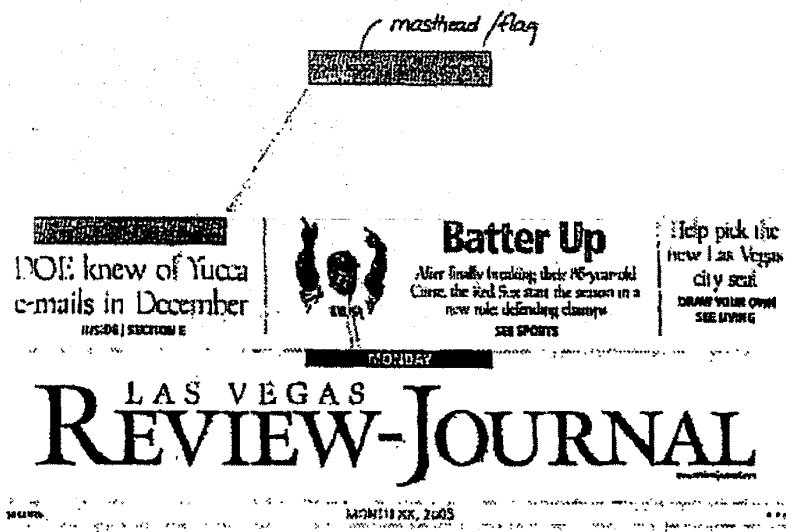
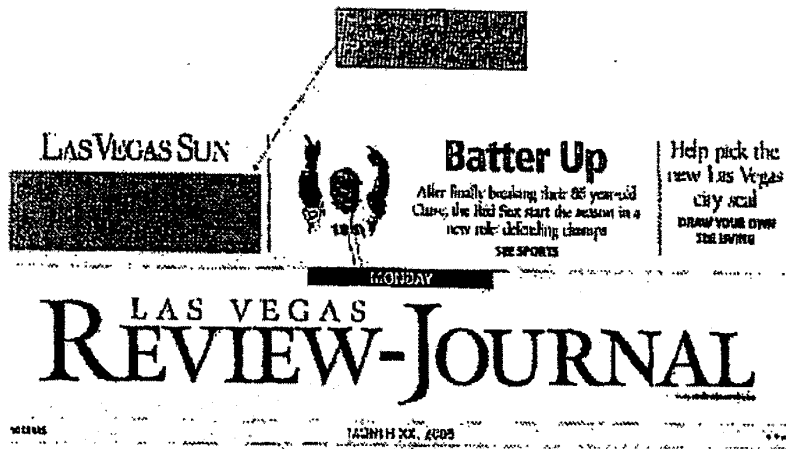
Witness says Michael Jackson nuzzled him

BY JEFFREY M. HARRIS

LOS ANGELES — A witness has testified that Michael Jackson nuzzled him during a sexual encounter.

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LOS ANGELES — A witness has testified that Michael Jackson nuzzled him during a sexual encounter.



APPENDIX C
Intentionally omitted

APPENDIX D

Sun shall receive an annual profits payment (the "Annual Profits Payment"), one-twelfth (1/12th) of which shall be paid monthly in advance on the first day of each month during the Term. For the fiscal year beginning April 1, 2005, the Annual Profits Payment shall be Twelve Million Dollars (\$12,000,000), provided, however, that payments to Sun shall continue in accordance with the 1989 Agreement until the Transition Date. Each fiscal year thereafter during the term of this Agreement the Annual Profits Payment shall be adjusted as set forth in this Appendix D. Within thirty (30) days following the beginning of each such fiscal year, Review-Journal shall calculate the percentage change (the "Percentage Change") between the earnings, before interest, taxes, depreciation and amortization ("EBITDA") for the fiscal year immediately preceding (the "LTM EBITDA") and the EBITDA for the penultimate fiscal year (the "Prior Period EBITDA"). The Annual Profits Payment shall be increased, or decreased, as the case may be, by the Percentage Change between the LTM EBITDA and the Prior Period EBITDA.

In calculating the EBITDA (i) for any period that includes earnings prior to April 1, 2005, such earnings shall not be reduced by any amounts that during such period may have been otherwise been deducted from earnings under section A.1 of Appendix A or sections B.1.16, B.1.17, B.1.18, or B.3 of Appendix B of the 1989 Agreement and (ii) for any period whether before or after April 1, 2005, such earnings shall not be reduced by any amounts paid to Sun as a percentage of operating profit under Appendix D of the 1989 Agreement or under this Appendix D. Any expense of the Review-Journal attributable to a transaction with an Affiliate shall not exceed fair market value. EBITDA shall include the earnings of the Newspapers and the

earnings of the Review-Journal's Affiliates derived from publications generally circulated in Clark, Nye, or Lincoln Counties, Nevada or any parts thereof. For purposes of this paragraph, Press Equipment shall mean the press equipment currently owned by the Review-Journal and identified in Appendix D-1 and any additional equipment, whether owned by the Review-Journal or third parties, to the extent that it produces substantially the same product or result, and Other Equipment shall mean all equipment and facilities used for production or operation of the printed Newspapers or other print publications whose earnings are included in EBITDA other than Press Equipment. EBITDA, whether determined for any period before or after April 1, 2005, shall not include (a) any expense for rents, leases or similar expense for Other Equipment (i) if such expense, under generally accepted accounting principles, should be treated as a capitalized lease obligation, or (ii) if such expense is made for the use of any capital asset the use of which is intended to replace any item of Other Equipment that is owned by the Review-Journal as of the Effective Date or (b) any expense for rents, leases, or similar expenses for Press Equipment, including any portion of a printing services contract that is fairly attributable to the use of Press Equipment. All calculations shall be made in accordance with generally accepted newspaper industry accounting principles consistently applied. The Parties intend that EBITDA be calculated in a manner consistent with the computation of "Retention" as that line item appears on the profit and loss statement for Stephens Media Group for the period ended December 31, 2004. Sun shall have the right, exercisable not more than once every twelve months and only after providing written notification no less than thirty days prior thereto, to appoint an certified public accounting firm or law firm as Sun's representative to examine and audit the books and records of the Review-Journal and the other publications whose earnings are included in EBITDA for purposes of verifying the determinations of the changes to the Annual Profit

Payments. Such representative shall agree in writing to maintain the confidentiality of all such financial records inspected. The confidentiality agreement shall not restrict the representative from disclosing to the management of Sun information concerning the audit of the Review-Journal, but shall restrict the representative from disclosing any specific individual salary information or advertiser-specific information (e.g., names, prices, contract terms, discounts, total inches) for the other publications whose earnings are included in EBIDTA. With respect to such other publications, the representative may only disclose summary information (e.g., total advertising revenue or total salaries) that is not identifiable with individual advertisers or employees. If as a result of such an audit, there is a dispute between Sun and the Review-Journal as to amounts owed to Sun and they are not able to resolve the dispute within 30 days, they shall select a certified public accountant to arbitrate the dispute. The arbitration shall be conducted according to the commercial arbitration rules of the American Arbitration Association, including such rules for the selection of a single arbitrator if Sun and the Review-Journal are not able to agree upon an arbitrator. Sun and the Review-Journal shall request the arbitrator to render a decision within sixty (60) days of his or her selection, and Sun and the Review-Journal each hereby covenant to cooperate with the arbitrator to facilitate such request. The arbitrator shall agree to be bound by terms of confidentiality to the same extent as the Sun's representative. The arbitrator shall make an award to Sun in the amount of the arrearage, if any, found to exist, together with interest thereon from the date any arrearage was due until paid at the corporate prime rate as quoted by the Wall Street Journal on the first business day of each month. The arbitrator shall also make an award of the fees and cost of arbitration, which may include a division of such fees and costs among the parties in a manner determined by the arbitrator to be reasonable in light of the positions asserted and the determination made.

DR shall be entitled to all of the profits of the Newspapers after the payments set forth above to the Sun during the term of this Restated Agreement.

APPENDIX D-1

- 1 Goss Urbanite Press (Parna Lane)**
- 1 Goss Community Press (Press Annex)**
- 2 Goss Newsliner presses (Main pressroom)**
- 1 Didde press (Mailroom)**
- 2 Lines of Heidelberg Inserters and GMA/Alphaliners**

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MCOM
MORRIS LAW GROUP
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Attorneys for Defendant
DR Partners d/b/a Stephens
Media Group

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS SUN, INC., a Nevada
corporation,

Plaintiff,

v.

DR PARTNERS, a Nevada General
Partnership, d/b/a STEPHENS
MEDIA GROUP; DOES 1-X,
inclusive,

Defendants.


Case No.: A-15-715008-B
Dept. No.: XI

MOTION TO COMPEL
ARBITRATION

Date:
Time:

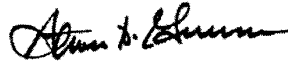
Defendant DR Partners d/b/a Stephens Media Group hereby
moves the Court, under NRS 38.221(1), for an order compelling arbitration
and for a stay of these judicial proceedings.

MORRIS LAW GROUP

By: 
Steve Morris, Bar No. 1543
Akke Levin, Bar No. 9102
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

Attorneys for Defendant DR Partners
d/b/a Stephens Media Group

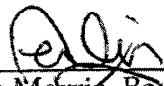
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CLERK OF THE COURT

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Compel on before the above-named Court on the 5 day of May, 2015 at the hour of 8:30 a a.m.

MORRIS LAW GROUP

By: 
Steve Morris, Bar No. 1543
Akke Levin, Bar No. 9102
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

Attorneys for Defendant Dr. Partners
d/b/a Stephens Media Group

POINTS AND AUTHORITIES

I. INTRODUCTION

This is a financial dispute between plaintiff Las Vegas Sun Inc. ("LV Sun" or "Sun") and Defendant DR Partners, owner and publisher of the Las Vegas Review Journal ("Review Journal"), under their joint operating agreement as amended and restated in 2005 ("JOA"). LV Sun alleges it is owed "at least \$6,000,000, plus interest" under the JOA since 2005, because Review Journal miscalculated the annual profit payments owed to LV Sun—*i.e.*, LV Sun alleges Review Journal improperly included its own operating expenses in the total operations costs, which reduced the earnings before interest, taxes, depreciation and amortization ("EBITDA") and thereby LV Sun's share in the annual profits. Compl. ¶¶ 17-21.

This dispute is subject to mandatory arbitration before a certified public accountant in accordance with "the commercial arbitration rules of the American Arbitration Association," because this is "a dispute

1 between [LV] Sun and the Review-Journal as to amounts owed to [LV]
2 Sun" under the JOA. Compl. Ex. 2. at 20. The JOA requires the parties to
3 "select a certified public accountant [CPA] to arbitrate the dispute." *Id.* If,
4 as here, the parties cannot agree on a CPA—LV Sun rejected the CPA
5 proposed by Review Journal, and Review Journal rejected the CPA
6 proposed by LV Sun by letter dated April 1, 2015—the AAA "rules for the
7 selection of a single arbitrator" will govern the selection process. *Id.*

8 LV Sun cannot invoke rights under the JOA while at the same
9 time disavowing the JOA's arbitration clause. *Phillips v. Parker*, 106 Nev.
10 415, 417, 794 P.2d 716, 718 (1990). The Court should compel arbitration as
11 provided by the parties' JOA and stay these judicial proceedings pending
12 arbitration. NRS 38.221(6).

13 II. ARGUMENT

14 A. This Accounting Dispute is Subject to Arbitration.

15 A party to an arbitration agreement may move the Court to
16 compel arbitration upon "another person's refusal to arbitrate pursuant to
17 the agreement," and the Court "shall proceed summarily to decide the issue
18 and order the parties to arbitrate unless it finds that there is no enforceable
19 agreement to arbitrate." NRS 38.221(1)(b). Thus, the Court decides
20 "whether a dispute must be arbitrated." *Phillips v. Parker*, 106 Nev. 415, 417,
21 794 P.2d 716, 717 (1990). This question of "arbitrability is usually a question
22 of contractual construction," which is a "question of law" for the Court to
23 decide. *Id.* at 417, 794 P.2d at 718.

24 "There is a strong public policy favoring contractual provisions
25 requiring arbitration as a dispute resolution mechanism," *id.*, "because
26 arbitration generally avoids the higher costs and longer time periods
27 associated with traditional litigation." *DR Horton, Inc. v. Green*, 120 Nev.
28 549, 553, 96 P.3d 1159, 1162 (2004). Where, as here, the parties contractually

1 agreed to arbitration, arbitration clauses should be liberally construed to
2 provide the parties with the benefits of arbitration they bargained for.
3 *Kindred v. Dist. Ct.*, 116 Nev. 405, 996 P.2d 903, 907 (2000). All doubts
4 "concerning the arbitrability of the subject matter of a dispute" should
5 therefore be decided "in favor of arbitration." *Int'l Ass'n of Firefighters v.*
6 *City of Las Vegas*, 104 Nev. 615, 618, 764 P.2d 478, 480 (1988); *Pacificare of*
7 *Nevada, Inc. v. Rogers*, 127 Nev. __ n.3, 266 P.3d 596, 600 n.3 (2011) (holding
8 same).

9 **1. The Dispute is Governed by Appendix D of the JOA**
10 **Because the Sun Disputes the Calculation of Annual**
11 **Profits and the Amount It is Owed.**

12 LV Sun's complaint is based on the parties' 1989 joint operating
13 agreement, as amended and restated in 2005 (collectively, "JOA"). Compl.
14 ¶¶ 9, 11, 12-21, 26-36 and Exhibits 1 and 2 thereto. In a nutshell, LV Sun
15 alleges that Review Journal underpaid the Sun its share of the annual
16 profits. *Id.* ¶¶ 17-21. More specifically, LV Sun contends that since the
17 JOA's amendment in 2005, the parties agreed that each party "shall bear
18 their own respective editorial costs." *Id.* ¶ 18 (quoting JOA, Ex. 2 § 4.2). LV
19 Sun alleges that Review Journal violated Article 4.2 of the JOA by including
20 its own editorial costs in the calculation of the total operating expenses,
21 which in turn reduced the earnings before interest, taxes, depreciation, and
22 amortization ("EBITDA"), which in turn reduced the Sun's share of annual
23 profits. Compl. ¶¶ 17, 19-20.

24 Article 7 of the JOA—entitled "Payment"—provides that
25 "[Defendant] DR [Partners] and the Sun shall receive the amounts set forth
26 in Appendix D" of the JOA. Compl., Ex. 2 § 7 (emphasis added).¹
27 Appendix D provides that LV Sun "shall receive an annual profits

28 ¹ Appendix D is not a separate attachment but included within the
consecutively paginated JOA on pages 18-21. See Compl. Ex. 2 at 18-21.

1 payment" and sets out the manner in which this payment is calculated—
2 starting with a base payment to be increased or decreased depending on
3 the percentage change between the EBITDA of the immediately preceding
4 fiscal year and the EBITDA for the year before that. *Id.* Ex. 2 at 19. LV Sun
5 specifically relies on Appendix D of the JOA to support its allegation that
6 in calculating the EBITDA, the earnings should not be reduced by Stephens
7 Media's own editorial costs. Compl. ¶¶ 14-16, 18, 26. In fact, Las Vegas
8 Sun admits that the dispute concerns "the calculation of EBITDA for
9 purposes of determining the Annual Profits Payment owed to Las Vegas
10 Sun, Inc." *Id.* ¶ 26.

11 **2. Appendix D of the JOA Calls for Mandatory**
12 **Arbitration.**

13 The remedies available to LV Sun in case of a dispute over the
14 calculation of EBITDA and the resulting annual profits payment are set out
15 in Appendix D. After describing the manner in which the EBITDA is to be
16 calculated, Appendix D goes on to state, in relevant part:

17 Sun shall have the right . . . to appoint a[] certified public
18 accounting firm or law firm as Sun's representative to examine
19 and audit the books and records of the Review-Journal . . . **If as**
20 **a result of such an audit, there is a dispute between Sun and**
21 **the Review-Journal as to amounts owed to Sun and they are**
22 **not able to resolve the dispute within 30 days, they shall**
23 **select a certified public accountant to arbitrate the dispute.**
24 **The arbitration shall be conducted according to the**
25 **commercial arbitration rules of the American Arbitration**
26 **Association ["AAA"], including such rules for the selection of**
27 **a single arbitrator if Sun and the Review-Journal are not able**
28 **to agree upon an arbitrator.** Sun and the Review-Journal shall
request the arbitrator to render a decision within sixty (60) days
of his or her selection, and Sun and the Review-Journal each
hereby covenant to cooperate with the arbitrator to facilitate
such request. . . The arbitrator shall make an award to Sun in
the amount of the arrearage, if any, found to exist, together
with interest thereon The arbitrator shall also make an
award of the fees and cost of arbitration, which may include a

1 division of such fees and costs among the parties in a manner
2 determined by the arbitrator to be reasonable in light of the
3 positions asserted and the determination made.

4 Compl. Ex. 2 at 19-20 (emphasis added).

5 Although LV Sun did not seek an audit and filed this lawsuit, it
6 may not avoid the mandatory JOA requirement to submit this dispute "as
7 to amounts owed to Sun" to a "certified public accountant" for arbitration
8 under the AAA commercial arbitration rules. *Id.* Thus, the Court should
9 compel arbitration and stay the proceedings pending conclusion of the
10 arbitration proceedings and entry of the arbitrator's award. *See* NRS
11 38.221(6) ("If a party makes a motion to the court to order arbitration, the
12 court on just terms shall stay any judicial proceeding that involves a claim
13 alleged to be subject to the arbitration until the court renders a final
14 decision under this section").

15 **3. Las Vegas Sun Cannot Avoid the Arbitration Clause by**
16 **Pleading Around It.**

17 A party cannot invoke a term in an agreement with an
18 arbitration clause "and simultaneously disavow the applicability of the
19 arbitration clause," as LV Sun attempts to do here. *Phillips*, 106 Nev. at 418,
20 794 P.2d at 718. LV Sun's complaint asserts a claim for breach of the JOA
21 and specifically (and repeatedly) invokes and quotes from Appendix D of
22 the JOA in support of its allegation that Stephens Media improperly
23 reduced the EBITDA by including its own editorial costs in the calculation.
24 Compl. ¶¶ 14-16, 18, 26. LV Sun admits that there is a dispute between the
25 parties concerning "the calculation of EBITDA for purposes of determining
26 the Annual Profits Payment owed to Las Vegas Sun, Inc." *Id.* ¶ 26.

27 However, LV Sun attempts to avoid the mandatory arbitration
28 clause by presenting this as a dispute involving the interpretation of Article
4.2 that can be resolved by "specific performance" under Article 10.8. *Id.*

1 ¶¶ 26, 34, 36; *id.* ¶¶ 30-37 (asserting claim for "specific performance"). This
2 position is wrong. Article 4.2 only addresses the allocation of the parties'
3 respective editorial costs; it does not address or determine the calculation
4 of the EBITDA of the joint operations, which is set out in Appendix D.
5 Moreover, Article 10.8 does not negate the arbitration clause of Appendix
6 D and, by its terms, is inapplicable to the financial dispute at issue. Article
7 10.8 provides, in relevant part:

8 **Because of the public interest in maintaining editorially and**
9 **reportorially independent and competitive newspapers in Las**
10 **Vegas and its environs, and because of the inadequacy of**
11 **damages in the event of default in the performance of material**
12 **obligations hereunder, each party shall have the right to seek**
13 **specific performance of the material provisions of this Restated**
14 **Agreement. . . .**

15 Compl. Ex. 2 Article 10.8 (emphasis added).

16 Thus, this provision contemplates injunctive relief where
17 damages are inadequate for a dispute involving the *public's* interest in
18 "independent and competitive newspapers in Las Vegas and its
19 environs" *Id.* Here, by contrast, the dispute is a *financial* one between
20 the *parties* that requires an accounting to resolve. The parties' interest in
21 maintenance of independent and competitive newspapers is not in issue.
22 Thus, the public interest is not involved. No matter how LV Sun tries to
23 frame the dispute as one for specific performance for violation of Article
24 4.2, at the end of the day LV Sun disputes Review Journal's annual profit
25 calculations and claims *damages* "of at least \$6,000,000" Compl. ¶ 21.
26 The Court should therefore disregard LV Sun's artful pleading and compel
27 arbitration. *See Phillips*, 106 Nev. at 718, 794 P.2d at 718 ("Despite the
28 careful pleading, the amended complaint relates to the agreement and
hence is subject to arbitration").

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1 III. CONCLUSION

2 For the reasons stated above, the Court should compel
3 arbitration and stay these judicial proceedings.

4 MORRIS LAW GROUP

6 By: 

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8 Akke Levin, Bar No. 9102
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12 Attorneys for Defendant DR Partners
13 d/b/a Stephens Media Group
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I caused the following documents to be served via the Court's Odyssey E-Filing system: **MOTION TO COMPEL ARBITRATION**. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

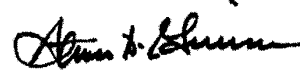
TO:

I further certify that the following are not registered with the Court's Odyssey E-Filing system and will be served the foregoing document via United States Mail, postage prepaid, on the date and to the addressee(s) shown below:

LEWIS ROCA ROTHGERBER, LLP
E. Leif Reid
50 West Liberty Street, Suite 410
Reno, Nevada 89501
lreid@lrrlaw.com

DATED this 1ST day of April, 2015.

By *J. Hickerson*


CLERK OF THE COURT

1 **OPPM**
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7 *Attorneys for Plaintiff*

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

11 LAS VEGAS SUN, INC., a Nevada Corporation,

12 **PLAINTIFF,**

13 **vs.**

14 DR PARTNERS, a Nevada General Partnership,
15 d/b/a STEPHENS MEDIA GROUP; DOES I-X,
inclusive,

16 **DEFENDANTS.**

Case No.: A-15-715008-B

Dept.: XI

PLAINTIFF'S OPPOSITION TO
MOTION TO COMPEL
ARBITRATION

17
18 Plaintiff Las Vegas Sun, Inc. ("the Sun"), opposes Defendant DR Partners', doing business
19 as Stephens Media Group, Motion to Compel Arbitration ("Motion") as follows:

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 DR Partners seeks to compel arbitration of this action by presenting a superficial and
22 oversimplified view of this dispute. In doing so, DR Partners fails to accurately describe the
23 nature of this case.

24 Rather than describing what is actually in dispute between the Parties—whether DR
25 Partners may force the Sun to subsidize the Las Vegas Review-Journal's editorial costs—DR
26 Partners deceptively presents arguments focused on the "enforceability" of the arbitration
27 provision and the purported inapplicability of the other material provisions contained in the
28

1 Parties' 2005 Joint Operating Agreement ("the JOA"). But no one here disputes the existence of
2 an arbitration provision or whether it is enforceable.

3 Instead, in its Complaint, the Sun seeks a declaratory order to confront DR Partners'
4 unreasonable interpretation of its contractual burden to bear its own editorial costs, to prevent
5 future breaches of the JOA, and to remedy DR Partners' failures by requiring specific performance
6 of its obligations under the JOA. Thus, rather than being an "accounting" or "financial" dispute
7 that would otherwise clearly require arbitration by a certified public accountant, this case involves
8 questions of law that must be decided by the Court.

9 As will be clearly presented below, the Parties never intended that questions of contractual
10 interpretation and breach, or whether specific performance should be ordered, would be subject to
11 or governed by a provision designed to resolve disputed questions of accounting and verifying how
12 EBITDA is calculated. Even the most cursory review of the JOA reveals that this dispute is not
13 subject to arbitration.

14 **I. THE NATURE OF THE DISPUTE.**

15 The Newspaper Preservation Act was enacted in 1970, and codified in 15 U.S.C. sections
16 1801 through 1804. The Act authorizes the formation of joint operating agreements among
17 competing newspaper operations within the same market area. 15 U.S.C. § 1803. It exempts
18 newspapers from certain provisions of antitrust laws. *Id.* The purpose of creating the Act was to
19 allow the survival of multiple daily newspapers in a given urban market where circulation was
20 declining, and to protect at least one of the newspapers in that market from ceasing operations
21 altogether. *See, e.g., Salt Lake Tribune Pub. Co., LLC v. AT & T Corp.*, 320 F.3d 1081, 1086 n.3
22 (10th Cir. 2003) ("In order to preserve multiple editorial voices in a given market and assist
23 financially distressed newspapers, Congress encouraged the formation of [joint operating
24 agreements] by giving them a limited exception to the antitrust laws."); *Hearst Communications,*
25 *Inc. v. Seattle Times Co.*, 115 P.3d 262, 271 (Wash. 2005) ("There is a clear national policy that
26 supports maintenance of two newspapers as long as one of the newspapers is 'failing' at the time
27 that the attorney general approves of the joint agreement.").

28

1 The Congressional Declaration of Policy set forth in 15 U.S.C. section 1801, reiterates the
2 same:

3 In the public interest of maintaining a newspaper press editorially
4 and reportorially independent and competitive in all parts of the
5 United States, it is hereby declared to be the public policy of the
6 United States to preserve the publication of newspapers in any city,
7 community, or metropolitan area where a joint operating
8 arrangement has been heretofore entered into because of economic
9 distress or is hereafter effected in accordance with the provisions
10 of this chapter.

11 15 U.S.C. § 1801.

12 The Sun and DR Partners have been operating their separate daily news publications
13 together under a joint operating agreement, entered into in accordance with the Act, since 1989.
14 *See generally* Compl. at Ex. 1. In 2005, the Parties renegotiated and restated their agreement in the
15 form of the 2005 Amended and Restated [Joint Operating] Agreement ("the JOA"). *See* Ex. 1.¹

16 Under the original 1989 Joint Operating Agreement, the Parties had previously shared news
17 and editorial expenses in accordance with a specified allocation formula. *See* Compl. at Ex. 1 ¶
18 4.2. However, in the process of amending the JOA in 2005, the Parties changed that provision to
19 require each to separately bear its own news and editorial expenses. *Compare id.* with Ex. 1 ¶ 4.2.
20 Amended Section 4.2 of the JOA reads as follows:

21 News and Editorial Allocations. The Review-Journal and the Sun
22 shall each bear their own respective editorial costs and shall
23 establish whatever budgets each deems appropriate.

24 Ex. 1 at 2. Following the execution of the 2005 JOA, and consistent with 15 U.S.C. § 1801, the
25 Review-Journal was prohibited from requiring the Sun to subsidize its editorial costs and
26 functions.

27 Despite this amendment to Section 4.2, DR Partners has continuously, improperly, and
28 surreptitiously included the Review-Journal's editorial expenses in the total operating expenses of
the JOA. *See* Compl. ¶17. The Sun's editorial expenses have not similarly been included.
Because DR Partners has improperly included these editorial expenses in the total operating

¹ The JOA was attached as Exhibit 2 to the Complaint, but is attached to this Opposition for the Court's convenience.

1 expenses of the JOA, the EBITDA calculated under the formula contained in Appendix D of the
2 JOA has been improperly decreased. *Id.* ¶ 19. This improper EBITDA adjustment has caused
3 inaccurately low Annual Profits Payments being made to the Sun, and an improper subsidy
4 received by the Review-Journal.

5 Section 4.2's mandate governing editorial expenses is a material provision of the JOA. A
6 party's failure to abide by Section 4.2 results in an improper shifting of cost burdens to the other
7 party. These improper cost burdens are substantial, amounting to hundreds of thousands of dollars
8 each year. And, because the Sun relies on the Annual Profits Payments that the Review-Journal
9 pays to it as its sole source of revenue, strict adherence to Section 4.2 is required to ensure the
10 Sun's continued existence—the core purpose of both the JOA and the Newspaper Preservation Act
11 of 1970.

12 In an effort to assure performance under the JOA, the Parties included Section 10.8 in the
13 JOA. Ex. 1 at 9-10. Section 10.8 is an express provision concerning the Parties' right to seek
14 redress in Court to obtain specific performance from the opposing party of the JOA's
15 requirements. *Id.* This provision further effectuates the purpose and intent of the Newspaper
16 Preservation Act, mirroring the language of 15 U.S.C. section 1801. Section 10.8 provides:

17 Because of the public interest in maintaining editorially and
18 reportorially independent and competitive newspapers in Las
19 Vegas and its environs, and because of the inadequacy of damages
20 in the event of default in the performance of material obligations
21 hereunder, *each party shall have the right to seek specific
22 performance of the material provisions of this Restated
23 Agreement*, provided, that in the event of any action by either
24 party for specific performance, if that party does not obtain an
25 order of specific performance, the other party shall be entitled to
26 recover in such action its attorneys' fees and costs.

27 *Id.* (emphasis added).

28 Due to DR Partners' repeated breach of Section 4.2 of the JOA through its continuing
refusal to bear its own editorial expenses (as the Sun has done), the Sun was forced to institute this
action. *See generally* Compl. The Sun seeks a declaration from this Court that DR Partners has
breached the JOA by failing to perform in accordance with Section 4.2. *Id.* at 5. In addition, the

1 Sun seeks specific performance of DR Partner's contractual obligations to exclude the Review-
2 Journal's editorial costs from the JOA's EBITDA calculation, and to correspondingly pay all of its
3 outstanding profit payments that would result from this change. *Id.* at 6-7.

4 **II. THIS DISPUTE IS NOT SUBJECT TO ARBITRATION UNDER THE JOA.**

5 **A. The Limited Arbitration Provision Contained in the JOA.**

6 Article 7 of the JOA contains the Agreement's payment terms. It reads, "During the term
7 of this Restated Agreement, DR and the Sun shall receive the amounts set forth in Appendix D."
8 Ex. 1 at 5. Under Appendix D, the Sun shall receive annual profits payments based upon the
9 EBITDA calculation. *Id.* at 18-19. The EBITDA calculation is specifically defined in Appendix
10 D to include the earnings of the two newspapers, as well as the earnings of the Review-Journal's
11 affiliates, while excluding certain listed expenses such as rents, leases and equipment expenses.
12 *Id.* at 18-19. Appendix D further mandates that "[a]ll calculations shall be made in accordance
13 with generally accepted newspaper industry accounting principles consistently applied." *Id.* at 19.

14 Additionally, Appendix D authorizes the Sun to appoint a certified public accountant to
15 audit the books and records of the Review-Journal "for purposes of verifying the determinations of
16 the changes to the Annual Profit Payments" due to the Sun. Ex. 1 at 19-20. In the event that the
17 Sun disputes the determinations of the Annual Profit Payment after its audit, the JOA provides for
18 an arbitration process to resolve the dispute and obtain a final financial determination. *Id.* The
19 arbitration provision reads, in pertinent part, as follows:

20 If as a result of such an audit, there is a dispute between Sun and
21 the Review-Journal as to amounts owed to Sun and they are not
22 able to resolve the dispute within 30 days, they shall select a
23 certified public accountant to arbitrate the dispute. The arbitration
24 shall be conducted according to the commercial arbitration rules of
the American Arbitration Association, including such rules for the
selection of a single arbitrator if Sun and the Review-Journal are
not able to agree upon an arbitrator.

25 *Id.* at 20.

26 **B. Standard for Determining Whether a Dispute is Arbitrable.**

27 Whether this dispute is subject to arbitration is an issue of contract interpretation. *Clark*
28 *Co. Public Employees v. Pearson*, 106 Nev. 587, 590, 798 P.2d 136, 137 (1990). Because

1 arbitration in this case “is a product of contract, . . . its legal basis depends entirely upon the
2 particular contract[] of particular parties.” See *City of Reno v. LAFF, Local 731*, 130 Nev. Adv.
3 Op. 100, ___, 340 P.3d 589, 593 (Dec. 31, 2014) (internal quotations and citation omitted). When
4 interpreting the contract, the court must “construe a contract that is clear on its face from the
5 written language, and [it] should be enforced as written.” *State ex rel. Masto v. Second Judicial*
6 *Dist. Ct.*, 125 Nev. 37, 44, 199 P.3d 828, 832 (2009). Although public policy favors arbitration,
7 arbitration provisions “must not be so broadly construed as to encompass claims and parties that
8 were not intended by the original contract.” *Truck Ins. Exch. v. Palmer J. Swanson, Inc.*, 124
9 Nev. 629, 634, 189 P.3d 656, 660 (2008) (quoting *Thomson-CSF, S.A. v. Am. Arbitration Ass’n*, 64
10 F.3d 773, 776 (2d Cir. 1995)). “[A] party cannot be required to submit to arbitration any dispute
11 which he has not agreed so to submit.” *City of Reno*, 130 Nev. Adv. Op. at ___, 340 P.3d at 593
12 (quoting *AT&T Techs., Inc. v. Commc’ns Workers of Am.*, 475 U.S. 643, 648 (1986)). Simply put,
13 the existence of an arbitration provision in a contract does not mean that every dispute between the
14 contracting parties is arbitrable.

15 The contract that is the subject of this action is the JOA. See generally Ex. 1. Thus,
16 general principles of contract interpretation govern the determination of whether this dispute is
17 arbitrable. For the reasons discussed below, this dispute is not arbitrable and DR Partners’ Motion
18 is without merit.

19 **C. This Dispute Falls Outside the Limited Purview of the Arbitration Provision.**

20 While DR Partners argues that this is a “financial dispute” that is subject to arbitration, this
21 assertion is simply incorrect. A plain review of the arbitration provision at issue in this case
22 reveals that it is extremely limited in scope: it is only for circumstances where accounting
23 professionals retained by the Parties differ on the amount of a calculation. No language in the
24 above-cited arbitration provision indicates that the Parties’ ceded contract interpretation or
25 enforcement questions for final resolution by a certified public accountant.

26 Employing applicable rules of contract interpretation, the arbitration provision cannot be
27 construed so broadly such that it encompasses all breaches of the JOA, as DR Partners contends.
28 See *Truck Ins. Exch. v. Palmer J. Swanson, Inc.*, 124 Nev. 629, 634, 189 P.3d 656, 660 (2008)

1 (stating that arbitration provisions “must not be so broadly construed as to encompass claims and
2 parties that were not intended by the original contract”) (internal quotations omitted); Mot. at 3, 6
3 (erroneously arguing that “LV Sun cannot invoke rights under the JOA while at the same time
4 disavowing the JOA’s arbitration clause”). The narrow nature of the arbitration provision
5 demonstrates that the Parties never intended the arbitration provision to apply to disputes such as
6 those raised in the Sun’s Complaint.

7 The heart of the arbitration provision states, “If as a result of such an audit, there is a
8 dispute between Sun and the Review-Journal as to amounts owed to Sun . . . , they shall select a
9 certified public accountant to arbitrate the dispute.” Ex. 1 at 20. The first phrase in this sentence
10 contemplates arbitration only after an audit of Review-Journal’s books and records, and only if the
11 Sun disputes the Annual Profits Payment after that audit. *Id.* This dispute is not about verifying
12 advertising revenue, explaining discounts provided to major accounts, or documenting publication
13 costs and amortization methods. This dispute does not sound in inaccuracies contained in
14 chargeable costs and actual expenses that would only be revealed by a formal audit of the Review-
15 Journal’s books and records. *See generally* Compl. Instead, this dispute is about whether the
16 Review-Journal breached the JOA when it failed to “bear [its] own respective editorial costs” as
17 required the JOA, and whether the Review-Journal should be required to specifically perform this
18 obligation contained in Section 4.2 of the JOA. *Id.*

19 No formal audit of Review-Journal’s books and records by a certified public accountant
20 was necessary to determine whether it failed to perform under Section 4.2. DR Partners freely
21 admits that it included its editorial costs in its EBITDA calculations of the joint venture. The
22 ongoing dispute between the Parties is whether the JOA authorizes this practice as a matter of law.

23 The second phrase in the arbitration provision referenced above reinforces the Sun’s
24 position. The second phrase requires that a certified public accountant be the final arbitrator of the
25 dispute. The Sun does not dispute that a certified public accountant is appropriate to preside over
26 and resolve a dispute resulting from a books and records audit. However, a certified public
27 account cannot properly determine whether a party to the JOA breached its duties and whether
28 specific performance is appropriate. Doing so would exceed the scope of the arbitration agreement

1 and the powers granted to the certified public accountant under Appendix D of the JOA. NRS
2 34.241(d)-(e) would require that any such action be vacated.

3 It is well-established that issues of contract interpretation, and requests for declaratory
4 relief based upon a breach thereunder, are issues of law for a court to decide. *E.g., Grand Hotel*
5 *Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 815, 839 P.2d 599, 602 (1992); *Fed. Ins. Co. v.*
6 *Coast Converters*, 130 Nev. Adv. Op. 95, 339 P.3d 1281, 1284 (Dec. 24, 2014); *Close v. Isbell*
7 *Constr. Co.*, 86 Nev. 524, 529, 471 P.2d 257, 261 (1970). The same is true of the relief sought in
8 the Sun's Complaint. Whether specific performance should be ordered is an issue to be decided by
9 a court, *e.g., Close*, 86 Nev. at 529, 471 P.2d at 261, not a certified public accountant.

10 **D. Section 10.8 of the JOA Excludes This Dispute from Arbitration.**

11 Even looking beyond the plain language of Exhibit D itself, it is clear that the Sun's request
12 for specific performance is expressly authorized in Section 10.8 of the JOA. Section 10.8 grants
13 the Parties "the right to seek specific performance of the material provisions of the [JOA]." Ex. 1
14 at 9-10. Section 10.8's reservation of specific performance as a remedy to a party's breach of the
15 JOA speaks separate from, and in addition to, the alternative dispute resolution process for
16 accounting questions set forth in Exhibit D. Surely Section 10.8 must be given its plain meaning
17 and application.

18 DR Partners contends that Section 10.8 does not apply to "*financial*" disputes between "the
19 *parties*," and instead only to disputes involving "the *public's* interest." Mot. 7. This distinction
20 oversimplifies what the Parties are disputing in this case. Again, at issue is not a factual question
21 of whether a calculation was properly performed and supported by genuinely-accepted accounting
22 principles, but rather the legal question of whether the JOA allows DR Partners to require the Sun
23 to subsidize a category of expenses that were excluded in a 2005 contractual amendment.

24 In making its argument, DR Partners emphasizes the language contained in Section 10.8 as
25 follows:

26 **Because of the public interest in maintaining editorially and**
27 **reportorially independent and competitive newspapers in Las**
28 **Vegas and its environs, and because of the inadequacy of**
damages in the event of default in the performance of material
obligations hereunder, each party shall have the right to seek

1 specific performance of the material provisions of this Restated
2 Agreement . . .

3 *Id.* (quoting Ex. 1 at 9). But this not only ignores the plain language of the provision as a whole, it
4 conflicts with the very purpose of the JOA.

5 Section 10.8 states that the Parties may seek judicial intervention to obtain specific
6 performance "*because*" the continued operation of two independent editorial voices in Las Vegas
7 is itself the public interest. Ex. 1 at 9. The Review-Journal's unabated practice of forcing the
8 Sun to subsidize the Review-Journal's editorial expenses threatens the Sun's ability to continue to
9 operate. Damages would be inadequate to remedy the loss of a second editorial voice in Las
10 Vegas which could result from DR Partners default of its obligations under Section 4.2 of the JOA.
11 Section 10.8 does not limit specific performance "only where" the public interest in maintaining
12 editorially and reportorially independent and competitive newspapers is at issue, or "only if"
13 damages are inadequate, *see id.*, as DR Partners argues. *See* Mot. 7.

14 Moreover, as stated previously, the Newspaper Preservation Act was specifically enacted to
15 promote joint operating arrangements *because—as stated in the Congressional Declaration of*
16 *Policy*—the preservation of such arrangements is in the public interest:

17 In the public interest of maintaining a newspaper press editorially
18 and reportorially independent and competitive in all parts of the
19 United States, it is hereby declared to be the public policy of the
20 United States to preserve the publication of newspapers in any city,
21 community, or metropolitan area where a joint operating
22 arrangement has been heretofore entered into because of economic
23 distress or is hereafter effected in accordance with the provisions
24 of this chapter.

25 15 U.S.C. § 1801. DR Partners' suggestion that its dispute with the Sun falls outside the public
26 interest cannot be reconciled with Congress's express statement of national policy.

27 In sum, the Parties never intended that a certified public account—untrained in the law—
28 would decide these important legal and equitable issues asserted in the Sun's Complaint. Although
29 a certified public accountant may eventually be called upon to recalculate the specific amounts
30 owed to the Sun, the Court must first interpret Section 4.2 and determine whether DR Partners
31 breached that provision and whether specific performance is appropriate. These decisions must be

1 made by the Court before a certified public accountant could possibly be employed should there be
2 some arbitrable dispute resulting from the Court's declaratory order.

3 **III. CONCLUSION.**

4 To give Appendix D's arbitration provision the all-encompassing breadth urged by DR
5 Partners would render Section 10.8 entirely superfluous and without meaning, diminish the
6 purpose of Section 4.2, and defeat the Parties' intentions altogether. The universally-accepted
7 tenets of contract interpretation do not permit result. *See, e.g., Musser v. Bank of Am.*, 114 Nev.
8 945, 950, 964 P.2d 51, 54 (1998) (recognizing the principle "that contracts should be construed so
9 as to avoid rendering portions of them superfluous"); *State ex rel. Masto v. Second Judicial Dist.*
10 *Ct.*, 125 Nev. 37, 44, 199 P.3d 828, 832 (2009) (providing that the court must "construe a contract
11 that is clear on its face from the written language, and should be enforced as written"); *Truck Ins.*
12 *Exch. v. Palmer J. Swanson, Inc.*, 124 Nev. 629, 634, 189 P.3d 656, 660 (2008) (stating that
13 arbitration provisions "must not be so broadly construed as to encompass claims and parties that
14 were not intended by the original contract") (internal quotations omitted); *City of Reno v. LAFF,*
15 *Local 731*, 130 Nev. Adv. Op. 100, 340 P.3d 589, 593 (Dec. 31, 2014) (holding, "a party cannot
16 be required to submit to arbitration any dispute which he has not agreed so to submit") (quoting
17 *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 648 (1986)).

18 For the foregoing reasons, the claims raised in the Sun's Complaint are not subject to
19 arbitration and DR Partners' Motion to Compel Arbitration must be denied.

20 DATED this 20th day of April, 2015.

21 LEWIS ROCA ROTHGERBER LLP

22
23 BY: /s/ E. Leif Reid
E. LEIF REID, ESQ.
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**LEWIS ROCA
ROTHGERBER**

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of LEWIS ROCA ROTHGERBER LLP and that on the date below, I caused the foregoing **PLAINTIFF'S OPPOSITION TO MOTION TO COMPEL ARBITRATION** to be served via the Court's CM/ECF electronic filing system to all parties on the e-service list.

DATED this 20th day of April, 2015.

/s/ Laura J. Heath
Laura J. Heath

**DECLARATION OF E. LEIF REID IN SUPPORT OF PLAINTIFF'S OPPOSITION TO
MOTION TO COMPEL ARBITRATION**

I, E. LEIF REID, do hereby swear under penalty of perjury that the following assertions are true and correct to the best of my knowledge:

1. I am a duly licensed attorney admitted to practice in the state of Nevada. I am a partner at Lewis Roca Rothgerber, LLP, and counsel for Plaintiff, Las Vegas Sun, Inc., in this matter. The statements herein are based upon personal knowledge.

2. Attached to Plaintiff's Opposition to Motion to Compel Arbitration is a true and correct copy of the June 10, 2005, Amended and Restated Agreement between DR Partners and the Las Vegas Sun, Inc.

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

DATED this 20th day of April, 2015

/s/ E. Leif Reid
E. LEIF REID, ESQ.

50 West Liberty Street
Suite 410
Reno, NV 89501-1922
LEWIS ROCA
ROTHGERBER

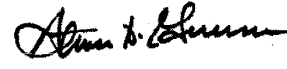
EXHIBIT LIST

No.	Description	Page(s)
1	2005 Amended and Restated [Joint Operating] Agreement	22 ²

² Page number does not include Exhibit No. cover sheet.

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12 Attorneys for Defendant
 13 DR Partners d/b/a Stephens
 14 Media Group

15 **DISTRICT COURT**
 16 **CLARK COUNTY, NEVADA**

17 **LAS VEGAS SUN, INC., a Nevada**
 18 **corporation,**

19 **Plaintiff,**

20 **v.**

21 **DR PARTNERS, a Nevada General**
 22 **Partnership, d/b/a STEPHENS**
 23 **MEDIA GROUP; DOES 1-X,**
 24 **inclusive,**

25 **Defendants.**

Case No.: A-15-715008-B
 Dept. No.: XI

**REPLY IN SUPPORT OF
 MOTION TO COMPEL
 ARBITRATION**

Date: May 19, 2015
Time: 8:30 a.m.

26 **I. INTRODUCTION**

27 The Court should not be misled by Las Vegas Sun's artful
 28 pleading of its claims to avoid its agreement to arbitrate this accounting
 dispute the arbitration of which is unmistakably required by the parties'
 contract. No matter how creatively put, Las Vegas Sun does not merely
 seek "an order to confront DR Partners' unreasonable interpretation of its
 contractual burden to bear its own editorial costs"—(huh?)—or to "prevent
 future breaches of the JOA" Opp'n at 2:4-6. What Las Vegas Sun seeks

1 is a proper calculation of the EBITDA and \$6,000,000 in alleged outstanding
2 Annual Profits Payments since 2005. Complaint ¶¶ 21, 26-27, 36.

3 Las Vegas Sun's own characterization of this dispute confirms
4 that it is nothing more or less than a dispute "as to amounts owed to Sun"
5 that must be sent to arbitration. *See* Opp'n at 2-4 ("The Nature of the
6 Dispute"). After describing irrelevant background of the Newspaper
7 Preservation Act, Las Vegas Sun gets to the guts of its complaint:

8 [Because] DR Partners has continuously, improperly, and
9 surreptitiously included the Review-Journal's editorial
10 expenses in the total operating expenses of the JOA [despite the
11 amendment to section 4.2] the EBITDA calculated under the
12 formula contained in Appendix D of the JOA has been
13 improperly decreased. This improper EBITDA adjustment
14 has caused inaccurately low Annual Profits Payments being
15 made to the Sun, and an improper subsidy received by the
16 Review-Journal.

17 Opp'n at 3:23-4:4 (emphasis added); *see also id.* at 5:1-3 ("Sun seeks specific
18 performance . . . to exclude the Review-Journals' editorial costs . . . and to
19 correspondingly pay all of its outstanding profitpayments . . ."). Las
20 Vegas Sun's contention that there is no factual question as to whether the
21 EBITDA calculation was properly performed is irrational against these
22 allegations.

23 Las Vegas Sun expressly bargained to have a CPA decide any
24 unresolved "dispute . . . as to amounts owed to Sun," including legal issues
25 of contract construction, under the commercial arbitration rules of the
26 AAA. The Court should "refuse to step-in and second guess that decision
27 simply because [Las Vegas Sun] now has concerns about its agreement."
28 *Benson Pump Co. v. South Cent. Pool Supply, Inc.*, 325 F. Supp. 2d 1152 (D.
Nev. 2004). Because any doubt as to whether an arbitration clause covers a
particular dispute must be decided in favor of arbitration, and because Las
Vegas Sun's arguments have all been rejected by courts in cases directly on

1 point, the Court should stay this case and compel Las Vegas Sun to
2 arbitrate its dispute, as its contract stipulates.

3 II. ARGUMENT

4 When deciding a motion to compel arbitration, the Court's role
5 is limited to determining: (1) whether a valid arbitration agreement exists;
6 and (2) whether the agreement covers the dispute at issue. NRS 38.219(2).
7 Las Vegas Sun does not dispute that the Joint Operating Agreement
8 ("JOA") contains a valid arbitration clause. Opp'n at 5-6. However, Las
9 Vegas Sun argues that the arbitration clause is "extremely limited in scope"
10 and does not cover the dispute at issue. *Id.* at 6:22. Las Vegas Sun's
11 artificially narrow reading of its own contract is at odds with the plain
12 language of the arbitration clause and its own allegations, all of which
13 squarely call for application of the arbitration clause.

14 A. The Arbitration Clause Broadly Covers All Disputes Over 15 "Amounts Owed to [Las Vegas] Sun."

16 Arbitration provisions must be "construed *liberally* in favor of
17 arbitration." *Phillips v. Parker*, 106 Nev. 415, 417, 794 P.2d 716, 718 (1990)
18 (emphasis added). Although a party cannot be compelled to arbitrate a
19 dispute it did not agree to arbitrate, "Nevada courts resolve all doubts
20 concerning the arbitrability of the subject matter of a dispute in favor of
21 arbitration." *Truck Ins. Exch. v. Palmer J. Swanson, Inc.*, 124 Nev. 629, 634,
22 189 P.3d 656, 660 (2008) (internal quotation marks and citation omitted); *see*
23 *also Phillips*, 106 Nev. at 417, 794 P.2d at 718 (holding same).

24 Here, the arbitration provision is set forth in Appendix D of the
25 parties' JOA, which addresses and sets out Las Vegas Sun's compensation
26 under the JOA. *See* Compl. Exhibit 1 (JOA), Article 7 at 5 ("... DR and the
27 Sun shall receive the amounts set forth in Appendix D"). Appendix D
28 provides that Las Vegas Sun shall receive an "Annual Profits Payment,"

1 which is a base amount of \$12 Million dollars that is increased or decreased
2 each year, depending on the change in earnings before interest, taxes,
3 depreciation and amortization ("EBITDA") between the immediately
4 preceding year and the year before that. *Id.* at 18.

5 After setting out the mechanism for calculating the EBITDA,
6 Appendix D gives Las Vegas Sun a yearly right to audit Review Journal's
7 books and records "for purposes of verifying the determination of the
8 changes to the Annual Profit Payments," *id.*, and goes on to say, in relevant
9 part:

10 If, as a result of such an audit there is a dispute between Sun
11 and the Review-Journal as to amounts owed to Sun and they
12 are not able to resolve the dispute within 30 days, they shall
13 select a certified public accountant to arbitrate the dispute.
14 The arbitration shall be conducted according to the commercial
15 arbitration rules of the American Arbitration Association,
16 including such rules for the selection of a single arbitrator if
17 Sun and the Review-Journal are not able to agree upon an
18 arbitrator. Sun and the Review-Journal shall request the
19 arbitrator to render a decision within sixty (60) days of his or
20 her selection, and Sun and the Review-Journal each hereby
21 covenant to cooperate with the arbitrator to facilitate such
22 request. . . .

23 JOA, Ex. 1 to Compl., App. D at 20 (emphasis added).

24 Thus, the arbitration clause plainly and unambiguously
25 requires Las Vegas Sun to arbitrate unresolved disputes "as to amounts
26 owed to [it]" before a CPA under the commercial arbitration rules of the
27 American Arbitration Association ("AAA"). *Nothing* in this arbitration
28 clause limits those disputes to "circumstances where *accounting professionals*
retained by the Parties differ on the amount of a calculation," as Las Vegas
Sun contends. Opp'n at 6:23. The limitation Las Vegas Sun wishes the
Court to accept is simply not there and cannot be read into the contract.
See Reno Club v. Young Inv. Co., 64 Nev. 312, 324, 182 P.2d 1011, 1017 (1947)

1 ("The Court has no power by interpretation to engraft on a contract a
2 limitation inconsistent with the apparent object of the parties").

3 **1. Conditions Precedent to Arbitrability Are Issues for the**
4 **Arbitrator to Decide and Las Vegas Sun's Failure to**
5 **Seek an Audit Waived the Condition.**

6 Las Vegas Sun's argument that the application of the arbitration
7 clause is conditioned upon Las Vegas Sun first seeking an audit and
8 thereafter disputing the amounts owed is nonsense. This argument
9 overlooks NRS 38.219, which expressly provides that "[a]n arbitrator"—*not*
10 a court—"shall decide whether a condition precedent to arbitrability has
11 been fulfilled." NRS 38.219(3) (emphasis added); *see also Exber, Inc. v.*
12 *Sletten Constr. Co.*, 92 Nev. 721, 731 n. 8, 558 P.2d 517, 523 n.8 (1976)
13 (timeliness of the demand to arbitrate and the issue of "whether filing a
14 copy of the demand for arbitration with the architect was a condition
15 precedent" were issues for the arbitrator to decide). Thus, as a matter of
16 law, it is not for the Court to decide whether the alleged condition—Las
17 Vegas Sun's request for an audit—that triggers arbitration is met. That
18 determination is for the arbitrator.

19 Moreover, Las Vegas Sun cannot defeat the Review Journal's
20 bargained-for right to arbitration by withholding a request for an audit,
21 when its entire complaint is based on its allegation that Review Journal
22 miscalculated EBITDA by wrongfully including editorial costs at the same
23 time it seeks a "proper" calculation of EBITDA.¹ *See Hilton Hotels v. Butch*
24 *Lewis Productions*, 107 Nev. 226, 232, 808 P.2d 919, 922-24 (1991) (party to a
25 contract may not act "in a manner that is unfaithful to the purpose of the
26 contract and the justified expectations of the other party. . ."); *cf. Moore*

27 ¹ The merits of these allegations are not before the Court. Thus, Las Vegas
28 Sun's unsupported contention that Review Journal "freely admits that it
included its editorial costs in the EBITDA calculations of the joint venture"
is irrelevant to this Motion.

1 *Bros. Co. v. Brown & Root, Inc.*, 207 F.3d 717, 725 (4th Cir. 2000)(discussing
2 the prevention doctrine, which provides that "if a promisor prevents or
3 hinders fulfillment of a condition to his performance, the condition may be
4 waived or excused") (citing 13 WILLISTON ON CONTRACTS § 39:5 at 579 (4th
5 ed. 2013); Restatement (Second) of Contracts § 245 (1981)); *In re Gulf*
6 *Oil/Cities Service Tender Offer Lit.*, 725 F. Supp. 712, 737 n.9 (S.D.N.Y. 1989)
7 ("The prevention doctrine . . . excuses a condition precedent when a party
8 wrongfully prevents that condition from occurring").

9 Regardless, however, Las Vegas Sun argues that "[n]o formal
10 audit of Review-Journal's books and records by a [CPA] was necessary to
11 determine whether it failed to perform under Section 4.2." Opp'n at 7:19-20
12 (emphasis added). By taking this position, Las Vegas Sun has waived its
13 right to seek an audit and with it its right to insist on the alleged condition
14 precedent to arbitration.

15 **2. The Interpretation of the Contract is Also an Issue for**
16 **the Arbitrator.**

17 Las Vegas Sun's argument that the parties did not agree that a
18 CPA would decide issues of contract interpretation is not supported by the
19 language of the arbitration clause, which provides—without limitation or
20 qualification—that a certified public accountant is "to arbitrate the dispute."
21 App. D. at 20. Its argument is also not supported by any of the cases it
22 cites. For example, *Close v. Isbell Constr. Co.*, 86 Nev. 524, 529, 471 P.2d 257,
23 261 (1970), inappropriately relied on by the Sun, did not involve an
24 arbitration provision. *Close* merely stands for the unremarkable
25 proposition that in court proceedings, juries decide the facts while courts
26 decide issues of law.

27 A similar argument was made and expressly rejected in *Benson*
28 *Pump Co. v. South Cent. Pool Supply, Inc.*, 325 F. Supp. 2d 1152 (D. Nev. 2004)

1 ("Benson")—a Nevada case directly on point. In *Benson*, the defendant
2 entered into an agreement to purchase almost all of the plaintiff's assets. *Id.*
3 at 1154. The purchase price consisted of a base amount "plus or minus the
4 amount of any adjustments listed in the Agreement, including an 'Accounts
5 Receivable Adjustment.'" *Id.* at 1155. The agreement in *Benson* provided
6 that "disputes concerning the Accounts Receivable Adjustment would be
7 taken to an **independent auditor** for resolution" *Id.* at 1156 (emphasis
8 added). The dispute resolution clause of the agreement provided, in
9 relevant part:

10 If [the parties] are unable to resolve any such disagreements
11 within twenty (20) days . . . [they] will submit such dispute for
12 resolution to an . . . **independent, nationally-recognized**
13 **accounting firm** mutually agreeable to [SCP] and [Benson
14 Pump].

15 *Id.* at 1155 (quoting agreement) (emphasis added).

16 A dispute over the accounts receivable adjustment arose and
17 the plaintiff in *Benson*, like Las Vegas Sun, filed a lawsuit for breach of
18 contract and declaratory relief. *Id.* at 1156. The defendant moved to
19 compel arbitration of the accounts receivable component of the dispute.
20 Like Las Vegas Sun, the plaintiff in *Benson* argued that the independent
21 auditor could not and "should not be allowed to decide legal issues"
22 relative to the dispute. *Id.* at 1157-58. The *Benson* court disagreed, holding
23 that the "interpretation of the underlying contract is an issue for the
24 arbitrator to decide, even though contract construction is generally a
25 question of law." *Id.* at 1158 (citing and quoting *United Steelworkers of Am.*
26 *v. Enterprise Wheel and Car Corp.*, 363 U.S. 593, 599 (1960)). The court
27 concluded that "the parties bargained to have an independent auditor
28 decide all issues concerning the Accounts Receivable Adjustment,
including issues of contract construction." *Benson*, 325 F. Supp. 2d at 1159.

1 The Court should conclude likewise here because the parties
2 contractually agreed to have a CPA decide disputes over amounts owed to
3 Las Vegas Sun—even if the dispute presents an raises issue of law, such as
4 the interpretation of a contract. App. D. at 18. Moreover, the parties
5 agreed to arbitration under the commercial arbitration rules of the AAA,
6 which provide that the "arbitrator shall have the power to determine the
7 existence or validity of a contract of which an arbitration clause forms a
8 part." AAA Commercial Arbitration Rule R-7(b). The Court should "refuse
9 to step-in and second guess that decision simply because [Las Vegas Sun]
10 now has concerns about its agreement." *Benson*, 325 F. Supp. 2d at 1159.

11 **B. This Dispute is On Its Face Within the Purview of the**
12 **Arbitration Clause.**

13 When confronted with the issue of whether a dispute is subject
14 to arbitration, courts should not limit their inquiry to how the plaintiff
15 labels its causes of action. In *Phillips*, the plaintiff alleged several tort
16 claims without making any reference to the agreement that contained the
17 arbitration provision. 106 Nev. at 418, 794 P.2d at 718. "[A]t first glance,"
18 the complaint did "not appear dependent upon the agreement for its causes
19 of action." *Id.* "However, despite this clear effort to avoid the agreement,"
20 the plaintiff's "basis for claiming injury and grounds for redress stem[med]
21 from the rights he allegedly received pursuant to the agreement" and were
22 therefore subject to arbitration. *Id.* In other words, courts should focus on
23 "the factual allegations in the complaint rather than the legal causes of
24 actions asserted." *E.S. Originals Inc. v. Totes Isotoner Corp.*, 734 F. Supp. 2d
25 523 (S.D.N.Y. 2010) (internal quotation marks and citations omitted) ("*E.S.*
26 *Originals*").

27 Although not binding on the Court, *E.S. Originals* is instructive
28 and on point. In *E.S. Originals*, the arbitration clause provided that if the

1 parties could not timely resolve their differences over disputed amounts,
2 they would submit the dispute to an independent accounting firm. *Id.* at
3 529-30. The plaintiff resisted arbitration, but its "factual allegations . . .
4 focus[ed] almost entirely on issues relating to accounting matters . . ." *Id.*
5 at 530. The plaintiff specifically alleged that the defendant "improperly
6 calculated Customer Charge-backs" and not only raised potential errors but
7 "ultimately specifie[d] the dollar amount of the purported calculation
8 discrepancy as over \$1.6 million." *Id.* at 531. Thus, the plaintiff
9 "articulate[d] a dispute that [was] on its face within the purview of the
10 arbitration clause and appropriate for resolution by the accounting
11 firm . . ." *Id.* (citation and internal quotation marks omitted).

12 **1. Las Vegas Sun's Factual Allegations Complain About**
13 **the Improper Calculation of the EBITDA and the**
14 **\$6,000,000 Allegedly "Owed to Sun."**

15 Las Vegas Sun's claims for Declaratory Relief and Specific
16 Performance of the Contract do not merely seek judicial relief. The factual
17 allegations to support these claims focus almost entirely on the alleged
18 miscalculation of EBITDA. And Las Vegas Sun affirmatively alleges that it
19 is owed more than \$6,000,000 in outstanding profits payments as a result of
20 the alleged miscalculation. Compl. ¶¶ 14-21, 26-27, 32, 35-36 and Prayer
21 for Relief Sections A-B. Las Vegas Sun extensively relies on and quotes
22 from Appendix D, which sets out how EBITDA is calculated, and
23 complains about the manner in which it was calculated. *Id.* ¶¶ 14-19, 26-27,
24 35-36 and Prayer for Relief Sections A-B. Las Vegas Sun alleges that
25 editorial costs should not be included in the calculation of EBITDA. *Id.* ¶
26 14 (quoting App. D at 18). The Sun alleges that the Review Journal
27 nevertheless included its editorial costs in calculating EBITDA
28 calculation—in violation of section 4.2 of the JOA and Appendix D—and
thereby improperly reduced the amounts owed to Las Vegas Sun. *Id.* ¶¶

1 17-19. Las Vegas Sun estimates that it suffered more than \$6,000,000 in
2 alleged damages. *Id.* ¶ 21. Thus, the "amounts owed" to Las Vegas Sun
3 and the proper calculation of these amounts are at the heart of its
4 complaint and squarely fall within the ambit of the arbitration provision.

5 **2. Resolution of Las Vegas Sun's Claims For Relief**
6 **Require an Accounting.**

7 Despite Las Vegas Sun's effort to avoid the arbitration
8 agreement, its Declaratory Relief claim itself triggers the arbitration
9 provision. Las Vegas Sun seeks:

10 [A] judicial declaration that Defendant has breached the 2005
11 Amended JOA by improperly including the LVRJ's editorial
12 costs in the total 2005 Amended JOA operating costs, thereby
13 decreasing the EBITDA calculation and resulting in
14 improperly low Annual Profits Payments being made to Las
15 Vegas Sun, Inc., in the aggregate amount of at least \$6,000,000,
16 plus interest, since the 2005 Amended JOA went into effect.

17 *Id.* ¶ 27 (emphasis added).

18 To make this "judicial declaration," the Court would necessarily
19 be required to address accounting issues that the parties contracted to
20 submit to an arbitrator-CPA. In setting out the standards for calculating
21 EBITDA, Appendix D requires, *inter alia*, that: (1) all calculations "be made
22 in accordance with generally accepted newspaper industry accounting
23 principles"; and (2) that "EBITDA be calculated in a manner consistent with
24 the computation of 'Retention' as that line item appears on the profit and
25 loss statement for Stephens Media for the period ended December 31,
26 2004." Compl. Ex. 1 (App. D) at 18-19. "These issues involve complex and
27 technical accounting questions" that are not only "far more appropriate for
28 resolution by [a CPA]," but "the parties agreed in their contract that an
arbitrator with appropriate expertise should do so." *Campeau Corp. v. May*
Dept. Stores Co., 723 F. Supp. 224, 228 (S.D.N.Y. 1989).

1 Las Vegas Sun's claim for Specific Performance also directly
2 implicates the arbitration clause: Plaintiff seeks specific performance "of
3 Defendant's contractual obligations, including, but not limited to, proper
4 calculation of EBITDA and payment of all Annual Profits Payment
5 obligations outstanding under the 2005 Amended JOA" Compl. ¶ 36
6 (emphasis added). If this claim does not raise a dispute "as to amounts
7 owed to Sun," then what claim would?

8 C. Section 10.8 Does Not Trump or Conflict with the Arbitration
9 Clause.

10 Courts should not interpret contracts in a way that "render[s]
11 its provisions meaningless." *Caldwell v. Consol. Realty & Mgmt. Co.*, 99 Nev.
12 635, 639, 668 P.2d 284, 287 (1983). When interpreting a contract, courts
13 should give effect to "the intent of the parties . . ." *Sheehan & Sheehan v.*
14 *Nelson Malley & Co.*, 121 Nev. 481, 487-88, 117 P.3d 219, 223-24 (2005)
15 (internal citation and quotation marks omitted). If there is an apparent
16 conflict between two provisions in a contract, "a specific provision will
17 qualify the meaning of a general provision." *Shelton v. Shelton*, 119 Nev.
18 492, 497, 78 P.3d 507, 510 (2003).

19 Here, Las Vegas Sun's reliance on the specific performance
20 provision of the agreement is entirely misplaced. First, § 10.8 is not a
21 forum selection clause; it merely provides for a remedy—*i.e.*, specific
22 performance. Nothing in the clause suggests that courts have jurisdiction,
23 much less exclusive jurisdiction, to impose such equitable remedy. Once
24 again, Las Vegas Sun reads words into the contract—"judicial
25 intervention"—that are not there. Second, the clause by its terms provides
26 for a remedy where needed to protect "the public's interest in maintaining
27 editorially and reportorially independent and competitive newspapers in
28 Las Vegas. . . ." JOA § 10.8. These words mean something and cannot be

1 ignored, as Las Vegas Sun asks the Court to do. *See Reno Club*, 64 Nev. at
2 324, 182 P.2d at 1017 ("The Court is not at liberty . . . to disregard words
3 used by the parties. . .").

4 Third, the clause provides that a party may only seek specific
5 performance if damages are "inadequa[te]." *Id.* As discussed above, Las
6 Vegas Sun's artfully pleaded claim for Specific Performance is really a
7 claim for damages: the Sun seeks "payment of all [outstanding] Annual
8 Profits Payment obligations," and alleges those obligations amount to more
9 than \$6,000,000. Compl. ¶¶ 21, 36. But the Sun utterly fails to explain how
10 damages "would be inadequate to remedy the loss of a second editorial
11 voice in Las Vegas," when it attributes that "loss" to Review Journal's
12 failure to adequately compensate it!

13 Even assuming § 10.8 were jurisdictional and conflicted with
14 the arbitration clause of Appendix D, the arbitration clause trumps because
15 it is specifically tailored to this dispute about "amounts owed to Sun."
16 Contrary to the Sun's contention, by agreeing to submit their disputes as to
17 amounts owed to an arbitrator-CPA under the commercial dispute
18 resolution rules of the AAA, the parties *unequivocally* agreed to submit the
19 entire dispute, including legal issues—if any—to the arbitrator. The Court
20 should not permit the Sun to avoid its agreement to arbitrate by its artful
21 pleading.
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1 **III. CONCLUSION**

2 For the reasons stated in the principal motion and in this reply,
3 the Court should stay this case and compel Las Vegas Sun to arbitrate its
4 dispute.

6 MORRIS LAW GROUP

7 By: 

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13 Attorneys for Defendant DR Partners
14 d/b/a Stephens Media Group
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I caused the following documents to be served via the Court's Odyssey E-Filing system: **REPLY IN SUPPORT OF MOTION TO COMPEL ARBITRATION**. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

TO:

Lewis Roca Rothgerber LLP

Leif Reid lreid@lrrlaw.com

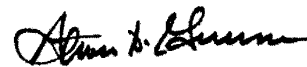
Kristen Martini kmartini@lrrlaw.com

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DATED this 12th day of May, 2015.

By 



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

LAS VEGAS SUN, INC.

Plaintiff

vs.

DR PARTNERS

Defendant
.....

CASE NO. A-715008

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON DEFENDANT'S MOTION TO COMPEL ARBITRATION

TUESDAY, MAY 19, 2015

APPEARANCES:

FOR THE PLAINTIFF:

LEIF REID, ESQ.
KRISTEN MARTINI, ESQ.
JOHN T. MORAN, JR., ESQ.
JEFFREY A. BENDAVID, ESQ.

FOR THE DEFENDANT:

STEVE L. MORRIS, ESQ.
AKKE LEVIN, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, TUESDAY, MAY 19, 2015, 9:33 A.M.
2 (Court was called to order)
3 THE COURT: If I could go to the rest of you.
4 MR. REID: Good morning, Your Honor. Leif Reid and
5 Kristen Martini from Lewis Roca Rothgerber representing the
6 Sun.
7 MR. MORAN: John Moran, Jr., and Jeff Bendavid from
8 the Moran Law Firm, Your Honor. Good morning.
9 THE COURT: Good morning.
10 MR. REID: I also want to recognize the presence of
11 the owners of the Sun, Brian and Myra Greenspun are at --
12 THE COURT: Good morning. Sorry you had to wait
13 through the other stuff.
14 Mr. Morris, good morning. It's been, what, a week?
15 MR. MORRIS: Good morning, Your Honor. Before I
16 begin speaking on this motion I'd like to express my
17 thankfulness that I'm not here this morning to discuss
18 anything having to do with redactions.
19 THE COURT: Thank you, Mr. Morris. And you're not
20 going to make me do any in-camera reviews this morning, are
21 you?
22 MS. LEVIN: Akke Levin on behalf of the defendant.
23 THE COURT: Good morning.
24 MS. LEVIN: Good morning.
25 THE COURT: It's your motion.

1 MR. MORRIS: Your Honor, thank you.

2 This presentation I don't believe should take a
3 great deal of time. Unless you have specific questions that
4 are not addressed --

5 THE COURT: Nope. I've read the agreement.

6 MR. MORRIS: Pardon me?

7 THE COURT: I've read the agreement, I've looked at
8 the arbitration provisions.

9 MR. MORRIS: Okay. Well, then you know, if you've
10 read those things, that this is a dispute, a financial dispute
11 that requires an accounting to resolve under the arbitration
12 agreement and Exhibit D. This dispute begins and ends with
13 Exhibit D. It doesn't have anything to do with whether the
14 Newspaper Preservation Act applies here or has been adhered
15 to. It has everything to do with, as the plaintiffs point out
16 in the complaint that brings us here in paragraphs 26 and 27
17 in particular, this is a dispute over payments made, annual
18 payments made after EBITDA under this agreement.

19 And this is what the agreement under which this case
20 has been filed has to say. It says, "If as a result of an
21 audit --" the Sun claims in its papers they don't need an
22 audit "-- there is a dispute between the Sun and The Review
23 Journal as to amounts owed to Sun and they are not able to
24 resolve the dispute within 30 days, they shall select a
25 certified public accountant to arbitrate the dispute, and the

1 arbitration shall be conducted according to the Commercial
2 Arbitration Rules of the American Arbitration Association,
3 including the rules of the selection of a single arbitrator if
4 the Sun and The Review Journal are not able to agree on an
5 arbitrator."

6 They're not able to agree on an arbitrator, Your
7 Honor. Each side has tendered to the other the name of a
8 potential arbitrator, and each side rejected the other side's
9 nomination. That means squarely, then, under the rules of the
10 American Arbitration Association the role of designating the
11 arbitrator to decide this falls to the American Arbitration
12 Association unless the parties can come to an agreement
13 otherwise. That's all there is to this case.

14 And the law on the case I believe is relatively
15 clear, the law that applies to it. There are a variety of
16 cases discussed here, but this is what we have. We have a
17 dispute that requires an accounting to resolve. We have an
18 arbitration agreement that says in such an event that dispute
19 is resolved by a single arbitrator under the provisions of
20 Appendix D, okay. Now --

21 THE COURT: And isn't the dispute at this point a
22 decision your client made as to how to allocate certain
23 editorial expenses related to your client in the calculation
24 of EBITDA?

25 MR. MORRIS: That's what they allege.

1 THE COURT: I mean, but isn't that what the dispute
2 is?
3 MR. MORRIS: Yes.
4 THE COURT: Okay.
5 MR. MORRIS: And that's why --
6 THE COURT: And whether it requires an accounting or
7 not, it's still an issue related to calculation of EBITDA.
8 MR. MORRIS: It is.
9 THE COURT: Okay.
10 MR. MORRIS: It's a calculation dispute, then, that
11 requires an accountant or accounting to resolve. This isn't
12 -- this isn't just a self-evident breach of contract case in
13 which the breach is clear and the damages are uncontested.
14 These people are seeking, these people are seeking relief
15 under a specific provision in an agreement that says, if you
16 believe that expenses have been inappropriately or improperly
17 deducted you have a dispute and that dispute is resolved by
18 arbitration. And that's the issue that we have here today, I
19 believe. And that is the issue that is addressed or was
20 addressed in a number of cases that we've tendered to you for
21 your consideration, one of which is virtually -- is almost on
22 fours with this. And that's Benson Pump Company versus South
23 Central Pool Supply, or SPS, that was decided across the
24 street in Federal Court in that case. And what that case
25 says, we've set it out, I believe, or summarized it in our

1 papers, it says, "Disputes over the calculation of damages or
2 payments due that are being alleged as damages require an
3 arbitrator. That is a dispute that is resolvable by
4 arbitration."

5 And that's this agreement. We have a dispute. And
6 if you've got a dispute, you have arbitration. There isn't
7 any question here that we don't -- we don't have an agreement
8 to arbitrate. What we've got is a dressed-up complaint that
9 says, we're alleging specific performance to obtain damages.
10 That's just a disingenuous way of saying, we would like to
11 avoid the arbitration clause and Appendix D for the dispute
12 that arises under Appendix D that requires an arbitrator to
13 resolve, and a particular type of arbitrator, an arbitrator
14 who has some experience or skill in dealing with accountings
15 under -- for accountings that take account of the operation of
16 newspapers and the expenses that are deductible or not
17 deductible in whole or in part under Appendix D.

18 The court in Camco Corporation versus May Department
19 Stores, Your Honor, spoke to this issue. We've cited that
20 case to you. Here's some language -- we didn't set out
21 everything the court said, we set out the court's holding.
22 And I believe it applies here. "These issues --" these issues
23 with respect to the calculation of profits from which payments
24 are determined, "These issues involve complex and technical
25 accounting questions. They are far more appropriate for

1 resolution by an independent accounting firm of national
2 standing as referred to in the arbitration clause, rather than
3 by a trial judge. But whether the parties agreed in their
4 contract that an arbitrator with appropriate expertise to do
5 so might conclude that without difficulty it would do violence
6 to the parties' contractual intent to characterize the issues
7 pleaded in the complaint as nonarbitrable. Camco's narrowing
8 of the meaning of 'calculations' --" that's a word you used a
9 moment ago "-- to one of mathematics which even a District
10 judge with a calculator might be able to perform wrenches the
11 world out of its scheduled context. A valuation of the
12 parties' calculations require the meticulous examination by
13 experts into whether or not the parties departed from past
14 accounting policies and practices."

15 And that is precisely what we have here with respect
16 to the claim being made with regard to the last several years
17 of payments under Appendix D that the Sun now claims shorted
18 it by \$6 million. If they're right, if they're wrong, that's
19 going to be decided, I submit, not by you or by a court; it's
20 going to be decided by the person who holds the status that
21 these folks agreed to when they negotiated this agreement and
22 reduced their agreement in writing in Appendix D. This
23 requires, as we have asked them and demanded from them and
24 which has been rejected, this requires arbitration with a
25 qualified CPA under the arbitration agreement that the parties

1 negotiated that is in Exhibit D. That is the exhibit under
2 which they claim damages, and damages, if there are any, are
3 the subject of and must be submitted to an arbitrator for
4 resolution.

5 Unless you have further questions --

6 THE COURT: No. I already asked my question of you.
7 Thank you.

8 Mr. Reid.

9 MR. MORRIS: I was right about calculations, though,
10 wasn't I?

11 THE COURT: District judges with calculators still
12 make mistakes. That's why we are judges or lawyers and not
13 mathematicians or engineers.

14 MR. MORRIS: Thank you.

15 THE COURT: Uh-huh.

16 MR. REID: Good morning, Your Honor.

17 I think there are a couple ways to start. The best
18 way is probably to respond to your question, okay, is this a
19 dispute about calculation. And it's clear from the relief we
20 requested in our complaint in which we haven't asked for a
21 dollar, we haven't conducted an accounting, that that isn't
22 the dispute that is at hand. We would ask you to take some
23 steps back and look at what the agreement is and what it
24 provides.

25 The other side in their papers make a bit of jest in

1 some ways about the nature of this agreement. I want to
2 impress upon the Court that the JOA is not just any contract,
3 okay. The JOA is authorized by an act of Congress. It had to
4 be approved by a signature of the Attorney General of the
5 United States. If you look at Section 10.8 of the agreement,
6 which mirrors the Newspaper Preservation Act, both of the
7 parties stipulated that it is in the public interest that
8 there be two newspapers in Clark County that are editorially
9 and reportorially, kind of an interesting word, but
10 reportorially independent and that because that's so
11 important, there aren't damages that can adequately remedy a
12 breach of the material terms of the agreement. Because of
13 that, the parties are free to pursue an equitable remedy,
14 specific performance to remedy breach.

15 The breach that we have alleged in the agreement is
16 of Section 4.2, which is a black-and-white provision,
17 unambiguous, that says, each of the parties shall bear their
18 own respective editorial costs. Now, the reason a breach of
19 that provision isn't just a matter of calculation is because
20 what results from that? As the parties --

21 THE COURT: So let me stop you.

22 MR. REID: Okay.

23 THE COURT: I've got paragraph 27 of your complaint
24 here, and it says, "Plaintiff is entitled to a judicial
25 declaration that defendant has breached the 2005 amended JOA

1 by improperly including the LVRJ's editorial costs in the
2 total 2005 amended JOA operating costs, thereby decreasing the
3 EBITDA calculation and resulting in improperly low annual
4 profits payments."

5 What that paragraph tells me when I read it and I
6 look at Exhibit D is your issue an issue about whether some
7 expenses are appropriately deducted from EBITDA, not whether
8 the editorial board is -- the editorial costs are or are not
9 appropriate for deduction.

10 MR. REID: We mentioned the dollars there.
11 The effect is not solely something that you go back and
12 calculate dollars and cents to remedy. As -- referencing
13 that section and reading it in context with Section 10.8 of
14 the agreement --

15 THE COURT: Which is your specific performance
16 provision.

17 MR. REID: -- specific performance, when the
18 editorial costs were included and less money was paid to the
19 Sun it means that there are fewer reporters, fewer editorial
20 writers, less ability to innovate with digital content to
21 provide online resources. Those are things that we have asked
22 the Court to enter an order in equity under our right saying,
23 but you can't include your editorial costs.

24 One thing we agree on, all the parties agree in
25 these governing cases that there's an analysis, okay. We do

1 not dispute that there is an arbitration provision. Our
2 dispute is that it isn't ripe, okay. There's basically a
3 three-prong inquiry that we ask the Court to do. Look at the
4 agreement. What did the parties agree to arbitrate? That's
5 the first question. Second is does the contract provide for
6 any remedies that are separate and apart from, excluded from
7 the arbitration remedy. That's what the cases like ES
8 Originals that the defendants rely on looked to. You know, is
9 it a broad or a narrow provision? What does it cover, what
10 does it exclude? And then the last question is does the
11 dispute fall within or outside of that scope of the
12 arbitration agreement.

13 So in response to your question, is this just about
14 calculation, we would refer you first to Exhibit D, that
15 language you have in front of you, and look at what powers the
16 arbitrator is charged with. That's page 20 of Exhibit 1 to
17 our opposition. It says, and the Court's looked, I'm sure,
18 "If as the result of an audit there's a dispute about amounts
19 owed...", and then it goes on to describe in the last two
20 sentences of that paragraph what the arbitrator's powers are
21 to remedy that, okay. "The arbitrator shall make an award to
22 the Sun in the amount of the arrearage, if any, together with
23 interest," et cetera, et cetera, et cetera. The last sentence
24 says, "The arbitrator shall make an award of fees and costs of
25 arbitration and may include a division of such fees and costs

1 among the parties," et cetera.

2 The CPA doesn't have the power to order prospective
3 relief, doesn't have the power to issue a declaration
4 requiring what has to be done in the future, or to ensure the
5 that interests set forth in the agreement that there's
6 editorial and reportorial independence as between the papers.
7 That is something that's outside of Exhibit D, the arbitration
8 provision.

9 I found it interesting, the defense's reliance on
10 that Benson Pump case. I think Benson Pump is very important,
11 but the case doesn't end with the quote that Mr. Morris read
12 to you. We would ask you to look at the result of Benson
13 Pump. What did Judge McQuaid do in that case? The conclusion
14 was there is a matter that is subject to arbitration and there
15 are matters that aren't covered by the arbitration proceeding.
16 If you look at the conclusion of Benson Pump, Judge McQuaid
17 orders that accounts payable dispute to arbitration, and he
18 declines to stay anything else. Everything that isn't covered
19 within the scope of the arbitration provision was free to
20 litigate. And the defendants have ignored the import of that
21 case. What is at issue here is more than calculation, okay.

22 And, you know, Mr. Morris represents Stephens Media.
23 Stephens Media's sold their interest in the Review-Journal.
24 This may just be a matter of -- for them of how much is owed.
25 But the Sun continues to publish every day, and the damages

1 that it experiences from the breach of Section 4.2 are felt
2 every day with the inability to, as I mentioned before, have
3 more reporters, investigate more stories, publish, all of the
4 things that fall squarely within the congressional declaration
5 of policy that's mirrored in Section 10.8 of the JOA.

6 Now, I know you referenced that provision in our
7 agreement -- in our complaint. But looking carefully at the
8 relief we requested, we have not asked for any money yet. We
9 may, we may not. Should we not have a ground, for example --

10 THE COURT: No. What you've asked for is,
11 "Plaintiff is entitled to proper calculation of EBITDA and
12 payment of all annual profits payment obligations." That's
13 what you're asking me for, specific performance of that. But
14 that's squarely within the Exhibit D, which says that, "The
15 Sun's representatives have the ability to examine the audits,
16 the books and records of the Review-Journal and the other
17 publications whose earnings are included in EBITDA for
18 purposes of verifying the determinations of the changes to the
19 annual profit payments."

20 MR. REID: We've asked for an order requiring --
21 ordering the parties' actions going forward. What are the
22 requirements of the calculation? What does Section 4.2
23 require? We haven't asked for any money back yet. We may not
24 have a grounds to, okay. What we have asked the Court to do
25 is to allow this action to proceed in equity. We're not

1 asking this Court to take the place of the CPA. We're not
2 asking the Court to conduct an audit or any kind of
3 calculation. That is all we recognize, a separate process
4 that's set forth in Exhibit D.

5 But the relief we've requested is equitable. It's
6 outside of what Section D -- Exhibit D allows the arbitrator
7 to do. Look carefully at the last sentences of Exhibit D.
8 That CPA can only make orders about dollars and cents, can
9 only calculate how much is owed, what interest has accrued
10 therefrom, and whether attorneys' fees can be awarded. What
11 we've asked for in our complaint, a declaratory judgment
12 saying that the editorial costs can't be included, an order
13 requiring specific performance of Section 4.2. Those are
14 remedies that this certified public accountant can't order.
15 Those are remedies that are only available under Section 10.8
16 of the joint operating agreement. That's the difference.

17 And it isn't Stephens Media's right to tell us what
18 relief we can seek and win. The Review-Journal, Stephens
19 Media, they aren't owed any money. If the Sun is, it has a
20 right to pursue that accounting procedure and to get the money
21 back.

22 But we also have equitable rights under Section 10.8
23 to get an order to ensure that this doesn't happen in the
24 future. Because, as I said before, the JOA is a special
25 agreement. There are 27 more years of dealings under this

1 agreement, and to say that it's just about the money
2 diminishes this agreement. It diminishes the fact that the
3 parties stipulated that there's a public interest in making
4 sure that there's editorial freedom in more than one place in
5 Clark County. It ignores the congressional intent that waives
6 anti-trust provisions and otherwise allows this agreement to
7 continue to exist.

8 So I would conclude by making this request. We're
9 prepared to brief the issue of if there's been a breach of 4.2
10 and what equitable relief we're entitled to. We would ask
11 that the Court set a briefing schedule. We could submit our
12 brief on that in the next 10 days. That issue should be
13 decided now. If for some reason the Court were to determine
14 that Section 4.2 doesn't mean what it says and that it doesn't
15 mean that Stephens Media or the R-J can't push its editorial
16 costs into the JOA and they're not required to bear them
17 separately, then it saves everybody a lot of time. Because it
18 would mean we don't have a basis to pursue an audit process,
19 to have a CPA appointed to calculate what we're owed.

20 So our request is to -- as Judge McQuaid did in the
21 Benson Pump case, to read carefully what the arbitration
22 provision provides for and what it doesn't, to decline to stay
23 the equitable rights that we have and instead allow us a
24 hearing on those matters promptly. As I said, we're ready to
25 brief the issue in 10 days, and this could be heard during the

1 summer. That's what we request.

2 THE COURT: Thank you.

3 MR. REID: Thank you.

4 THE COURT: Because the complaint that is currently
5 drafted relates to the calculation of EBIDTA, the complaint as
6 it is currently drafted falls within the Appendix D to the
7 agreement. For that reason the motion to compel arbitration
8 is granted.

9 MR. MORRIS: Thank you.

10 MR. REID: Would the Court allow us -- understanding
11 the tenor of the Court's ruling, would we be provided an
12 opportunity to amend the complaint --

13 THE COURT: Sure.

14 MR. REID: -- to make clear --

15 THE COURT: What I'm looking at is the complaint
16 that's currently been filed. The complaint that has currently
17 been filed revolves around the calculation of EBITDA and
18 whether the costs that are currently being deducted from the
19 profits is an appropriate deduction or not. That's how it's
20 framed. I'm not saying there might not be other issues you
21 could bring, but, as it's currently framed, it should be in
22 the arbitration pursuant to Appendix D.

23 MR. REID: But we do have leave to amend our
24 complaint?

25 THE COURT: Well, you didn't ask me for that --

1 MR. REID: Okay.
2 THE COURT: -- and you didn't give me a proposed
3 amendment, so I don't want to jump the gun.
4 MR. REID: Okay. I understand.
5 THE COURT: Because you know what Mr. Morris will
6 say if I jump the gun. Then he'll yell at me and then I'll
7 have to deal with it again.
8 MR. REID: Yes.
9 THE COURT: Mr. Morris, please draft an order.
10 MR. MORRIS: I will.
11 THE COURT: If you guys seek to amend, file a
12 motion. I'll be happy to sign an OST to deal with it. But
13 based on the current framing of the complaint, the motion's
14 granted. Thank you. Have a nice day.
15 MR. REID: Thank you.
16 THE PROCEEDINGS CONCLUDED AT 10:01 A.M.

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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.

FLORENCE HOYT
Las Vegas, Nevada 89146


FLORENCE M. HOYT, TRANSCRIBER

9/18/15
DATE

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Suite 410
Reno, NV 89501-1922
**LEWIS ROCA
ROTHGERBER**

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12 *Attorneys for Plaintiff*

13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 LAS VEGAS SUN, INC., a Nevada
Corporation,
16
17 Plaintiff,
18 vs.
19 DR PARTNERS, a Nevada General
Partnership, d/b/a STEPHENS MEDIA
20 GROUP; DOES I-X, inclusive,
21 Defendants.

CASE NO.: A-15-715008-B
DEPT. NO.: XI

**PLAINTIFF'S MOTION FOR LEAVE
TO FILE FIRST AMENDED
COMPLAINT ON ORDER
SHORTENING TIME**

Date of Hearing:
Time of Hearing:

22 Plaintiff Las Vegas Sun, Inc. (the "Sun"), through counsel of Lewis Roca Rothgerber LLP,
23 moves this Court pursuant to Nevada Rule of Civil Procedure 15(a) for leave to file its First
24 Amended Complaint. This Motion is based upon the following Memorandum of Points and
25 Authorities, the arguments made at the May 19, 2015, hearing on Defendant DR Partners' Motion
26 ///
27 ///
28 ///

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CLERK OF THE COURT

50 West Liberty Street
Suite 410
Reno, NV 89501-1922
LEWIS ROCA ROTHGERBER

1 to Compel Arbitration, the attached Exhibits, and the pleadings and papers on file herein. The Sun
2 requests that this Motion be heard on shortened time on or before June 9, 2015, for the reasons
3 described in the Declaration of Jeffrey A. Bendavid, included herein.

4 DATED this 22nd day of May, 2015.

5 LEWIS ROCA ROTHGERBER LLP

6
7 BY: 

8 E. REID
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12 In Association With:

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15 630 South 4th Street
16 Las Vegas, Nevada 89101

17 Attorneys for Plaintiff

18 **ORDER SHORTENING TIME**

19 ORDERED that Plaintiff's Motion for Leave to File First Amended Complaint will be
20 heard on June 4, 2015, at 9:30 a.m./p.m., in Department XI of the Eighth
21 Judicial District Court, 200 Lewis Avenue, Las Vegas, Nevada 89155.

22 DATED this Wth day of May, 2015.

23 Respectfully submitted by:

24 LEWIS ROCA ROTHGERBER LLP

25 BY: 

26 E. REID, ESQ.
27 Nevada Bar No. 5750
28 KRISTEN L. MARTINI, ESQ.
Nevada Bar No. 11272

JOHN T. MORAN, JR., ESQ.
Nevada State Bar No. 2271
JEFFERY A. BENDAVID, ESQ.
Nevada State Bar No. 6220


DISTRICT JUDGE

DECLARATION IN SUPPORT OF MOTION FOR ORDER SHORTENING TIME

I, Jeffrey A. Bendavid, declare under penalty of perjury that the following assertions are true and correct to the best of my knowledge:

1. I am an attorney licensed and in good standing to practice law in the State of Nevada. I have personal knowledge of the facts stated herein and am competent to testify if called upon to do so.

2. I am a lawyer with Moran Brandon Bendavid Moran, which represents Plaintiff Las Vegas Sun, Inc., with Lewis Roca Rothgerber LLP, in this matter.

3. An order shortening time is necessary and appropriate for this Motion. On May 19, 2015, this Court, after hearing, granted Defendant DR Partners' Motion to Compel Arbitration. Due to this Court's Order, shortened time would save the parties time and expense associated with commencing arbitration of this action if this Court determines that the dispute as alleged in the First Amended Complaint would not be subject to arbitration.

4. This Motion is made in good faith and not for purpose of harassment or delay.

I make this declaration under penalty of perjury, under the laws of the United States, in Las Vegas, Nevada, on May 22, 2015.



JEFFREY A. BENDAVID

MEMORANDUM OF POINTS AND AUTHORITIES

The Sun seeks leave pursuant to Nevada Rule of Civil Procedure 15(a) to file its First Amended Complaint (the proposed First Amended Complaint is attached as Exhibit 1). As mentioned during the May 19, 2015, hearing on Defendant DR Partners' Motion to Compel Arbitration, leave for the Sun to amend its Complaint is necessary to clarify the relief that the Sun seeks in this action. Justice requires that leave be granted, as mandated by Rule 15(a).¹

¹ While DR Partners has yet to file a responsive pleading, it is unclear whether the Sun is still entitled to amend its Complaint as a matter of course in light of this Court's May 19, 2015, grant of DR Partners' Motion to Compel Arbitration. For this reason, and because this Court directed counsel to file a motion if the Sun sought to amend the Complaint, see Ex. 2 (Court Minutes (May 19, 2015)), the Sun seeks permission for leave to file its First Amended Complaint instead of simply amending its Complaint as matter of course pursuant to Nevada Rule of Civil Procedure 15(a).

1 **I. FACTS GIVING RISE TO THE SUN'S REQUEST FOR LEAVE TO AMEND.**

2 The Sun filed its Complaint initiating this action on March 10, 2015. *See* Compl. 1. In its
3 Complaint, the Sun sought the following relief: (1) a declaratory judgment on the interpretation of
4 and the parties' rights and responsibilities with respect to Section 4.2 of the 2005 Amended and
5 Restated [Joint Operating] Agreement (the "JOA"), and (2) an order directing DR Partners to
6 perform their contractual obligations under the JOA. *See generally id.* The Sun alleged that DR
7 Partners had improperly and in breach of Section 4.2 of the JOA included the Las Vegas Review
8 Journal's editorial costs in the total operation expenses under the JOA. *Id.* at 4. This, the Sun
9 further alleged, improperly decreased the EBITDA calculation, which resulted in an inaccurately
10 low Annual Profits Payment and, in turn, "effectively starved the [] Sun's [] news organization."
11 *Id.* In its First Claim for Relief, the Sun realleged that it was

12 entitled to a judicial declaration that Defendant has breached the
13 2005 Amended JOA by improperly including the LVRJ's editorial
14 costs in the total 2005 Amended JOA operating costs, thereby
15 decreasing the EBITDA calculation and resulting in improperly
low Annual Profits Payments being made to Las Vegas Sun, Inc.,
in the aggregate amount of at least \$6,000,000, plus interest, since
the 2005 Amended JOA went into effect.

16 *Id.* at 5 ¶ 27.

17 Instead of filing a responsive pleading, DR Partners filed its Motion to Compel Arbitration
18 on April 1, 2015. *See* Mot. to Compel Arb. 1. In its briefing and oral argument, DR Partners
19 argued that the claims raised in the Sun's Complaint concerned and required an EBITDA
20 calculation, triggering the arbitration provision contained in Appendix D of the JOA. *See*
21 *generally* Mot. to Compel Arb. & Reply in Support of Mot. to Compel Arb. To the contrary, the
22 Sun articulated that an arbitrable dispute had not yet ripened, as no audit had yet been conducted,
23 and the Sun was only seeking equitable and declaratory relief -- and not monetary payment or
24 damages -- by way of the Complaint. *See generally* Opp'n to Mot. to Compel Arb. Rather, the
25 Sun has merely sought an Order from this Court declaring the parties' respective obligations to
26 bear their own editorial costs in accordance with Section 4.2. *Id.*

27
28 Counsel for DR Partners was contacted prior to filing the instant Motion to request a stipulation to
the Sun filing an amended complaint, and DR Partners declined to enter into any such stipulation.

1 After hearing argument on DR Partners' Motion to Compel Arbitration on May 19, 2015,
2 this Court granted DR Partners' motion. See Ex. 2. This Court reasoned that because the Sun's
3 Complaint "as currently drafted relates to calculation of EBITDA," particularly paragraph 27, "the
4 [C]omplaint as currently drafted falls within Appendix D" of the JOA. See *Id.*

5 While granting DR Partners' motion, the Court, at the same time, permitted the Sun to
6 request leave to file an amended complaint setting forth its request for Declaratory Relief, and
7 expressed the Court would file an Order Shortening Time if the Sun so moved. *Id.* The instant
8 Motion follows accordingly.

9 **II. STANDARD APPLIED TO MOTIONS FOR LEAVE TO AMEND.**

10 Nevada Rule of Civil Procedure 15(a), governing amendments of pleadings, reads as
11 follows:

12 A party may amend the party's pleading once as a matter of course
13 at any time before a responsive pleading is served or, if the
14 pleading is one to which no responsive pleading is permitted and
15 the action has not been placed upon the trial calendar, the party
16 may so amend it at any time within 20 days after it is served.
17 Otherwise a party may amend the party's pleading only by leave of
18 court or by written consent of the adverse party; and leave shall be
19 freely given when justice so requires.

20 Rule 15(a) is unequivocal in providing that leave to amend "shall be freely given when justice so
21 requires." *Id.* "In the absence of any apparent or declared reason—such as undue delay, bad faith
22 or dilatory motive on the part of the movant—the leave sought should be freely given." *Stephens*
23 *v. S. Nev. Music Co.*, 89 Nev. 104, 105-06, 507 P.2d 138, 139 (1973) (citing *Foman v. Davis*, 371
24 U.S. 178 (1962), as "cited in *Adamson v. Bowker*, 85 Nev. 115, 121, 450 P.2d 796, 800-801
25 (1969)").

26 **III. JUSTICE REQUIRES THAT LEAVE BE GRANTED IN THIS CASE.**

27 Justice requires that leave be granted for the Sun to file its First Amended Complaint.
28 There has been no undue delay on the Sun's part. The Sun's position has always been the same.
The Sun believes that this dispute and its Proposed First Amended Complaint necessitates Court
involvement to declare the parties' rights and obligations under Section 4.2 of the JOA. This
decision is necessary to determine the parties' rights, interests and obligations under this section of
the JOA.

1 In order to comply with the concerns expressed by the Court during the May 19, 2015,
2 hearing, the Sun now seeks permission to file the attached First Amended Complaint. *See* Ex. 1.
3 The Amended Complaint has been narrowly drafted so that it is clear that only the declaratory
4 judgment to which the Sun is entitled, and not any dispute as to amounts that may be owing
5 pursuant to the calculation set forth in Appendix D of the JOA. Nowhere in the Sun's prayer for
6 relief does the Sun request monetary damages. The Sun, therefore, is diligently and timely moving
7 this Court for leave to amend its Complaint.

8 The fact that this action is in its infancy further demonstrates that the Sun has not unduly
9 delayed its request. DR Partners has not filed a responsive pleading, discovery has not
10 commenced, and this matter has not been set for trial. As a result, DR Partners will not suffer any
11 prejudice from an amendment. DR Partners cannot be heard to complain that the Sun has unduly
12 delayed seeking leave to amend its Complaint.

13 Moreover, the Sun's request for permission to file its First Amended Complaint is neither
14 being made in bad faith nor stemming from any dilatory motive of the Sun. The Sun's position
15 regarding the nature of, and its refusal to arbitrate, this current dispute has remained unchanged
16 throughout this action. In fact, the Sun voiced its position that arbitration of this matter is not ripe
17 during the parties' several, informal, pre-Complaint discussions. Turning to any assertion of
18 dilatory motive, every delay in the resolution of this action financially benefits DR Partners, not
19 the Sun. Accordingly, DR Partners cannot reasonably dispute that the Sun is moving for leave to
20 file its First Amended Complaint in good faith and not for purposes of delay.

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1 **IV. CONCLUSION.**

2 For the reasons stated above, justice requires that leave for the Sun to file its First Amended
3 Complaint be granted.

4 DATED this 22nd day of May, 2015.

5 LEWIS ROCA ROTHGERBER LLP

6
7 BY: 

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17 *Attorneys for Plaintiff*
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LEWIS ROCA
ROTHGERBER

EXHIBIT LIST

Exhibit No.	Description	Page Count
1	Proposed First Amended Complaint	76
2	Minutes of the Court Granting DR Partners' Motion to Compel Arbitration	1

EXHIBIT 1

1 FAC
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Las Vegas, Nevada 89101
11 Telephone: (702) 384-8424

12 *Attorneys for Plaintiff*

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 LAS VEGAS SUN, INC., a Nevada Corporation,

16 PLAINTIFF,

17 vs.

18 DR PARTNERS, a Nevada General Partnership,
d/b/a STEPHENS MEDIA GROUP; DOES I-X,
19 inclusive,

20 DEFENDANTS.
21

**PROPOSED FIRST AMENDED
COMPLAINT FOR DECLARATORY
JUDGMENT**

**(EXEMPT FROM ARBITRATION:
DECLARATORY RELIEF
REQUESTED)**

**BUSINESS COURT REQUESTED
PURSUANT TO
E.D.C.R. 1.61(a)(2)(iv)**

22 COMES NOW Plaintiff Las Vegas Sun, Inc. ("Plaintiff"), and complains against
23 Defendants DR Partners, doing business as Stephens Media Group, and Does I through X
24 ("Defendants") as follows:

25 **JURISDICTION AND VENUE**

26 1. This is an action for declaratory relief pursuant to NRS 30.040. This Court has
27 subject matter jurisdiction over this action under Article 6, Section 6 of the Nevada Constitution.
28

1 2. This Court has personal jurisdiction over Defendants, and each of them, pursuant to
2 NRS 14.065 because the acts and omissions complained of herein were committed, in part, within
3 the State of Nevada, County of Clark, and, thus, Defendants, and each of them, had and continue to
4 have sufficient minimum contacts with this forum such that the exercise of personal jurisdiction
5 over them will not offend traditional notions of fair play and substantial justice.

6 3. Venue is proper in the Eighth Judicial District Court, Clark County, Nevada, under
7 NRS 13.010, because all of the actions alleged herein were undertaken in Clark County, Nevada,
8 and affect property located in Clark County, Nevada. Venue is also proper pursuant to
9 NRS 13.040.

10 **THE PARTIES**

11 4. Plaintiff is a Nevada corporation that is a member of Greenspun Media Group,
12 LLC, which publishes various newspapers and magazines in Clark County, Nevada.

13 5. Defendant, DR Partners, doing business as Stephens Media Group ("Defendant"), is
14 and at all times material hereto was a Nevada general partnership having its principal place of
15 business in Clark County, Nevada.

16 6. Plaintiff alleges that Defendants named herein as Does I through X are individuals,
17 corporations, limited-liability companies, partnerships, associations or other persons or entities
18 who are responsible in some manner or capacity for the acts alleged herein, but whose names are
19 unknown to Plaintiff at this time. Plaintiff will seek leave to amend this complaint to include the
20 names of Does I through X when the identities of such Defendants become known to Plaintiff.

21 **GENERAL ALLEGATIONS**

22 7. Plaintiff realleges and incorporates by reference the allegations contained in the
23 above paragraphs as though fully set forth herein.

24 8. Plaintiff publishes a daily newspaper called Las Vegas Sun ("The Sun") for
25 circulation in the Las Vegas metropolitan area.

26 9. Defendant was the publisher of the Las Vegas Review Journal ("LVRJ") in Las
27 Vegas, Nevada.

1 10. In 1989, Plaintiff entered into a joint operating agreement (the "1989 JOA"),
2 attached hereto and incorporated herein as Exhibit 1, with Defendant's predecessor, Donrey of
3 Nevada, Inc.

4 11. The 1989 JOA became effective, pursuant to 15 U.S.C. section 1803(b), only after
5 it was determined by the Attorney General of the United States that the 1989 JOA would effectuate
6 the policy and purpose set forth by Congress in the Newspaper Preservation Act.

7 12. Under the 1989 JOA, the LVRJ was required to, among other things, print The Sun,
8 and handle all advertising and circulation functions for both print newspapers. The 1989 JOA
9 ensured that The Sun would be in existence and publication until at least 2040.

10 13. Thereafter, Defendant assumed all of the rights and obligations of the 1989 JOA
11 from its predecessor, Donrey of Nevada, Inc.

12 14. In 2005, Plaintiff renegotiated the 1989 JOA with Defendant.

13 15. At this time, Plaintiff and Defendant entered into the valid and existing written
14 Amended and Restated Agreement ("2005 Amended JOA"), attached hereto and incorporated
15 herein as Exhibit 2, which forever amended the terms and conditions of the 1989 JOA.

16 16. The 2005 Amended JOA was approved by the Attorney General of the United
17 States in the same manner as the 1989 JOA, and was found to effectuate similarly the policy and
18 purpose set forth by Congress in the Newspaper Preservation Act. The 2005 Amended JOA
19 requires that The Sun continue in publication until at least 2040.

20 17. The 2005 Amended JOA required the LVRJ to print both the LVRJ and The Sun
21 together in its facilities and to fund and execute payments to all costs, including capital
22 expenditures of operations, with the exception of operation of The Sun's news and editorial
23 department.

24 18. Specifically, Section 4.2 of the 2005 Amended JOA states: "The Review-Journal
25 and the Sun shall each bear their own respective editorial costs and shall establish whatever
26 budgets each deems appropriate."

27 19. Section 4.2's requirement that Plaintiff and Defendant were required to bear their
28 own editorial costs was not an obligation under the 1989 JOA.

1 20. Despite the plain language of Section 4.2 requiring otherwise, Defendant has failed
2 or refused to comply with its requirement that Plaintiff and Defendant bear alone their respective
3 editorial costs, thereby breaching Section 4.2 of the 2005 Amended JOA.

4 **FIRST CLAIM FOR RELIEF**

5 **(Declaratory Judgment)**

6 21. Plaintiff realleges and incorporates by reference the allegations contained in the
7 above paragraphs as though fully set forth herein.

8 22. Plaintiff is a party to the written 2005 Amended JOA.

9 23. Pursuant to NRS 30.040, Plaintiff, as a party to the written 2005 Amended JOA, is
10 entitled to a declaration of its rights, status, and legal relations under the 2005 Amended JOA.

11 24. Section 4.2 of the 2005 Amended JOA expressly states: "The Review-Journal and
12 the Sun shall each bear their own respective editorial costs and shall establish whatever budgets
13 each deems appropriate."

14 25. Since Defendant has expensed its editorial costs for the LVRJ, in direct violation of
15 Section 4.2 of the 2005 Amended JOA, a justiciable controversy presently exists between Plaintiff
16 and Defendant as to whether Section 4.2 of the 2005 Amended JOA requires Defendant to bear its
17 respective editorial costs.

18 26. A justiciable controversy exists between Plaintiff and Defendant as to the meaning
19 and interpretation of Section 4.2 and the obligations it places upon the Parties' performance under
20 the 2005 Amended JOA.

21 27. As such, Plaintiff is entitled to a Declaratory Judgment determining the rights,
22 interests, and obligations of Plaintiff as to these justiciable controversies concerning the terms and
23 conditions of the 2005 Amended JOA, and in particular, whether Section 4.2 of the 2005 Amended
24 JOA requires Plaintiff and Defendant to bear their respective editorial costs.

25 28. Plaintiff has been forced to obtain the services of counsel to prosecute this action
26 and is entitled to an award of attorneys' fees and costs incurred herein pursuant to NRS 18.010, *et*
27 *seq.*

28 ///

50 West Liberty Street
Suite 410
Reno, NV 89501-1922
**LEWIS ROCA
ROTHGERBER**

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court provide the following relief:

A. A Declaratory Judgment in the manner permitted by NRS 30.040(1) determining and declaring Plaintiff's rights, status, and legal relations under the 2005 Amended JOA as alleged and requested above.

B. An award to Plaintiff of its cost of suit, including reasonable attorney's fees; and

C. An order granting to Plaintiff such other and further equitable or injunctive relief to which it may be entitled and which this Court finds to be just and appropriate.

DATED this 22nd day of May, 2015.

LEWIS ROCA ROTHGERBER LLP

BY: _____

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Las Vegas, Nevada 89101

Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA


ORDER GRANTING MOTION TO COMPEL ARBITRATION

The Court, having considered the papers filed in support of and in opposition to the Motion to Compel Arbitration, having heard oral argument, and for good cause appearing, finds that: (1) it is undisputed that a valid arbitration agreement exists; and (2) based upon the currently existing language of the Complaint, the arbitration agreement covers the dispute on its face because, under Appendix D to the Amended and Restated Joint Operating Agreement, at 20, the parties agreed to arbitrate any "dispute . . . as to [Annual Profits Payments] owed to Sun," which the Sun alleges Las Vegas Review Journal improperly calculated. The Sun seeks a "proper calculation of EBITDA and payment of all [outstanding] Annual Profits Payment obligations" alleged to be "in the aggregate amount of at least \$6,000,000, plus interest, since the 2005 Amended JOA went into effect." Complaint ¶¶ 27, 36. **ACCORDINGLY,**

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IT IS HEREBY ORDERED that the Motion to Compel Arbitration is
GRANTED, and, pursuant to NRS 38.221(7), this case is **STAYED** pending arbitration before
the AAA, as the parties agreed to under Appendix D.

DATED this 28th day of May, 2015.


Elizabeth Gonzalez
District Court Judge

Certificate of Service

I hereby certify that on or about the date filed, this document was Electronically Served
to all parties of record, or a copy was mailed to the proper party as follows:


Dan Kutinac

1 **OPPM**

2 **MORRIS LAW GROUP**

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10 **Telephone: (702) 474-9400**

11 **Facsimile: (702) 474-9422**

12 **Attorneys for Defendant**

13 **DR Partners d/b/a Stephens**

14 **Media Group**

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 **LAS VEGAS SUN, INC., a Nevada**
18 **corporation,**

19 **Plaintiff,**

20 **v.**

21 **DR PARTNERS, a Nevada General**
22 **Partnership, d/b/a STEPHENS**
23 **MEDIA GROUP; DOES 1-X,**
24 **inclusive,**

25 **Defendants.**

Case No.: A-15-715008-B

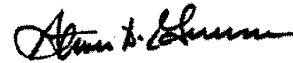
Dept. No.: XI

**DEFENDANT'S OPPOSITION
TO PLAINTIFF'S MOTION FOR
LEAVE TO FILE FIRST
AMENDED COMPLAINT ON
ORDER SHORTENING TIME**

Date: June 4, 2015

Time: 8:30 a.m.

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CLERK OF THE COURT

26 **I. INTRODUCTION**

27 The Court should not be fooled by the Sun's attempt to plead
28 around Exhibit D to the parties' Joint Operating Agreement in an effort to
avoid arbitration. This dispute is not about the interpretation of section 4.2
of the Joint Operating Agreement ("JOA"), which provides that "Review-
Journal and the Sun shall each bear their own respective editorial costs and
whatever budgets each deems appropriate." The dispute arises out of the
Sun's wish to avoid arbitration by asking the Court to declare as a matter of
law that section 4.2 precludes "editorial costs" as an expense of operations

1 and thus may not considered at all in the Review-Journal's calculation of
2 EBITDA under Appendix D (to which the Sun agreed) to arrive at profits
3 from operations in which the Sun may participate—over and above the \$12
4 million aggregate annual payments to the Sun under the JOA. Disputes
5 arising out of or relating to the correctness of EBITDA are exclusively
6 governed by Appendix D of the JOA and the arbitration clause the Sun
7 agreed to, which does not leave issues of contract interpretation that may
8 bear on the dispute to the Court. The Nevada Supreme Court has declared
9 that arbitration is not a matter of gamesmanship because "careful pleading
10 in [] [an] amended complaint cannot avoid arbitration." *Phillips v. Parker*,
11 106 Nev. 415, 418, 794 P.2d. 716, 718 (1990).

12 If the Court were to separately declare the parties' rights under
13 the JOA that allegedly bear on this clearly arbitrable dispute, it would not
14 only deprive Review Journal of the benefits of arbitration it bargained for,
15 *Kindred v. Dist. Ct.*, 116 Nev. 405, 411, 996 P.2d 903, 907 (2000), but it would
16 impermissibly tread on the merits of the financial dispute the parties
17 contracted to have an arbitrator decide. See *Steelworkers v. Am. Mfg. Co.*, 363
18 U.S. 564, 569 (1960) (judiciary may not, "under the guise of interpreting" an
19 agreement, "usurp[] a function . . . entrusted to the arbitration tribunal").
20 Moreover, as the Nevada federal district court observed, "[w]hile the
21 temptation is strong to construe the agreements for the parties, a task for
22 which lawyers and judges are supposedly especially trained, and to resolve
23 the dispute, judicial discipline precludes this." *Order of Repeater & Toll Test-*
24 *Board v. Bell Tel. Co. of Nev.*, 254 F. Supp. 462, 466 (D. Nev. 1966). Courts
25 "have no business weighing the merits of [an arbitrable dispute]."
26 *Steelworkers*, 363 U.S. at 569.
27
28

1 Because the alleged justiciable controversy around the meaning
2 of § 4.2 is a false issue aimed at avoiding arbitration, the Court should deny
3 the Sun's Motion to Amend as futile and compel arbitration.

4 **II. ARGUMENT**

5 **A. The Proposed Amendment is Futile Because the Declaratory**
6 **Relief Claim is Subject to Arbitration.**

7 "[L]eave to amend should not be granted if the proposed
8 amendment would be futile," *Halcrow, Inc. v. Dist. Ct.*, 302 P.3d 1148, 1152
9 (Nev. 2013), or if the amendment is sought in bad faith. *Kantor v. Kantor*,
10 116 Nev. 886, 8 P.3d 825, 828 (2000) (citing and quoting *Stephens v. Southern*
11 *Nev. Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973)). "When
12 proposed amendments sought by parties are covered by a binding
13 arbitration agreement, the proposed amendment is futile" and should be
14 denied. *Knights of Columbus v. The Virginia Trust*, No. 2: 12-CV-688 JCM
15 (VCF) (D. Nev. Mar. 21, 2013) (citing *Detroit Edison Co. v. Burlington*
16 *Northern and Santa Fe Railway Co.*, 442 F. Supp.2d 387, 394 (E.D. Mich. 2006)
17 (collecting cases holding same)).

18 **1. The Arbitration Agreement Covers the Alleged Dispute**
19 **Over the Meaning of § 4.2 of the JOA.**

20 "Whether a particular claim is arbitrable depends not upon the
21 characterization of the claim, but upon the relationship of the claim to the
22 subject matter of the arbitration clause." *In re Oil Spill By Amoco Cadiz*,
23 *etc.*, 659 F. 2d 789, 794 (7th Cir. 1981) (emphasis added). "Were the rule
24 otherwise, a party could frustrate any agreement to arbitrate simply by the
25 manner in which it framed its claims." *Id.* (citations omitted).

26 Here, the Sun seeks to reframe the dispute over annual profits
27 payments allegedly owed to it as one involving the meaning of section 4.2
28 of the JOA. See Proposed Am. Compl. ¶ 25 ("a justiciable controversy

1 presently exists . . . as to whether Section 4.2 of the 2005 Amended JOA
2 requires Defendant to bear its respective editorial costs"); *id.* ¶ 26 ("A
3 justiciable controversy exists . . . as to the meaning and interpretation of
4 Section 4.2 . . ."); *id.* ¶ 27 ("As such, Plaintiff is entitled to a Declaratory
5 Judgment determining the rights, interests, and obligations of Plaintiff, and
6 in particular, whether Section 4.2 of the [JOA] requires Plaintiff and
7 Defendant to bear their respective editorial costs").

8 Even assuming the parties disputed the meaning of section 4.2,
9 that issue is directly related to the subject matter of the arbitration clause.
10 Section 4.2 provides, in relevant part, that "Review-Journal and the Sun
11 shall each bear **their own respective editorial costs . . .**" JOA § 4.2
12 (emphasis added). The Sun alleges that Review Journal's obligation to bear
13 its own editorial costs under § 4.2 means that Review Journal cannot
14 deduct its editorial costs in calculating EBITDA under Appendix D of the
15 JOA. Compl., on file, ¶¶ 17-21, 26, 36. The arbitration clause covers
16 disputes between the Sun and Review Journal "as to [annual profits
17 payments] amounts owed to Sun," which includes disputes such as the
18 present dispute about the proper calculation of EBITDA. JOA Appendix D.

19 Questions as to the meaning of contract provisions that
20 allegedly bear on a dispute that is subject to arbitration are for the *arbitrator*
21 to decide, even if that arbitrator is a CPA. *See Benson Pump Co. v. South*
22 *Cent. Pool Supply, Inc.*, 325 F. Supp. 2d 1152 (D. Nev. 2004) (holding that the
23 "interpretation of the underlying contract is an issue for the [independent
24 auditor] to decide, even though contract construction is generally a
25 question of law"). Although they could have agreed otherwise, the parties
26
27
28

1 did not agree to leave questions of contract interpretation bearing on
2 financial disputes to the Court.¹

3 Thus, despite the Sun's attempt to present the interpretation of
4 § 4.2 as a standalone issue, it is *not*. Moreover, a fair reading of the
5 proposed amended complaint shows that the Sun seeks a declaratory
6 judgment determining *all* its rights under the JOA—not just a judicial
7 determination as to the meaning of § 4.2. See Proposed Am. Compl. ¶ 27
8 ("... Plaintiff is entitled to a Declaratory Judgment determining the
9 right ... of Plaintiff, and in particular, whether Section 4.2 of the [JOA]
10 requires Plaintiff and Defendant to bear their respective editorial costs")
11 (emphasis added); see also *id.* at 5 (Prayer for Relief § A) ("A Declaratory
12 Judgment ... determining and declaring Plaintiff's rights ... under the 2005
13 Amended JOA").

14 The Court should not assist the Sun in its attempt to sever an
15 issue that is an inseparable material part of the dispute covered by the
16 arbitration clause. Any Court interference would deprive the Review
17 Journal of the benefits of arbitration it bargained for and result in an
18 impermissible determination of the merits of the dispute. See *Steelworkers*
19 *v. Am. Mfg. Co.*, 363 US 564, 569 (1960) ("When the judiciary undertakes to
20 determine the merits of a grievance under the guise of interpreting the ...
21

22 ¹ In *Countrywide Home Loans, Inc. v. Mortg. Guar. Ins. Corp.*, by contrast, the
23 parties agreed that:

24 all controversies, disputes, or other assertions of liability or rights
25 arising out of or relating to this Policy, including the breach,
26 interpretation or construction thereof, shall be settled by arbitration.
27 Notwithstanding the foregoing, [MGIC] or [Countrywide] both retain the
28 right to seek a declaratory judgment from a court of competent jurisdiction
on matters of interpretation of the [Flow] Policy.

642 F.3d 849, 851 (9th Cir. 2011) (emphasis added).

1 collective bargaining agreements, it usurps a function which under that
2 regime is entrusted to the arbitration tribunal").

3 **2. "Interpretation" of § 4.2 of the JOA is a False Issue.**

4 Courts should be skeptical of proposed amendments to
5 complaints that are designed to avoid arbitration. *See Phillips v. Parker*, 106
6 Nev. 415, 418, 794 P.2d 716, 718 (1990) (although plaintiff's amended
7 complaint, unlike the initial complaint, made no reference to the
8 agreement, it was a "clear effort to avoid the [arbitration] agreement"); *cf.*
9 *Soebbing v. Carpet Barn, Inc.*, 109 Nev. 78, 84, 847 P.2d 731, 736 (1993)
10 ("courts should be cautious of . . . amendments alleging meritless claims in
11 an attempt to save a case from summary judgment"). "[T]he proper
12 method to deal with such tactics is to deny leave to amend on grounds of
13 futility." *Soebbing*, 109 Nev. at 84, 847 P.2d at 736.

14 Here, the Sun's proposed amended complaint presents a false
15 "justiciable controversy" to the Court in an effort to avoid arbitration. The
16 Sun asks the Court to declare that section 4.2 of the JOA—which provides
17 that "Review-Journal and the Sun shall each bear their own respective
18 editorial costs"—*really* means something other than what it says. *See*
19 Proposed Am. Compl. ¶¶ 26-27 and Prayer for Relief (alleging a justiciable
20 controversy and seeking a declaratory judgment as to "whether Section 4.2
21 of the [JOA] requires Plaintiff and Defendant to bear their respective
22 editorial costs").

23 The dispute is not about the words of section 4.2. The issue is
24 whether section 4.2 governs the calculation of EBITDA. What the Sun
25 seeks from the Court is a judicial declaration that the Review Journal
26 should bear its own editorial expenses (which it has) but may not treat
27 them as an expense of operations for accounting purposes, such as in
28 calculating EBITDA in determining the Sun's annual profits payment. But

1 the Court cannot make such declaration in the abstract without delving
2 into accounting issues the parties agreed to leave to the arbitrator.

3 Appendix D provides, *inter alia*, that the parties "intend that EBITDA be
4 calculated in a manner consistent with the computation of 'Retention' as
5 that line item appears on the profits and loss statement for Stephens Media
6 Group for the period ended [sic] December 31, 2004." App. D of JOA at 19.

7 The Sun's attempt to create a *non-issue* is nothing more than an
8 attempt to avoid the arbitration clause and whether it has been paid for
9 several years past as provided for in Appendix D. For this reason, the
10 Court should deny the motion to amend as futile and compel arbitration, as
11 the parties intended.

12 III. CONCLUSION

13 The Court should deny the Sun's motion to amend and send
14 this dispute to arbitration under the AAA's rules for commercial
15 arbitration, as they contracted to do 10 years ago when they negotiated
16 amendments to the JOA and adopted Appendix D.

17
18 MORRIS LAW GROUP

19
20 By: /s/ Akke Levin

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27 d/b/a Stephens Media Group
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I caused the following documents to be served via the Court's Odyssey E-Filing system: **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT ON ORDER SHORTENING TIME.** The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

TO:

Lewis Roca Rothgerber LLP

Leif Reid lreid@lrrlaw.com

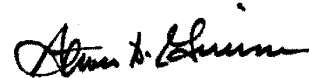
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DATED this 3rd day of June, 2015.

By V.L. Nickerson



CLERK OF THE COURT

1 RTRAN

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 LAS VEGAS SUN, INC.,

8 Plaintiff,

9 vs.

10 DR PARTNERS, D/B/A/
11 STEPHENS MEDIA GROUP, et al,

12 Defendants.
13

CASE NO. A-15-715008

DEPT. XI

14 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE
15 THURSDAY, JUNE 4, 2015

16 RECORDER'S TRANSCRIPT OF PROCEEDINGS:
17 **PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**
18 **ON ORDER SHORTENING TIME**
19

20 APPEARANCES:

21 For the Plaintiff:

JEFFREY A. BENDAVID, ESQ.
E. LEIF REID, ESQ.

22
23 For the Defendant:

STEVE L. MORRIS, ESQ.

24
25 RECORDED BY: JILL HAWKINS, COURT RECORDER

1 THURSDAY, JUNE 4, 2015, AT 10:52 A.M.

2
3 THE COURT: If I could go to the RJ -- Sun issue.

4 MR. REID: Your Honor.

5 THE COURT: Good morning.

6 MR. REID: Good morning.

7 THE COURT: It's still morning, sorry. Unfortunately, business court is like
8 this. And it's not all Mr. Morris' fault because he was here on time at eight o'clock
9 this morning.

10 MR. REID: So --

11 MR. MORRIS: Well, it's not my fault usually; is it?

12 THE COURT: No, it's usually Mr. Peek's fault.

13 MR. MORRIS: All right.

14 THE COURT: I have a motion to amend.

15 MR. REID: Yes.

16 THE COURT: I read it. I read the opposition. Did you read it?

17 MR. REID: Yes, I got it yesterday afternoon.

18 THE COURT: Lovely. Do you want to argue?

19 MR. REID: Yes, we're prepared to go forward.

20 THE COURT: Great.

21 MR. REID: As the Court noted we were here two weeks ago. We set this on
22 an order shortening time. As it turns out, that deprived us of the opportunity to reply
23 so I'm going to spend a little time talking about the cases that Mr. Morris relies on in
24 opposition to our motion.

25 I would note just preliminarily the things that aren't in dispute. Rule 15,

1 amendments are freely granted. That's language that's in the rule. That's not
2 attacked there. We just heard -- the case that we just heard they were on their fifth
3 amended --

4 THE COURT: Sixth.

5 MR. REID: Sixth amended --

6 THE COURT: Sixth amended complaint.

7 MR. REID: -- complaint. So this is -- the standards under this rule are -- favor
8 amendments. The opposition does not go after the timeliness. Obviously, there
9 hasn't been a responsive motion filed. We've acted in a timely basis. There's no
10 argument about any harm or anything like that. The focus is solely on cases -- a
11 couple cases that talk about how amendments when there is a arbitration
12 agreement that covers the dispute, that those are futile.

13 So I want to talk about futility. I think that puts the cart before the horse
14 in a lot of ways, especially in the context of us not having replied and the opinions
15 that Mr. Morris relies on where they're discussing futility. If you look at those
16 opinions, they are addressing that issue in the context of a motion to amend that's
17 been heard at the same time as the motion to compel arbitration. So we've been
18 deprived of that opportunity in that respect to fully brief the issue of the -- whether
19 the complaint filed falls within the arbitration provision.

20 I want to draw a common link between every case that Mr. Morris relies
21 on. And I just made little notes when I got this yesterday and I hope it isn't lost on
22 the Court.

23 *Phillips v. Parker* that Mr. Morris relies on to talk about careful pleading
24 around an arbitration provision. The original complaint in that case was based on
25 the contract, the contract had an arbitration provision. The subsequent amendment

1 alleged tort claims and avoided any reference to the agreement. That's not what
2 you have here and that case also involved an arbitration provision that said, quote,
3 any controversy relating to the agreement would be subject to arbitration. That's the
4 common thread.

5 The *Kindred v. Second Judicial District Case*, that arbitration provision
6 said any dispute arising from the employment arrangement between the parties
7 would be subject to arbitration.

8 *U.S. Steelworkers*, all disputes, misunderstandings or disagreements
9 regarding interpretation of the agreement would be subject to arbitration.

10 I paid special attention to the *Knights of Columbus* case. That was a
11 case argued before Judge Mahan by my partner. The arbitration provision in that
12 case said: The sole means to present and resolve grievances was through
13 arbitration.

14 And so in that context all -- every other case says that. The Court's
15 been here all morning. I don't want to belabor the point. Every single case -- there
16 are eight cases that Mr. Morris relies on. The common thread between each of
17 those cases is that it had the broad arbitration provision that required all disputes be
18 subjected to arbitration.

19 That's not the arbitration agreement that exists here in this case and so
20 I would urge the Court in evaluating and ultimately deciding that this amendment is
21 not futile is refer to Exhibit D. The arbitration provision that exists in this case is not
22 an all-encompassing agreement. The parties didn't agree to subject all disputes that
23 would arise between the parties to arbitration. Exhibit D relates to calculation of the
24 payment following an audit and it limits the arbitrator in what the arbitrator can do to
25 entering an award, recalculating the amount, adding interest and awarding any

1 attorneys' fees or costs, if appropriate. That's the limitation of this arbitration
2 provision. You compare that to the complaint that we have proposed the Court
3 allow us leave to file. It relates to the interpretation of this contractual provision, 4.2.

4 Under Nevada law, NRS 30.040, parties have a right to have -- party --
5 people that are party to a contract like this or any written instrument have a right
6 under the statute to have a judicial determination of their rights. That's what we are
7 requesting in this complaint. We are not requesting that there be any recalculation.
8 We're not requesting anything. No remedy relates to provision -- a repayment to the
9 Sun. This is not an arbitrable dispute that is covered by the terms of this agreement
10 and Mr. Morris' arguments in opposition to allowing us leave to file this amendment
11 fall because of the language of this arbitration provision and because every other
12 case that he relies on in arguing that the amendment is futile involved a very
13 different type of arbitration agreement.

14 THE COURT: Thank you.

15 Mr. Morris.

16 MR. MORRIS: Your Honor, this so-called dispute is no different today than it
17 was when you ordered arbitration, which we have implemented and are now
18 engaged in with the AAA. All this proposed complaint seeks from you is to displace
19 and repeal the calculation of profits under EBITDA. That's in Exhibit D. That's what
20 the end result here is.

21 The meaning and interpretation that Mr. Reid talks about with respect to
22 paragraph 4.2 is not an issue here. That provision is perfectly clear. It says each
23 party shall bear its own editorial costs and that has been done. The question is with
24 respect to the division of profits that the Sun is seeking, does Section 4.2 say that
25 earnings cannot be calculated by including an expense item that the parties have

1 historically treated as an expense item and that is editorial costs?

2 Look at Exhibit -- at Appendix D for just a moment and I'll conclude this.
3 We point this out in our opposition but you didn't have to wait and neither did Mr.
4 Reid have to wait for our opposition to continue ignoring this term in Appendix D.

5 Now, Appendix D is concerned with the profits that are divided and the
6 amount that goes to the Las Vegas Sun. That's what's at issue. And what Exhibit D
7 says, if you turn to it; it's on page 19 of the Amended Joint Operating Agreement. If
8 you look down to about the last third of the page, it says: All calculations shall be
9 made in accordance with general -- this is the calculations with respect to getting to
10 what the profits are that are going to be divided. The parties and the -- they shall be
11 made in accordance with generally accepted newspaper industry accounting
12 principles consistently applied. The parties' intend that EBITDA be calculated in a
13 manner consistent with the computation of -- the word is retention, as that line item
14 appears on the profit and loss statement for Stevens Media Group for the period
15 ended December 31, 2004.

16 That's what's an issue here. And this is what Mr. Reid says: We need
17 to file our amended complaint and you need to declare as a matter of law that this
18 language that we just looked at from Exhibit D -- from Appendix D is inoperative. It
19 is cancelled out by Section 4.2 of the principle agreement, which doesn't speak to
20 the division of profits and how earnings are calculated and what expenses may or
21 may not be deducted to arrive at earnings before interest, depreciation, taxes,
22 amortization; that's EBITDA. That's all we're seeking here.

23 So to amend this complaint to ask you to declare as a matter of law that
24 this issue is not arbitrable would mean they're asking you to declare as a matter of
25 law by declaratory judgment that Appendix D is inoperative and the parties did not

1 agree to it.

2 Appendix D sets out how it is that profits will be calculated and how
3 they're going to be divided year after year after year starting at the reset date in
4 2005 and continuing to this time, okay? And if there's a dispute, as Appendix D
5 says, as to the amounts owed to Sun and they are not able to resolve the dispute
6 within 30 days, they shall select a certified public accountant to arbitrate the dispute.

7 We were here last week or two weeks ago. You granted our motion to
8 compel. You honored this Appendix D and the appointment of an arbitrator and we
9 have submitted a demand for arbitration to the AAA in accordance with your order
10 and enclosing it and that process is now underway. And that's why I say granting
11 this amendment to revoke Appendix D and to cancel the decision you've already
12 made to compel arbitration would be futile. Thank you.

13 THE COURT: The motion to amend is granted under Rule 15, leave should
14 be given freely unless it is futile. Here the justiciable controversy is a declaration as
15 to the meaning of paragraph 4.2. For that reason the Court will make a decision
16 related to the declaration of that.

17 My question to you is how do you want to get to that decision making
18 point sooner rather than later because then you have to arbitrate after that?

19 MR. REID: We had requested when we were here two weeks ago -- or at
20 least we had indicated that we were prepared to brief this issue quickly. I think if the
21 Court wants to set a briefing schedule, a tight briefing schedule --

22 THE COURT: Well, he gets to do an answer and a motion to dismiss if he
23 wants.

24 MR. REID: Okay, following that.

25 THE COURT: But the question is do you need any discovery is really the

1 issue before you have this, or is it purely a briefing issue, Mr. Morris?

2 MR. MORRIS: I don't believe so. I don't -- never mind.

3 THE COURT: Okay. So get it on file, he'll respond and then you file your
4 motion, he'll file a counter-motion and then we'll decide it.

5 MR. REID: Thank you.

6 MR. MORRIS: What's the motion he's going to file?

7 THE COURT: I guess he's going to file a motion for declaratory relief and ask
8 me to make a finding.

9 MR. MORRIS: Okay.

10 THE COURT: But it's a bench trial, basically. But if you don't need any
11 discovery and there's really no additional evidence, it's just a legal determination as
12 to what those terms mean; fairly simple.

13 MR. MORRIS: Well, it is fairly simple in that abstract sense. I want to see
14 what it -- I want to see his motion --

15 THE COURT: Absolutely.

16 MR. MORRIS: -- for declaratory relief.

17 THE COURT: And then if you think, Mr. Morris, that that requires an
18 evidentiary hearing or any additional discovery, I need to know that so we can
19 structure that. That's what I'm trying to do is figure out how to get you to the
20 resolution point sooner rather than later in this case so you can go deal with the
21 arbitrable issues which are the accounting issues.

22 MR. MORRIS: What is it though -- can you help me out here? What is it you
23 believe that is an issue with respect to Section 4.2?

24 THE COURT: I believe there is an issue as to what falls within the scope of
25 4.2 and the parties bearing their own editorial expenses; what falls within that

1 distinction.

2 MR. REID: That will also be clear in the brief we file.

3 THE COURT: I hope.

4 MR. MORRIS: All right. We'll see.

5 THE COURT: Okay. Maybe not, but -- I may be being naïve because now I
6 have to go back to Mr. Peek.

7 MR. MORRIS: So -- never mind. Okay.

8 MR. REID: Thank you.

9 MR. MORRIS: State the order. We'll come -- we'll be back.

10 THE COURT: I know you will.

11 [Proceedings concluded at 11:05 a.m.]

12 * * * * *

13 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual
14 proceedings in the above-entitled case to the best of my ability.

15

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24

25

Cheryl Carpenter

Cheryl Carpenter,
Court Recorder

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 68700

District Court Case No. A715008

DR PARTNERS, a Nevada General Partnership,
d/b/a STEPHENS MEDIA GROUP,

Electronically Filed
Oct 06 2015 08:52 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Appellant,

vs.

LAS VEGAS SUN, INC., a Nevada Corporation,

Respondent.

Appeal from an Order of the Eighth Judicial District Court
Clark County, Nevada
Judge Elizabeth Gonzalez

APPELLANT'S APPENDIX

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CASE NO. 68700
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APPELLANT'S APPENDIX
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First Amended Complaint for Specific Performance and Declaratory Judgment (6/22/15)	I	AA 170-246
Minute Order – Defendant's Motion to Stay (7/23/15)	II	AA 283
Motion to Compel Arbitration (4/1/15)	I	AA 081-089
Motion to Stay and Application for Order Shortening Time and Order Shortening Time (7/17/15)	II	AA 268-275
Notice of Appeal (8/21/15)	II	AA 321-323
Notice of Entry of Order Denying Renewed Motion to Compel Arbitration and Staying Proceedings (8/19/15)	II	AA 315-320
Opposition to DR Partners' Renewed Motion to Compel Arbitration (7/29/15)	II	AA 284-294
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Description	Vol. No.	Page No.
Order Granting Plaintiff's Motion for Leave to File First Amended Complaint on Order Shortening Time (6/19/15)	I	AA 168-169
Plaintiff's Motion for Leave to File First Amended Complaint on Order Shortening Time (exhibits to proposed amended complaint omitted) (5/26/15)	I	AA 135-148
Plaintiff's Motion for Summary Judgment on Plaintiff's Declaratory Relief Action (7/10/15)	II	AA 257-267
Plaintiff's Opposition to Motion to Compel Arbitration (exhibit thereto omitted) (4/20/15)	I	AA 090-102
Renewed Motion to Compel Arbitration (7/10/15)	II	AA 247-256
Reply in Support of Motion to Compel Arbitration (5/12/15)	I	AA 103-116
Reply in Support of Renewed Motion to Compel Arbitration (8/11/15)	II	AA 295-304
Transcript - Defendant's Motion to Compel Arbitration (5/19/15)	I	AA 117-134
Transcript - Defendant's Motion to Stay (7/23/15)	II	AA 276-282
Transcript - Defendant's Renewed Motion to Compel Arbitration (8/18/15)	II	AA 305-312
Transcript - Plaintiff's Motion for Leave to File First Amended Complaint on Order Shortening Time (6/4/15)	I	AA 159-167

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(b-d) and NEFCR Rule 9, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I caused the following document to be served via the Court's E-Flex filing system: **APPELLANT'S APPENDIX – Volume I**. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

TO:

Lewis Roca Rothgerber LLP

Leif Reid lreid@lrrlaw.com

Kristen Martini kmartini@lrrlaw.com

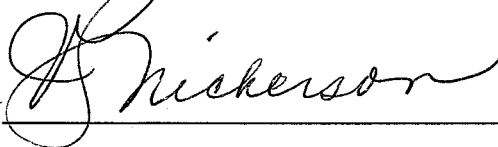
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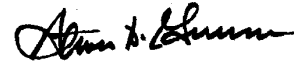
John Moran john.moran@moranlawfirm.com

Jeffrey Bendavid j.bendavid@moranlawfirm.com

DATED this 5th day of October, 2015.

By





CLERK OF THE COURT

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DISTRICT COURT

A-15-715008-B

CLARK COUNTY, NEVADA

XI

11 LAS VEGAS SUN, INC., a Nevada Corporation,

12 PLAINTIFF,

13 vs.

14 DR PARTNERS, a Nevada General Partnership,
15 d/b/a STEPHENS MEDIA GROUP; DOES I-X,
16 inclusive,

17 DEFENDANTS.

**COMPLAINT FOR SPECIFIC
PERFORMANCE AND
DECLARATORY JUDGMENT**

**(EXEMPT FROM ARBITRATION:
DECLARATORY RELIEF
REQUESTED)**

**BUSINESS COURT REQUESTED
PURSUANT TO
E.D.C.R. 1.61(a)(2)(iv)**

18 COMES NOW Plaintiff Las Vegas Sun, Inc., and complains against Defendant DR
19 Partners, doing business as Stephens Media Group, and Does I-X as follows:

JURISDICTION AND VENUE

20 1. This Court has subject matter jurisdiction over this action under Article 6, section 6
21 of the Nevada Constitution.

22 2. This Court has personal jurisdiction over Defendants, and each of them, pursuant to
23 NRS 14.065 because the acts and omissions complained of herein were committed, in part, within
24 the State of Nevada, County of Clark and, thus, Defendants, and each of them, had and continue to
25 have sufficient minimum contacts with this forum such that the exercise of personal jurisdiction
26 over them will not offend traditional notions of fair play and substantial justice.

27 3. Venue is proper in the Eighth Judicial District Court, Clark County, Nevada, under
28 NRS 13.010, because all of the actions alleged herein were undertaken in Clark County, Nevada,
and affect property located in Clark County, Nevada. Venue is also proper pursuant to
NRS 13.040.

THE PARTIES

4. Plaintiff Las Vegas Sun, Inc., is a Nevada corporation that is a member of Greenspun Media Group, LLC, which publishes various newspapers and magazines in Clark County, Nevada.

5. DR Partners, doing business as Stephens Media Group, is and at all times material hereto was a Nevada general partnership having its principal place of business in Clark County, Nevada.

6. Plaintiff alleges that Defendants named herein as Does I through X are individuals, corporations, limited-liability companies, partnerships, associations or other persons or entities who are responsible in some manner or capacity for the acts alleged herein, but whose names are unknown to Plaintiff at this time. Plaintiff will seek leave to amend this Complaint to include the names of Does I through X when the identities of such defendants become known to Plaintiff.

GENERAL ALLEGATIONS

**THE 1989 JOINT OPERATING AGREEMENT AND ITS
2005 RESTATEMENT AND AMENDMENT**

7. Las Vegas Sun, Inc., publishes a daily newspaper called Las Vegas Sun ("The Sun") for circulation in the Las Vegas metropolitan area.

8. Defendant is the owner and publisher of the Las Vegas Review Journal ("LVRJ") in Las Vegas, Nevada.

9. In 1989, pursuant to the Newspaper Preservation Act of 1970, Las Vegas Sun, Inc., negotiated a joint operating agreement (the "1989 JOA"), attached hereto as **Exhibit 1**, with Defendant's predecessor, Donrey of Nevada, Inc. Under the 1989 JOA, the LVRJ was required to, among other things, print The Sun and handle all advertising and circulation functions for both print newspapers, thereby eliminating significant expenses to The Sun. Since entering into the 1989 JOA, Las Vegas Sun, Inc., has had no control over revenue generated by The Sun.

10. The 1989 JOA ensured that The Sun would be in existence until at least 2040.

11. In 2005, Las Vegas Sun, Inc., renegotiated the 1989 JOA with Defendant DR Partners, which resulted in the execution of the Amended and Restated Agreement ("2005 Amended JOA"), attached hereto as **Exhibit 2**.

1 12. Under the 2005 Amended JOA, the LVRJ agreed to continue to produce and
2 promote The Sun. Specifically, the LVRJ agreed to print both the LVRJ and The Sun together in
3 its facilities and to fund and execute payments to all costs, including capital expenditures of
4 operations, with exception to the operation of The Sun's news and editorial department.

5 13. As with the original 1989 JOA, the 2005 Amended JOA still requires that each
6 entity maintain its own, separate editorial staff. However, the 2005 Amended JOA included a
7 change to Section 4.2, concerning the "News and Editorial Allocations." The change provided that
8 The Sun and the LVRJ are required to "bear their own respective editorial costs," "establish
9 whatever budgets each deems appropriate," and "maintain a staff of news and editorial
10 employees." **Exhibit 2** § 4.2. Under the 1989 JOA, the entities shared the news and editorial
11 expenses amongst each other in accordance with a specified allocation formula.
12 *See Exhibit 1* § 4.2 & App'x A.1.

13 14. Pursuant to Appendix D of the 2005 Amended JOA, Las Vegas Sun, Inc., "shall
14 receive an annual profits payment ("the Annual Profits Payment"), one-twelfth (1/12th) of which
15 shall be paid monthly in advance of the first day of each month during the term." **Exhibit 2** at
16 App'x D. Appendix D reiterated the change contained in Section 4.2 that editorial costs would
17 now be separate and not shared. It states: "In calculating the EBITDA . . . such earnings shall not
18 be reduced by any amounts that during such period may have been otherwise been deducted [sic]
19 from earnings under section A.1 of Appendix A or sections B.1.16, B.1.17, B.1.18, or B.3 of
20 Appendix B of the 1989 Agreement."

21 15. The payments the LVRJ makes pursuant to Appendix D are Las Vegas Sun, Inc.'s
22 sole source of revenue and are used to set its annual budget and pay for its editorial expenses. For
23 fiscal year beginning April 1, 2005, the Annual Profits Payment made to Las Vegas Sun, Inc., was
24 Twelve Million Dollars (\$12,000,000.00). *See id.*

25 16. For the fiscal year thereafter, the Annual Profits Payment was to be adjusted as
26 ///
27 ///
28 ///

1 follows:

2 Within thirty (30) days following the beginning of each such fiscal
3 year, Review-Journal shall calculate the percentage change (the
4 "Percentage Change") between earnings,, before interest, taxes,
5 depreciation and amortization ("EBITDA" for the fiscal year
6 immediately preceding (the "LTM EBITDA") and the EBITDA for
the penultimate fiscal year (the "Prior Period EBITDA"). The
Annual Profits Payment shall be increased, or decreased, as the case
may be, by the Percentage Change between the LTM EBITDA and
the Prior Period EBITDA.

7 *Id.*

8 **DEFENDANT'S CONDUCT GIVING RISE TO VIOLATIONS OF LAW**

9 17. Since the effective date of the 2005 Amended JOA, Defendant has reduced
10 EBITDA performance by improperly including the LVRJ's editorial costs in the total operation
11 expenses of the 2005 Amended JOA.

12 18. The inclusion of the LVRJ's editorial costs in the total operating expenses of the
13 2005 Amended JOA is a direct violation of section 4.2 of the 2005 Amended JOA, which states
14 explicitly that the LVRJ and The Sun are to "bear their own respective editorial costs." Appendix
15 D of the 2005 Amended JOA similarly requires the LVRJ to exclude its editorial costs from the
16 EBITDA calculation.

17 19. By including these editorial costs in the total operating expenses of the 2005
18 Amended JOA, the EBITDA calculated under the terms of the 2005 Amended JOA has been
19 improperly decreased, thereby leading to an inaccurately low Annual Profits Payment being made
20 to Las Vegas Sun, Inc.

21 20. By including the LVRJ's editorial costs in the total operational costs of the 2005
22 Amended JOA, Defendant has improperly reduced the sum owed to Las Vegas Sun, Inc., and has
23 caused Las Vegas Sun, Inc. to underwrite the LVRJ's newsroom costs in defiance of section 4.2 of
24 the 2005 Amended JOA. These underpayments effectively starved the Las Vegas Sun, Inc.'s news
25 organization.

26 21. Upon information and belief, Defendant's treatment of the LVRJ's editorial costs as
27 a 2005 Amended JOA operational expense has resulted in an aggregate shortfall in payments to
28

1 Las Vegas Sun, Inc., of at least \$6,000,000, plus interest, since the 2005 Amended JOA went into
2 effect.

3 **FIRST CLAIM FOR RELIEF**
4 **(Declaratory Relief)**

5 22. Plaintiff realleges and incorporates by reference the averments contained in the
6 above paragraphs as though fully set forth herein.

7 23. NRS 30.040(1) allows any person interested under a written contract to have
8 determined any question of construction or validity arising under that contract and obtain a
9 declaration of rights thereunder.

10 24. A justiciable controversy presently exists between Plaintiff and Defendant, as set
11 forth herein.

12 25. The present controversy is between parties whose interests are adverse.

13 26. A dispute has arisen between Plaintiff and Defendant, for which a declaratory
14 judgment of this Court is required, as to the meaning of section 4.2 and Appendix D of the 2005
15 Amended JOA, specifically as to the relationship between the responsibilities of the parties to bear
16 their own editorial costs and the calculation of EBITDA for purposes of determining the Annual
17 Profits Payment owed to Las Vegas Sun, Inc.

18 27. Plaintiff is entitled to a judicial declaration that Defendant has breached the 2005
19 Amended JOA by improperly including the LVRJ's editorial costs in the total 2005 Amended JOA
20 operating costs, thereby decreasing the EBITDA calculation and resulting in improperly low
21 Annual Profits Payments being made to Las Vegas Sun, Inc., in the aggregate amount of at least
22 \$6,000,000, plus interest, since the 2005 Amended JOA went into effect.

23 28. A declaration of rights is necessary and appropriate at this time in order for the
24 parties to ascertain their respective rights, obligations, and liabilities, and no adequate remedy
25 other than that prayed for exist by which the rights of the parties may be ascertained.

26 29. Furthermore, as a result of Defendant's wrongful and unlawful acts, Plaintiff has
27 been forced to obtain the services of counsel to prosecute this action and are entitled to an award of
28 attorneys' fees and costs incurred herein pursuant to NRS § 18.010, *et seq.*

SECOND CLAIM FOR RELIEF
(Breach of Contract - Specific Performance)

30. Plaintiff realleges and incorporates by reference the averments contained in the above paragraphs as though fully set forth herein.

31. The parties entered into a valid and existing agreement on June 10, 2005 (the 2005 Amended JOA).

32. Defendant has breached the 2005 Amended JOA by including the LVRJ's editorial costs in the total operational costs of the 2005 Amended JOA, thereby resulting in Las Vegas Sun, Inc., receiving improperly low Annual Profits Payments. Defendant has failed to pay sums due under the 2005 Amended JOA and continues to fail to pay said sums despite Plaintiff's demands.

33. Las Vegas Sun, Inc., has performed each and every duty and obligation under the 2005 Amended JOA, and is not in breach thereof. Defendant's obligations to perform are not conditioned upon any event or happening which has yet to occur.

34. Pursuant to Article 10.8 of the 2005 Amended JOA, "[b]ecause of the public interest in maintaining editorially and reportorially independent and competitive newspapers in Las Vegas and its environs, and because of the inadequacy of damages in the event of a default in their performance of material obligations hereunder, [Las Vegas Sun, Inc.,] shall have the right to seek specific performance of the material provisions of the [2005 Amended JOA]." **Exhibit 2 § 10.8.**

35. The payment of the Annual Profits Payments, and thus the proper calculation of EBITDA, is a material obligation of the 2005 Amended JOA. As Las Vegas Sun, Inc.'s sole source of income, the Annual Profits Payment ensures that The Sun has the required resources to continue to publish its editorial content, which serves the public interest and conforms to the goals of the Newspaper Preservation Act.

36. Plaintiff is entitled to specific performance by Defendant of Defendant's contractual obligations, including, but not limited to, proper calculation of EBITDA and payment of all Annual Profits Payment obligations outstanding under the 2005 Amended JOA, including interest thereon. These calculations are specifically required to exclude the LVRJ's editorial costs.

1 37. As a result of Defendant's wrongful and unlawful acts, Plaintiff has been forced to
2 obtain the services of counsel to prosecute this action and is entitled to an award of attorneys' fees
3 and costs incurred herein pursuant to NRS 18.010, *et seq.*

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff respectfully requests that this Court provide the following relief:

6 A. A declaratory judgment stating that Defendant may not include the LVRJ's editorial
7 costs in its EBITDA calculation pursuant to terms of the 2005 Amended JOA;

8 B. An order requiring Defendants to specifically perform their contractual obligations
9 under the 2005 Amended JOA, including but not limited to, excluding the LVRJ's editorial costs
10 from its calculation of EBITDA and payment of all Annual Profits Payment obligations
11 outstanding under the 2005 Amended JOA, with interest;

12 C. An award to Plaintiff of its cost of suit, including reasonable attorney's fees; and

13 D. An order granting to Plaintiff such other and further relief to which it may be
14 entitled and which this Court finds to be just and appropriate.

15 DATED this 10th day of March, 2015.

16 LEWIS ROCA ROTHGERBER LLP

17 BY:  *for* #11098

18 E. LEIF REID
19 50 West Liberty Street, Suite 410
20 Reno, Nevada 89501

21 *Attorneys for Plaintiff*
22
23
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25
26
27
28

EXHIBIT 1

EXHIBIT 1

AGREEMENT

This Agreement is dated as of June 12, 1989, between Donrey of Nevada, Inc., a Nevada corporation ("Donrey"), and the Las Vegas Sun, Inc., a Nevada corporation ("Sun").

PRELIMINARY STATEMENT

Donrey owns and publishes in Las Vegas, Nevada, an all day newspaper on weekdays, a morning newspaper on Saturdays and holidays, and a Sunday newspaper, each known as the Las Vegas Review-Journal (hereinafter referred to as the "Review-Journal"). Sun owns and publishes in Las Vegas, Nevada, a morning newspaper on weekdays and Saturdays and a Sunday newspaper, each known as the Las Vegas Sun (hereinafter referred to as the "Sun"). The Sun presently operates and for a number of years has operated at a substantial loss, and is in probable danger of financial failure. It is the firm belief of the parties that the continued publication of at least two newspapers of general circulation, editorially and reportorially separate and independent, is of paramount importance to the citizens of Las Vegas and its environs. The parties further believe that publication of the Sun can be carried on profitably, and its continued editorial existence and independence thereby assured, if its production, distribution and advertising functions and related non-news and non-editorial activities are conducted and performed by the Review-Journal, through a single staff of Review-Journal employees utilizing Review-Journal's plant and equipment under a joint

Pages 12-23 include Exhibits.

newspaper operating arrangement (hereinafter referred to as "Agreement"), under which the Review-Journal will act on its own behalf with respect to the Las Vegas Review-Journal and on behalf of the Sun with respect to the Las Vegas Sun.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

TERM

1.1 Effective Date. The term of this Agreement shall begin at 12:01 a.m. on the 10th day (or on such later day as the parties may agree) after the filing of written consent of the Attorney General of the United States to this Agreement under the Newspaper Preservation Act, which shall be known as "the Effective Date". The parties agree to pursue diligently the filing of the application for approval of this Agreement to the Department of Justice and to use their best efforts and take all action necessary to obtain such written consent as expeditiously as possible within the procedures set forth in applicable regulations of the Department of Justice. This Agreement does not constitute any limitation on either party's obligation to engage in good faith labor negotiations if and as required by the National Labor Relations Act, and to implement any understandings it may reach in such negotiations.

Upon execution hereof, each party shall furnish to the other a written opinion of its counsel that all necessary

corporate action has been taken to authorize this Agreement and that, subject to the conditions of the preceding paragraph, this Agreement shall constitute the valid and binding obligation of the respective party. The parties agree to cooperate in coordinating meetings with government officials, community leaders, employees and their representatives, advertisers and others to explain the Agreement.

If, within eighteen (18) months after the filing of the application with the Department of Justice, the application has neither been approved by the Attorney General without a hearing nor been the subject of an order for a hearing, or if, within eighteen (18) months after the Attorney General has issued an order for a hearing, the application has not been approved by the Attorney General, the parties shall discuss the feasibility of continuing to seek approval of the application and either party may, after notification to the other, withdraw from the application. The Review-Journal and Donrey intend to make a request, at the time of filing the application, under 28 CFR Section 48.5 for a protective order withholding from public disclosure their financial and other privileged and confidential commercial information to be filed with this application and restricting access to such materials to the applicants and the Department of Justice. If the request is not granted the Review-Journal and Donrey reserve the right to unilaterally withdraw the application. If the protective order is initially granted but, at a later date, access to or inspection of the protected information is to be afforded anyone other than the

applicants, the Department of Justice, or an administrative law judge, and their respective employees, without restrictions as to disclosure acceptable to the Review-Journal and Donrey, then the Review-Journal and Donrey shall have the unilateral right to withdraw the application and dismiss any further hearing or proceedings concerning the application.

Each party shall pay its own costs and professional fees in connection with the formulation and drafting of this Agreement and the preparation and filing of the application to the Department of Justice. From and after the filing of such application all costs and professional fees shall be borne equally by the parties with each party having reasonable approval of costs and fees to be incurred.

1.2 Duration. Subject to the termination provisions set forth in Article 9, this Agreement shall continue for an initial period ending at the close of business on the ~~last day of~~ ~~December of the fiftieth (50th)~~ year following the Effective Date. The Agreement shall automatically renew for succeeding renewal periods of ten (10) years each unless either party shall notify the other in writing at least two (2) years prior to the end of the initial period that it elects to terminate the Agreement at the end of said fiftieth (50th) year, or unless either party shall notify the other in writing at least two (2) years prior to the end of the renewal period that it elects to terminate the Agreement as of the end of said renewal

period. The phrase "term of this Agreement" as used hereafter shall mean the initial period and any renewal period or periods.

ARTICLE 2

AGENCY

Donrey of Nevada, Inc. now owns and operates the Review-Journal, together with other unrelated business operations in the State of Nevada. In order to facilitate management, administration, record keeping and tax administration under this Agreement, Donrey, as of the effective date of this Agreement, shall have established a separate Nevada business corporation which shall own or lease all assets related to the operation of the Las Vegas Review-Journal. Donrey shall cause such corporate entity to assume and agree to perform all duties and obligations of the Review-Journal under the terms of this Agreement.

ARTICLE 3

TRANSFER OF CONTRACTS AND SALE OF SUPPLIES, INVENTORY AND EQUIPMENT BY SUN TO REVIEW-JOURNAL

3.1 Transfer to and Assumption by Review-Journal of Certain Contracts. To enable Review-Journal to perform its functions hereunder on behalf of Sun, Sun shall (as of the Effective Date) transfer certain assets and assign certain contracts to Review-Journal subject to the procedures and conditions hereinafter specified in this Section 3.1.

3.1.1 Delivery of Contracts and Data to Review-Journal.

Upon consent of the Attorney General as specified in Section 1.1, Sun shall furnish to the Review-Journal:

3.1.1.1 Circulation Contracts. All subscription, bulk sales, circulation, dealer and sub-dealer, and delivery agent lists and contracts related to the Sun in the possession or control of Sun, and all books and statements of account, records and other information relating to or concerning routes, daily draws by editions, distribution, delivery, sales returns, or prepaid subscriptions of the Sun in any territory, but not including the Sun's general books of account.

3.1.1.2 Contracts for Supplies. All contracts and other available information as may be reasonably necessary to form business judgments respecting such contracts, then held by Sun for the purchase of newsprint, film, ink and supplies for the Sun's mechanical departments, and all other similar contracts (other than those relating to the Sun's news and editorial departments) which would be helpful or beneficial to the Review-Journal in fulfilling its obligations hereunder.

3.1.1.3 Advertising Contracts. A list of all contracts then outstanding for publication of advertising in the Sun, which list shall indicate in each case the date of the contract, the name and address of the advertiser, the amount of space used up to that time, the amount unpaid and owing the Sun for advertising run to that time, the amount prepaid as of the Effective Date, the frequency of insertions, the rate, the expiration date, and any special conditions, records, requirements or publication orders with the date thereof, and any special instructions, agreements or commitments made by the Sun with

the advertiser with respect thereto, and all insertion orders for advertising subsequent to the Effective Date. Sun shall make available to the Review-Journal at the Review-Journal's request copies of any or all such contracts.

3.1.2 Analysis of Contracts and Assumption by Review-Journal. As soon as possible after such information and documents shall have been furnished to the Review-Journal, and in any event prior to the Effective Date, Review-Journal shall designate in writing to Sun those contracts that Sun shall assign to Review-Journal and which Review-Journal shall assume as of the Effective Date (excluding all portions which Sun had a duty to perform prior to the Effective Date); provided, that with respect to advertising contracts Review-Journal shall have no obligation to assume any advertising contract that is on a trade-out basis, and Review-Journal agrees that it will not refuse the assumption of any advertising contract solely on the basis of the contract rate. However, for advertising contracts containing rates which Review-Journal determines to be unreasonable, Review-Journal shall have the right to charge to Sun the difference between the contract rate and a rate determined by Review-Journal to be reasonable, effective ninety (90) days after the date of assumption and continuing for the balance of such contracts. Subject to the foregoing, Review-Journal shall use its best efforts to maximize its designation of such contracts

to be assigned to and assumed by Review-Journal. Review-Journal pre-assumption analysis of such contracts and information may include consultation with the contracting parties, and Sun agrees to assist Review-Journal in that process. Sun shall remit to Review-Journal (a) all dealers', vendors' and carriers' cash deposits (to the extent that the same shall not be due and owing to such depositors on the Effective Date) and (b) all sums in respect of prepaid subscriptions and prepaid advertising received by Sun but not earned prior to the Effective Date. As to any assigned and assumed advertising contracts, Review-Journal shall have the right to make adjustments, such as rebates or short ratings of any of same so long as this shall not alter indebtedness due Sun prior to the Effective Date without Sun's approval. All such contracts to be assumed by Review-Journal shall be assigned to Review-Journal by Sun as of the Effective Date, and such contracts shall be assumed by Review-Journal as of that date and thereafter shall be performed by Review-Journal, and Sun shall be relieved from any and all performance obligations under such contracts accruing after the Effective Date.

3.2 Newsprint. Review-Journal shall procure, as of the Effective Date and thereafter, a supply of newsprint adequate to produce the Newspapers as defined in Section 5.1 below;

provided, that Review-Journal shall have the purchase and assumption obligations specified in Section 3.3 as to Sun newsprint.

3.3 Sale of Supplies, Inventory and Equipment. As of the Effective Date, Review-Journal agrees to purchase Sun's inventory of newsprint and supplies common to or usable in the operations of both newspapers (i.e., newsracks, production film, rubber bands, plastic bags, etc.). Upon the consent of the Attorney General as specified in Section 1.1, Sun shall deliver to Review-Journal a schedule identifying all supplies, inventory (on hand or in transit) and equipment owned or leased by Sun and used or available to be used in the production and distribution of the Sun. On or before the Effective Date, Review-Journal shall designate in writing which of the scheduled items of supplies, inventory and equipment it wishes to purchase or sublease, as the case may be.

As to such of the equipment as is owned by Sun, which Review-Journal determines to purchase, Sun shall be obligated to sell and deliver same and Review-Journal shall be obligated to buy at a purchase price equal to the purchase cost of such equipment or its then market value, whichever is lower.

As to such of the supplies and inventory which Review-Journal is obligated to purchase or designates for purchase by it, Sun shall be obligated to sell and deliver same and Review-Journal shall be obligated to buy at a purchase price equal to the cost of same to Sun, or its then market value, whichever is lower.

Any newspaper production equipment of the Sun which is not purchased by the Review-Journal may be sold by the Sun to a third party, provided that the sale of any such equipment to any party within the State of Nevada shall require Donrey's prior approval.

ARTICLE 4

NEWS AND EDITORIAL COPY, FEATURES AND SERVICES

4.1 Maintenance of News and Editorial Staff; Feature Materials. Review-Journal and Sun each shall maintain a staff of news and editorial employees, and shall license such feature materials (including, but not limited to, news and editorial services supplied by third parties), adequate to provide its respective newspaper with all of the news and editorial copy and related services deemed necessary by each of them as to its respective newspaper.

4.2 News and Editorial Allocations. The Review-Journal and the Sun shall establish, in accordance with the provisions of Appendix A attached hereto and made a part hereof by reference, the amounts to be allocated to Agency Expense, as hereinafter defined, for each for news and editorial expenses.

4.3 Furnishing News and Editorial Copy and Services. In furnishing features, news and editorial copy, and like materials to Review-Journal for publication in the Sun or the Sun portion of jointly published newspapers as provided in Section 4.4, and in providing layout for such material, Sun shall provide all such material in a form appropriate for the production of its

newspaper or its portion of jointly published newspapers hereunder, in conformity with the mechanical standards, deadlines and production requirements which prevail in the Review-Journal plant from time to time, including page sizes, column widths, and cut-offs established by Review-Journal, upon reasonable notice to Sun. Sun shall acquire and maintain at its expense such newsroom equipment (including, but not limited to, typewriters, video terminals and news editing systems) as may be required as of the Effective Date to interface with Review-Journal production facilities. ~~Any changes or additions thereafter required in such equipment shall be covered by Appendix B hereto.~~ Newshole limitations and other matters for separate and jointly published newspapers are set forth in Appendix A hereto.

4.4 Furnishing Copy, Features and Services for Jointly Published Newspapers. Sun shall furnish editorial copy, features and comics to permit the Review-Journal to include them within jointly published newspapers, which shall be Sundays, Saturdays, holidays, other special editions and total market coverage editions. The Sun portion of jointly published newspapers shall be in accordance with Appendix A hereto. All components of jointly published newspapers shall bear the Review-Journal's headress, typeface and style. The front page logo of all jointly published newspapers shall read "Las Vegas REVIEW-JOURNAL and SUN," and all folios shall similarly refer to both papers, except for editorial and other pages described in Appendix A as being for the use of only one newspaper, which

pages shall bear only the name of such newspaper. The Review-Journal shall provide all of the news content of jointly published newspapers, except for stories and features included on those pages described in Appendix A as being only for the use of the Sun. The Review-Journal reserves the right to print conspicuous notices in jointly published newspapers to the effect that the news content of the non-Sun portion of the newspaper, including locally produced supplements, is produced by Review-Journal personnel.

4.5 Showbiz Magazine. Showbiz Magazine, which is owned or controlled by Sun, is carried as an insert by the Sun and distributed to hotels in Las Vegas. As of the Effective Date, Showbiz Magazine shall be a department or division of the Sun and subject to the terms of this Agreement. If the Review-Journal determines that it no longer desires Showbiz Magazine to be governed by the terms of this Agreement and/or no longer desires to carry Showbiz Magazine as an insert in the jointly published Sunday newspaper, Review-Journal shall give sixty (60) days prior written notice to Sun, and Sun shall have the right to transfer Showbiz Magazine out of Sun, or continue publication and distribution of Showbiz Magazine, and in either case, outside the terms of this Agreement. In this event, Review-Journal agrees to perform, at the request of Sun, composition, production and printing services at reasonable costs and further agrees not to engage in the production of an entertainment magazine for distribution to Las Vegas hotels for a period of two (2) years.

ARTICLE 5

CONTINUING PUBLICATION AND NEWS AND EDITORIAL AUTONOMY

5.1 Production and Promotion of the Newspapers. Subject to the terms of this Agreement, and as of the Effective Date, Sun shall be a daily afternoon newspaper and Review-Journal shall be a daily morning newspaper and on Saturday, Sunday, holidays, and other special editions the newspapers shall be jointly published as provided in Section 4.4. So long as Sun furnishes news and editorial copy, features and services to Review-Journal in accordance with Article 4 of this Agreement, Review-Journal agrees to produce the Sun daily as an afternoon newspaper as provided herein, to include the Sun copy and features in jointly published newspapers as specified in Article 4 above, and to sell all advertising for, promote and circulate such newspapers as provided herein. Review-Journal agrees that the afternoon Sun and the Sun portion of jointly published newspapers shall contain no editorial content other than that furnished by Sun. Also subject to the terms of this Agreement, Review-Journal further agrees to publish and produce for the term of this Agreement the Las Vegas Review-Journal daily as a morning newspaper and to produce jointly published newspapers as provided herein. The daily Sun and the Sun portion of jointly published newspapers, and the daily Review-Journal and the balance of the jointly published newspapers are hereinbefore and hereinafter referred to as the "Newspapers".

Review-Journal shall print the Newspapers on equipment owned or leased by the Review-Journal in the Review-Journal plant or plants located at such place or places as Review-Journal may determine, and all operations under this Agreement, except the operation of the Sun's news and editorial department, shall be carried on and performed by the Review-Journal with Review-Journal employees and equipment and in the Review-Journal's said plant or plants or by independent contractors selected by the Review-Journal.

The Review-Journal shall control, supervise, manage and perform all operations involved in managing and operating under this Agreement, including printing, selling and distributing the Newspapers, shall determine page sizes, number of columns per page, cut-offs, page makeup of non-news and non-editorial content (subject to the newshole formula set forth in Appendix A), and all other mechanical and technical functions of the Newspapers, shall purchase newsprint, materials and supplies as required (subject to Sun's obligations under Section 3.2), shall determine the rates for, solicit and sell all advertising space in the Newspapers, shall determine circulation rates, collect the Newspapers' circulation and advertising accounts receivable which come into existence after the Effective Date, and shall make all determinations and decisions and do any and all acts and things related to the foregoing activities, provided:

5.1.1 Format. Review-Journal shall not change the format of the Sun to any size or format different from that of the Review-Journal without approval of Sun.

5.1.2 Editions. The number of Sun editions shall not be changed without approval of Sun.

5.1.3 Best Efforts. Review-Journal agrees that it will use its best efforts, using the same degree of diligence, to sell advertising space in the Sun and the Review-Journal and to promote and circulate the Sun and the Review-Journal.

5.1.4 Promotional Activities. Review-Journal shall establish for each fiscal year a budget for promotional activities which shall be allocated between the Review-Journal and the Sun in accordance with the provisions of Appendix A, attached hereto and made a part hereof by reference. Promotional activities may include radio and television, outdoor advertising, in-paper or house advertisements, and other advertising media. All expenses of such promotional activities shall be Agency Expense, up to the amount of the promotional budget allocation. If either the Review-Journal or the Sun determines that it wishes to incur expenses in excess of those in the promotional budget, such expenses shall not be included in Agency Expense. Direct circulation sales expenses, including such items as carrier premiums and expenses of order generation shall not be included in the promotional budget and shall be allocated by Review-Journal between the newspapers so as to maximize the maintenance and enhancement of the circulation of the newspapers to the

extent economically feasible. The newsroom of each newspaper shall determine the nature, extent and timing of its promotional activities and shall supply basic information therefor. Review-Journal promotion management shall be responsible for all final promotional copy preparation and placements.

5.1.5 Rates. Review-Journal shall not increase the single copy or subscription prices of the daily edition of the Sun to an amount higher than the comparable rates for the Review-Journal. Review-Journal shall not change the rates for advertising to be run solely in the Sun in relation to the rates charged for comparable advertising to be run solely in the Review-Journal, unless such change is justified by the then-relative circulation of the Sun and the Review-Journal and other factors considered relevant in the industry.

5.1.6 Meetings of JOA Participants. Periodically, not less than four times per year, Donrey senior management shall meet with Sun senior management to discuss operations under this Agreement and future plans and opportunities.

5.1.7 Advertising Acceptability. Sun may reject any advertising or types of advertising for the Sun which is in the opinion of Sun undesirable or inappropriate for publication therein, and shall notify Review-Journal in writing of any specific advertising or types of advertising that Sun deems undesirable for publication. Review-Journal shall accept all advertising for the Sun other than the advertising indicated on

Sun's written notice, subject to all laws affecting the acceptability of advertising.

5.1.8 Sun Distribution. To the extent economically feasible, Review-Journal shall use its best efforts to substantially maintain the historical area and extent of distribution of the Sun.

5.2 News and Editorial Autonomy. Preservation of the news and editorial independence and autonomy of both the Review-Journal and the Sun is of the essence of this Agreement. Sun shall have exclusive and complete control, authority and direction over the news and editorial content, features and services to be furnished by Sun to Review-Journal to be included in its newspaper and in its portion of the jointly published newspapers, including without limitation the right of selection of all its news and editorial employees, and the exclusive right to hire and discharge such employees. Review-Journal shall have exclusive and complete control, authority and direction over the news and editorial content, features and services in its newspapers and in its portion of the jointly published newspapers, including without limitation the right of selection of all its news and editorial employees, and the exclusive right to hire and discharge such employees. The Review-Journal and Sun each hereby agrees to preserve high standards of newspaper quality throughout the term of this Agreement. All news and editorial expense of the Sun or the Review-Journal in excess of the amounts set forth in Appendix A shall be borne by the respective newspaper.

5.3 Performance and Cooperation. Sun and Review-Journal agree to take all corporate action necessary to carry out and effectuate the intent, purposes and provisions of this Agreement, and to cooperate with the other party in every reasonable way that will promote successful and lawful operation under this Agreement for both parties.

5.4 Sun Office Space. The Sun shall have the option to provide its own offices for its news and editorial department and senior management, or to occupy office space, to be provided by the Review-Journal, adjacent to the Review-Journal's newspaper building.

ARTICLE 6

PAYMENT OF EXPENSES, DISTRIBUTION OF REVENUES, AND OTHER FINANCIAL PROVISIONS

6.1 Expenses and Revenues. Review-Journal shall pay and record all Agency Expense, as defined in Appendix B hereto, and collect and record all Agency Revenues as defined in Appendix C hereto, and shall pay to Sun, monthly, a sum for Sun news and editorial expense as provided in Appendix A hereto.

6.2 Accounting Records. Accounting records of Agency Revenues and Agency Expense shall be maintained by Review-Journal. Accounting records of news and editorial expense shall be separately maintained by the Review-Journal and the Sun for their respective newspapers. All such records shall be kept on a fiscal year basis in reasonable detail and in accordance with generally accepted accounting principles. Financial statements to be provided under Section 6.3 shall be prepared

in accordance with generally accepted accounting principles and the applicable provisions of this Agreement.

6.3 Financial Statements. Within ninety (90) days following the close of each fiscal year, Review-Journal shall furnish to Sun financial statements in respect of such year which summarize Agency Revenues and Agency Expense hereunder. Within thirty (30) days after the end of each month, except the last month of the fiscal year, Review-Journal shall furnish to Sun a monthly financial statement summarizing Agency Revenues and Agency Expense. All Agency financial statements furnished by Review-Journal shall be certified by a financial officer of Review-Journal.

6.4 Distributions. Payments of Sun's share of operating profit, pursuant to Appendix D, shall be made with each financial statement to be furnished to Sun under the provisions of Section 6.3 above.

ARTICLE 7

TRANSITIONAL MATTERS

7.1 Collection of Sun Receivables. After the Effective Date, Review-Journal shall use its best efforts (without any obligation to institute legal proceedings) to collect Sun advertising and circulation accounts receivable which are outstanding on the Effective Date and shall remit same to Sun on a monthly basis, less the Agency's reasonable collection costs specifically incurred in connection therewith. Such collections and collection costs recovered by Review-Journal shall not be Agency Revenues or Agency Expense. Any such

advertising accounts which have not been collected by Review-Journal within sixty (60) days after the Effective Date shall be returned to Sun. Collections from particular subscribers shall first be applied to circulation accounts receivable unless otherwise agreed by Sun. As to any Sun advertising or circulation contracts assumed by Review-Journal under Section 3.1 above, Review-Journal will remit to Sun the portion of the receipts thereunder reflecting advertising run or circulation delivered by Sun prior to the Effective Date but not payable until on or after that date, and such portion shall not be Agency Revenues.

7.2 Termination Obligations. Sun shall be solely responsible for all notices, severance allowances, accrued benefits, or other related payments or obligations which may become due or payable to any terminated employee or agent of Sun.

7.3 Sun Personnel. Review-Journal shall be under no obligation to employ any terminated Sun employee.

ARTICLE 8

NONLIABILITY PROVISIONS

8.1 Defense of Claims and Indemnification. Any claim, demand, suit, action, obligation or other liability asserted against or sustained by Review-Journal and Sun, or either of them, in respect of any third party ("Claims") shall be dealt with as provided in this Article 8. For all purposes of this Article 8, the term "cost or expense" shall include reasonable attorneys' fees.

8.1.1 Claims Related to the Joint Operation. Review-Journal shall defend and shall control the defense or settlement of any third party Claims related to the joint operations or to its performance or non-performance under this Agreement (including but not limited to Claims arising from any advertising published in, or excluded from, any of the Newspapers -- except as provided in Section 8.1.2 -- and Claims in respect of feature, news and editorial content furnished by Sun hereunder arising as a result of any act or omission on the part of Review-Journal other than republication in the form furnished by Sun), devoting reasonable efforts to minimizing any resulting liability and related cost or expense. Any such liability, and the cost or expense related thereto, shall be an Agency Expense, except to the extent any such Claim shall be covered by insurance. Review-Journal shall give written notice to Sun of any material Claims arising under this Section 8.1.1.

8.1.2 Other Claims. Except as specifically provided in Section 8.1.1. or elsewhere in this Agreement, neither party hereto shall be charged with or held responsible for any third party Claims (except to the extent certain Sun contracts shall be assumed by Review-Journal under Article 3), arising before or after the Effective Date by reason of any act or omission on the part of the other party, and the responsible party shall indemnify and hold the other party harmless therefrom, including all related cost or expense. The responsible party shall defend, settle, pay or discharge any such Claim and shall indemnify and hold harmless

the other party against any such Claim, and from any liability, cost or expense arising therefrom. By way of example under this section 8.1.2 and without limitation, the entire cost or expense of defending, settling or paying and discharging Claims relating to any feature, news or editorial copy published in, or excluded from the daily Review-Journal or the Review-Journal portion of the jointly published newspaper, or arising by reason of anything done or omitted by the news and editorial department of the Review-Journal in regard to its daily newspaper or the Review-Journal portion of the jointly published newspaper, or arising by reason of any advertising rejected by the Review-Journal or accepted by the Review-Journal in situations where such advertising would be rejected pursuant to Sun guidelines, shall be borne by the Review-Journal, and any such liability, cost or expense on account of Claims relating to any feature, news or editorial copy published in, or excluded by Sun from the daily Sun or the Sun portion of any jointly published newspaper, or arising by reason of anything done or omitted by the news and editorial department of the Sun, or arising by reason of any advertising rejected by the Review-Journal pursuant to Sun guidelines, or accepted in situations where such advertising would be rejected pursuant to Review-Journal guidelines, shall be borne by Sun, unless such Claims shall be an Agency Expense by reason of the operation of Section 8.1.1.

8.1.3 Insurance. For the purposes of this Article 8, each party shall separately maintain and pay for, as an item of

news and editorial expense, insurance to the extent reasonably available protecting against losses from libel, invasion of privacy, copyright or trademark infringement and other matters related to the gathering or preparation of news and editorial matter for publication, in such amounts as the parties may agree upon from time to time, but in no event less than Ten Million Dollars (\$10,000,000), and the other party shall be named as an additional insured.

8.2 Force Majeure. Neither party shall be liable to the other for any failure or delay in performance under this Agreement, occasioned by war, riot, government action, act of God or public enemy, damage to or destruction of facilities, strike, labor dispute, failure of suppliers or workers, inability to obtain adequate newsprint or supplies, or any other cause substantially beyond the control of the party required to perform, provided that in the event partial performance under this Agreement is feasible, notwithstanding the occurrence of one or more of the foregoing, performance shall be allocated between the newspapers by the Review-Journal, in its sole judgment, and if it is feasible to publish only one newspaper product, Review-Journal shall exercise its best efforts to produce a jointly published newspaper in which the Sun portion shall be determined by Review-Journal, notwithstanding the provisions of Appendix A hereto, provided, that the Sun portion shall not be less than two (2) pages.

ARTICLE 9

TERMINATION

9.1 Events of Termination. This Agreement shall continue in full force and effect unless and until it may be terminated by the occurrence of one of the following events of termination:

9.1.1 Voluntary Termination. Voluntary termination under the provisions of Section 1.1.

9.1.2 Bankruptcy or Default. If either party hereto makes an assignment of its assets for the benefit of creditors, is adjudged a bankrupt or has a receiver appointed for its business by a court of competent jurisdiction (provided, that such adjudication shall continue unstayed on appeal or otherwise in effect for a period of ninety (90) days after the entry of the decree related thereto before such adjudication becomes an event of termination, and further provided that the appointment of the receiver must continue unvacated, not set aside, not stayed or otherwise in effect for a period of ninety (90) days after such appointment before such appointment becomes an event of termination), or if either party defaults in the performance of any of its material obligations hereunder and does not cure such default within sixty (60) days after receiving written notice thereof from the other party, then such other party may, at its election, and in addition to all other remedies available to it at law or in equity, terminate this Agreement upon thirty (30) days' written notice by the Sun and sufficient notice by the Review-Journal to enable the Sun to arrange for the separate

production of the Sun, but not to exceed six (6) months; provided, that in the event of default, the other party shall have the additional option to cure such default and, on demand, be reimbursed by the defaulting party for all costs and expenses related thereto.

9.1.3 Change of Controlling Interest. In view of the nature of the relationship established by this Agreement and the fact that the Sun is published under the direction and control of Herman M. Greenspun and Brian L. Greenspun, the Review-Journal shall not be required to carry out the terms of this Agreement or be associated with another party to which it objects. Accordingly, ownership or control of the Sun shall not be transferred to any other entity or person without notice to and prior approval by the Review-Journal, provided that the Review-Journal will not object to any transfer of the ownership or control of Sun to any entity under the immediate direction and control of Herman M. Greenspun, or Brian L. Greenspun, or any other lineal descendant of Herman M. Greenspun. If, following an approved or permitted change of control of Sun, a subsequent change of control occurs, notice as hereinabove shall be given and the Review-Journal may exercise the rights provided herein.

9.1.4 Loss Operation. If there are any two (2) consecutive years in which the Agency does not have an operating Profit (Agency Expenses in excess of Agency Revenues), despite the Review-Journal's good faith efforts to produce an operating

profit, the Review-Journal may terminate this Agreement upon ninety (90) days written notice.

9.2 Mechanics of Termination. Upon termination of this Agreement, Review-Journal shall take appropriate action to transfer to Sun: (a) all then current circulation contracts, agreements or lists concerning bulk sales, subscriptions, dealers and sub-dealers, distributions, deliveries, sales returns and prepaid subscriptions of the Sun's daily newspaper, and of all jointly published newspapers, plus all pertinent portions of then current records and data pertaining thereto, and all sums received by Review-Journal in respect of prepaid subscriptions and cash deposits relating to daily Sun circulation, and a pro rata portion of all sums received by Review-Journal in respect of such subscriptions and deposits relating to the jointly published newspaper circulation, and (b) all then current advertising contracts and all pertinent portions of then current records and data relating to advertising to be published in the Sun and in all jointly published newspapers. Review-Journal shall further provide Sun with the originals and all copies of all contracts relating solely to circulation and advertising of the daily Sun, and copies of all other contracts referred to in the immediately preceding sentence.

ARTICLE 10

MISCELLANEOUS

10.1 Notices. Each notice or other communication given pursuant to this Agreement shall be given in writing, delivered

in person or mailed by registered or certified mail, addressed to the respective parties as follows:

Review-Journal: Donrey, Inc.
P. O. Box 410
Las Vegas, NV 89125
Attention: Fred W. Smith

Sun: Las Vegas Sun, Inc.
P. O. Box 4279
Las Vegas, NV 89127
Attention: Brian L. Greenspun

or, in the case of either party hereto, at such other address or marked for the attention of such other person, as such party may set forth in a written notice to the other party.

10.2 Disclaimer of Labor Related Obligations. The parties specifically agree that neither party hereby assumes any obligations of the other party related to its employment practices or to any of its employees, whether or not arising under any collective bargaining agreements or arising prior to, on or subsequent to the Effective Date.

10.3 Inspection of Books and Records. Either party shall have the right to authorize its independent certified public accountants or any of its corporate officers to inspect the books and records of the other party hereto at reasonable times and intervals in regard to the financial statements specified in Article 6, but only as to the three (3) years preceding the exercise of the right of inspection, commencing with the year immediately preceding the year in which the right is exercised. The expenses of any such inspection shall be borne by the party

causing such inspection to be made and shall not be included in Agency Expenses.

10.4 Limited Effect. Nothing herein contained shall constitute the parties hereto partners, joint venturers, successors, alter egos, joint employers, an unincorporated association, or as having any relationship other than as specifically provided by this Agreement. This Agreement is intended solely for the benefit of the parties hereto, and their permitted successors and assigns and not for the benefit of any other person or party. This Agreement, including Appendices A through D hereto, and contracts and agreements supplemental hereto, comprises the entire understanding and agreement of the parties hereto on the subject matter herein contained and any and all other representations or agreements, which heretofore may have been made on such subject matter, whether oral or in writing, by any agent of either party shall be null, void and of no effect whatsoever. Time is of the essence of this Agreement.

10.5 Community Cable TV. As of the Effective Date, Sun shall assign or cause to be assigned to Donrey the right to receive ten percent (10%) of all dividends or distributions of any kind paid or made by Community Cable TV ("CCTV"), a Nevada corporation which owns and operates a cable television system serving Las Vegas and surrounding communities and certain unincorporated areas of Clark County, Nevada, to any of its shareholders, including any payments in excess of current salaries or current percentages of income as management or

consultant fees paid by CCTV to any of its shareholders. With respect to payments to be made to Donrey hereunder, Sun shall cause CCTV to make such payments, or make such payments directly to Donrey. As soon as permitted under the terms of certain shareholder and financing agreements, CCTV shall issue to Donrey ten percent (10%) of the total issued and outstanding common stock of CCTV, which shall be issued as fully paid and nonassessable. In addition, at such time as Sun or its affiliates have purchased all of the issued and outstanding common stock of CCTV owned by third parties, Donrey shall have the right to purchase an additional thirty-five percent (35%) of the issued and outstanding common stock of CCTV on the same terms and conditions, including price, as those on which Sun or its affiliates acquired such stock, which shall be issued as fully paid and nonassessable. In the event of the sale by Sun or its affiliates of any interest in CCTV prior to Donrey's acquisition of stock, Donrey shall be entitled to receive ten percent (10%) of the net sale proceeds, and Donrey's right to receive its ten percent (10%) stock interest shall be ratably reduced. Donrey's rights with respect to CCTV as herein provided shall survive the expiration or termination of this Agreement, provided, in the event the Review-Journal and Donrey withdraw from the application to the Department of Justice, pursuant to Section 1.1 of this Agreement, or if the Review-Journal terminates this Agreement pursuant to Section 9.1.4. within the first three (3) years of the term of this Agreement, Donrey's rights with

respect to CCTV shall terminate, and in the event Donrey has received any payments, issuances, or transfers of or with respect to CCTV stock pursuant hereto prior to Donrey's withdrawal from the application to the Department of Justice or the Review-Journal's termination of this Agreement as herein provided, such payments, issuances or transfers of or with respect to CCTV stock shall be refunded or rescinded.

10.6 Sun Trademark, Tradenames, Service Marks and Copyrights.

In its use of such Sun trademarks, tradenames, service marks and copyrights as may be required to perform its obligations under this Agreement, Review-Journal shall use its best efforts to comply substantially with all relevant laws of the State of Nevada and of the United States pertaining to trademarks, tradenames, service marks and copyrights in force at any time during the term of this Agreement. Sun shall use its best efforts to maintain in effect said trademarks, tradenames, service marks and copyrights, and shall make applications for the registration and/or renewal thereof if and when required by law. Review-Journal acknowledges Sun's right, title and interest in and to said trademarks, tradenames, service marks and copyrights and all renewals thereof, and agrees that it shall not at any time permit, take, or cause to be taken any action within its control in any way impairing or tending to impair any part of such right, title and interest. Review-Journal agrees to publish such notices in the Sun and the jointly published newspapers as Sun reasonably may request in order to protect

said trademarks, tradenames, service marks and copyrights, or any of them. Review-Journal shall not in any manner represent that it has any ownership interest in said trademarks, tradename, service marks or copyrights or in the registration thereof, and Review-Journal acknowledges that its use hereunder of said trademarks, tradenames, service marks or copyrights shall not create in its favor any right, title or interest in or to same beyond those created by this Agreement.

10.7 Tax Treatment of Payments to Sun. It is contemplated by the parties that the payments to Sun under Section 6.4 of this Agreement will be, for federal income tax purposes, ordinary income to Sun and will be deductible by Review-Journal as a business expense.

10.8 Specific Performance. Because of the public interest of maintaining editorially and reportorially independent and competitive newspapers in Las Vegas and its environs, and because of the inadequacy of damages in the event of default in the performance of material obligations hereunder, each party shall have the right to seek specific performance of the material provisions of this Agreement, provided, that in the event of any action by Sun for specific performance against Review-Journal, if Sun does not obtain an order of specific performance, Review-Journal shall be entitled to recover in such action its attorneys' fees and costs.

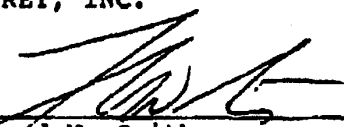
10.9 Successors and Assignment. This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and their permitted successors and assigns.

10.10 Governing Law; Modification. This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. This Agreement may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, modification or discharge shall be sought.

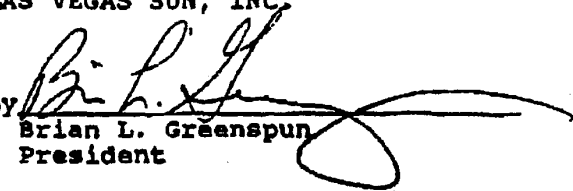
10.11 Headings. Headings have been inserted in this Agreement for the purpose of convenience only. They shall not be used to interpret or construe the meaning of any Articles or Sections, nor shall they have the effect of limiting or enlarging the meaning thereof.

IN WITNESS WHEREOF, this Agreement has been executed by the parties' respective corporate officers thereto duly authorized as of the day and year first above written.

DONREY, INC.

By 
Fred W. Smith
President

LAS VEGAS SUN, INC.

By 
Brian L. Greenspun
President

APPENDIX A

A.1. Pursuant to Section 4.2 of this Agreement, for each fiscal year after the Effective Date Review-Journal shall establish an allocation for Review-Journal news and editorial expenses, and the allocation for, news and editorial expenses for the Sun shall be equal to sixty-five percent (65%) of the Review-Journal allocation, subject to a minimum of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) per fiscal year, which shall be increased each year by a percentage equal to the percentage increase in the CPI for the Las Vegas metro area. Such allocations shall be prorated for any period less than a full fiscal year. The aggregate allocations for news and editorial expenses shall constitute Agency Expense. On the first day of each month following the Effective Date, Review Journal shall pay to Sun an amount equal to one-twelfth (1/12th) of the Sun's annual allocation for news and editorial expenses as herein provided.

A.2. Pursuant to Sections 4.3 and 4.4 of this Agreement, the reading content of the newspapers shall be in accordance with the following formulas:

(a) For Monday through Friday editions, the number of pages of the Sun and the number of pages of the Review-Journal shall be determined by the ratio of the number of inches of advertising to be printed in each newspaper and the size of the newshole in each newspaper shall be determined by the same ratio, provided that in no event

shall the average newshole of the Sun in any month be less than eighty-five percent (85%) of the newshole of the Review-Journal in such month.

(b) For the jointly published Sunday edition, Sun shall be entitled to a separate section of three (3) open pages (one cover page, one editorial page and one op. ed. page), plus four hundred fifty (450) column inches, provided, that the Review-Journal may add additional pages to the Sun section comprised of news and advertising, as may be required by composition or printing requirements. The Review-Journal shall attempt to place the Sun section within the first four (4) sections of the Sunday edition. The Review Journal shall determine the number of pages for a comic section for jointly published Sunday editions which shall consist of strips and features selected equally by the Review-Journal and the Sun.

(c) For jointly published Saturday and holiday editions, the Sun shall be entitled to one editorial or op. ed. page and one comic page.

A.3. Pursuant to Section 5.1.4 of this Agreement, the Review-Journal shall establish for each fiscal year after the Effective Date a budget for promotional activities of the Review-Journal and the Sun and at least forty percent (40%) of each total budget shall be allocated to the Sun.

A.4. Edition times for Monday through Friday issues of the Review-Journal and the Sun and for jointly published Sunday,

Saturday and holiday editions shall be established by the Review-Journal in accordance with normal industry standards.

A.5. If the Review-Journal determines that it is feasible to publish an "extra" edition, such edition shall be a jointly published edition, but the content of any "extra" edition shall be determined solely by the Review-Journal.

APPENDIX B

B.1. Except as otherwise expressly provided for in this Agreement, the term "Agency Expense" shall mean and include all costs and expenses of the performance of the Review-Journal's obligations under this Agreement, including but not limited to:

~~But, the amounts allocated to Review-Journal~~
~~and sum for news and editorial expenses, and for~~
~~promotional expenses as set forth in Appendix A.~~

B.1.2. Costs and expenses incurred by Review-Journal, with respect to the newspapers, supplements and Showbiz Magazine, for composition, printing, and distributing; news content of Showbiz Magazine; solicitation and sale of advertising; circulation sales expenses; collection of circulation and advertising accounts receivable, including a reasonable allowance for doubtful receivables and write-offs of receivables deemed uncollectible.

B.1.3. Compensation of Review-Journal's non-news and non-editorial employees, including, without limitation, salaries, commissions, payroll taxes, the cost of group insurance, retirement benefits, workers' compensation coverage, and other benefits for such employees as may be customary in the newspaper industry from time to time.

B.1.4. Accrued vacation or severance pay for Review-Journal's non-news and non-editorial employees.

~~agency~~ costs s/n/m include
income taxes
RJ liable ins.



B.1.5. Costs for supplies, postage, private couriers, freight, Sunday comics and supplements, film, photo paper and chemicals, ink, newsprint, plates, cuts and mats and contract trucking, and similar costs for all Review-Journal newspaper departments, ~~other than news and editorial.~~

B.1.6. Expenses for travel, auto allowances, mileage reimbursement, employee relations, recruiting, and attendance at seminars and conventions for Review-Journal's non-news and non-editorial employees.

B.1.7. Sales and use taxes^{on} on equipment and personal property purchased for use by Review-Journal or otherwise applied to Agency operations under this Agreement to the extent that such taxes are not capitalized for purposes of depreciation or amortization.

B.1.8. Taxes, license or permit fees paid by Review-Journal with respect to or resulting from the conduct of business under this Agreement or with respect to property used by Review-Journal in the operations under this Agreement, ~~except federal, state or local taxes, if any, measured by net income.~~

B.1.9. The cost of membership for Review-Journal and Sun and their non-news and non-editorial employees in the Better Business Bureau, Las Vegas Chamber of Commerce, and other business-oriented

memberships which shall be determined by Review-Journal to be in the best interests of the Agency.

B.1.10. The cost of Review-Journal and Sun membership in the Newspaper Advertising Bureau, American Newspaper Publishers Association, and other similar newspaper organizations.

B.1.11. The cost of public liability insurance, insurance against interruption or suspension of publication of the newspapers, carrier insurance, and libel, invasion of privacy and related insurance covering advertising printed in the newspapers. Insurance costs relating to the news or editorial activities of the Review-Journal or the Sun shall not be considered Agency Expense and such costs shall be borne separately by the parties; provided, that each party shall attempt to add the other as an additional named insured under such insurance, but Review-Journal may procure libel, invasion of privacy and related insurance to cover any otherwise inadequately insured exposure it may have as a republisher of Sun news, editorial or advertising copy, and the cost of such additional insurance shall be an Agency Expense.

B.1.12. The cost of fire and casualty insurance on buildings, equipment, and other property utilized by Review-Journal in the performance of the Agreement.



B.1.13. The cost of all utilities related to the Review-Journal's performance of the Agreement.

B.1.14. Costs and expenses incurred in connection with hazardous waste materials.

B.1.15. Costs and expenses incurred by Review-Journal in obtaining legal and other professional services which it deems necessary in performing its obligations under this Agreement, including but not limited to the costs and fees related to any defense against third party claims, charges, complaints and related matters asserted against the Review-Journal related to the Agreement or Review-Journal's performance of the Agreement; provided, that such costs and fees related to news and editorial liabilities as defined in Section 8.1.2 shall not be Agency Expense, except insofar as such liabilities are asserted against Review-Journal solely due to its republication of Sun news, editorial or feature material or advertising copy.

B.1.16. A monthly charge of Five Hundred Fifty Thousand Dollars (\$550,000) for the rental value of all Review-Journal real property, plant and equipment (including the value of Sun office space provided by Review-Journal under Section 5.4 of the Agreement), except that devoted to non-agency activities such as the Review-Journal's news and editorial operations. The rental charge would be adjusted each five (5)



years on the basis of the change in the CPI for the Las Vegas, Nevada, market.

B.1.17. A monthly charge equal to one and one-half percent ($1\frac{1}{2}\%$) of the cost of all equipment acquired, expansion or remodeling of buildings, or other capital expenditures, in connection with Agency activities, subsequent to the date of the Agreement. The monthly charge would be subject to adjustment at any time on the basis of increases in the prime interest rate at First Interstate Bank, Las Vegas, Nevada. The Review-Journal shall have sole discretion regarding the purchase of equipment or other necessary capital expenditures for the performance of the Agreement.

B.1.18. A monthly charge for general management services equal to three and one-half percent ($3\frac{1}{2}\%$) of Agency Revenues.

B.2. All costs and expenses in connection with the news content, composition, production, distribution and advertising sales in connection with Showbiz Magazine shall be included in Agency Expense for the period Showbiz Magazine is governed by the terms of this Agreement, pursuant to Section 4.5.

B.3. Changes or additions in the Sun's newsroom equipment which may be required after the Effective Date to interface with Review-Journal production facilities shall be purchased or paid for by Review-Journal and a monthly charge equal to one and one-half percent ($1\frac{1}{2}\%$) of the cost thereof shall be



included in Agency Expense. This monthly charge would be subject to adjustment at any time on the basis of increases in the prime interest rate at First Interstate Bank, Las Vegas, Nevada.

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APPENDIX C
AGENCY REVENUES

C.1. Except as otherwise expressly provided in this Agreement, the term "Agency Revenues" shall mean and include:

C.1.1. All advertising and circulation revenues of the newspapers, subject to the provisions of section 7.1 of this Agreement with respect to accounts receivable outstanding on the Effective Date.

C.1.2. All revenues from sales incidental to the publication of the newspapers or involving either the facilities used to produce the newspapers or personnel whose compensation is included in Agency Expense, such as sales of commercial printing, waste paper, press plates, and other production materials.



APPENDIX D

Operating profit under the Agreement shall mean the excess of Agency Revenues over Agency Expense, and shall be distributed as follows:

For each fiscal year during the term of the Agreement the operating profit shall be distributed ninety percent (90%) to the Review-Journal and ten percent (10%) to the Sun, with payment to be made to the Sun pursuant to the provisions of Section 6.4 of the Agreement, provided, that for the first fiscal year the Sun shall be guaranteed a minimum operating profit distribution of Three Million Dollars (\$3,000,000).

APPENDIX D

Operating profit under the Agreement shall mean the excess of Agency Revenues over Agency Expense, and shall be distributed as follows:

For each fiscal year during the term of the Agreement the operating profit shall be distributed ninety percent (90%) to the Review-Journal and ten percent (10%) to the Sun, with payment to be made to the Sun pursuant to the provisions of Section 6.4 of the Agreement.

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EXHIBIT 2

EXHIBIT 2

AMENDED AND RESTATED AGREEMENT

This Amended and Restated Agreement ("Restated Agreement") dated as of June 10, 2005 between DR Partners, a Nevada General Partnership, the successor-in-interest to Donrey of Nevada, Inc. ("DR") and the Las Vegas Sun, Inc., a Nevada corporation ("Sun").

PRELIMINARY STATEMENT

WHEREAS, DR owns and publishes in Las Vegas, Nevada, a morning newspaper on weekdays, a morning newspaper on Saturdays and holidays, and a Sunday newspaper, each known as the Las Vegas Review-Journal (hereinafter referred to as the "Review-Journal"); and

WHEREAS, Sun owns in Las Vegas, Nevada, an afternoon newspaper on weekdays, known as the Las Vegas Sun (hereinafter referred to as the "Sun") and a combined Saturday and Sunday paper with the Review-Journal; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE I **REGULATORY FILING AND TERM**

1.1 **Regulatory Filing.** Within ten business days (or on such later day as the parties may agree) the Parties agree to file the Restated Agreement with the Attorney General of the United States under the Newspaper Preservation Act within the Department of Justice and to use their best efforts and take all action necessary to effect the intent of this Restated Agreement. In the event of any action by the United States Department of Justice after the filing of the Restated Agreement which, in the sole opinion of either party, hinders, impairs, seeks to halt or otherwise materially impacts this Restated Agreement, then either party may declare the Restated Agreement null and void, and the 1989 Agreement between the parties shall be reinstituted and remain in full force and effect. The Restated Agreement does not constitute any limitation on either party's obligation to engage in good faith labor negotiations if and as required by the National Labor Relations Act, and to implement any understandings it may reach in such negotiations.

Upon execution hereof, each party shall furnish to the other a written opinion of its counsel that all necessary corporate or partnership action has been taken to authorize this Restated Agreement and that, subject to the conditions of the preceding paragraph, this Restated Agreement shall constitute the valid and binding obligation of the respective party. The parties agree to cooperate in coordinating meetings with government officials, community leaders, employees and their representatives, advertisers and others to explain the Restated Agreement.

Each party shall pay its own costs and professional fees in connection with the formulation and drafting of the Restated Agreement and the preparation and filing of the Restated Agreement with the Department of Justice. From and after the filing of such Restated Agreement, all costs and professional fees in connection with seeking any required approval by the Department of Justice shall be controlled and approved by the Review-Journal and such cost and shall be borne solely by Review-Journal.

1.2 Term. The term of this Restated Agreement shall begin at 12:00 a.m. on June 10, 2005 ("the Effective Date"). The 1989 Agreement shall remain in full force and effect through September 30, 2005 (the "Transition Date"). Subject to the termination provisions set forth in Article 9, the Restated Agreement shall continue for an initial period ending at the close of business on the 31st day of December of the fiftieth (50th) year from July 1, 1990. The Restated Agreement shall then automatically renew for succeeding periods of ten (10) years unless either party shall notify the other in writing at least two (2) years prior to the end of the then current period that it elects to terminate the Restated Agreement at the end of said period. The phrase "term of this Agreement" as used hereafter shall mean the initial period and any renewal period or periods.

ARTICLE 2

AGENCY

Intentionally omitted

ARTICLE 3

Intentionally omitted

ARTICLE 4

NEWS AND EDITORIAL COPY, FEATURES AND SERVICES

4.1 Maintenance of News and Editorial Staff, Feature Materials. Review-Journal and Sun each shall maintain a staff of news and editorial employees, and shall license such feature materials (including, but not limited to, news and editorial services supplied by third parties), adequate to provide its respective newspaper with all of the news and editorial copy and related services deemed necessary by each of them as to its respective newspaper. Review-Journal shall use commercially reasonable efforts to cause third party suppliers of feature materials and professional associations to provide such feature materials and association memberships to Sun at rates equivalent to those currently charged to Sun.

4.2 News and Editorial Allocations. The Review-Journal and the Sun shall each bear their own respective editorial costs and shall establish whatever budgets each deems appropriate.

4.3 Furnishing News and Editorial Copy and Services. In furnishing features, news and editorial copy, and like materials to Review-Journal for publication in the Sun, and in providing layout for such material, Sun shall provide all such material in a form appropriate for the production of its newspaper, in conformity with the mechanical standards, deadlines and production requirements which prevail in the Review-Journal plant from time to time, including

deadlines, page sizes, column widths, and cut-offs established by Review-Journal, upon reasonable notice to Sun. Sun shall acquire and maintain at its expense such newsroom equipment (including, but not limited to, newspaper production systems, i.e., "front-end" systems) as may be required to interface with Review-Journal production facilities. In the event that the newspaper production system used by the Review-Journal is changed and (i) the Sun has utilized a production system that is current with systems commonly employed in the newspaper industry; (ii) the change by the Review-Journal results in any loss of a fully functional interface with the Sun newspaper production system, the Review-Journal shall be responsible to furnish such additional software, hardware and technical services to the Sun as may be necessary to establish such an interface. The Review-Journal shall give Sun ninety (90) days advance notice of anticipated changes to the Review-Journal's production system, including technical specifications for the new or modified system. The Sun shall treat any software provided as confidential and conform to all applicable licensing requirements for such software. Newshole limitations and other matters are set forth in Appendix A hereto. The parties agree to begin the publication cycle changes for the Sun on the Transition Date (or on such latter day as the parties may agree). The Review-Journal reserves the right to print conspicuous notices to the effect that the news content of the non-Sun portion of the Newspapers, including locally produced supplements, is produced by Review-Journal personnel. The Sun reserves the right to print conspicuous notices to the effect that the news content of the non-Review-Journal portion of the Newspapers, including locally produced supplements, is produced by Sun personnel.

4.4 Intentionally omitted.

ARTICLE 5

CONTINUING PUBLICATION AND
NEWS AND EDITORIAL AUTONOMY

5.1 Production and Promotion of the Newspapers. Subject to the terms of the Restated Agreement, and as of the Transition Date, Sun shall be a daily morning newspaper as specified in Appendix A. The Review-Journal shall be a daily morning newspaper, as specified in Appendix A, including such sections and materials as are consistent with custom and practice in the United States metropolitan daily newspaper industry. So long as Sun furnishes news and editorial copy, features and services to Review-Journal in accordance with Article 4 of this Restated Agreement, Review-Journal agrees to produce the Sun daily as a morning newspaper as provided herein to include the Sun copy and to sell all advertising for, promote and circulate such newspapers as provided herein. The daily Sun and the daily Review-Journal are hereinbefore and hereinafter referred to as the "Newspapers". Review-Journal shall print the Newspapers in the Review-Journal plant or plants located at such place or places as Review-Journal may determine, and all operations under this Restated Agreement, except the operation of the Sun's news and editorial department, shall be carried on and performed by the Review-Journal with Review-Journal employees and equipment and in the Review-Journal's said plant or plants or by independent contractors selected by the Review-Journal. All costs, including capital expenditures, of operations under this Restated Agreement, except the operation of the Sun's news and editorial department, shall be borne by Review-Journal.

The Review-Journal shall control, supervise, manage and perform all operations involved in managing and operating under this Restated Agreement, including the need, if any, for Sunday supplements and comics, total or zoned market coverage, direct mail or other publication programs, zoned editions, and printing, selling and distributing the Newspapers, shall determine page sizes, number of columns per page, cut-offs, page makeup of non-news and non-editorial (subject to Appendix A), and all other mechanical and technical functions of the Newspapers, shall purchase newsprint, materials and supplies as required and shall determine the rates for, solicit and sell all advertising space in the Newspapers, shall determine circulation rates, collect the Newspapers' circulation and advertising accounts receivable, and shall make all determinations and decisions and do any and all acts and things related to the foregoing activities, provided:

5.1.1 Format. Review-Journal shall not change the format of the Sun to any size or format different from that of the Review-Journal without approval of Sun.

5.1.2 Sun Editions. The number of Sun editions shall not be changed without approval of Sun.

5.1.3 Circulation. Review-Journal shall use commercially reasonable efforts to maximize the circulation of the Newspapers.

5.1.4 Promotional Activities. Review-Journal shall use commercially reasonable efforts to promote the Newspapers. Any promotion of the Review-Journal as an advertising medium or to advance circulation shall include mention of equal prominence for the Sun. Either the Review-Journal or Sun may undertake additional promotional activities for their respective newspaper at their own expense. For all promotional activities for the Newspapers paid for by the Review-Journal, the Review-Journal shall be responsible for all promotional copy preparation and placement, provided however, that the Sun shall have the right to approve all promotional copy for the Sun that does not generically and concurrently promote both Newspapers.

5.1.5 Intentionally omitted.

5.1.6 Meetings of JOA Participants. DR senior management shall meet quarterly with Sun senior management to discuss performance under this Restated Agreement.

5.1.7 Advertising Acceptability. Sun may reject any advertising or types of advertising for the Sun which is, in the opinion of Sun, undesirable or inappropriate for publication therein, and shall notify Review-Journal in writing of any specific advertising or types of advertising that Sun deems undesirable for publication. Review-Journal shall accept all advertising for the Sun other than the advertising indicated on Sun's written notice, subject to all laws affecting the acceptability of advertising.

5.1.8 Intentionally omitted.

5.2. News and Editorial Autonomy. Preservation of the news and editorial independence and autonomy of both the Review-Journal and the Sun is of the essence of this Restated Agreement. Sun shall have exclusive and complete control, authority and direction over the news and editorial content, features and services to be furnished by Sun to Review-Journal to be included in its newspaper, including without limitation the right of selection of all its news and editorial employees, and the exclusive right to hire and discharge such employees. Review-Journal shall have exclusive and complete control, authority and direction over the news and editorial content, features and services in its newspapers, including without limitation the right of selection of all its news and editorial employees, and the exclusive right to hire and discharge such employees. The Review-Journal and Sun each hereby agrees to preserve high standards of newspaper quality throughout the term of this Restated Agreement consistent with United States metropolitan daily newspapers.

5.3. Performance and Cooperation. Sun and Review-Journal agree to take all corporate action necessary to carry out and effectuate the intent, purposes and provisions of this Restated Agreement, and to cooperate with the other party in every reasonable way that will promote successful and lawful operation under this Restated Agreement for both parties.

5.4 Sun Office Space. The Sun shall provide and pay for its own offices for its news and editorial department and management.

ARTICLE 6
Intentionally omitted

ARTICLE 7
PAYMENT

During the term of this Restated Agreement, DR and the Sun shall receive the amounts set forth in Appendix D.

ARTICLE 8
NON-LIABILITY PROVISIONS

8.1 Defense of Claims and Indemnification. Any claim, demand, suit, action, obligation or other liability asserted against or sustained by Review-Journal and Sun, or either of them, in respect of any third party ("Claims") shall be dealt with as provided in this Article 8. For all purposes of this Article 8, the term "cost or expense" shall include reasonable attorneys' fees and costs, whether or not taken to trial or appeal or in any bankruptcy or other related proceeding.

8.1.1 Claims Related to the Joint Operation. Review-Journal shall defend and shall control the defense or settlement of any third party Claims related to the joint operations or to its performance or non-performance under this Restated Agreement (including but not limited to Claims arising from any advertising published in, or excluded from, any of the Newspapers -

except as provided in Section 8.1.2 - and claims in respect of feature, news and editorial content furnished by Sun hereunder arising as a result of any act or omission on the part of Review-Journal other than republication in the form furnished by Sun), devoting reasonable efforts to minimizing any resulting liability and related cost or expense. Any such liability, and the cost of expense related thereto, shall be borne by the Review-Journal, except to the extent any such Claim shall be covered by insurance.

8.1.2 Other Claims. Except as specifically provided in Section 8.1.1. or elsewhere in this Restated Agreement, neither party hereto shall be charged with or held responsible for any third party Claims, arising before or after the Effective Date by reason of any act or omission on the part of the other party, and the responsible party shall defend and indemnify and hold the other party harmless therefrom, including all related cost or expense. The responsible party shall defend, settle, pay or discharge any such Claim and shall indemnify and hold harmless the other party against any such Claim, and from any liability, cost or expense arising therefrom. By way of example under this Section 8.1.2 and without limitation, the entire cost or expense of defending, settling or paying and discharging Claims relating to any feature, news or editorial copy published in, or excluded from the daily Review-Journal or arising by reason of anything done or omitted by the news and editorial department of the Review-Journal in regard to its daily newspaper or arising by reason of any advertising rejected by the Review-Journal or accepted by the Review-Journal in situations where such advertising would be rejected pursuant to Sun guidelines, shall be borne by DR and any such liability, cost or expense on account of claims relating to any feature, news or editorial copy published in, or excluded by Sun from the daily Sun or, or arising by reason of anything done or omitted by the news and editorial department of the Sun, or arising by reason of any advertising rejected by the Review-Journal pursuant to Sun guidelines, or accepted in situations where such advertising would be rejected pursuant to Review-Journal guidelines, shall be borne by Sun, unless such Claims shall be an expense of the Review-Journal by reason of the operation of Section 8.1.1.

8.1.3 Insurance. For the purpose of this Article 8, each party shall separately maintain and pay for, as an item of news and editorial expense, insurance to the extent reasonably available protecting against losses from libel, invasion of privacy, copyright or trademark infringement and other matters related to the gathering or preparation of news and editorial matter for publication, in such amounts as the parties may agree upon from time to time, but in no event less than Ten Million Dollars (\$10,000,000), and the other party shall be named as an additional insured.

8.2 Force Majeure. Neither party shall be liable to the other for any failure or delay in performance under this Restated Agreement, occasioned by war, riot, government action, act of God or public enemy, acts of terrorism, damage to or destruction of facilities, strike, labor dispute, failure of suppliers or worker, inability to obtain adequate newsprint or supplies, or any other cause substantially beyond the control of the party required to perform, provided that in the event partial performance under this Restated Agreement is feasible, notwithstanding the occurrence of one or more of the foregoing, performance shall be allocated between the newspapers by the Review-Journal, in its sole judgment, notwithstanding the provisions of Appendix A hereto, provided, that the Sun portion shall not be less than six (6) pages.

ARTICLE 9
TERMINATION

9.1 Events of Termination. This Restated Agreement shall continue in full force and effect unless and until it may be terminated by the occurrence of one of the following events of termination:

9.1.1 Stated Duration. Expiration of the term set forth in Section 1.1

9.1.2 Bankruptcy or Default. If either party hereto makes an assignment of its assets for the benefit of creditors, an order of relief is entered by any bankruptcy court or has a receiver appointed for its business by a court of competent jurisdiction (provided, that such assignment, order of relief or adjudication shall continue unstayed on appeal or otherwise in effect for a period of ninety (90) days after the assignment, the entry of the order of relief or decree related thereto before such assignment or adjudication becomes an event of termination, and further provided that the appointment of the receiver must continue unvacated, not set aside, not stayed or otherwise in effect for a period of ninety (90) days after such appointment before such appointment becomes an event of termination), or if either party defaults in the performance of any of its material obligations hereunder and does not cure such default within sixty (60) days after receiving written notice thereof from the other party, then such other party may, at its election, and in addition to all other remedies available to it at law or in equity, terminate this Restated Agreement. In the event of the entry of an unstayed order of relief in an involuntary bankruptcy by DR, the Sun shall have the right, at its option, to purchase from DR, the equipment necessary to publish the Sun. The value of the equipment shall be set by the bankruptcy trustee. In the event of an unstayed order of relief in an involuntary bankruptcy, the Sun may lease, at fair market value, for a period not to exceed five (5) years the assets necessary to the publish the Sun.

9.1.3. Change of Controlling Interest. In view of the nature of the relationship established by this Restated Agreement and the fact that the Sun is published under the direction and control of the Estate of Herman Greenspun and Brian L. Greenspun, the Review-Journal shall not be required to carry out the terms of this Restated Agreement or be associated with another party to which it reasonably objects. Accordingly, ownership or control of the Sun shall not be transferred to any other entity or person without notice to and prior approval by the Review-Journal, provided that the Review-Journal will not object to any transfer of the ownership or control of Sun to any entity under the immediate direction of Brian L. Greenspun, or any other lineal descendant of Herman M. Greenspun. Notwithstanding the foregoing, controlling interest of the Sun may be transferred to any person that can provide the necessary editorial background and expertise to produce the Sun pursuant to the terms of this Restated Agreement. Following an approved or permitted change of control of Sun, if a subsequent change of control occurs, notice as hereinabove shall be given and the Review-Journal may exercise the rights provided herein.

9.1.4 Intentionally omitted.

9.2 Intentionally omitted.

9.3 Duties Upon Termination. Upon termination of this Restated Agreement, either by expiration of its term or otherwise, the Review-Journal shall provide Sun with a complete list (including all contact information) of current newspaper subscribers and advertisers.

ARTICLE 10
MISCELLANEOUS

10.1 Notices. Each notice or other communication given pursuant to this Agreement shall be given in writing, delivered in person or mailed by registered or certified mail, addressed to the respective parties as follows:

Review-Journal: DR Partners
P. O. Box 70
Las Vegas, NV 89125
Attention: Sherman Frederick

Sun: Brian L. Greenspun, Esq.
President & Editor
Las Vegas Sun
2275 Corporate Circle Drive
Suite 300
Henderson, Nevada 89074

Or, in case of either party hereto, at such other address or marked for the attention of such other person, as such party may set forth in a written notice to the other party.

10.2 Disclaimer of Labor Related Obligations. The parties specifically agree that neither party hereby assumes any obligations of the other party related to its employment practices or to any of its employees, whether or not arising under any collective bargaining agreements or arising prior to, on or subsequent to the Effective Date.

10.3 Intentionally omitted.

10.4 Limited Effect. Nothing herein contained shall constitute the parties hereto partners, joint venturers, successors, alter egos, joint employers, an unincorporated association, or as having any relationship other than as specifically provided by this Restated Agreement. This Restated Agreement is intended solely for the benefit of the parties hereto, and their permitted successors and assigns and not for the benefit of any other person or party. This Restated Agreement, including Appendices A through D hereto, and the contracts and agreements supplemental hereto, comprises the entire understanding and agreement of the parties hereto on the subject matter herein contained and any and all other representations or agreements, which heretofore may have been made on such subject matter, whether oral or in

writing, by any agent of either party shall be null, void and of no effect whatsoever. Time is of the essence of this Restated Agreement.

10.5 Intentionally omitted.

10.6 Sun Trademark, Tradenames, Service Marks and Copyrights. In its use of such Sun trademarks, tradenames, service marks and copyrights as may be required to perform its obligations under this Restated Agreement, including promotion of the Newspapers, Review-Journal shall use commercially reasonable effort to comply substantially with all relevant laws of the State of Nevada and of the United States pertaining to trademarks, tradenames, service marks and copyrights in force at any time during the term of this Restated Agreement. Review-Journal shall have the exclusive right and the obligation to distribute the Sun through electronic replica technology (i.e. technology customarily used by metropolitan daily newspapers which transmits an entire Sun page to the subscriber or consumer in any form) to the same extent the Review-Journal distributes its own pages by such means provided, however, that Sun shall have the right to republish, license, or otherwise use its editorial content in any form or media, other than as an entire Sun page or pages, upon the earliest of: (i) 7:00 a.m., (ii) the time the Review-Journal guarantees delivery to its subscribers, or (iii) the time the Review-Journal first uses its editorial content in any form or media other than in the printed newspaper or replica technology. Sun shall use commercial reasonable efforts to maintain in effect said trademarks, trade names, services marks and copyrights, and shall make applications for the registration and/or renewal thereof if and when required by law. Review-Journal acknowledges Sun's right, title and interest in and to said trademarks, trade names, service marks and copyrights and all renewals thereof, and agrees that it shall not at any time permit, take, or cause to be taken any action within its control in any way impairing or tending to impair any part of such right, title and interest. Review-Journal agrees to publish such notices in the Sun as Sun reasonably may request in order to protect said trademarks, trade names, service marks and copyrights, or any of them. Review-Journal shall not in any manner represent that it has any ownership interest in said trademarks, trade names, services marks or copyrights or in the registration thereof, and Review-Journal acknowledges that its use hereunder of said trademarks, trade names, services marks or copyrights shall not create in its favor any right, title or interest in or to same beyond those created by this Restated Agreement. The Review-Journal shall have the right to republish, license, or otherwise use its editorial content in any form or media.

10.7 Tax Treatment of Payments to Sun. Its is contemplated by the parties that the payments to Sun under Appendix D of this Restated Agreement will be, for federal income tax purposes, ordinary income to Sun and will be deductible by DR as a business expense.

10.8 Specific Performance. Because of the public interest in maintaining editorially and reportorially independent and competitive newspapers in Las Vegas and its environs, and because of the inadequacy of damages in the event of default in the performance of material obligations hereunder, each party shall have the right to seek specific performance of the material provisions of this Restated Agreement, provided, that in the event of any action by either party for specific performance, if that party does not obtain an order of specific

performance, the other party shall be entitled to recover in such action its attorneys' fees and costs.

10.9 Successors and Assignment. This Restated Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and their permitted successors and assigns.

10.10 Governing Law; Modification. This Restated Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. This Restated Agreement may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, modification or discharge shall be sought.

10.11 Headings. Headings have been inserted in this Restated Agreement for the purpose of convenience only. They shall not be used to interpret or construe the meaning of any Articles or Sections, nor shall they have the effect of limiting or enlarging the meaning thereof.

10.12 Ancillary Publications. Nothing in this Restated Agreement shall preclude either party from engaging in any lawful business outside of this Restated Agreement, except that neither Review-Journal, or any Affiliate of Review-Journal nor Sun, or any Affiliate of Sun, shall, outside of this Restated Agreement, publish a newspaper that is published three or more days per week and that is directed primarily to Clark, Nye, or Lincoln Counties, Nevada or any parts thereof. As used in this Restated Agreement, "Affiliate" means any person, corporation, partnership, trust or other entity which controls, is controlled by, or is under common control with either party.

10.13 Release. As a material inducement to DR to enter into this Restated Agreement, and for other good and valuable consideration, Sun, for itself, and its assigns, hereby unconditionally releases and forever discharges DR and the Las Vegas Review-Journal and their partners, predecessors, successors, assigns, agents, stockholders, directors, officers, current or former employees, representatives, attorneys, divisions, subsidiaries, affiliates, receivers, trustees, shareholders and all persons acting by, through, under or in concert with any of them from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses, including, but not limited to, attorneys' fees and costs actually incurred of any nature whatsoever with respect to all those claims asserted or which could have been asserted which arise out of, or are related to, operation of the Las Vegas Review-Journal or Sun between June 17, 1989, and June 10, 2005, known or unknown, including, but not limited to, any claims connected with operations under the 1989 Joint Operating Agreement between the parties, during that time period, including those items set forth on Exhibit C to a release agreement between the parties dated June 20, 2002 and any claims related to the conduct or operation of lvvj.com, reviewjournal.com, lasvegasnewspapers.com.

As a material inducement to Sun to enter into this Restated Agreement, and for other good and valuable consideration, DR, for itself, its affiliates and assigns, hereby unconditionally releases and forever discharges Sun its partners, predecessors, successors, assigns, agents, stockholders, directors, officers, current or former employees, representatives, attorneys,

divisions, subsidiaries, affiliates, receivers, trustees, shareholders and all persons acting by, through, under or in concert with any of them from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses, including, but not limited to, attorneys' fees and costs actually incurred of any nature whatsoever with respect to all those claims asserted or which could have been asserted which arise out of, or are related to, operation of the Las Vegas Review-Journal or Sun between June 17, 1989, and June 10, 2005, known or unknown, including, but not limited to, any claims connected with operations under the 1989 Joint Operating Agreement between the parties, during that time period, including those items set forth on Exhibit D to a release agreement between the parties dated June 20, 2002 and any claims related to the conduct or operation of lasvegassun.com or lasvegasnewspapers.com.

IN WITNESS WHEREOF, this Restated Agreement has been executed by the parties' respective corporate officers thereto duly authorized as of the day and year first above written.

DR PARTNERS.

By: Stephens Group, Inc.
General Partner

By: Warren A. Stephens
Warren Stephens
Chief Executive Officer

LAS VEGAS SUN, INC.

By: Brian L. Greenspun
Brian L. Greenspun
President

APPENDIX A

A.1. Intentionally omitted

A.2. Pursuant to Section 4.3. of this Restated Agreement, the number, placement, and characteristics of Sun pages shall be in accordance with the following specifications:

- (a) For Monday through Friday editions, the Sun shall be composed of an open front page with the Las Vegas Sun flag and seven (7) additional editorial pages (or the lineage equivalent thereof) of which three (3) shall be open pages as determined by the Sun. The remaining pages may include advertising, subject to the restrictions in (d) below. For Monday-Friday editions, the Review-Journal shall be composed of as many pages as Review-Journal management determines in its sole discretion.
- (b) For the Sunday edition, the Sun shall be composed of an open front page with the Las Vegas Sun flag and nine (9) additional editorial pages (or the lineage equivalent thereof) of which three (3) shall be open pages as determined by the Sun. The remaining pages may include advertising, subject to restrictions in (d) below. The Review-Journal shall determine the number of pages for a comic section for the Sunday edition which shall consist of strips and features selected by the Review-Journal. The Sunday paper, including comics, shall be composed of as many Review-Journal pages as Review-Journal management determines in its sole discretion.
- (c) For Saturday and holiday editions, the Sun shall be composed of an open front page with the Las Vegas Sun flag and five (5) additional editorial pages (or the lineage equivalent thereof) of which three (3) shall be open pages as determined by the Sun. The Saturday and holiday editions shall be composed of as many Review-Journal pages as Review-Journal management determines in its sole discretion. The remaining pages may include advertising, subject to restrictions in (d) below.
- (d) The Sun shall not include any Review-Journal editorial content. Standard materials such as weather pages, comics, standardized television listings and the like shall not be considered Review-Journal editorial material and may be included in the Sun as additional pages unless the Sun objects in writing thereto. Other than open pages, the Sun may include advertising. No Sun page shall be more than 50% advertising, except for full page ads, and no advertising shall appear "above the fold" in the Sun, except for full page ads. Notwithstanding the foregoing, pages may contain, from time to time, more than 50% advertising due to production issues and advertising demands. Advertising will not be stacked in a pyramid format and shall be evened out in terms of height on the page. The Monday-Sunday editions of the Review-Journal shall include a noticeable mention of the

Sun, on the front page of the Review-Journal. The noticeable mention will appear in a box above the Review-Journal's masthead (the "Sun Box") and shall be in the form shown on Appendix B. The Sun Box shall not be smaller in proportion than shown in Appendix B. The Sun Box shall also include the Sun's masthead, and any emblem that is part of the Sun's masthead. The Sun Box shall include a promotion of a story in the Sun and refer readers to the Sun inside. The type face, editorial artwork, font, and editorial promotional content appearing in the Sun Box shall be determined by Sun, in its sole discretion. Any color in the Sun Box shall be restricted to constituent colors used by the Review-Journal on its front page. The Sun Box shall be the left-hand box unless it would be obscured by a spaeda fold, in which case the Sun Box shall be the right-hand box. In the event of major breaking news or for exigent production circumstances, the Sun Box may be moved below the Review-Journal's masthead. The Sun, on average, will receive as much editorial color as the local news section of the Review-Journal.

A.3. Edition times for Monday through Sunday issues of the Review-Journal shall be established by the Review-Journal in accordance with normal industry standards. Deadlines for the Sun shall be the same as those established for the last local news sections of the Review-Journal. The Sun will be placed as the third section of the Newspapers except on occasions when exigent production circumstances require that it be placed as the fourth section. The Sun will be printed in the same press run as the Review-Journal local news section. The Review-Journal shall be solely responsible for determining the need for replating the Newspapers, and shall treat the Sun and the Review-Journal equally with respect to replating of page one for major breaking national or international news events

A.4. If the Review-Journal determines that it is feasible to publish an "extra" edition, such edition shall be a Review-Journal edition and the content of any "extra" edition shall be determined solely by the Review-Journal.

A.5. In the event the Review-Journal determines that the Sun's continued placement in the Review-Journal has a material and substantial negative financial impact on the revenue and profit of the Newspapers it may deliver the Sun separately from the Review-Journal but at the same time, place, and manner as the Review-Journal. The Review-Journal shall provide written notice to the Sun within fifteen (15) days of beginning such separate delivery specifying in detail the factual basis for its determination.

In the event the Sun disagrees with the Review-Journal's determination, it shall within seven (7) days of receipt of notice from the Review-Journal, request that the matter be submitted to arbitration by an arbiter mutually agreed upon by the parties. If Sun requests arbitration, the Review-Journal shall not deliver the Sun separately until sixty (60) days after selection of the arbitrator. In the event the parties are not able to agree upon an arbiter within seven (7) days, an arbiter shall be selected by the Chairman of the Department of Journalism of Northwestern University, Evanston, Illinois, or a similar journalism school if Northwestern University has ceased operations of its School of Journalism. The parties shall request the arbitrator to render a decision within sixty (60) days of his or her selection, and Sun and the Review-Journal each

hereby covenant to cooperate with the arbitrator to facilitate such request.

The arbitrator shall have experience in the senior management of metropolitan daily newspapers. In determining material and substantial negative financial impact, only the following factors shall be considered; advertiser abandonment of the Newspapers specifically due to the Sun's inclusion within the Review-Journal or subscriber cancellations of the Newspapers specifically due to the Sun's inclusion within the Review-Journal. The material and substantial negative financial impact shall be determined by reference to generally accepted standard newspaper industry sources. The decision of the arbitrator shall be final. The cost of the arbitration shall be borne by the non-prevailing party. The Review-Journal's rights under this section shall be cumulative and may not be exercised more often than once every eighteen (18) months.

In the event Sun determines, in its sole discretion, that the Sun's continued placement in the Review-Journal negatively impacts the Sun, the Review-Journal shall, upon fifteen (15) day written notice from Sun, thereafter deliver the Sun separately from the Review-Journal but at the same time, place and manner as the Review-Journal, provided that Sun shall pay any incremental expenditure reasonably incurred because of such separate delivery, which separate delivery shall be effected without any derogation in the publication, production, or delivery of the Review-Journal. Prior to giving its fifteen (15) day written notice, Sun may request and the Review-Journal shall provide a good faith estimate of such incremental expenditures and the parties shall meet and confer regarding the estimate. If the Sun is separately delivered, it will no longer receive noticeable mention in the Review-Journal.

APPENDIX B

[Sample to be attached]

Help pick the
new Las Vegas
city seal

DRAW YOUR OWN
SEE LIVING



Batter Up

After finally breaking their 86-year-old
Curse, the Red Sox start the season in a
new role: defending champs

SEE SPORTS

LAS VEGAS SUN
DOE knew of Yucca
e-mails in December

INSIDE | SECTION E

MONDAY

LAS VEGAS REVIEW-JOURNAL

50 CENTS

MONTH XX, 2005

PUBLIC VIEWING OF POPE

**Agency
pursued
damage
control**

Documents show
how DOE coped
with e-mails about
Yucca Mountain

BY NINA FORT
WASHINGTON — Although
they were known for a long
time as the "Energy Department's
secretive, behind-the-scenes
operating system," the documents
released last week suggest the
agency's damage control efforts
were not always successful.

Three dozen pages of newly
released e-mails and other in-
ternal documents show how
the agency coped with a series
of e-mails about the Yucca
Mountain nuclear waste repository.

The documents, which were
obtained by the Freedom of Information Act, show that the
agency's damage control efforts
were not always successful.

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agency's damage control efforts
were not always successful.

Mourners pay respects



Thousands pack St. Peter's Square
to see John Paul II ahead of burial

BY STEPHEN L. KELLY
VATICAN CITY

The crowd was estimated at
more than 200,000 people, the
largest gathering in the square
since Pope John Paul II's arrival
in 1979. The Pope's body was
displayed in a glass casket, and
people were allowed to touch it.
The Pope's body was displayed
in a glass casket, and people
were allowed to touch it.



POPE JOHN PAUL II'S BODY IS CARRIED
THROUGH ST. PETER'S SQUARE.

The crowd was estimated at
more than 200,000 people, the
largest gathering in the square
since Pope John Paul II's arrival
in 1979. The Pope's body was
displayed in a glass casket, and
people were allowed to touch it.
The Pope's body was displayed
in a glass casket, and people
were allowed to touch it.

The late Pope John Paul II is carried to St. Peter's Basilica at the Vatican Sunday for a period
of public viewing before he is buried in the grotto of the Basilica after his funeral today.

Oil concerns increase as prices soar to record level

Limited supply,
rising demand,
continued weakness
of U.S. dollar cited

BY STEPHEN L. KELLY
WASHINGTON

Oil prices rose sharply Sunday
as concerns about supply and
demand grew. The price of oil
rose to a record level, and
analysts said it could reach
\$100 a barrel in the near future.

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Supreme Court rules IRAs protected from bankruptcy

BY STEPHEN L. KELLY
WASHINGTON

The Supreme Court ruled Sunday
that individual retirement accounts
are protected from bankruptcy.



Witness says Michael Jackson molested him

BY STEPHEN L. KELLY
LOS ANGELES

A witness said Sunday that
Michael Jackson molested him
when he was a child. The witness
said that Jackson had a sexual
relationship with him when he
was a child.

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control

Documents show
how DOE copied
with e-mails about
Yucca Mountain

BY JEFFREY M. HARRIS

WASHINGTON — Although they were known for a long time as the agency that oversees the nation's nuclear power plants, the Department of Energy (DOE) was not always known for its ability to handle the public's concerns about the Yucca Mountain nuclear waste repository. Documents show how DOE copied with e-mails about Yucca Mountain.

The documents, which were obtained by the Freedom of Information Act, show that DOE officials were aware of the public's concerns about the Yucca Mountain project as early as 1992. At that time, DOE officials were told that the project was "a major problem" for the agency.

They also showed that DOE officials were aware of the public's concerns about the Yucca Mountain project as early as 1992. At that time, DOE officials were told that the project was "a major problem" for the agency.

Mourners pay respects



Thousands pack St. Peter's Square
to see John Paul II ahead of burial

BY MICHAEL J. WATSON

ROME — The masses gathered in St. Peter's Square ahead of the funeral of Pope John Paul II. The Pope's body was brought to St. Peter's Basilica for a public viewing.

All the time, as the line moved forward, it grew longer and longer. The Pope's body was brought to St. Peter's Basilica for a public viewing.

The Pope's body was brought to St. Peter's Basilica for a public viewing. The Pope's body was brought to St. Peter's Basilica for a public viewing.

There was no sign of the Pope's body. The Pope's body was brought to St. Peter's Basilica for a public viewing.

People who had never had a chance to see the Pope's body were now able to see it. The Pope's body was brought to St. Peter's Basilica for a public viewing.

AMERICAN CATHOLICS WENT FOR MAJOR CHANGES IN THE
POPE'S FUNERAL DELAYS CATHOLIC WEDDING PAGE 10A

Oil concerns increase as prices soar to record level

Limited supply
rising demand
continued weakness
of US dollar cited

Oil prices in the U.S. rose to a record high of \$42.93 a barrel on Monday, as concerns about the U.S. dollar's continued weakness and the limited supply of oil increased.

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Supreme Court rules IRAs
protected from bankruptcy

BY JEFFREY M. HARRIS

A SUPREME COURT RULING THAT IRAS ARE PROTECTED FROM BANKRUPTCY

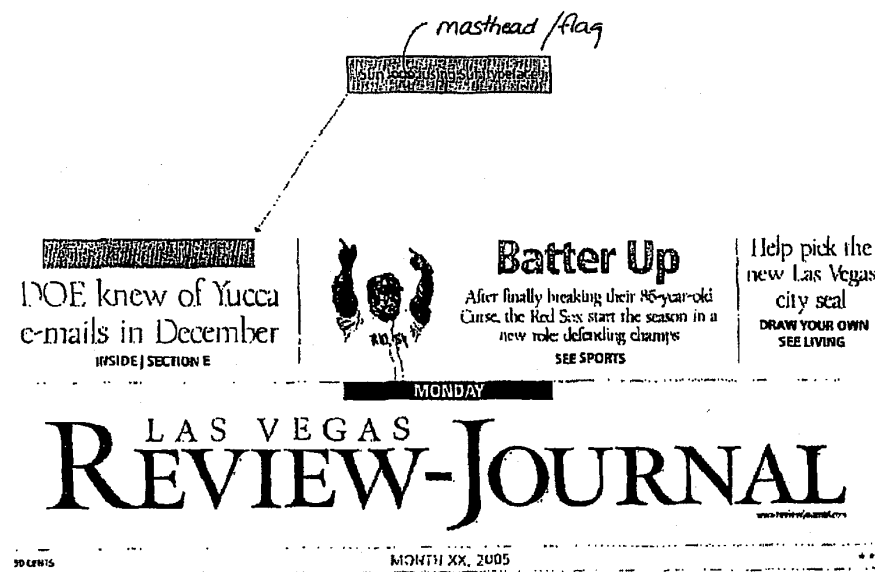
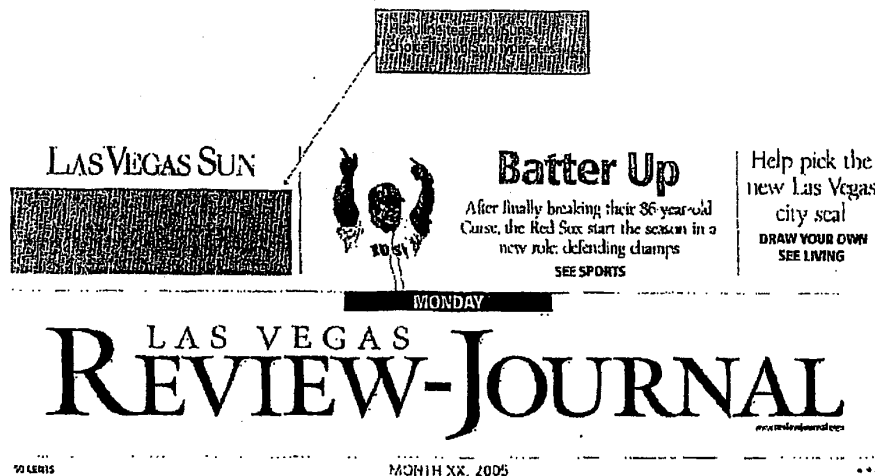


Witness says Michael Jackson molested him

BY JEFFREY M. HARRIS

A WITNESS SAYS MICHAEL JACKSON MOLESTED HIM

A WITNESS SAYS MICHAEL JACKSON MOLESTED HIM



APPENDIX C
Intentionally omitted

APPENDIX D

Sun shall receive an annual profits payment (the "Annual Profits Payment"), one-twelfth (1/12th) of which shall be paid monthly in advance on the first day of each month during the Term. For the fiscal year beginning April 1, 2005, the Annual Profits Payment shall be Twelve Million Dollars (\$12,000,000), provided, however, that payments to Sun shall continue in accordance with the 1989 Agreement until the Transition Date. Each fiscal year thereafter during the term of this Agreement the Annual Profits Payment shall be adjusted as set forth in this Appendix D. Within thirty (30) days following the beginning of each such fiscal year, Review-Journal shall calculate the percentage change (the "Percentage Change") between the earnings, before interest, taxes, depreciation and amortization ("EBITDA") for the fiscal year immediately preceding (the "LTM EBITDA") and the EBITDA for the penultimate fiscal year (the "Prior Period EBITDA"). The Annual Profits Payment shall be increased, or decreased, as the case may be, by the Percentage Change between the LTM EBITDA and the Prior Period EBITDA.

In calculating the EBITDA (i) for any period that includes earnings prior to April 1, 2005, such earnings shall not be reduced by any amounts that during such period may have been otherwise been deducted from earnings under section A.1 of Appendix A or sections B.1.16, B.1.17, B.1.18, or B.3 of Appendix B of the 1989 Agreement and (ii) for any period whether before or after April 1, 2005, such earnings shall not be reduced by any amounts paid to Sun as a percentage of operating profit under Appendix D of the 1989 Agreement or under this Appendix D. Any expense of the Review-Journal attributable to a transaction with an Affiliate shall not exceed fair market value. EBITDA shall include the earnings of the Newspapers and the

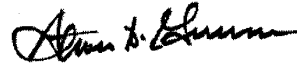
earnings of the Review-Journal's Affiliates derived from publications generally circulated in Clark, Nye, or Lincoln Counties, Nevada or any parts thereof. For purposes of this paragraph, Press Equipment shall mean the press equipment currently owned by the Review-Journal and identified in Appendix D-1 and any additional equipment, whether owned by the Review-Journal or third parties, to the extent that it produces substantially the same product or result, and Other Equipment shall mean all equipment and facilities used for production or operation of the printed Newspapers or other print publications whose earnings are included in EBITDA other than Press Equipment. EBITDA, whether determined for any period before or after April 1, 2005, shall not include (a) any expense for rents, leases or similar expense for Other Equipment (i) if such expense, under generally accepted accounting principles, should be treated as a capitalized lease obligation, or (ii) if such expense is made for the use of any capital asset the use of which is intended to replace any item of Other Equipment that is owned by the Review-Journal as of the Effective Date or (b) any expense for rents, leases, or similar expenses for Press Equipment, including any portion of a printing services contract that is fairly attributable to the use of Press Equipment. All calculations shall be made in accordance with generally accepted newspaper industry accounting principles consistently applied. The Parties intend that EBITDA be calculated in a manner consistent with the computation of "Retention" as that line item appears on the profit and loss statement for Stephens Media Group for the period ended December 31, 2004. Sun shall have the right, exercisable not more than once every twelve months and only after providing written notification no less than thirty days prior thereto, to appoint an certified public accounting firm or law firm as Sun's representative to examine and audit the books and records of the Review-Journal and the other publications whose earnings are included in EBITDA for purposes of verifying the determinations of the changes to the Annual Profit

Payments. Such representative shall agree in writing to maintain the confidentiality of all such financial records inspected. The confidentiality agreement shall not restrict the representative from disclosing to the management of Sun information concerning the audit of the Review-Journal, but shall restrict the representative from disclosing any specific individual salary information or advertiser-specific information (e.g., names, prices, contract terms, discounts, total inches) for the other publications whose earnings are included in EBIDTA. With respect to such other publications, the representative may only disclose summary information (e.g., total advertising revenue or total salaries) that is not identifiable with individual advertisers or employees. If as a result of such an audit, there is a dispute between Sun and the Review-Journal as to amounts owed to Sun and they are not able to resolve the dispute within 30 days, they shall select a certified public accountant to arbitrate the dispute. The arbitration shall be conducted according to the commercial arbitration rules of the American Arbitration Association, including such rules for the selection of a single arbitrator if Sun and the Review-Journal are not able to agree upon an arbitrator. Sun and the Review-Journal shall request the arbitrator to render a decision within sixty (60) days of his or her selection, and Sun and the Review-Journal each hereby covenant to cooperate with the arbitrator to facilitate such request. The arbitrator shall agree to be bound by terms of confidentiality to the same extent as the Sun's representative. The arbitrator shall make an award to Sun in the amount of the arrearage, if any, found to exist, together with interest thereon from the date any arrearage was due until paid at the corporate prime rate as quoted by the Wall Street Journal on the first business day of each month. The arbitrator shall also make an award of the fees and cost of arbitration, which may include a division of such fees and costs among the parties in a manner determined by the arbitrator to be reasonable in light of the positions asserted and the determination made.

DR shall be entitled to all of the profits of the Newspapers after the payments set forth above to the Sun during the term of this Restated Agreement.

APPENDIX D-1

- 1 Goss Urbanite Press (Pama Lane)**
- 1 Goss Community Press (Press Annex)**
- 2 Goss Newsliner presses (Main pressroom)**
- 1 Didde press (Mailroom)**
- 2 Lines of Heidelberg Inserters and GMA/Alphaliners**


CLERK OF THE COURT

1 E. LEIF REID
2 Nevada Bar No. 5750
3 LEWIS ROCA ROTHGERBER LLP
4 50 West Liberty Street, Suite 410
5 Reno, Nevada 89501
6 Telephone Number: (775) 823-2900
7 Fax Number: (775) 823-2929
8 lreid@lrrlaw.com

9 *Attorneys for Plaintiffs*

10
11 DISTRICT COURT
12 CLARK COUNTY, NEVADA
13

14 LAS VEGAS SUN, INC., a Nevada Corporation,)
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17)
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28)

Plaintiff(s),

Case No. A-15-715008-B

vs.

Dept. No. XI

DR PARTNERS, a Nevada General Partnership,
d/b/a STEPHENS MEDIA GROUP; DOES I-X,
inclusive,

AFFIDAVIT OF SERVICE

Defendant(s).

TYLER TREWET, #R-073823, being duly sworn, or under penalty of perjury, states that at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to or interested in the proceedings in which this Affidavit is made. That Affiant received a copy of the following document(s):

SUMMONS-CIVIL;

COMPLAINT FOR SPECIFIC PERFORMANCE AND DECLARATORY JUDGMENT


on the 12 day of MARCH, 2015, and
served the same on this 12 day of MARCH, 2015 at 12:22 PM by:

1 ☒ Serving the above-listed document(s) to Defendant: DR Partners, a Nevada General Partnership,
2 d/b/a Stephens Media Group by personally delivering and leaving a copy at 1111 West Bonanza Road,
3 Las Vegas, Nevada 89106 with Mark Hinueber - Vice President/General Counsel (Caucasian, Male, 67
4 yrs., 6'3", 205 lbs., Gray hair, Blue eyes), a person of suitable age and discretion, Authorized Agent, to
5 accept service of process.

6 CONTROL #21060193
7

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

9 Executed on the 12 day of MARCH, 2015

10 
11 (Server Signature)
12 TYLER TREWET
13 Registered Work Card #R-073823
14
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25
26
27
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(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal, LLC (1656)
720 S. 4th Street-Suite 305
Las Vegas, Nevada 89101
(702) 385-5444