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 REPLY BRIEF

MORRIS LAW GROUP
Steve Morris, Bar No. 1543
sm@morrislawgroup.com
Akke Levin, Bar No. 9102
al@morrislawgroup.com
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101
Telephone: (702) 474-9400
Facsimile: (702) 474-9422

Attorneys for Stephens Media LLC

NRAP 26.1(a) Disclosure

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26(a)(1), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

DR Partners, a Nevada general partnership and the named defendant in this case, was dissolved in June 2006. Stephens Media LLC, a Nevada limited liability company and the appellant in this matter, is the successor in interest to the rights and obligations of DR Partners. It was the publisher of the Las Vegas *Review-Journal* newspaper until it sold its assets to DB Acquisition, Inc. on March 18, 2015, after this case was commenced in the district court. DB Acquisition, Inc. now publishes the *Review-Journal;* it has assumed the post-March 2015 obligations of Stephens Media under the Joint Operating Agreement with Las Vegas *Sun*, Inc. which is at issue in this appeal. Stephens Media is owned 99% by SF Holding Corp. and 1% by Stephens Holding Corporation, neither of which is a publicly-held company.

Stephens Media was represented in the district court by Steve Morris and Akke Levin of Morris Law Group, and it is represented by the same counsel on appeal.

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 Stephens Media LLC

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I. INTRODUCTION.

If the Sun's declaratory relief claim were limited to seeking confirmation that § 4.2 of the parties' contract means what it says—*i.e.*, that the parties must "bear their own editorial costs"—we would not be here. But the Sun seeks a declaration that § 4.2 means *more* than what it says: It seeks a declaration that § 4.2 is dispositive of and dictates the calculation of EBITDA under Appendix D of the parties' agreement. As the Sun admits in its Motion For Summary Judgment, the issue it has presented to the district court is whether "Section 4.2 directs the parties to bear their own editorial costs *in all respects*," meaning that Stephens cannot "include its editorial costs as a chargeable expense and proper input to the EBITDA/2004 Retention formula." AA 263 (n.1) (emphasis added).

No matter how narrowly the Sun attempts to frame its claim and no matter how it is labeled, the district court cannot decide this issue *as a matter of law* under § 4.2 because the answer depends on and requires—at the very minimum—an accounting analysis under Appendix D, including of the "EBITDA/2004 Retention formula," under "generally accepted newspaper accounting principles." AA 243. Because even the Sun admits that the calculation of EBITDA and accounting issues are for the CPA arbitrator to decide, the order denying Stephens motion to compel arbitration cannot stand and must be reversed.

II. ARGUMENT.

A. Standard of Review.

The question whether a dispute is subject to arbitration "is a matter of contract interpretation, which is a question of law" that the court reviews "de novo." *Nevada ex. rel. Masto v. Dist. Ct.*, 125 Nev. 37, 44, 199 P.3d 828, 832 (2009).

B. The Arbitration Clause is Not as Narrow as the Sun Contends.

1. The Arbitration Clause is Not Limited to Disputes Arising Out of a Formal Audit.

The Sun's audit rights under Appendix D neither limit the scope of the arbitration clause, nor make arbitration contingent on the Sun first seeking an audit, as Sun mistakenly contends. Answering Brief ("AB") at 15. Appendix D, which the Sun negotiated and assented to, gives it an annual right to appoint an "accounting firm or law firm as Sun's representative to examine and audit [the Review Journal's] books and records . . . for purposes of verifying the determinations of the changes to the Annual Profits Payments." AA 243. If "as a result of such an audit, there is a dispute . . . as to amounts owed" that the parties are "not able to resolve . . . within 30 days," they must appoint a CPA arbitrator, who must render a decision "within sixty (60) days of his or her selection . . . ." AA 244.

When viewed in their proper contractual context, these provisions show that the Sun's audit rights do *not* limit or condition arbitration of "disputes." Appendix D encourages the parties to resolve any issues revealed by an audit between themselves. If they cannot do so, they have a "dispute" that is subject to arbitration. The arbitration clause itself does not apply only to "accounting disputes that ***arise*** from a formal audit," as Sun contends, AB at 15 (emphasis added)—it applies to any "**result[ing]**" unresolved dispute "between Sun and the Review Journal ***as to amounts owed to Sun*** . . . ." AA 244 (emphasis added). The Sun's lawsuit is an attempt to avoid arbitration of alleged "amounts owed to Sun" by seeking a declaration from the court that several million dollars are owed to the Sun for the Review Journal's editorial expenses over the past several years.

Even assuming arbitration was contingent upon the Sun first seeking a "formal" audit, this argument fails for three separate reasons, each of which is dispositive. *First*, a party who "voluntarily prevents the occurrence of a condition established for his or her benefit is estopped from seeking relief from a contract on the grounds that the condition precedent to his obligation failed to occur." *NGA # 2 LLC v. Rains*, 113 Nev. 1151, 1160, 946 P.2d 163, 169 (1997) (internal quotation marks and citation omitted); *see also Hilton Hotels v. Butch Lewis Productions*, 107 Nev. 226, 232, 808 P.2d 919, 922-24 (1991) (party to a contract may not act "in a manner that is unfaithful to the purpose of the contract and the justified expectations of the other party. . . ."). Thus, by voluntarily foregoing its right to a formal audit, the Sun is estopped from seeking relief from the arbitration agreement.

Second, whether or not a condition precedent to arbitration has been fulfilled is not for courts to determine: "An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled. . . ." NRS 38.219(3). Thus, any alleged condition precedent is irrelevant in deciding a motion to compel arbitration. *See id.*; *see also* NRS 38.219(2) (the court decides only whether a valid arbitration agreement exists and whether the agreement covers the dispute at issue).

Third, the Sun has already taken the position that "[n]o formal audit of Review-Journal's books and records by a [CPA] was necessary to determine whether [Stephens] failed to perform under Section 4.2." AA 096:19-20. Thus, the Sun has waived the alleged condition—*i.e.*, its right to an audit—and with it, its right to insist on the alleged condition precedent to arbitration. *See Mayfield v. Koroghli*, 124 Nev. 343, 352, 184

P.3d 362, 368 (2008)("A party may waive a condition in a contract if the condition was included in the contract for his or her benefit").

2. The Arbitration Clause is Arguably Broader Than the Arbitration Clauses in *Benson Pump* and *Shy*.

The Sun mischaracterizes the parties' arbitration agreement as "extremely narrow" and the arbitration clauses in *Benson Pump Co. v. South Cent. Pool Supply, Inc.*, 325 F. Supp. 2d 1152, 1155 (D. Nev. 2004) ("*Benson Pump*") and *Shy v. Navistar Int'l Corp.*, 781 F.3d 820, 826 (6th Cir. 2015) ("*Shy*") as "much broader." AB at iv, 18.[1] Although the arbitration clause at issue certainly is not "far-reaching and all-encompassing"—superlatives Stephens never made use of—a comparison between the arbitration clauses shows that the parties' arbitration clause here is broader than the arbitration clauses in *Benson Pump* and *Shy*. Appendix D stipulates that if, after an audit, there is an unresolved "***dispute*** between Sun and the Review-Journal ***as to amounts owed*** to Sun," the parties "shall" arbitrate the dispute before a CPA arbitrator "***according to the commercial***

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[1] The Sun mistakenly contends that Stephens is "presenting a new and therefore improper argument" on appeal by relying on *Shy* and, for the first time, arguing the "unqualified" nature of the arbitration provision. AB at 17 and fn. 8. Stephens' argument under *Shy*—*i.e.*, an accountant arbitration clause that is silent on the arbitrator's jurisdiction to decide legal issues at best presents an issue of ambiguity that should be resolved in favor or arbitration—is nothing new. OB at 12-13. Stephens specifically and repeatedly argued below that: (1) "any doubts" as to whether an arbitration clause covers a dispute should be construed in favor of arbitration; (2) the arbitration clause is *not* "limit[ed]"—another word for "unqualified"— but "covers ***all*** [compensation] disputes . . . ***not just factual*** disputes"; and (3) if the parties had intended to carve out legal disputes, they could have done so. AA 84, AA 104-106, AA 250-51 (emphasis added). What's more, the Sun already acknowledged that Stephens made these arguments in the district court. AA 287. The Sun cites no Rule or case law holding that a party may not reinforce an argument made below by citing additional authority on appeal. This is because, of course, there is none.

arbitration rules of the American Arbitration Association [AAA]." AA 244 (emphasis added). By its terms, the clause is not limited to factual disputes as to amounts owed, or factual disputes about the calculation of amounts owed. Moreover, the parties' agreement to arbitrate according to the commercial arbitration rules of the AAA expands the scope of the arbitration clause: For example, these rules give the arbitrator the authority to grant interim relief and specific performance (R-37, R-47) and permit the parties to introduce evidence in support of their claims (R-34), which means that the Sun is free to point the CPA arbitrator to § 4.2 of the JOA as evidence of how the parties intended to calculate EBITDA, and the arbitrator, not the court, will decide the issue.

In *Benson Pump*, the parties agreed to submit unresolved disputes concerning the "***determination of the Base Purchase Price***" and the "Accounts Receivable Adjustment" to an independent accounting firm. 325 F. Supp. 2d at 1155 (discussing and quoting relevant dispute resolution provisions) (emphasis added). The *Benson Pump* arbitration clause did not provide for arbitration under the commercial arbitration rules of the AAA, and could be read to suggest that the accounting firm was limited to resolving disputes about *how* Benson Pump calculated—*i.e.*, "determin[ed]"—the Accounts Receivable Adjustment. Nevertheless, the court held that the accounting firm could decide any "issues of contract construction." *Id.* at 1159. The district court here should have done likewise. If it had done so, this dispute would be over, and the parties would have realized the benefits of prompt cost-effective dispute resolution that arbitration is designed to provide.

In *Shy*, the arbitration clause was set out in a settlement agreement and consent decree under which Navistar was obligated "to

make yearly profit-sharing payments . . . ." 781 F.3d at 822. Much like Appendix D to the JOA here, the appendix to the consent decree in *Shy* set out the "methods for calculating and enforcing Navistar's obligation" and the "dispute resolution clause," which provided, in relevant part:

> 8.4. If, following a review of ***the information and calculations*** provided pursuant to Sections 8.1, 8.2, and 8.3 the [SBC] ***disputes such information or calculation***[s], it shall inform the Company of such dispute within 30 calendar days . . . The Company and the [SBC] shall thereafter attempt, for a period not to exceed 30 calendar days, to resolve such dispute. . . . If the parties . . . cannot identify a mutually acceptable third party to resolve such dispute, the parties . . . shall obtain a list of the seven largest accounting firms . . . and . . . shall then alternately . . . strike one name off such list until only one name remains. The remaining firm shall be empowered to resolve the dispute.

Id. at 822-23 (quoting the arbitration clause).

Thus, the arbitration clause in *Shy* was limited by its terms to unresolved disputes concerning "the information and calculations" pertaining to the profit-sharing payments, whereas the clause here covers *any* unresolved "dispute . . . as to amounts owed to Sun"—not just disputes about the *calculation* or the *information* that forms the basis of "the amounts owed." Further, in *Shy*, as in *Benson Pump*, the parties did not agree to arbitrate according to the commercial arbitration rules of the AAA.

The *Shy* court's observation that the clause was "otherwise unqualified" had nothing to do with the absence of a limitation on remedies or the absence of a condition precedent: it pertained to the fact that the clause—like the clause here—was "not limited by its terms to disputes over the calculations involved" and did not prohibit the accountant from addressing legal issues of contract interpretation. *Shy*, 781 F.3d at 825.

Irrespective of these differences, *Shy* held that the accountant arbitrator could address questions of contract interpretation because any doubt as to the arbitrability of a given dispute must be resolved in favor of arbitration. *Id.* at 826; *accord Truck Ins. Exch. v. Palmer J. Swanson, Inc.*, 124 Nev. 629, 634, 189 P.3d 656, 660 (2008) (holding that all doubts concerning the arbitrability of the subject matter of a dispute are decided in favor of arbitration). There is no reason this Court should decide this case differently under a substantially similar arbitration clause.

3. The Arbitration Clause Does Not Limit the Arbitrator's Authority to Awarding Monetary Relief.

Parties to an arbitration agreement who intend to limit the applicability of arbitration rules frequently add language to do so. In *DR Horton, Inc. v. Green*, for example, the parties agreed to arbitration under the "procedures established by the [AAA] Construction Industry Arbitration Rules *except as specifically modified herein*." 120 Nev. 549, 553, 96 P.3d 1159, 1162 (2004) (internal quotations marks omitted) (emphasis added).

Here, by contrast, the parties did not make use of such limiting language; they agreed, without qualification, to arbitrate "according to the commercial arbitration rules of the [AAA] . . . ." AA 244. Thus, the CPA arbitrator is free to: (1) consider the JOA and its terms as evidence of what the parties intended (AAA Rule 34); and (2) determine, as part of his or her award, how EBITDA should be calculated to "govern the parties' future conduct." AB at 16; *see* AAA Commercial Rule R-47(a)-(b) (allowing arbitrator to award "any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties" and to "make other decisions . . . .").

Even if the parties had not agreed to arbitrate according to the commercial arbitration rules of the AAA, NRS 38.238 likewise provides that "an arbitrator may order such remedies as the arbitrator considers *just and appropriate under the circumstances* of the arbitral proceeding." NRS 38.238(2) (emphasis added). An award that sets out the proper EBITDA calculation is not inconsistent with the arbitrator's obligation to enter a monetary award, if warranted, under Appendix D. Nor does it render the "monetary award" provision "meaningless," as the Sun irresponsibly contends. AB at 20.

The Sun's reliance on the *expressio unius est exclusio alterius* maxim is misplaced for several reasons. *First*, the only case on which the Sun relies to invoke this maxim—*Flyge v. Flynn*, 63 Nev. 201, 166 P.2d 539 (1946)—is unpersuasive because it did not involve an arbitration agreement, much less an arbitration agreement that provided for arbitration according to the AAA commercial arbitration rules. *Second*, the parties did not express one thing and thereby (impliedly) exclude the other: they *expressly* agreed to arbitrate according to the AAA commercial rules without excluding or varying any of these rules. *Third*, the Sun's circular argument—if the parties had intended that a CPA could award all remedies under AAA R-47(a), they would have omitted the "monetary award" clause—works both ways: If the parties had intended to allow the arbitrator to award monetary relief only, then why specify that the arbitration would be conducted in accordance with the AAA commercial arbitration rules?

Thus, the arbitrator's obligation to enter a monetary award, if so warranted, does not preclude the arbitrator from awarding other relief that

is "just and appropriate under the circumstances of the arbitral proceeding." NRS 38.238(2).

C. This Is a Dispute About the Sun's Compensation.

1. The Sun's Prior Complaint is Unmistakable Evidence of the Nature and Scope of the Parties' Dispute.

Although an amended pleading "supersedes the prior pleading *as a pleading*," the prior pleading is not "ineffective for all purposes." *Las Vegas Network v. B. Shawcross & Assocs.*, 80 Nev. 405, 407, 395 P.2d 520, 521 (1964) (emphasis added). An admission against interest made in a prior pleading, for example, may be used as evidence of a party's inconsistent positions for impeachment purposes. *See Peters v. Peters*, 92 Nev. 687, 692, 557 P.2d 713, 716 (1976) ("inconsistent allegations made in a prior pleading are admissible in evidence for the purpose of impeachment . . . .").

Here, Stephens is not contending that the Sun's initial complaint remains operative; nor is it challenging the district court's order granting the Sun leave to file its amended complaint, as the Sun speculates. AB at 24. Rather, Stephens is contending that it is too late and it is disingenuous for the Sun to characterize its dispute with the Review Journal as a mere "contract interpretation dispute." AB at 23. In its initial complaint, the Sun admitted that the dispute between the parties was about the proper calculation of EBITDA, repeatedly referred to and quoted from Appendix D which sets out how EBITDA must be calculated, and **sought $6 million dollars in alleged damages**. AA 004-05 (¶¶ 21, 27).

The Sun's contention that its initial complaint was "devoid of any request for a monetary award," AB at 3; *id.* at 10 ("Nowhere did the Sun request a monetary award") is nonsense, as paragraphs 21 and 27 of its initial complaint show, as does its Prayer for Relief, which asks for an

"order requiring Defendants [sic] to specifically perform their contractual obligations . . . , including but not limited to . . . **payment of all Annual Profits Payment obligations outstanding under the 2005 Amended JOA, with interest.**" AA 007 (emphasis added); *see also* AA 006 (¶ 36) ("Plaintiff is entitled to . . . specific performance . . . including . . . payment of all Annual Profits Payment obligations outstanding under the 2005 Amended JOA"). In fact, when the Sun's counsel was explaining his position to the district court and told the court "we have not asked for any money yet," the district court corrected him and said: "No. What you've asked for is, 'Plaintiff is entitled to proper calculation of EBITDA and payment of all annual profits payment obligations.' " AA 129:8-13 (quoting ¶ 36 of the Sun's initial complaint). The Sun also alleged—twice—the amount it was seeking: $6 million dollars plus years of interest. AA 005 (¶¶ 21, 27).

Once the district court compelled arbitration, however, the Sun filed an amended complaint that omits reference to Appendix D altogether. AA 170-174. Now, the Sun seeks a declaration that § 4.2 *alone* dictates how profit is calculated under Appendix D, even though Appendix D—*not* § 4.2—determines *how* EBITDA must be calculated. Put another way, the Sun seeks to displace the arbitrator altogether by artificially splitting the compensation dispute into a legal issue and a factual issue, when in fact these issues are inseparable. The Sun recognized as much in its initial complaint. *See* AA 005 (¶ 26) (seeking declaratory judgment "as to the meaning of Section 4.2 *and Appendix D* . . . . ") (emphasis added).

2. The Sun Seeks a Judicial Declaration that Would Dictate the Accounting Treatment of EBITDA.

Analogous to the plaintiff in *Phillips v. Parker*, 106 Nev. 415, 418, 794 P.2d 716, 718 (1990), who asserted tort claims in an effort to avoid the

arbitration provision in his contract, the Sun asserts a claim under Section 4.2 to avoid Appendix D in which the arbitration clause appears. As "disingenuous" as it was in *Phillips* "to assert that the agreement [would] be used only as an evidentiary document," 794 P.2d at 718, so is it disingenuous here to assert that "the Sun merely seeks a judicial declaration of the meaning of Section 4.2." AB at 23.[2]

Although the Sun's amended complaint is deliberately cryptic to avoid arbitration, its other papers lay bare that the relief sought by the Sun unmistakably invokes the arbitration clause. For example, in its Motion for Summary Judgment, the Sun admits it seeks a declaration that § 4.2 does not allow "DR Partners to include its editorial costs as a chargeable expense and proper input to the EBITDA/2004 Retention formula." AA 263 (n.1). In its Answering Brief, the Sun contends that the "wide sweeping *effect* of DR Partners' violation of Section 4.2" is "an improper decrease to the EBITDA calculation" and a "substantial depletion to the Sun's Annual Profit Payments." AB at 2 (emphasis added). In other words, the Sun wants the district court to judicially declare *under § 4.2* that Review Journal cannot deduct its editorial costs in calculating EBITDA *under Appendix D* even though Appendix D (and not § 4.2) addresses the manner of calculating EBITDA. Of course the Sun's amended complaint does not seek an accounting; the point is that the Sun seeks an

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[2] The undersigned only recently discovered that various pinpoint citations and introductory signals that were included in prior drafts of the Opening Brief were erased in the process of "marking" the Brief for the Table of Authorities, including the "*cf.*" introductory signal before *Soebbing v. Carpet Barn, Inc.*, 109 Nev. 78, 84, 847 P.2d 731, 736 (1993). *See* OB at 19. Stephens' counsel included the "*cf.*" introductory signal in the draft Opening Brief and in briefing below, AA 156:8-9; AA 254:20, and never intended to suggest that the case was directly on point.

interpretation of § 4.2 that would dictate the outcome of any accounting, thereby usurping the role of the CPA arbitrator the parties agreed on to resolve this and any other dispute related to the Sun's compensation.

What's more, by seeking a *legal* determination that § 4.2 prohibits the Review Journal from deducting its editorial costs in calculating EBITDA, the Sun seeks to sidestep the specific *accounting* standards and principles in Appendix D, including their agreement 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 for the period ended December 31, 2004." AA 243. As one court explained in a similar case, where the plaintiff sought a "declaratory judgment" respecting the "judicial construction of a contract" providing for accountant arbitration, "[t]hese issues involve complex and technical accounting questions" that are not only "far more appropriate for 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). So did the parties here. AA 244.

3. The Sun's Persistence in Litigating a False Issue is Irresponsible and Confirms Its Repudiation of Its Agreement to Arbitrate.

In an attempt to justify litigating the "unambiguous language" of § 4.2, the Sun argues that Stephens has maintained "[f]rom the inception of the underlying dispute" that § 4.2 "is ambiguous . . . ." AB at 23. But this argument is directly contradicted by the pages of the Appendix on which the Sun relies to make it: Stephens' counsel argued below that "paragraph 4 2 . . . is **perfectly clear**"; and that the meaning of § 4.2 is a "false issue," because § 4.2, unlike Appendix D, does not address or determine whether

editorial costs can be deducted as an expense in calculating EBITDA and is therefore irrelevant. AA 156, AA 163 (emphasis added).

Next, the Sun argues that Stephens secretly hopes that a CPA who is "not trained in the law" will not be "shrewd" enough to understand "contract interpretation principles." AB at 24. On the contrary, Stephens is confident that a CPA is perfectly capable of reading and understanding the JOA, including § 4.2, which is hardly as difficult to understand as the rule against perpetuities. Section 4.2 says: "The Review-Journal and the Sun shall each bear their own respective editorial costs and shall establish whatever budgets each deems appropriate." AA 223 (§ 4.2). What special "training in the law" would a CPA need to understand this language? AB at 24.

Rather, it is the other way around: By framing the alleged justiciable controversy as one involving only the legal meaning of § 4.2, AA 170-74, the Sun hopes that the district court will disregard the accounting principles and directives set out in Appendix D. If Stephens is mistaken in this belief, then the Sun certainly does not explain how it is that the district court is qualified to analyze and apply "generally accepted newspaper industry accounting principles" in deciding the meaning of § 4.2 and on what basis the district court could verify 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." AA 243.

In sum, the Sun's declaratory relief claim seeks to displace the arbitrator's role altogether. At its core, this is a mere compensation dispute which may raise an issue of contract interpretation. Put another way, the meaning of § 4.2 is at best a side-show to the main event: the EBITDA

determination and the Sun's alleged damages. The district court's order should be reversed and the Sun should be compelled to arbitrate its claim for compensation.

III. CONCLUSION.

The order denying Stephens' Renewed Motion to Compel Arbitration should be reversed.

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
(702) 474-9400

Attorneys for Stephens Media LLC

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

(a) This brief has been prepared in a proportionally-spaced typeface using Microsoft Office Word 2007 in 14-point Palatino typeface.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 2(a)(7)(C), it is either:

(a) Proportionally spaced, has a typeface of 14 points or more and contains 4,134 words; or

(b) Does not exceed 15 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in

the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 4th day of November, 2015.

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
(702) 474-9400

Attorneys for Stephens Media LLC

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 REPLY BRIEF.** 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 4th day November, 2015.

By