

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEWS+MEDIA CAPITAL GROUP
LLC, a Delaware limited liability company;
and LAS VEGAS REVIEW-JOURNAL,
INC., a Delaware limited liability
company,

Appellants,

vs.

LAS VEGAS SUN, INC., a Nevada
corporation,

Respondent.

Supreme Court No. 80511

District Court Case No. A772591

Electronically Filed
Feb. 24, 2020 04:53 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth Department: 16
County: Clark Judge: Hon. Timothy C. Williams
District Ct. Case No.: A-18-772591-B

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Client(s): Las Vegas Sun, Inc.

4. Nature of disposition below (check all the apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/denial of declaratory relief | <input type="checkbox"/> Divorce decree |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| | <input checked="" type="checkbox"/> Other disposition (specify):
<u>Confirming Arbitration Award</u> |

5. Does this appeal raise issues concerning any of the following: No.

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court: List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

- Prior proceeding: *DR Partners v. Las Vegas Sun, Inc.*, Nevada Supreme Court, Case No. 68700

7. Pending and prior proceedings in other courts: List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

- **Prior proceeding:** *Las Vegas Sun, Inc. v. DR Partners*, Nevada Eighth Judicial District Court, Case No. A-15-715008-B (Stipulation and Order of Dismissal with Prejudice filed on December 23, 2016).
- **Pending proceeding:** *Las Vegas Sun, Inc. v. News+Media Capital Group LLC, et al.*, Nevada Eighth Judicial District Court, Case No. A-18-772591-B.

- **Pending proceeding:** *Las Vegas Sun, Inc. v. Adelson, et al.*, United States District Court, District of Nevada, Case No. 2:19-cv-01667-RFB-BNW.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Plaintiff Las Vegas Sun, Inc. (the “Sun”) publishes the Las Vegas Sun newspaper. Defendant Las Vegas Review-Journal, Inc. is owned by defendant News+Media Capital Group LLC (together, the “Review-Journal”) and publishes the Las Vegas Review-Journal newspaper. On June 10, 2005, the Sun and the Review-Journal’s predecessor executed a joint operating arrangement (the “JOA”). On April 10, 2018, the Sun sued the Review-Journal for declaratory relief, tortious breach of the JOA, and breach of the JOA, including allegations of improper accounting under the JOA. On November 21, 2018, the district court ordered to arbitration all claims and disputes, including contract interpretation, accounting, and other disputes, bearing on the amounts allegedly owed to the Sun under the JOA. All other claims remained in state court.

Following an eight-day arbitration, the Arbitrator issued a Final Award of Arbitrator dated July 2, 2019 (the “Award”). The Arbitrator ruled in favor of the Sun on the claim related to how editorial expenses are accounted for under the JOA and awarded damages to the Sun. The Arbitrator ruled in favor of the Sun on the interpretation of certain accounting provisions related to promotional expenses but did not award any damages to the Sun. The Arbitrator denied the Sun’s tortious breach of the implied covenant of good faith and fair dealing and denied both parties’ requests for attorneys’ fees.

On September 13, 2019, the Sun filed its Motion to Confirm Arbitration Award, in Part, and to Vacate or, Alternatively, Modify or Correct the Award, in Part (the “Sun’s Motion”). On September 18, 2019, the Review-Journal filed its Motion to Vacate Arbitration Award arguing the Arbitrator disregarded the JOA’s plan language and created a new accounting method that conflicts with the parties’ agreement and years of conduct under that agreement. On September 30, 2019, the Review-Journal filed its opposition to the Sun’s Motion along with a Conditional Countermotion to Confirm Arbitration Award, in Part, and to Vacate the Award, in Part. On December 4, 2019, the district court issued its six-page Minute Order resolving the parties’ motions, affirming the Award in its entirety, and directing the parties to prepare and submit a more detailed order containing findings of fact and conclusions of law for the district court’s review and signature. On January 28, 2020, the district court entered its Findings of Facts, Conclusions of Law, And Order Affirming the Arbitration Award (“Order”), with the Notice of Entry of Order being filed on January 28, 2020. Pursuant to NRS

38.247, the Review-Journal timely filed its Notice of Appeal of the Order on January 28, 2020.

9. Issues on appeal: State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The JOA sets forth how editorial and promotional expenses must be accounted for under the JOA. The Arbitrator disregarded the plain language of the JOA and adopted a new accounting method that conflicts with the parties' express contract and years of conduct under the contract.

This Court has repeatedly held that an arbitration award must be vacated if the Arbitrator ignores the express language of the parties' agreement. The issue on appeal is whether the trial court erroneously confirmed the Award even though the Arbitrator disregarded the plain language of the JOA accounting provisions.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

- None

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employer thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

■ N/A

☐ Yes

☐ No,

If not, explain:

12. Other issues. Does this appeal involve any of the following issues? No.

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first impression
- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decision
- ☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstances that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(9) because it originated in business court.

14. Trial. If this action proceeded to trial, how many days did the trial last? Certain of the Las Vegas Sun, Inc.'s claims were compelled to arbitration. Arbitration commenced on April 15, 2019, and lasted eight days.

Was it a bench or jury trial? Neither. Certain of the Sun's claims were arbitrated in 2019.

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment on order appealed from: January 28, 2020.

17. Date written notice of entry or order was served: January 28, 2020.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59):

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing: N/A

☐ NRCP 52(b) Date of filing: N/A

☐ NRCP 59 Date of filing: N/A

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See *AA Primo Builders v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion: N/A

(c) Date written notice of entry of order resolving tolling motion was served:
N/A

Was service by:

- ☐ Delivery
- ☐ Mail/electronic/fax

19. Date notice of appeal filed:

If more than one party had appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

- News+Media Capital Group LLC and Las Vegas Review-Journal, Inc. filed their Notice of Appeal on January 28, 2020.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) other:

NRAP (4)(a)(1).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| ■ Other (specify): NRS 38.247 | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRS 38.247, Appeals, states that an appeal may be taken from “[a]n order confirming or denying confirmation of an [arbitration] award.”

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

- Appellants:

Defendant News+Media Capital Group LLC and
Defendant/Counterclaimant Las Vegas Review-Journal, Inc.

- Respondent:

Plaintiff/Counter-defendant Las Vegas Sun, Inc.

(b) If the parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other: N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims and the date of formal disposition of each claim.

(a) Plaintiff's Claims: Plaintiff's First Amended Complaint alleges the following nine claims for relief: (i) judicial declaration of the parties' contractual rights, (ii) breach of contractual arbitration clause, (iii) breach of contract re the accounting of editorial expenses, (iv) breach of contract re promotional activities and expenses, (v) breach of contract re the format of the front page of the newspaper, (vi) breach of the contractual audit provisions, (vii) breach of contract re failure to promote the Sun newspaper, (viii) breach of contract re the electronic replica edition of the newspaper, and (ix) tortious breach of the implied covenant of good faith and fair dealing. On July 2, 2019, the Arbitrator ruled in favor of the Sun on the claims related to how editorial expenses are accounted for under the JOA and awarded damages to the Sun. The Arbitrator ruled in favor of the Sun on the interpretation of certain accounting provisions related to promotional expenses but did not award any damages. The Arbitrator denied the Sun's claim of tortious breach related to the Review-Journal's accounting. The Arbitrator also denied the Sun's request for attorneys' fees. The Sun's claims that do not relate to amounts owed to the Sun under the JOA remain pending before the state court. The state court action has been stayed pending resolution of the Sun's federal lawsuit. The Arbitrator's rulings were confirmed by the state court on January 28, 2020 and judgment was entered on February 10, 2020.

- (b) Defendants' Counterclaim: Defendants' Counterclaim alleges that the Sun breached the parties' contract and the implied covenant of good faith and fair dealing by (i) failing to take all actions necessary to effectuate and promote the success of the JOA; (ii) failing to meet the newspaper quality standards set forth in the contract; and (iii) intentionally undermining and harming the JOA by withholding valuable content and diverting readers to the Sun's separately owned website. The Review-Journal also seeks a judicial declaration of its right to terminate the JOA due to the Sun's material breaches and frustration of the JOA's purpose. The state action has been stayed pending resolution of the Sun's federal lawsuit.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

- ☐ Yes
☒ No

25. If you answered "No" to question 24, complete the following:

- (a) Specify the claims remaining pending below: The Sun's claims that do not relate to amounts owed to the Sun under the JOA remain pending before the state court (i.e., breach of contract re the format of the front page of the newspaper; breach of contract re failure to promote the Sun newspaper; breach of the arbitration clause; and breach of contract re the electronic replica edition of the newspaper). Additionally, the Review-Journal's counterclaims remain pending below (i.e., that the Sun materially breached the JOA and seeking a judicial declaration that the Review-Journal may terminate the JOA as a result of the Sun's material breaches and frustration of purpose).
- (b) Specify the parties remaining below: Las Vegas Sun, Inc., News+Media Capital Group LLC, and Las Vegas Review-Journal, Inc.
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?
- ☐ Yes
☒ No
- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

- ☐ Yes
☒ No

26. If you answered “No” to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

NRS 38.247, Appeals, states that an appeal may be taken from “[a]n order confirming or denying confirmation of an [arbitration] award.”

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, crossclaims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim counterclaims, crossclaims, and/or third-party claims asserted in the action
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this Docketing Statement, that the information provided in this Docketing Statement is true and complete to the best of my knowledge, information and belief, and that I have attached all require documents to this Docketing Statement.

News+Media Capital Group LLC

Las Vegas Review-Journal, Inc.

Name of Appellants

J. Randall Jones

Name of counsel of record

February 24, 2020

Date

/s/ J. Randall Jones

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of February, 2020, I served a copy of this completed Docketing Statement upon all counsel of record via electronic service:

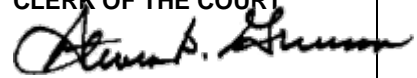
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I further hereby certify that on the 24th day of February, 2020, I served a copy of this completed Docketing Statement via U.S. Mail, postage prepaid, to the following:

Carolyn Worrell
4236 Furgerson Ranch Road
Carson City, Nevada 89701
Settlement Judge

/s/ Pamela Y. Montgomery
An employee of Kemp Jones, LLP



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DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS SUN, INC., a Nevada
corporation,

Plaintiff,

vs.

NEWS+MEDIA CAPITAL GROUP LLC, a
Delaware limited liability company; LAS
VEGAS REVIEW-JOURNAL, INC., a
Delaware limited liability company; and
DOES, I-X, inclusive,

Defendants.

CASE NO.: A-18-772591-B

DEPT.: XVI

FIRST AMENDED COMPLAINT

**(EXEMPT FROM COURT ANNEXED
ARBITRATION PROGRAM:
EQUITABLE RELIEF REQUESTED)**

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COMES NOW Plaintiff Las Vegas Sun, Inc. (the “Sun”), and complains against Defendants as follows:

INTRODUCTION

1. This Complaint stems from Defendants’ unilateral, unbridled, and unabashed actions that have intentionally deprived the Sun of the fundamental benefits of its bargain under the parties’ joint operating agreement. Through their superior position over the Sun, Defendants have systematically (1) frustrated—and now completely eviscerated—the most essential method by which the Sun funds its newspaper editorial operations; (2) improperly diminished the vitality and visibility of the Sun’s brand and voice in the market; (3) impaired the Sun’s ability to compete for the public’s attention; and (4) denied the Sun access to its only contracted-for oversight mechanism that would reveal whether Defendants were abiding by the parties’ agreement, *i.e.*, an audit. Defendants’ multi-pronged attack to cripple and crush the Sun’s financial stability and brand has been advanced with a single goal: to gain monopolistic dominion over Las Vegas as the only news and political voice speaking to Southern Nevadans. Defendants desperately hope that at the end of this unlawful scheme the Sun will be bled into complete demise whereby Defendants would then find themselves free to prosecute whatever agenda its owners might contemplate without any counterbalancing news organization of a similar scale. Defendants’ actions are unlawful, conducted in bad faith, and constitute breaches of the parties’ agreement and Defendants’ implied duties of good faith and fair dealing.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action under Article 6, section 6, of the Nevada Constitution.

3. Upon information and belief, a member or members of Defendant News+Media Capital Group LLC (“News+Media”) are Nevada citizens, and the center of Defendant Las Vegas Review-Journal, Inc.’s (the “Review-Journal”), direction, control, and coordination, is in the State of Nevada.

///

1 4. This Court has personal jurisdiction over Defendants, and each of them, pursuant
2 to NRS 14.065 because the acts and omissions complained of herein were committed, in part,
3 within the State of Nevada, County of Clark, and, thus, Defendants, and each of them, had and
4 continue to have sufficient minimum contacts with this forum such that the exercise of personal
5 jurisdiction over them will not offend traditional notions of fair play and substantial justice.

6 5. Venue is proper in the Eighth Judicial District Court, Clark County, Nevada,
7 under NRS 13.010, because all of the actions alleged herein were undertaken in Clark County,
8 Nevada, and affect property located in Clark County, Nevada, and NRS 13.040.

9 **THE PARTIES**

10 6. The Sun is a Nevada corporation that is a member of Greenspun Media Group,
11 LLC, which publishes various newspapers and magazines, including the Las Vegas Sun in
12 Clark County, Nevada.

13 7. Defendant News+Media is a Delaware limited liability company doing business
14 in the State of Nevada, which owns a separate newspaper in Clark County, Nevada, the Las
15 Vegas Review Journal.

16 8. Defendant Review-Journal is a Delaware corporation doing business in the State
17 of Nevada, which, upon information and belief, is a wholly-owned subsidiary of News+Media
18 and operates and publishes the Las Vegas Review Journal.

19 9. Plaintiff alleges that Defendants named herein as Does I through X are
20 individuals, corporations, limited-liability companies, partnerships, associations, or other
21 persons or entities who are responsible in some manner or capacity for the acts alleged herein,
22 but whose names are unknown to Plaintiff at this time. Plaintiff will seek leave to amend this
23 Complaint to include the names of Does I through X when the identities of such defendants
24 become known to Plaintiff.

25 ///

26 ///

27 ///

GENERAL ALLEGATIONS

I. THE 1989 JOINT OPERATING AGREEMENT

10. The Sun and News+Media each own one of the two daily morning newspapers of general circulation in Las Vegas, Nevada. The Sun owns, operates, and publishes the Las Vegas Sun (also referred to herein as, the “Sun”). News+Media, through the Review-Journal, operates and publishes the Las Vegas Review-Journal (also referred to herein as, the “Review-Journal”).

11. The Sun has been a source of news for Nevadans since 1950. By the late 1980s, the Sun had been operating at a substantial loss and was in probable danger of financial failure.

12. It was the Sun and the Review-Journal’s prior owners, Donrey of Nevada, Inc.’s, firm belief that the continued publication of at least two newspapers of general circulation, editorially and reportorially separate and independent, was of paramount importance to the citizens of Las Vegas and its environs.

13. As a result, in June 1989, the Sun and Donrey of Nevada, Inc., entered into a joint operating agreement, the 1989 JOA. *See generally* Ex. 1. These parties entered into the 1989 JOA in accordance with the Newspaper Preservation Act of 1970, 15 U.S.C. §§ 1801-04 (the “Act”). *See id.* at 3.

14. The Act authorizes the formation of joint operating agreements among competing newspaper operations within the same market area: it exempts newspapers that choose to merge operations from the otherwise applicable antitrust laws. At the same time, the Act makes clear that merging newspapers must remain “editorially and reportorially independent.”

15. Under the 1989 JOA, the Sun and the then-owners of the Review-Journal agreed to start producing and distributing both newspapers in the form of a joint operation using a single platform (the Review-Journal’s plant and equipment). *See generally* Ex. 1. The parties agreed that the Review-Journal, among other things, would handle all print advertising and circulation functions for both print newspapers. *Id.*

1 16. Pursuant to the 1989 JOA, together the parties operated separate daily news
2 publications: the Sun and Review-Journal, to which the agreement referred as the
3 “Newspapers.” The 1989 JOA allowed the Newspapers to maintain their editorial
4 independence while, at the same time, realizing the savings of joint production, distribution,
5 advertising, and other non-editorial functions.

6 17. Because the Review-Journal was now publishing and producing the Sun,
7 including printing, selling, and distributing the Newspapers, the Review-Journal agreed not to
8 “change the format of the Sun to a size or format different from that of the Review-Journal”
9 without the Sun’s approval. *Id.* at 5.1 & 5.1.1.

10 18. To facilitate the management and administration of this joint operation, the 1989
11 JOA obligated Defendants’ predecessor to form a separate business corporation, the “Agency,”
12 which was to own or lease all assets related to the operation. *Id.* at Art. 2. The Agency was
13 supposed to assume the duties and obligations of the joint operation, including the payment of
14 the joint expenses and collection of the joint revenues. *Id.* at Art. 2 & Art. 6.

15 19. The 1989 JOA defined such joint expenses and joint revenues as “Agency
16 Expense” and “Agency Revenues,” respectively. *Id.* at App’x B & C.

17 20. One such Agency Expense involved the parties’ news and editorial costs. The
18 1989 version of Section 4.2 provided:

19 4.2 News and Editorial Allocations. The Review-Journal and the
20 Sun shall establish, in accordance with the provisions of Appendix
21 A attached hereto and made a part hereof by reference, the
22 amounts to be allocated to Agency Expense, as hereinafter defined,
for each for news and editorial expense.

23 *Id.* § 4.2.

24 21. Under this version of Section 4.2, both parties’ news and editorial allocations
25 were approved deductions from the parties’ joint earnings as an Agency Expense. *See id.*

26 ///

27 ///

22. In the event that either the Sun's or the Review-Journal's editorial costs exceeded their respective allocated amounts, Section 5.2 of the 1989 JOA required that such additional expenses be borne by the newspaper that incurred them:

5.2 News and Editorial Autonomy. . . . 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.

Ex. 1.

23. The 1989 JOA further provided that the Sun, as the publisher of the Sun, would receive compensation from the joint operation via two revenue streams:

A. compensation for the Sun's news and editorial expenses was calculated as 65 percent of the Review-Journal's budgeted news and editorial expenses, on the condition that such compensation was at least \$2.5 million annually (the "Sun's editorial allocation"); and

B. a profit-sharing arrangement allocating to the Sun 10 percent of the Agency Operating Profit, calculated as the excess of Agency Revenues over Agency Expense (the "10% profits payment").

Id. at App'x A & D.

24. An allocation structure similar to the one applied to the parties' editorial costs was also applied to the parties' promotional activities and expenses. *See id.* § 5.1. Under the 1989 JOA, the Review-Journal would establish a budget for promotional activities each fiscal year that was allocated between the Review-Journal and the Sun, with the Sun receiving 40 percent of the allocated budget. *Id.* § 5.1.4 & App'x A.3.

25. Also similar to the editorial cost provision of Section 4.2, Section 5.1.4 provided that any promotional expenses incurred by either party in excess of the promotional allocation was disallowed as an Agency Expense. *Id.* § 5.1.4 ("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."); *see also id.* at App'x B.1.1 (defining

1 “Agency Expense” as “[t]he amounts allocated to Review-Journal and Sun . . . for promotional
2 expenses as set forth in Appendix A”).

3 26. Any dispute arising under the 1989 JOA that could not be informally resolved by
4 the parties was subject to litigation, as the 1989 JOA did not provide for any alternative dispute
5 resolution procedure.

6 **II. ONGOING DISPUTES CULMINATE INTO A SETTLEMENT**

7 27. By 2002, the parties under the 1989 JOA had persistent disputes related to the
8 Sun’s compensation.

9 28. The Sun believed that Donrey of Nevada, Inc., and the successor-owner of the
10 Review-Journal, DR Partners, had been hiding and reclassifying valid editorial costs to avoid
11 paying the Sun its full 65 percent editorial allocation.

12 29. As a result of this ongoing dispute, DR Partners and the Sun entered into a
13 settlement agreement whereby DR Partners agreed to pay the Sun for amounts that included
14 certain editorial, profit, and other adjustments due to the Sun. *See generally* Ex. 2 § 10.13.

15 **III. THE 2005 JOA**

16 30. In 2004, the Sun and DR Partners began renegotiating the 1989 JOA. The
17 renegotiation was desired by both parties in large part to eliminate the friction related to the
18 constant editorial cost dispute that was once addressed in the 2002 settlement.

19 31. DR Partners, through its General Partner Stephens Group, Inc., and the Sun
20 eventually executed an Amended and Restated Agreement, dated June 10, 2005 (the “2005
21 JOA”). *See generally* Ex. 2.

22 32. Like the 1989 JOA, the 2005 JOA was entered into pursuant to the Act. Ex. 2 §
23 1.1. DR Partners and the Sun explicitly acknowledged the public interest in remaining
24 editorially independent in the 2005 JOA as required by the Act. *See, e.g., id.* § 10.8 (“Because
25 of the public interest in maintaining editorially and reportorially independent and competitive
26 newspapers in Las Vegas” specific performance is available to enforce the 2005 JOA) & § 5.4
27
28

1 (“The Sun shall provide and pay for its own offices and editorial department and
2 management.”).

3 33. The 2005 JOA was to remain effective for an initial period ending on December
4 31st of the 50th year from July 1, 1990, *i.e.*, December 31, 2040. *Id.* § 1.2.

5 34. As a result of the new agreement, the parties combined the two newspapers into
6 a single media product that contained and separately branded the Review-Journal and the Sun.
7 *See generally id.* at Art. 5. In doing so, the parties removed the Agency concept from the 2005
8 JOA.

9 **A. Editorial Cost Obligations**

10 35. Unlike the previous version of Section 4.2 (which referenced an allocation for
11 news and editorial costs based on a set 65 percent formula, *see* Ex. 1 § 4.2 & App’x A), the
12 parties changed Section 4.2 to read as follows:

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

16 Ex. 2 § 4.2.

17 36. The parties then modified the original language of Section 5.2 in line with the
18 new Section 4.2 to make all editorial costs an individual expense of the newspaper that incurred
19 them. *See id.* § 5.2. The old statement that “[a]ll news and editorial expense of the Sun or the
20 Review-Journal in excess of the amounts set forth in Appendix A shall be borne by the
21 respective newspaper” was deleted from Section 5.2 entirely. *Compare id. with* Ex. 1 § 5.2.

22 37. Every other reference to the parties’ previous method of sharing editorial costs,
23 and reference to those costs as a joint expense before the Agency Operating Profit was
24 calculated, was also deleted from the 2005 JOA. *Compare generally* Ex. 2 *with* Ex. 1. These
25 revisions caused the remainder of the 2005 JOA to conform with the new Section 4.2, *i.e.*, that
26 each party was to bear its own costs.

27 38. The Sun’s compensation scheme was also restructured to remove editorial costs
28 from its payment calculation.

39. The Sun and DR Partners replaced the Sun's two-part compensation scheme with "Annual Profits Payments" to the Sun. Ex. 2 at App'x D.

40. The new compensation arrangement required the Review-Journal to pay the Sun a \$12 million Annual Profits Payment, payable monthly, in the first fiscal year (starting on April 1, 2005). *Id.*

41. The amount of subsequent Annual Profits Payments was set to fluctuate in direct correlation with the amount of the joint EBITDA. *Id.*

42. Higher operating expenses under the new compensation arrangement would therefore work to reduce the joint EBITDA and, consequently, lead to lower Annual Profits Payments to the Sun.

43. To effectuate a direct mandate of Section 4.2, Appendix D of the 2005 JOA explicitly removed both the Sun's and the Review-Journal's editorial costs as an expense category chargeable against the joint EBITDA for the fiscal year ending March 31, 2005, *i.e.*, the "base year." *See id.* at App'x D.

44. This was done to ensure that the calculation of the base year EBITDA was consistent with calculations of future years' EBITDAs.

B. Promotional Obligations

45. The 2005 JOA further deviated from the 1989 JOA regarding the parties' responsibilities to promote the Newspapers and their promotional allocations.

46. Under the 1989 JOA, the parties promoted their respective newspapers with their promotional allocations, with the Sun receiving 40 percent of the Review-Journal's established promotional budget, and each party to bear its own expenses incurred in excess of that allocation. *See* Ex. 1 § 5.1 & 5.1.4. The promotional allocation was eliminated in the 2005 JOA, and the Review-Journal was charged with the responsibility of promoting both Newspapers. *See* Ex. 2 § 5.1.4.

47. Now, the Review-Journal would be responsible for marketing and promoting the Sun (using commercially reasonable efforts to maximize the circulation of the Newspapers),

1 including equal mention to the Sun in the Review-Journal's promotional activities to ensure the
2 Sun's brand remained as vibrant as the Review-Journal's once the Review-Journal assumed
3 responsibility for all marketing.

4 48. The 2005 JOA provides, in part, that the RJ is required to "sell all advertising
5 for, promote and circulate" both newspapers. *Id.* § 5.1.

6 49. The 2005 JOA specified how the parties were to charge promotional expenses
7 incurred for the Review-Journal's independent promotional activities:

8 5.1.4 Promotional Activities. Review-Journal shall use
9 commercially reasonable efforts to promote the Newspapers. Any
10 promotion of the Review-Journal as an advertising medium or to
11 advance circulation shall include mention of equal prominence for
12 the Sun. Either the Review-Journal or Sun may undertake
13 additional promotional activities for their respective newspaper at
14 their own expense. For all promotional activities for the
15 Newspapers paid for by the Review-Journal, the Review-Journal
16 shall be responsible for all promotional copy preparation and
17 placement, provided however, that the Sun shall have the right to
18 approve all promotional copy for the Sun that does not generically
19 and concurrently promote both Newspapers.

20 *Id.* § 5.1.4.

21 50. Thus, if the Review-Journal included the mention of equal prominence for the
22 Sun, the expense for that promotional activity was chargeable against the joint operation.

23 51. Virtually all promotion for a newspaper is either to promote it as an advertising
24 medium or to advance circulation.

25 52. However, if the Review-Journal undertook to promote its newspaper (or its non-
26 JOA entities) individually, the Review-Journal's expenses associated with those promotional
27 activities could not be charged against the joint operation. The same is true if the Sun
28 undertook to promote its own newspaper.

53. In light of this new joint operation platform and in line with Defendants' new
obligations, the parties included the following provision:

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1 5.3 Performance and Cooperation. Sun and Review Journal agree
2 to take all corporate action necessary to carry out and effectuate
3 the intent, purposes and provisions of this Restated Agreement,
4 and to cooperate with the other party in every reasonable way that
5 will promote successful and lawful operation under this Restated
6 Agreement for both parties.

7 *Id.*

8 **C. Front Page Formatting Specifications**

9 54. The Sun and DR Partners' agreement to combine the separate Newspapers into a
10 single-media product naturally resulted in the Review-Journal's continued obligation to produce
11 and publish the Sun.

12 55. With the new, single-media product, however, the 2005 JOA contained strict and
13 mutually-agreed upon formatting specifications for the Sun's pages, including "the number,
14 placement, and characteristics," and how the Sun was to appear on the front page of the
15 Review-Journal. Ex. 2 § 5.1, App'x A.2(d), App'x B. The Review-Journal promised to feature
16 the Sun's masthead according to the detailed specifications in Appendix A.2(d). *Id.* App'x A &
17 App'x B.

18 56. The front page of the combined publication was required to appear, in pertinent
19 part, as follows:

20 The Monday-Sunday editions of the Review Journal shall include a
21 noticeable mention of the Sun, on the front page of the Review-
22 Journal. The noticeable mention will appear in a box above the
23 Review-Journal's masthead (the "Sun Box") and shall be in the
24 form shown on Appendix B. The Sun Box shall not be smaller in
25 proportion than shown in Appendix B. The Sun Box shall also
26 include the Sun's masthead, and any emblem that is part of the
27 Sun's masthead. The Sun Box shall include a promotion of a story
28 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.

1 *Id.*, App'x A at A.2(d).

2 57. Appendix B provided sample illustrations of how the Sun was to appear on the
3 front page.

4 **D. Electronic Replica Editions**

5 58. The 2005 JOA also includes a requirement that the RJ include the Sun in any
6 electronic replica edition:

7 Review-Journal shall have the exclusive right and the obligation to distribute the
8 Sun through electronic replica technology (i.e. technology customarily used by
9 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

10 *Id.* § 10.6.

11 **E. The Sun's Entitlement to an Audit, Arbitration, and Specific Performance**

12 59. The parties also incorporated audit and arbitration rights exercisable only by the
13 Sun in the 2005 JOA. *See* Ex. 2, App'x D at 19-20.

14 60. The Sun's audit right was a necessary provision now that Defendants were in
15 control of all aspects of non-editorial management: an audit was the Sun's sole mechanism by
16 which it could ensure that that Defendants were complying with the 2005 JOA.

17 61. Section 10.8 was included as an additional remedy, and expressly allowed for
18 specific performance of any default in performance of any material obligation under the 2005
19 JOA. *Id.*

20 62. Under the 1989 JOA, either party was allowed to inspect the books and records
21 of the other party within certain limitations, *see* Ex. 1 § 10.3, and there was no alternative
22 dispute resolution procedure provided for.

23 63. The parties changed these elements in the 2005 JOA and the parties included an
24 audit and arbitration provision in favor of the Sun.

25 64. The 2005 JOA's audit provision reads, in pertinent part:

26 Sun shall have the right, exercisable not more than once every
27 twelve months and only after providing written notification no less
28 than thirty days prior thereto, to appoint a[] 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.

Id.

65. The Sun's right to arbitrate any disputes follows that provision, providing:

If as a result of such an audit, there is a dispute between the 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 account 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 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.

Id. at 20.

66. Keeping in line with the purpose of the Act, the parties included an express provision acknowledging the availability of specific performance. Pursuant to Section 10.8 of the 2005 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, [the Sun] shall have the right to seek specific performance of the material provisions of the [2005 JOA]."

IV. THE SUN AND DR PARTNERS LITIGATE; DEFENDANTS TAKE OVER THE REVIEW-JOURNAL

67. In 2014, the Sun discovered that DR Partners and its then-successor-in-interest Stephens Media LLC ("Stephens Media") had reduced the base year EBITDA with the Review-Journal's individual news and editorial costs, contrary to the express language of Section 4.2 and Appendix D of the 2005 JOA.

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68. The Sun made this discovery once Mr. Brian Greenspun obtained sole ownership of the Sun.

69. Although the Sun immediately notified Stephens Media of the issue, Stephens Media continued to reduce all subsequent EBITDAs by the amounts of the Review-Journal's individual editorial costs.

70. In 2015, the Sun initiated a lawsuit against DR Partners and Stephens Media, styled as *Las Vegas Sun, Inc. v. DR Partners d/b/a Stephens Media Group*, Case No. A-15-715008-B (Nev. Dist. Ct., March 10, 2015). These proceedings were centered on the interpretation of Section 4.2 and Appendix D of the 2005 JOA, and DR Partners' and Stephens Media LLC's illegal editorial costs accounting practice.

71. Stephens Media sought to compel the action to arbitration pursuant to the arbitration provision of Appendix D of the 2005 JOA.

72. The issue went before the Nevada Supreme Court on appeal in August 2015. *See Las Vegas Sun, Inc. v. DR Partners d/b/a Stephens Media Group*, Appeal No. 68700.

73. The Nevada Supreme Court compelled the action to arbitration. *Las Vegas Sun, Inc. v. DR Partners d/b/a Stephens Media Group*, Appeal No. 68700, Order of Reversal and Remand (Nev. May 19, 2016).

74. In so ordering, the Nevada Supreme Court rejected a narrow reading of the arbitration provision, and broadly construed the provision: "Appendix D of the JOA refers to the payments that are owned to the Sun by the RJ under the JOA, including how those payments are to be calculated, how the Sun can audit the books and records used to calculate those payments, and how disputes regarding the calculation of those payments may be resolved." *Id.* at 3.

75. The Nevada Supreme Court reasoned that "[b]y disputing whether each newspaper should bear its own editorial costs, the Sun is essentially disputing the amounts owed to it under the JOA and therefore the dispute falls within the scope of the JOA's arbitration provision." *Id.* at 6.

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85. Defendants have known that that they should have changed and still should change their accounting practices as a result.

86. Defendants, however, (like their predecessors) refused to do so.

87. Defendants have violated the 2005 JOA in several respects.

V. DEFENDANTS HAVE FAILED TO BEAR THE REVIEW-JOURNAL'S EDITORIAL COST BURDEN

88. The previous controversy between the Sun and Defendants' predecessors concerning the meaning of and obligations imposed by the 2005 JOA and who must carry the Review-Journal's editorial cost burden is presently ongoing between the Sun and Defendants.

89. By the fiscal year ending March 31, 2017, Defendants—for the first time in the history of the joint operation—recorded a negative EBITDA in the amount of negative \$2.25 million.

90. This constitutes a negative 122.43% EBITDA change from the prior year.

91. Defendants had increased the Review-Journal's editorial costs from \$6.78 million in 2016 to \$8.88 million in 2017.

92. The Review-Journal's editorial costs in the amount of \$8.88 million in 2017 is close to the amount of editorial costs that the Review-Journal maintained in 2005, when the joint EBITDA equaled \$121.56 million.

93. Upon information and belief, when News+Media purchased the Review-Journal, its immediate successor-in-interest remained with the Review-Journal as its manager for a short period of time in 2015 and early 2016.

94. Upon information and belief, under this management, the joint operation was projected to expect a financially strong close for the fiscal year end 2016. Consequently, the Sun was projected to receive an increase of more than 18 percent of its Annual Profits Payments for 2017.

95. Thereafter, the then-manager's financial forecast for the joint operation continued to point toward even stronger growth for the year 2016-2017, projecting profits of the joint operation in the amount of \$20 million.

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104. When the Sun challenged the Review-Journal to produce any examples of promotional activities that mention the Sun in equal prominence, Defendants have conceded that they cannot do so.

105. Defendants have not promoted the Sun.

106. Defendants have not used commercially reasonable efforts to promote the Newspapers.

107. Defendants have not promoted the Sun in “[a]ny [of the Review-Journal’s] promotion of the Review-Journal as an advertising medium or to promote the Newspapers.”

108. Furthermore, all promotional activity for the RJ — completely charged against the JOA activities — includes promotion for the reviewjournal.com, the revenues of which do not accrue to the benefit of the JOA.

109. While Defendants may undertake to promote its newspaper individually the Review-Journal’s expenses associated with those promotional activities may not be charged against the joint operation.

110. Defendants have admitted to the Sun that they have not included the Sun in their promotional activities for the Review-Journal.

111. Yet, upon information and belief, Defendants have failed to properly account for those expenses under the 2005 JOA and Section 5.1.4.

112. Defendants’ improper charges for the Review-Journal’s unilateral promotional activities, like the Review-Journal’s editorial costs, reduces the joint EBITDA, and therefore the Sun’s Annual Profits Payments.

113. Defendants’ failures to (1) promote the Sun under Section 5.1, (2) promote the Sun with equal prominence under Section 5.1.4, and (3) to “use commercially reasonable efforts to promote the Newspapers” and improper accounting practices related to the Review-Journal’s unilateral promotional activities under Section 5.1.4, specifically contravenes Defendants’ obligations under Section 5.1.3 of the 2005 JOA. That is, that Defendants would “take all corporate action necessary to carry out and effectuate the intent, purposes and provisions of this [2005 JOA], and to cooperate with the other party in every reasonable way that will promote successful and lawful operation under this [2005 JOA] for both parties.”

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114. As a result of Defendants' failures related to the Review-Journal's promotional activities, the Sun has sustained damages.

115. Defendants' continue to not use commercially reasonable efforts to promote the Sun and continue to improperly charge the Review-Journal's unilateral promotional activities against the joint operation.

VII. DEFENDANTS CHANGED THE NEWSPAPERS' FRONT PAGE SPECIFICATIONS WITHOUT APPROVAL

116. In 2017, Defendants, through the Review-Journal, informed the Sun that, after 12 years of publishing the Newspapers in accordance with the specifications of Appendices A and B of the 2005 JOA, they were unilaterally changing the format of the front page of the combined publication.

117. Two days later, the Review-Journal published the Newspapers with a new front page design that has eliminated the Sun Box entirely and deviated from the Sun's specifications, including reducing the font size of the Sun's logo.

118. The Sun has suffered damage to its brand as a result of the Review-Journal's unauthorized design.

119. The Review-Journal has continued to publish the unapproved front page design over the Sun's objection.

VIII. DEFENDANTS OMITTED THE SUN FROM THE ELECTRONIC REPLICA EDITION

120. Section 10.6 of the 2005 JOA requires that the RJ include the Sun in all electronic replica editions it publishes.

121. On or about January 25, 2018, the RJ stopped including the Sun in the electronic replica edition of the newspapers.

122. On or about May 3, 2019, the RJ's publisher and editor, Keith Moyer, telephoned the COO for the Sun, Robert Cauthorn, and stated that he had looked into the

1 removal and stated that it was “kind of a unilateral decision by Craig Moon. He said, ‘Just take
2 it out.’”

3 **IX. DEFENDANTS HAVE STONEWALLED THE SUN’S AUDIT REQUESTS FOR**
4 **OVER A YEAR**

5 123. Amidst the Sun’s pending litigation with DR Partners and Stephens Media, on
6 May 12, 2016, the Sun (through its appointed law firm representative) provided Defendants
7 with its 30-day notice of intent to examine and audit the Review-Journal’s books and records
8 (and other publications whose earnings were included in EBITDA) to verify the Review-
9 Journal’s Annual Profit Payment calculation, and ensure that Defendants have not illegally
10 redirected revenues from or charged expenses to the joint operation for the Review-Journal’s
11 non-JOA digital operations, including reviewjournal.com.

12 124. The Sun’s audit request was made pursuant to and in accordance with Appendix
13 D of the 2005 JOA.

14 125. The Sun forwarded its initial list of documentation requested after the notice
15 period expired.

16 126. Defendants rejected the Sun’s request in late July 2016.

17 127. Prior to and after the November 2016 settlement with Stephens Media, the Sun
18 attempted to informally negotiate with Defendants to obtain documents from the Review-
19 Journal, party-to-party.

20 128. On September 5, 2017, the Sun renewed its formal audit request, expressly
21 appointing its chosen law firm auditor to examine and audit the books and records of the
22 Review-Journal and related publications pursuant to Appendix D of the 2005 JOA.

23 129. One month later, the Review-Journal rejected the request on the grounds that it
24 “far exceed[ed] the limited audit provisions” of the 2005 JOA, but also stated that the Review-
25 Journal intended to gather relevant, albeit very limited, information for production in due
26 course.

27 ///

1 130. Next, on November 16, 2017, the Review-Journal disputed the Sun's audit
2 request as irrelevant based on the November 2016 settlement with Stephens Media, despite the
3 fact that the Sun's request affected the payments due to the Sun under Defendants' ownership
4 and operation of the Review-Journal.

5 131. But, once again, by November 28, 2017, the Review-Journal had agreed to
6 produce certain categories of documents initially requested by the Sun on September 5, 2017.

7 132. The Sun's representatives met with the Review-Journal's leadership to explain
8 the rationale and precedent behind the Sun's requests, in an effort to participate in the audit in
9 good faith.

10 133. After further discussion between counsel, on December 21, 2017, the Review-
11 Journal agreed to produce additional categories of documents the Sun requested on September
12 5, 2017, including editorial cost information and general financial statements.

13 134. The Review-Journal represented that it anticipated production would occur
14 within the first two weeks of January 2018.

15 135. That promised production never happened.

16 136. On January 15, 2018, the Sun warned the Review-Journal that this audit dispute
17 would be included in the Sun's impending arbitration demand without immediate compliance
18 by Defendants. Only then did the Review-Journal agree to open for inspection nearly all of the
19 documents the Sun requested on September 5, 2017—with one exception to the Review-
20 Journal's digital operations, including those related to reviewjournal.com—commencing the
21 audit on January 23, 2018.

22 137. Although Defendants have sought to prevent a reasonable review of the Review-
23 Journal's books and records regarding the Review-Journal's digital operations, it cannot be
24 disputed that the Review-Journal has inextricably intertwined its digital promotion, sales,
25 accounting, management, and billing with the print publication. All of the expenses related to
26 these items have been improperly charged against the joint operation. Furthermore, the
27
28

1 Review-Journal offers bundled print and digital products, yet Defendants have refused to allow
2 the relative revenue allocations to be audited.

3 138. Despite the parties' dispute as to the Review-Journal's digital operations, the
4 Sun agreed to commence the audit on the date that the Review-Journal proposed to open the
5 stipulated information for inspection.

6 139. However, on or about January 24, 2018, the Review-Journal then objected to the
7 Sun's chosen representative law firm.

8 140. As of this filing, Defendants have not produced any documents or opened for
9 inspection and examination the Review-Journal's books and records.

10 **X. THE SUN INITIATES ARBITRATION OF THESE DISPUTES AND**
11 **DEFENDANTS CHALLENGE AAA JURISDICTION**

12 141. On February 12, 2018, the Sun filed its Demand for Arbitration and Arbitration
13 Statement in AAA. *See Las Vegas Sun, Inc. v. News+Media Capital Group LLC, et al.*, AAA
14 Case No. 01-18-0000-7567.

15 142. AAA confirmed receipt of the Sun's arbitration demand, and scheduled
16 Defendants' answering statement deadline for February 28, 2018, along with the parties'
17 Checklists for Conflicts.

18 143. The parties conducted the administrative call with AAA on February 23, 2018.

19 144. During the call, the parties discussed and agreed that the matter would be
20 overseen by a single arbitrator pursuant to Appendix D of the 2005 JOA, with the parties'
21 agreement as to how the single-arbitrator selection process would proceed. The parties also
22 agreed to the timing of the case (and agreed that the arbitrator must render a decision within 60
23 days from appointment), and discovery issues.

24 145. During that call, Defendants sought an extension to file their answering
25 statement. They were granted an extension to March 21, 2018.

26 146. On March 12, 2018, AAA provided the parties with the arbitrator selection list.
27 The parties were required to submit their arbitrator selections no later than March 28, 2018.
28

151. Plaintiff has been forced to initiate the instant action as a result.

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160. As a result of Defendant's wrongful and unlawful acts, Plaintiff has been forced to obtain the services of counsel to prosecute this action and are entitled to an award of attorneys' fees and costs incurred herein pursuant to NRS 18.010.

163. The arbitration provision contained in Appendix D of the 2005 JOA provides that in the event of a dispute between the Sun and the Review-Journal as to the amounts owed to Sun, which are not resolved within 30 days, “arbitration shall be conducted” pursuant to the

AAA rules of arbitration, “including the rules for the selection of a single arbitrator if Sun and Review-Journal are not able to agree upon an arbitrator.”

164. The Nevada Supreme Court has already interpreted the 2005 JOA’s arbitration provision and held that any dispute relating to amounts owed to the Sun are arbitrable.

165. Despite substantially participating in the arbitration process initially, Defendants have unnecessarily delayed the proceedings in bad faith and have now breached the 2005 JOA by challenging AAA’s jurisdiction over these disputes, and demanding that the case be closed.

166. Plaintiff has performed under the 2005 JOA.

167. As a direct and proximate result of Defendants’ breaches, Plaintiff has suffered damages in excess of \$15,000.

168. In addition, Defendants’ breaches continue.

169. The editorial costs provisions included in the 2005 JOA are definite and certain.

170. The remedy at law is inadequate, and Plaintiff has tendered performance under the 2005 JOA.

171. Defendants’ refusal to arbitrate these disputes pursuant to the 2005 JOA is a violation of a material obligation contained in the parties’ agreement. Because of the undisputed 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 of Defendants’ obligation to arbitrate these disputes, Plaintiff has the right, under Section 10.8 of the 2005 JOA and the Act, to seek specific performance of the same.

172. Accordingly, Plaintiff is entitled to an Order directing Defendants to specifically perform in accordance with the terms of the 2005 JOA now and for the remaining duration of the term of the 2005 JOA.

173. As a result of Defendant’s wrongful and unlawful acts, Plaintiff has been forced to obtain the services of counsel to prosecute this action and are entitled to an award of attorneys’ fees and costs incurred herein pursuant to NRS 18.010.

THIRD CLAIM FOR RELIEF

(Breach of Contract—Editorial Costs: Section 4.2 and Related Provisions)

174. Plaintiff realleges and incorporates as though fully set forth herein the allegations contained in the above paragraphs.

175. The 2005 JOA is a valid and existing contract.

176. Section 4.2 and related provisions, as detailed herein, require that Defendants bear the Review-Journal's editorial costs, which requires Defendants to refrain from charging its costs against the joint operation, and improperly reducing the joint EBITDA calculation and, therefore, the Sun's Annual Profits Payments.

177. Defendants have breached the 2005 JOA, including Section 4.2, and related provisions, by improperly charging the Review-Journal's editorial costs against the joint operation, resulting in the Sun receiving improperly low, and now no, Annual Profits Payments. Defendants have failed to pay sums due and owing under the 2005 JOA and continues to fail to pay said sums despite Plaintiff's demands.

178. The Sun has performed under the 2005 JOA.

179. As a direct and proximate result of Defendants' breaches, Plaintiff has suffered damages in excess of \$15,000.

180. In addition, Defendants' breaches continue.

181. The editorial costs provisions included in the 2005 JOA are definite and certain.

182. The remedy at law is inadequate.

183. Defendants' refusal to bear the Review-Journal's editorial costs and cease from charging those costs against the joint EBITDA is a violation of a material obligation contained in the parties' 2005 JOA. Because of the undisputed 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 of Defendants' obligation, Plaintiff has the right, under Section 10.8 of the 2005 JOA and the Act, to seek specific performance of the same.

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184. Accordingly, Plaintiff is entitled to an Order directing Defendants to specifically perform in accordance with the terms of the 2005 JOA now and for the remaining duration of the term of the 2005 JOA.

185. As a result of Defendant's wrongful and unlawful acts, Plaintiff has been forced to obtain the services of counsel to prosecute this action and are entitled to an award of attorneys' fees and costs incurred herein pursuant to NRS 18.010.

FOURTH CLAIM FOR RELIEF
(Breach of Contract—the Review-Journal's Independent Promotional Activities and Expenses: Section 5.1.4)

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

187. The 2005 JOA is a valid and existing contract.

188. Section 5.1.4 of the 2005 JOA requires that if Defendants undertake additional promotional activities for their respective newspaper, they must do so at their own expense.

189. Defendants are prohibited from charging their individual promotional activity expenses against the joint operation.

190. Defendants have failed to undertake individual promotional activities for the Review-Journal at their own expense: they have failed to properly account for their individual promotional expenses under the 2005 JOA, having charged those expenses against the joint operation.

191. As a direct and proximate result of these Defendants' wrongful and unlawful acts, Plaintiff has suffered damages in excess of \$15,000.

192. In addition, Defendants' breaches continue.

193. Section 5.1.4 in the 2005 JOA is definite and certain.

194. The remedy at law is inadequate.

195. Defendants' failure to pay its individual promotional expenses, and refrain from charging those expenses against the joint operation, is a violation of a material obligation contained in the parties' 2005 JOA. Because of the undisputed public interested in maintaining

editorially and reportorially independent and competitive newspapers in Las Vegas and its environs, and because of the inadequacy of damages of a default of Defendants' obligation, Plaintiff has the right, under Section 10.8 of the 2005 JOA and the Act, to seek specific performance of the same.

196. Accordingly, Plaintiff is entitled to an Order directing Defendants to specifically perform in accordance with the terms of the 2005 JOA now and for the remaining duration of the term of the 2005 JOA.

197. As a result of Defendant's wrongful and unlawful acts, Plaintiff has been forced to obtain the services of counsel to prosecute this action and are entitled to an award of attorneys' fees and costs incurred herein pursuant to NRS 18.010.

FIFTH CLAIM FOR RELIEF
**(Breach of Contract—The Front Page Format: Section 5.1,
and Appendices A and B)**

198. Plaintiff realleges and incorporates as though fully set forth herein the allegations contained in the above paragraphs.

199. The 2005 JOA is a valid and existing contract.

200. Section 5.1, and Appendices A and B of the 2005 JOA set forth strict and mutually-agreed upon formatting specifications for the Sun's pages, including how the Sun is to appear on the front page of the Newspapers and including the "Sun Box."

201. In violation of Section 5.1 and Appendices A and B of the 2005 JOA, Defendants changed the format and design of the front page of the Newspapers, such that the new design fails to comply with the 2005 JOA.

202. As a direct and proximate result of these Defendants' wrongful and unlawful acts, Plaintiff has suffered damages in excess of \$15,000.

203. In addition, Defendants' breaches continue.

204. Section 5.1 and Appendices A and B in the 2005 JOA are definite and certain.

205. The remedy at law is inadequate.

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206. Defendants' unlawful change to the formatting specifications of the front page of the Newspapers is a violation of a material obligation contained in the parties' 2005 JOA. Because of the undisputed public interested in maintaining editorially and reportorially independent and competitive newspapers in Las Vegas and its environs, and because of the inadequacy of damages of a default of Defendants' obligation, Plaintiff has the right, under Section 10.8 of the 2005 JOA and the Act, to seek specific performance of the same.

207. Accordingly, Plaintiff is entitled to an Order directing Defendants to specifically perform in accordance with the terms of the 2005 JOA now and for the remaining duration of the term of the 2005 JOA.

208. As a result of Defendant's wrongful and unlawful acts, Plaintiff has been forced to obtain the services of counsel to prosecute this action and are entitled to an award of attorneys' fees and costs incurred herein pursuant to NRS 18.010.

SIXTH CLAIM FOR RELIEF
(Breach of Contract—Audit)

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

210. The 2005 JOA is a valid and existing contract.

211. Appendix D to the 2005 JOA grants the Sun the unilateral right "to appoint a[] 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."

212. Defendants have consistently delayed and refused to participate in the Sun's lawful audit request.

213. As a direct and proximate result of these Defendants' wrongful and unlawful acts, Plaintiff has suffered damages in excess of \$15,000.

214. In addition, Defendants' breach continues to date.

1 215. The audit provision is definite and certain.

2 216. The remedy at law is inadequate.

3 217. Defendants' refusal to participate in the Sun's audit request is a violation of a
4 material obligation contained in the parties' 2005 JOA. Because of the undisputed public
5 interested in maintaining editorially and reportorially independent and competitive newspapers
6 in Las Vegas and its environs, and because of the inadequacy of damages of a default of
7 Defendants' obligation, Plaintiff has the right, under Section 10.8 of the 2005 JOA and the Act,
8 to seek specific performance of the same.

9 218. Accordingly, Plaintiff is entitled to an Order directing Defendants to specifically
10 perform in accordance with the terms of the 2005 JOA now and for the remaining duration of
11 the term of the 2005 JOA, including allowing the Sun to audit the Review-Journal's digital
12 operations in their entirety due to Defendants commingling of the Review-Journal's digital
13 operations with the joint operations.

14 219. As a result of Defendant's wrongful and unlawful acts, Plaintiff has been forced
15 to obtain the services of counsel to prosecute this action and are entitled to an award of
16 attorneys' fees and costs incurred herein pursuant to NRS 18.010.

17 **SEVENTH CLAIM FOR RELIEF**
18 **(Breach of Contract/Specific Performance—the Review-Journal's Failure to Promote the**
19 **Sun)**

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

22 221. The 2005 JOA is a valid and existing contract.

23 222. Section 5.1 of the 2005 JOA requires Defendants to promote the Sun.

24 223. Section 5.1.4 of the 2005 JOA requires that Defendants "shall use commercially
25 reasonable efforts to promote the Newspapers."

26 224. Section 5.1.4 of the 2005 JOA also provides that "[a]ny promotion of the
27 Review-Journal as an advertising medium or to advance circulation *shall* include mention of
28 equal prominence for the Sun." (Emphasis added).

1 225. Defendants have failed to promote the Sun; indeed Defendants concealed from
2 the Sun that the Sun is not included in any of the Defendants' trade agreements with third-party
3 customers.

4 226. Defendants have failed to use commercially reasonable efforts to promote the
5 Newspapers, including the Sun.

6 227. Defendants have failed to include a mention of equal prominence for the Sun in
7 Defendants' promotions "as an advertising medium or to advance circulation."

8 228. In addition, Defendants' breaches continue.

9 229. Sections 5.1 and 5.1.4 in the 2005 JOA are definite and certain.

10 230. The remedy at law is inadequate.

11 231. Defendants' failure to promote the Sun is a violation of a material obligation
12 contained in the parties' 2005 JOA. Because of the undisputed public interested in maintaining
13 editorially and reportorially independent and competitive newspapers in Las Vegas and its
14 environs, and because of the inadequacy of damages of a default of Defendants' obligation,
15 Plaintiff has the right, under Section 10.8 of the 2005 JOA and the Act, to seek specific
16 performance of the same.

17 232. Accordingly, Plaintiff is entitled to an Order directing Defendants to specifically
18 perform in accordance with the terms of the 2005 JOA now and for the remaining duration of
19 the term of the 2005 JOA.

20 233. As a result of Defendant's wrongful and unlawful acts, Plaintiff has been forced
21 to obtain the services of counsel to prosecute this action and are entitled to an award of
22 attorneys' fees and costs incurred herein pursuant to NRS 18.010.

23 **EIGHTH CLAIM FOR RELIEF**
24 **(Breach of Contract/Specific Performance—Electronic Replica Edition)**

25 234. Plaintiff realleges and incorporates as though fully set forth herein the
26 allegations contained in the above paragraphs.

27 235. The 2005 JOA is a valid and existing contract.

236. Section 10.6 requires Defendants to include the Sun in the electronic replica edition: “Review-Journal shall have the exclusive right *and the obligation to distribute the Sun through electronic replica technology . . .*” (Emphasis added.)

237. In violation of Section 10.6 of the 2005 JOA, Defendants omitted the Sun from its electronic replica technology from approximately January 25, 2018, through May 3, 2019.

238. The replica edition constitutes a meaningful percentage of the Review-Journal’s circulation and is mostly used in educational environments, thus Defendants deprived the Sun of an opportunity to reach new young readers to allow its voice to be introduced to future readers.

239. Defendants’ removal of the Sun from the electronic replica edition has reduced the Sun’s visibility.

240. As a direct and proximate result of these Defendants’ wrongful and unlawful acts, Plaintiff has suffered damages in excess of \$15,000.

241. Absent an order from the Court, Defendants could (as they have previously) remove the Sun from the electronic replica edition at any time.

242. Section 10.6 in the 2005 JOA is definite and certain.

243. The remedy at law is inadequate.

244. Defendants’ unlawful omission of the Sun in the electronic replica edition is a violation of a material obligation contained in the parties’ 2005 JOA. Because of the undisputed public interest in maintaining editorially and reportorially independent and competitive newspapers in Las Vegas and its environs, and because of the inadequacy of damages of a default of Defendants’ obligation, Plaintiff has the right, under Section 10.8 of the 2005 JOA and the Act, to seek specific performance of the same.

245. Accordingly, Plaintiff is entitled to an Order directing Defendants to specifically perform in accordance with the terms of the 2005 JOA now and for the remaining duration of the term of the 2005 JOA.

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246. As a result of Defendant's wrongful and unlawful acts, Plaintiff has been forced to obtain the services of counsel to prosecute this action and are entitled to an award of attorneys' fees and costs incurred herein pursuant to NRS 18.010.

NINTH CLAIM FOR RELIEF
(Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing)

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

248. The 2005 JOA is a valid and existing contract.

249. By virtue of Defendants' relationship with Plaintiff, a special relationship existed between Defendants and Plaintiff. The relationship was one characterized by elements of public trust, reliance, and fiduciary duty. Defendants were in a superior and entrusted position, and engaged in grievous and perfidious conduct.

250. In Nevada, contained in every contract is the implied covenant of good faith and fair dealing requiring Defendants to avoid undertaking actions which would injure or prejudice Plaintiff's rights, or to otherwise act so as to deprive Plaintiff of the benefits arising under the contract.

251. Plaintiff performed all conditions, covenants, and promises required by them pursuant to the 2005 JOA.

252. By proceeding in the aforementioned manner, Defendants have breached their duty of good faith and fair dealing to Plaintiff under the 2005 JOA. Defendants have breached their duty of good faith and fair dealing to Plaintiff by: (1) abusing the RJ's control over operations and advertising (and the accounting thereof) under the JOA; (2) refusing to participate in audits and arbitration as required by the JOA; (3) charging editorial costs and independent promotional activities against the JOA EBITDA, thereby reducing the Sun's annual profit payments with improper charges; (4) failing to promote the Sun and failing to promote the Sun in equal prominence with the Review-Journal; and (5) removing the Sun from the Review-Journal electronic replica edition.

1 iii. directing Defendants to abide by Section 5.1.4, and use commercially
2 reasonable efforts to promote both Newspapers and cease charging the Review-Journal's
3 individual promotional expenses against the joint operation;

4 iv. directing Defendants to abide by Section 5.1, and Appendices A and B,
5 and revert to the original front page design that complied with the 2005 JOA;

6 v. directing Defendants to comply with the audit provision contained in
7 Appendix D to the 2005 JOA, and allowing the Sun to inspect the Review-Journal's digital
8 operations in their entirety.

9 vi. directing Defendants to comply with Section 5.1 and 5.1.4, and promote
10 the Sun, and to do so in equal prominence with the Review-Journal in any promotional activity
11 that seeks to "advance circulation" or promote the Review-Journal as an "advertising medium."

12 vii. directing Defendants to comply with Section 10.6 and distributing the
13 Sun as part of the electronic replica edition.

14 C. An award of compensatory damages for Defendants' breaches of the 2005 JOA
15 in an amount to be determined at trial.

16 D. An award of punitive damages.

17 E. An award to Plaintiff of its cost of suit, including reasonable attorney's fees.

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1 F. And, an order granting to Plaintiff such other and further relief to which it may
2 be entitled and which this Court finds to be just and appropriate.

3 DATED this 15th day of November, 2019.

4 LEWIS ROCA ROTHGERBER CHRISTIE LLP

5
6 BY: /s/ E. Leif Reid

7 E. LEIF REID, Bar No. 5750
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One East Liberty Street, Suite 300
Reno, NV 89501

Lewis Roca
ROTHGERBER CHRISTIE

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nevada Rule of Civil Procedure 5(b), I certify that I am an employee of
3 LEWIS ROCA ROTHGERBER CHRISTIE LLP, and that on this date, I caused the foregoing
4 **FIRST AMENDED COMPLAINT** to be served by electronically filing the foregoing with the
5 Odyssey electronic filing system, which will send notice of electronic filing to the following:

6 Steve Morris, Esq., SBN 1543
7 Akke Levin, Esq., SBN 9102
8 MORRIS LAW GROUP
9 411 E. Bonneville Ave., Ste. 360
Las Vegas, Nevada 89101

J. Randall Jones, Esq., SBN 1927
Michael J. Gayan, Esq., SBN 11135
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KEMP, JONES & COULTHARD, LLP
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Las Vegas, Nevada 89169

10 Richard Stone, Esq.
11 Amy Gallegos, Esq.
12 David Singer, Esq.
13 JENNER & BLOCK, LLP
14 633 West 5th Street, Suite 3600
Los Angeles, CA 90071

15 DATED this 15th day of November, 2019.

16 /s/ Autumn D. McDannald
Employee of Lewis Roca Rothgerber Christie LLP

One East Liberty Street, Suite 300
Reno, NV 89501

Lewis Roca
ROTHGERBER CHRISTIE

EXHIBIT LIST

EXHIBIT NO.	DESCRIPTION	NO. OF PAGES
1	1989 [Joint Operating] Agreement	44
2	2005 Amended and Restated [Joint Operating] Agreement	25

One East Liberty Street, Suite 300
Reno, NV 89501

Lewis Roca
ROTHGERBER CHRISTIE

EXHIBIT 1

EXHIBIT 1

AGREEMENT

This Agreement is dated as of June 17, 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 22-23 contain the balance of the agreement.

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 ~~first 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's 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 headdress, 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.

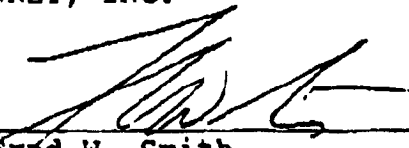
10.9 Successors and Assignment. This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and their permitted successors and assigns.

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.

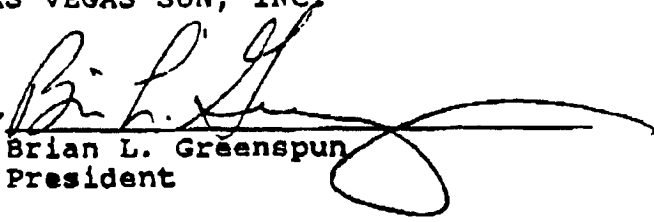
10.11 Headings. Headings have been inserted in this Agreement for the purpose of convenience only. They shall not be used to interpret or construe the meaning of any Articles or Sections, nor shall they have the effect of limiting or enlarging the meaning thereof.

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:

~~B.1.1. The amounts allocated to Review-Journal and Sun 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
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 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.

A handwritten signature, possibly reading "JH", is located to the right of the main text block.

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.

24/15

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 lvrj.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]

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

www.reviewjournal.com

50 CENTS

MONTH XX, 2005

Agency pursued damage control

Documents show
how DOE coped
with e-mails about
Yucca Mountain

BY MICHAEL A. ...

WASHINGTON — Although

there were income for a big
check, the Energy Depart-
ment officials ordered internal
first reports of possible fal-
sified documents would not af-
fect the release, suggesting
the Yucca Mountain nuclear
waste site documents made
public on Monday drew.

Three dozen pages of newly
released records, and other in-
ternal documents show how
federal officials scrambled to
weigh the effect after discov-
ering a cache of e-mail mes-
sages in which someone dis-
missed some "fudge factors"
and falsifying reality assump-
tion of computer models used
to estimate water storage es-
timate in the desert.

The e-mails were brought to
the department's attention on
March 11 and were announced
on March 15.

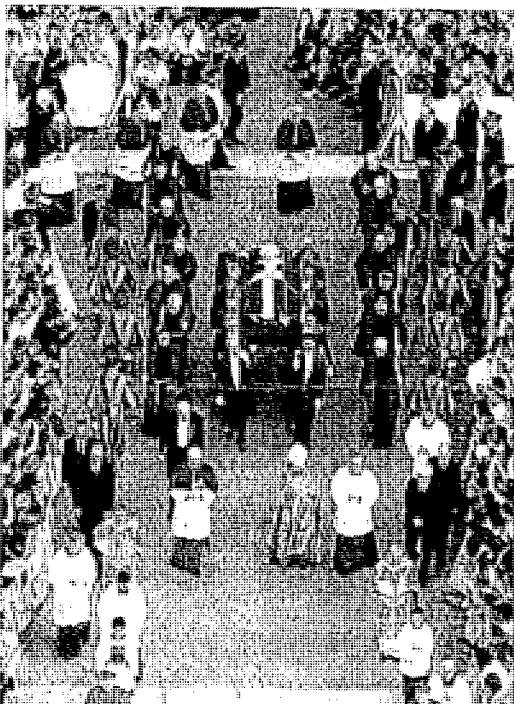
In the days between their
discovery and the announce-
ment, officials dissected the e-
mail messages, written be-
tween May 15, 1998, and
March 28, 2001. They pre-
pared an initial assessment
and taking notes to be dis-
cussed with Energy Secretary
Nathan C. Richmond and used in
public hearings, minutes
show.

An e-mail from a Yucca pro-
ponent to a Yucca manager in
Las Vegas, Bodman was in the
mail for information in the e-
mails, does not imply the
"Yucca site recommendation,
and we do not believe that the
specifically data has any
material effect on the en-
vironmental review process as a
modern waste repository.

During the same period, of-
ficials started a more detailed
investigation, the documents
show.

There also shows the Energy
Dept. found no incentive to
lose the allegations would re-
sult in the Yucca Mountain
■ SEE YUCCA MOUNTAIN PAGE 10A

Mourners pay respects



The late Pope John Paul II is carried to St. Peter's Basilica at the Vatican Monday for a period of public viewing before he is buried in the grotto of the Basilica after his funeral Friday.

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

BY MICHAEL A. ...
AND MARIA TALAMON

THE ASSOCIATED PRESS

VATICAN CITY — The mourn-
ers stood in line here after
noon, starting when the sun's
heat blazed off the Vatican's
old streets, and into the late
night chill. Pilgrims older than
the late pope struggled to re-
main standing. Young chil-
dren, even infants, were un-
usually well behaved.

All the time, as the line
inched forward, it grew longer
and longer out of St. Peter's
Square, stretching out of sight
down the Via Della Concordan-
za. Police said close to mid-
night it was two miles long,
and many people wept.

For pilgrims mourning
Pope John Paul II, it was a
deeply moving scene: the pope
lying, lifeless, on a casket
covered with a pair of the
simple brown leather shoes he
so often wore on his trips
around the world.

There was no stopping for a
bidding, rite, a last-minute
moment of reflection. Many
went as they walked past the
bier. Some collapsed against
the wall outside after leaving
St. Peter's Basilica, where the
pope's remains were on public
view Monday afternoon. He
will be buried Friday.

People who had never had
an audience with the pope fell
as if they had lost a dear one.
"Every time I saw him (on
television), he told me some-
thing, he gave me a message,"



A mourner weeps Monday as
John Paul II's body is carried
through St. Peter's Square.

Said Silvio Sordani, 23, a stu-
dent in Rome, after viewing the
body: "Now, I just saw him."

"His face was suffering,"
said Sister Emma, a 76-year-
old Italian nun who saw the
pope's body "I felt a sense of
sadness, even though I know
he's in heaven."

The crowd cheerfully
chanted and clapped hands on
the street leading to St. Peter's
Square as it moved slowly to-
ward the basilica. As soon as
they entered the square, peo-
ple fell silent. It became a pro-
cession of mourning, with peo-
ple holding their hands tightly
and whispering the rosary.

After taking a quick
glimpse of the pope's remains
as pale as whipped cream, "I cry-
ed," many wept against the
walls of the basilica and
sobbed.

■ SEE POPE PAGE 10A

■ AMERICAN CATHOLICS HOPE FOR MAJOR CHANGES PAGE 10A

■ POPE'S FUNERAL DELAYS CHARLES' WEDDING PAGE 10A

Oil concerns increase as prices soar to record level

Limited supply
rising demand
continued weakness
of U.S. dollar cited

BY BRAD LARSON

THE ASSOCIATED PRESS

Oil prices briefly climbed to
record territory above \$58 a
barrel Monday, as concerns
about growing demand and
potential supply disruptions

were again at work shadowed, in-
creasing crude inventories.

"I've been doing this for 22
years, and I've never seen
anything like this," said oil an-
alyst Ken Miller at Pivotal &
Co. in Houston. "I view this
as a very unusual situation."

Late in the day, traders took
profits and considered a possi-
ble production increase by the
Organization of Petroleum Ex-
porting Countries, sending
light, sweet crude for May deliv-
ery down 26 cents to \$57.01
a barrel on the New York

Merchants Exchange.

Prices had climbed as high
as \$58.28, topping the previous
intraday record of \$57.70 a
barrel reached Friday, when
futures settled at a record
\$57.27.

■ SEE OIL PAGE 4A

Supreme Court rules IRAs protected from bankruptcy

BY JEFFREY ...

THE ASSOCIATED PRESS

■ SUPREME COURT ASKED
TO BLOCK AWARD AGAINST



Witness says Michael Jackson molested him

BY JAMES ...

THE ASSOCIATED PRESS

SANTA MARIA, Calif. — In a
balding, weathered witness,
the son of Michael Jackson's
former bodyguard testified

trying to show the jury that
the singer has a pattern of
abusing young boys.

The judge told jurors the
evidence of past uncharged
crimes was being offered to
show a "propensity" by the de-

fendant "by a preponder-
ance of the evidence."

"Complicated, yes," the
judge said, and promised to
give them the instructions
again later.

The witness, a tall, slender,

LAS VEGAS SUN
DOE knew of Yucca
e-mails in December
INSIDE | SECTION E



Batter Up
After finally breaking their 86-year-old
Curse, the Red Sox start the season in a
new role, defending champs
SEE SPORTS

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

MONDAY

LAS VEGAS REVIEW-JOURNAL

www.reviewjournal.com

50 CENTS

MONTH XX, 2005

Agency pursued damage control

Documents show
how DOE copied
with e-mails about
Yucca Mountain

BY STEVE HARRIS

WASHINGTON — Although they were tracing for a big black eye, Energy Department officials believed initially that reports of possibly falsified documents would not affect the science supporting the Yucca Mountain nuclear waste site, documents made public on Monday show.

Three dozen pages of heavily redacted memos and other internal documents show how federal officials tried to keep the effort from becoming a matter of a small number of e-mails in which scientists discussed "falsified" data and "falsified" quality assurance and computer models used for climate and water studies.

The e-mails were brought to the department's attention on March 14 and were investigated on March 15.

In the days between the discovery and the announcement, officials cleared the e-mails from the system between March 15, 1998, and March 20, 2000. They prepared an initial assessment and talking points for the department's Secretary of Energy, Richard E. Smith, and used an internal "checklist" to ensure that the documents were accurate.

According to a memo prepared by a DOE staffer in late 1998, the department was to be told the information in the e-mails "does not impact the Yucca Mountain project, and we do not believe that the questionable data has any meaningful effect on the safety of the Yucca Mountain project."

During the same period, officials started a series of internal investigations of the documents.

They also drew the Energy Department's attention to the fact that the documents were not in the Yucca Mountain project database.

SEE YUCCA MOUNTAIN PAGE 1A

PUBLIC VIEWING OF POPE

Mourners pay respects

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

By WILLIAM F. KOLB
and MARTA FALCONE

THE ASSOCIATED PRESS

VATICAN CITY — The mourners stood in line hour after hour, starting when the sun's heat blasted off the Vatican's old streets, and into the late night chill. Pilgrims older than the late pope struggled to remain standing. Young children, even infants, were unusually well-behaved.

All the time, as the line inched forward, it grew longer and longer: out of St. Peter's Square, stretching out of sight down the Via Della Conciliazione. Police said close to midnight it was two miles long, and many people wept.

For pilgrims mourning Pope John Paul II, it was a deeply moving scene: the popes, many in a casket, standing on a raised platform, wearing a pair of the simple brown leather shoes he so often wore on his trips around the world.

There was no stopping for a lingering view, a motionless moment of reflection. Many wept as they walked past the line. Some collapsed against the wall outside after leaving St. Peter's Basilica, where the pope's remains went on public view Monday afternoon. He will be buried Friday.

People who had never had an audience with the pope felt as if they had lost a dear one. "Every time I see him face to face, he gave me a message,"



After hours of waiting, thousands of pilgrims gathered in St. Peter's Square Monday to see the body of Pope John Paul II.

said Silvio Sanzoni, 23, a student in Rome, after viewing the body. "How I just saw him."

"His face was suffering," said Sister Emma, a 70-year-old Italian nun who was the pope's body. "I felt a sense of sadness, even though I knew he's a martyr."

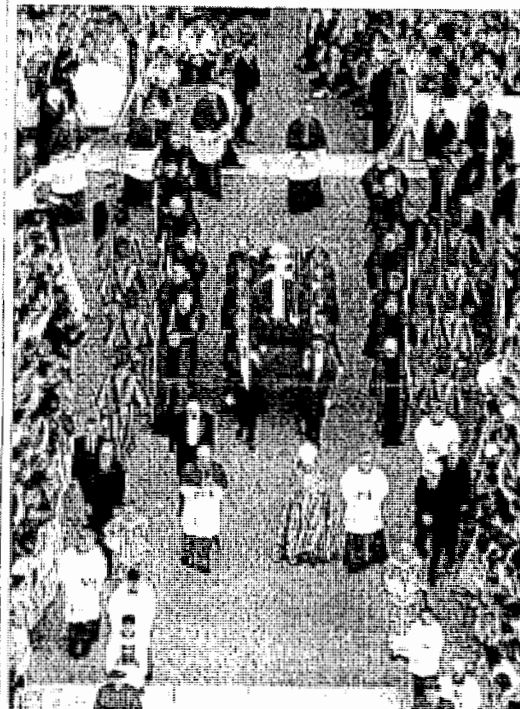
The crowd cheerfully chanted and clapped hands on the street leading to St. Peter's Square as it moved slowly toward the basilica. As soon as they entered the square, people fell silent. It became a procession of mourning, with people holding their hands tightly and whispering the rosary.

After taking a quick glimpse at the pope's remains as people whispered "blessed," many leaned against the walls of the basilica and sobbed.

SEE POPE PAGE 10A

► AMERICAN CATHOLICS HOPE FOR MAJOR CHANGES PAGE 12A

► POPE'S FUNERAL DELAYS CHARLES' WEDDING PAGE 18A



The late Pope John Paul II is carried to St. Peter's Basilica at the Vatican Monday for a period of public viewing before he is buried in the grotto of the Basilica after his funeral Friday.

Oil concerns increase as prices soar to record level

Limited supply,
rising demand
continue weakness
of U.S. dollar cited

BY BRAD LEE

THE ASSOCIATED PRESS

Oil prices Monday climbed to record territory above \$38 a barrel Monday, as concerns about security around and potential supply disruptions

drive again overwhelmed improving crude inventories.

"I've been doing this for 22 years, and I've never seen anything like this," said oil analyst Ken Miller of Energy & Commerce. "I saw this as a very unstable situation."

Late in the day traders took profits and considered a possible production increase by the Organization of Petroleum Exporting Countries, sending light sweet crude for May delivery down 25 cents to \$37.23, a record on the New York

Merchandise Exchange.

Prices climbed as high as \$38.28, topping the previous intraday record of \$37.70 a barrel reached Friday, when futures settled at a record \$37.27.

SEE OIL PAGE 4A

Supreme Court rules IRAs protected from bankruptcy

BY MICHELLE

THE ASSOCIATED PRESS

WASHINGTON — The U.S. Supreme Court Monday ruled that individual retirement accounts (IRAs) are protected from bankruptcy.

► SUPREME COURT ASKED TO PUNISH ARABIC REGIME



Witness says Michael Jackson molested him

BY JEFFREY M. HARRIS

THE ASSOCIATED PRESS

SAN FRANCISCO, Calif. — In a hearing, another credible voice, the son of Michael Jackson's former housekeeper testified Monday that the singer had

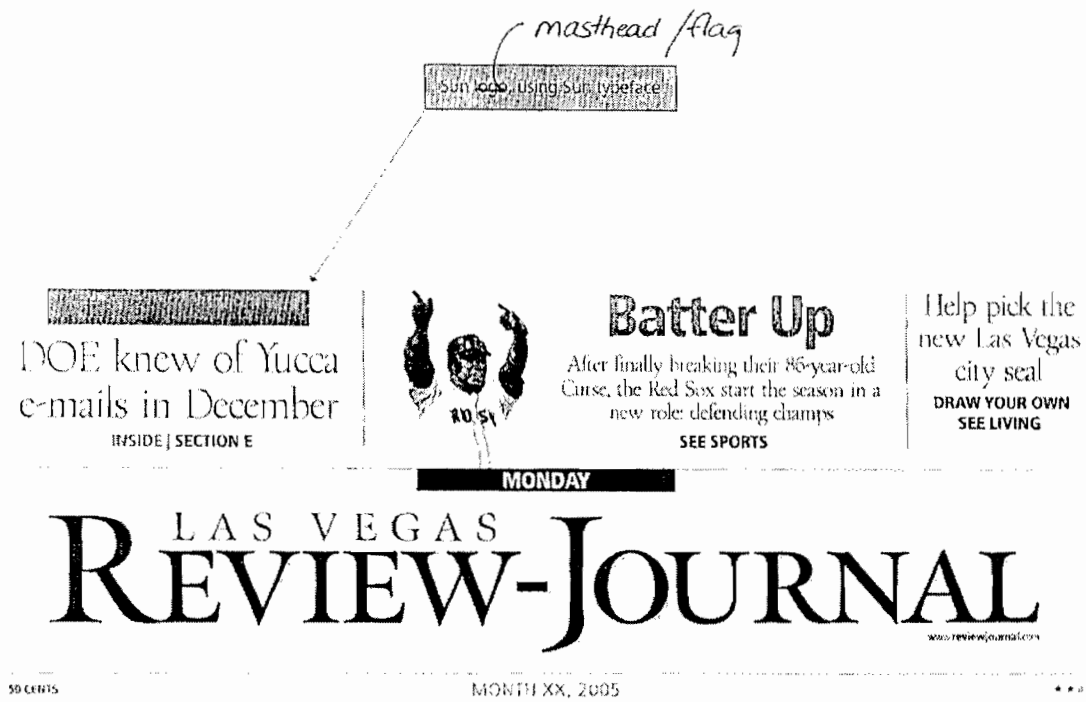
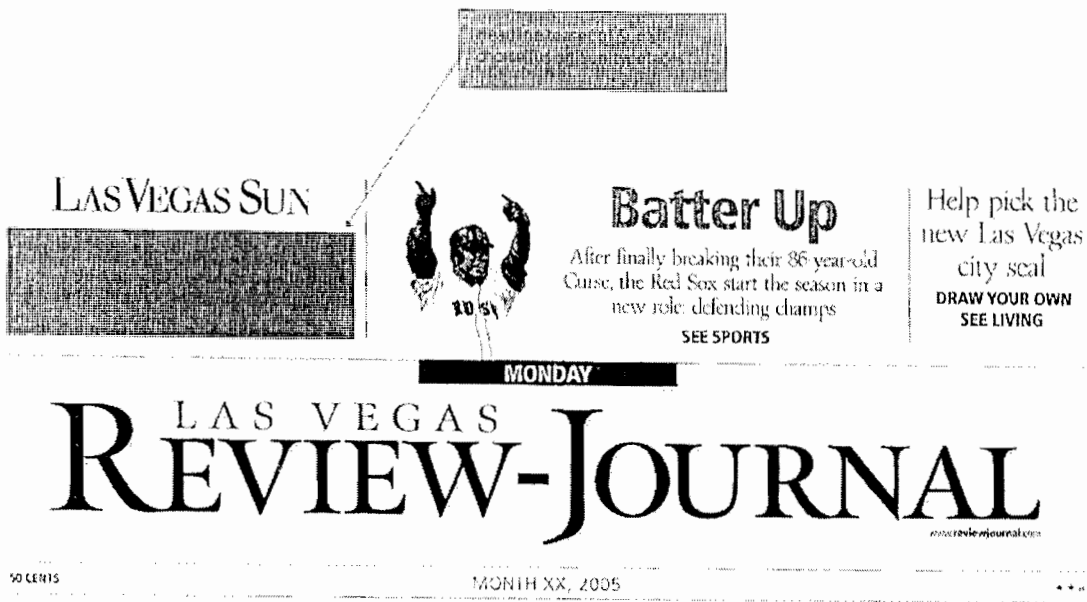
tried to show the jury that the singer had a pattern of abusing young boys.

The judge told jurors the evidence of past molested victims was being offered to show a "propensity" to do so. Jackson's counsel said the

testimony was "a preponderance of the evidence."

"Conspicuously," the judge said, and promised to give them the instructions regarding the testimony.

The witness, a tall, slender, dark-haired young man, said



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

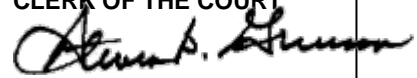
earnings of the Review-Journal's Affiliates derived from publications generally circulated in Clark, Nye, or Lincoln Counties, Nevada or any parts thereof. For purposes of this paragraph, Press Equipment shall mean the press equipment currently owned by the Review-Journal and identified in Appendix D-1 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



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Attorneys for Defendants and Counterclaimants
News+Media Capital Group LLC &
Las Vegas Review-Journal, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS SUN, INC., a Nevada
corporation,

Plaintiff,

vs.

NEWS+MEDIA CAPITAL GROUP LLC, a
Delaware limited liability company; LAS VEGAS
REVIEW-JOURNAL, INC., a
Delaware corporation; and
DOES, I-X, inclusive,

Defendants.

Case No. A-18-772591-B

DEPT.: XVI

**FIRST AMENDED ANSWER TO
COMPLAINT AND COUNTERCLAIMS**

LAS VEGAS REVIEW-JOURNAL, INC., a
Delaware corporation,

Counterclaimant,

vs.

LAS VEGAS SUN, INC., a Nevada
corporation,

Counterclaim-Defendant.

FIRST AMENDED ANSWER TO COMPLAINT

1 1. Answering Paragraph “1” of the Plaintiff’s Complaint, the Defendants deny the
2 allegations contained in said paragraph.

3 2. Answering Paragraph “2” of the Plaintiff’s Complaint, the allegations contained in
4 said paragraph are legal conclusions, and as such, require no response. To the extent that a
5 response is required, the Defendants deny said allegations.

6 3. Answering Paragraph “3” of the Plaintiff’s Complaint, the Defendants deny the
7 allegations purporting to represent factual matters. The remaining allegations are legal
8 conclusions, and require no response. To the extent that a response is required, the Defendants
9 deny said allegations.

10 4. Answering Paragraph “4” of the Plaintiff’s Complaint, the allegations contained in
11 said paragraph are legal conclusions, and as such, require no response. To the extent that a
12 response is required, the Defendants deny said allegations.

13 5. Answering Paragraph “5” of the Plaintiff’s Complaint, the allegations contained in
14 said paragraph are legal conclusions, and as such, require no response. To the extent that a
15 response is required, the Defendants deny said allegations.

16 6. Answering Paragraph “6” of the Plaintiff’s Complaint, the Defendants admit the
17 allegations contained in said paragraph.

18 7. Answering Paragraph “7” of the Plaintiff’s Complaint, the Defendants admit the
19 allegations contained in said paragraph.

20 8. Answering Paragraph “8” of the Plaintiff’s Complaint, Defendants admit that
21 Defendant LAS VEGAS REVIEW-JOURNAL, INC. is a Delaware corporation doing business in
22 the State of Nevada, which operates and publishes the Las Vegas Review-Journal.

23 9. Answering Paragraph “9” of the Plaintiff’s Complaint, the Defendants deny the
24 allegations contained in said paragraph.

25 10. Answering Paragraph “10” of the Plaintiff’s Complaint, the Defendants admit that
26 the Plaintiff owns and operates the Las Vegas Sun (“the Sun”), the Defendants operate and publish
27 the Las Vegas Review-Journal, and both the Sun and Las Vegas Review-Journal are daily
28 newspapers of general circulation in Las Vegas, Nevada. The Defendants deny the remaining

1 allegations in said paragraph.

2 11. Answering Paragraph “11” of the Plaintiff’s Complaint, the Defendants are without
3 sufficient knowledge or information upon which to base a response to said paragraph, and
4 therefore deny the allegations in said paragraph.

5 12. Answering Paragraph “12” of the Plaintiff’s Complaint, the Defendants are without
6 sufficient knowledge or information upon which to base a response to said paragraph, and
7 therefore deny the allegations in said paragraph.

8 13. Answering Paragraph “13” of the Plaintiff’s Complaint, Defendants admit that the
9 Sun and Donrey of Nevada, Inc. entered into a joint operating agreement, the 1989 JOA. As to the
10 remaining allegations as to the reasons for the agreement and/or its compliance with the
11 Newspaper Preservation Act of 1970, the Defendants are without sufficient knowledge or
12 information upon which to base a response to said allegations, and therefore deny said allegations.

13 14. Answering Paragraph “14” of the Plaintiff’s Complaint, the allegations in such
14 paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory
15 language, to which no responsive pleading is required. To the extent any response is required, the
16 Defendants deny the allegations in said paragraph.

17 15. Answering Paragraph “15” of the Plaintiff’s Complaint, the 1989 JOA speaks for
18 itself and Defendants deny the unnecessary characterizations of its provisions, as worded.

19 16. Answering Paragraph “16” of the Plaintiff’s Complaint, the 1989 JOA speaks for
20 itself and Defendants deny the unnecessary characterizations of its provisions, as worded.

21 17. Answering Paragraph “17” of the Plaintiff’s Complaint, the 1989 JOA speaks for
22 itself and Defendants deny the unnecessary characterizations of its provisions, as worded.

23 18. Answering Paragraph “18” of the Plaintiff’s Complaint, the Defendants are without
24 sufficient knowledge or information upon which to base a response to said paragraph, and
25 therefore deny the allegations in said paragraph.

26 19. Answering Paragraph “19” of the Plaintiff’s Complaint, the 1989 JOA speaks for
27 itself and Defendants deny the unnecessary characterizations of its provisions, as worded.

28 20. Answering Paragraph “20” of the Plaintiff’s Complaint, the Defendants admit that

1 the 1989 JOA contains the quoted language, but the Defendants are without sufficient knowledge
2 or information upon which to base a response to the remaining allegations and characterizations
3 contained in said paragraph, and therefore deny the remaining allegations and characterizations in
4 said paragraph.

5 21. Answering Paragraph “21” of the Plaintiff’s Complaint, the 1989 JOA speaks for
6 itself and Defendants deny the unnecessary characterizations of its provisions, as worded.

7 22. Answering Paragraph “22” of the Plaintiff’s Complaint, the Defendants admit that
8 the 1989 JOA contains the quoted language, but the Defendants are without sufficient knowledge
9 or information upon which to base a response to the remaining allegations and characterizations
10 contained in said paragraph, and therefore deny the remaining allegations and characterizations in
11 said paragraph.

12 23. Answering Paragraph “23” of the Plaintiff’s Complaint, the 1989 JOA speaks for
13 itself and Defendants deny the unnecessary characterizations of its provisions, as worded.

14 24. Answering Paragraph “24” of the Plaintiff’s Complaint, the 1989 JOA speaks for
15 itself and Defendants deny the unnecessary characterizations of its provisions, as worded.

16 25. Answering Paragraph “25” of the Plaintiff’s Complaint, the 1989 JOA speaks for
17 itself and Defendants deny the unnecessary characterizations of its provisions, as worded.

18 26. Answering Paragraph “26” of the Plaintiff’s Complaint, the Defendants admit that
19 the 1989 JOA did not provide for any alternative dispute resolution procedure. The Defendants are
20 without sufficient information upon which to form a belief as to the truth of the remaining
21 allegations and characterizations contained in said paragraph and therefore, deny said allegations
22 and characterizations.

23 27. Answering Paragraph “27” of the Plaintiff’s Complaint, the Defendants are without
24 sufficient knowledge or information upon which to base a response to said paragraph, and
25 therefore deny the allegations in said paragraph.

26 28. Answering Paragraph “28” of the Plaintiff’s Complaint, the Defendants are without
27 sufficient knowledge or information upon which to base a response to said paragraph, and
28 therefore deny the allegations in said paragraph.

1 29. Answering Paragraph “29” of the Plaintiff’s Complaint, the Defendants are without
2 sufficient knowledge or information upon which to base a response to said paragraph, and
3 therefore deny the allegations in said paragraph.

4 30. Answering Paragraph “30” of the Plaintiff’s Complaint, the Defendants are without
5 sufficient knowledge or information upon which to base a response to said paragraph, and
6 therefore deny the allegations in said paragraph.

7 31. Answering Paragraph “31” of the Plaintiff’s Complaint, the Defendants admit the
8 allegations contained in said paragraph.

9 32. Answering Paragraph “32” of the Plaintiff’s Complaint, the 2005 JOA speaks for
10 itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

11 33. Answering Paragraph “33” of the Plaintiff’s Complaint, the 2005 JOA speaks for
12 itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

13 34. Answering Paragraph “34” of the Plaintiff’s Complaint, the Defendants are without
14 sufficient knowledge or information upon which to base a response to said paragraph, and
15 therefore deny the allegations in said paragraph.

16 35. Answering Paragraph “35” of the Plaintiff’s Complaint, the Defendants admit that
17 the 2005 JOA contains the quoted language, but the Defendants are without sufficient knowledge
18 or information upon which to base a response to the remaining allegations and characterizations
19 contained in such paragraph, and therefore deny the remaining allegations and characterizations in
20 said paragraph. The 2005 JOA speaks for itself.

21 36. Answering Paragraph “36” of the Plaintiff’s Complaint, the Defendants admit that
22 the quoted language does not appear in Section 5.2 of the 2005 JOA. As to the remaining
23 allegations and characterizations in said paragraph, the Defendants are without sufficient
24 knowledge or information upon which to base a response to said allegations, and therefore deny
25 said allegations. The 2005 JOA speaks for itself.

26 37. Answering Paragraph “37” of the Plaintiff’s Complaint, the 2005 JOA speaks for
27 itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

28 38. Answering Paragraph “38” of the Plaintiff’s Complaint, the Defendants are without

1 sufficient knowledge or information upon which to base a response to said paragraph, and
2 therefore deny the allegations in said paragraph.

3 39. Answering Paragraph “39” of the Plaintiff’s Complaint, the 2005 JOA speaks for
4 itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

5 40. Answering Paragraph “40” of the Plaintiff’s Complaint, the 2005 JOA speaks for
6 itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

7 41. Answering Paragraph “41” of the Plaintiff’s Complaint, the 2005 JOA speaks for
8 itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

9 42. Answering Paragraph “42” of the Plaintiff’s Complaint, the 2005 JOA speaks for
10 itself and the Defendants deny the unnecessary characterizations and conjecture of its provisions,
11 as worded.

12 43. Answering Paragraph “43” of the Plaintiff’s Complaint, the 2005 JOA speaks for
13 itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

14 44. Answering Paragraph “44” of the Plaintiff’s Complaint, the Defendants are without
15 sufficient knowledge or information upon which to base a response to said paragraph, and
16 therefore deny the allegations in said paragraph.

17 45. Answering Paragraph “45” of the Plaintiff’s Complaint, the 2005 JOA speaks for
18 itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

19 46. Answering Paragraph “46” of the Plaintiff’s Complaint, the 1989 JOA and the 2005
20 JOA speak for themselves and the Defendants deny the unnecessary characterizations of their
21 provisions, as worded.

22 47. Answering Paragraph “47” of the Plaintiff’s Complaint, the 2005 JOA speaks for
23 itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

24 48. Answering Paragraph “48” of the Plaintiff’s Complaint, the Defendants admit that
25 the language quoted in said paragraph is contained in Section 5.1.4 of the JOA. The Defendants
26 deny remaining allegations in said paragraph.

27 49. Answering Paragraph “49” of the Plaintiff’s Complaint, the 2005 JOA speaks for
28 itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

1 50. Answering Paragraph “50” of the Plaintiff’s Complaint, the Defendants are without
2 sufficient knowledge or information upon which to base a response to said paragraph, and
3 therefore deny the allegations in said paragraph.

4 51. Answering Paragraph “51” of the Plaintiff’s Complaint, the 2005 JOA speaks for
5 itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

6 52. Answering Paragraph “52” of the Plaintiff’s Complaint, the Defendants admit that
7 the quoted language contained in said paragraph is contained in the 2005 JOA, but the Defendants
8 are without sufficient knowledge or information upon which to base a response to the remaining
9 allegations and characterizations in said paragraph, and therefore deny the allegations in said
10 paragraph.

11 53. Answering Paragraph “53” of the Plaintiff’s Complaint, the 2005 JOA speaks for
12 itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

13 54. Answering Paragraph “54” of the Plaintiff’s Complaint, the Defendants admit and
14 affirmatively state that Section 5.1, and Appendices A and B set forth specifications that apply to
15 the Sun’s pages and its “noticeable mention” on the front page of the Las Vegas Review-Journal.
16 The Defendants deny the remaining allegations in said paragraph, as worded.

17 55. Answering Paragraph “55” of the Plaintiff’s Complaint, the Defendants admit that
18 the quoted language is contained in Appendix A to the 2005 JOA, but deny the remaining
19 allegations and characterizations contained in said paragraph.

20 56. Answering Paragraph “56” of the Plaintiff’s Complaint, the 2005 JOA, including
21 Appendix B, speaks for itself, and Defendants deny the unnecessary allegations and
22 characterizations contained in said paragraph.

23 57. Answering Paragraph “57” of the Plaintiff’s Complaint, the 2005 JOA speaks for
24 itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

25 58. Answering Paragraph “58” of the Plaintiff’s Complaint, the Defendants deny the
26 allegations (as worded) contained in said paragraph.

27 59. Answering Paragraph “59” of the Plaintiff’s Complaint, the 2005 JOA speaks for
28 itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

1 60. Answering Paragraph “60” of the Plaintiff’s Complaint, the 2005 JOA speaks for
2 itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

3 61. Answering Paragraph “61” of the Plaintiff’s Complaint, the 1989 JOA and the 2005
4 JOA speak for themselves and the Defendants deny the unnecessary characterizations of their
5 provisions, as worded.

6 62. Answering Paragraph “62” of the Plaintiff’s Complaint, the Defendants admit that
7 the quoted language in said paragraph is contained in the 2005 JOA.

8 63. Answering Paragraph “63” of the Plaintiff’s Complaint, the Defendants admit that
9 the quoted language in said paragraph is contained in the 2005 JOA.

10 64. Answering Paragraph “64” of the Plaintiff’s Complaint, the Defendants admit that
11 the language quoted is contained in Section 10.8 of the 2005 JOA, but Defendants are without
12 sufficient knowledge or information upon which to base a response to the remaining allegations
13 and characterizations, and therefore deny the remaining allegations and characterization in said
14 paragraph.

15 65. Answering Paragraph “65” of the Plaintiff’s Complaint, the Defendants are without
16 sufficient knowledge or information upon which to base a response to said paragraph, and
17 therefore deny the allegations in said paragraph.

18 66. Answering Paragraph “66” of the Plaintiff’s Complaint, the Defendants are without
19 sufficient knowledge or information upon which to base a response to said paragraph, and
20 therefore deny the allegations in said paragraph.

21 67. Answering Paragraph “67” of the Plaintiff’s Complaint, the Defendants are without
22 sufficient knowledge or information upon which to base a response to said paragraph, and
23 therefore deny the allegations in said paragraph.

24 68. Answering Paragraph “68” of the Plaintiff’s Complaint, the Defendants admit that
25 the litigation mentioned in said paragraph was in fact initiated. The Defendants deny the
26 remaining allegations and characterizations contained in said paragraph.

27 69. Answering Paragraph “69” of the Plaintiff’s Complaint, the Defendants admit the
28 allegations contained in said paragraph.

1 70. Answering Paragraph “70” of the Plaintiff’s Complaint, the Defendants admit the
2 allegations contained in said paragraph.

3 71. Answering Paragraph “71” of the Plaintiff’s Complaint, the Defendants admit the
4 allegations contained in said paragraph.

5 72. Answering Paragraph “72” of the Plaintiff’s Complaint, the Defendants admit that
6 the language quoted in said paragraph is contained in the Order entered by the Nevada Supreme
7 Court in Las Vegas Sun, Inc. v. D.R. Partners d/b/a Stephens Media Group, Appeal No. 68700.
8 The Defendants deny the remaining characterizations and allegations in said paragraph.

9 73. Answering Paragraph “73” of the Plaintiff’s Complaint, the Defendants admit that
10 the language quoted in said paragraph is contained in the Order entered by the Nevada Supreme
11 Court in Las Vegas Sun, Inc. v. D.R. Partners d/b/a Stephens Media Group, Appeal No. 68700.
12 The Defendants deny the remaining characterizations and allegations in said paragraph.

13 74. Answering Paragraph “74” of the Plaintiff’s Complaint, the Defendants admit that
14 the language quoted in said paragraph is contained in the Order entered by the Nevada Supreme
15 Court in Las Vegas Sun, Inc. v. D.R. Partners d/b/a Stephens Media Group, Appeal No. 68700.
16 The Defendants deny the remaining characterizations and allegations in said paragraph.

17 75. Answering Paragraph “75” of the Plaintiff’s Complaint, the Defendants deny the
18 allegations contained in said paragraph.

19 76. Answering Paragraph “76” of the Plaintiff’s Complaint, the Defendants are without
20 sufficient knowledge or information upon which to base a response to said paragraph, and
21 therefore deny the allegations in said paragraph.

22 77. Answering Paragraph “77” of the Plaintiff’s Complaint, the Defendants admit that
23 the dispute settled and deny the remainder of the allegations contained in said paragraph.

24 78. Answering Paragraph “78” of the Plaintiff’s Complaint, the Defendants admit the
25 allegations contained in said paragraph.

26 79. Answering Paragraph “79” of the Plaintiff’s Complaint, the Defendants admit the
27 allegations contained in said paragraph.

28 80. Answering Paragraph “80” of the Plaintiff’s Complaint, the Defendants admit that

1 they became aware of the pending legal proceedings when they succeeded in ownership.

2 81. Answering Paragraph “81” of the Plaintiff’s Complaint, the Defendants are without
3 sufficient knowledge or information upon which to base a response to said paragraph, and
4 therefore deny the allegations in said paragraph.

5 82. Answering Paragraph “82” of the Plaintiff’s Complaint, the Defendants admit that
6 early in 2018 they were provided with a copy of the settlement agreement reached in the Sun’s
7 litigation with DR Partners and Stephens Media, subject to protective, use and confidentiality
8 stipulations.

9 83. Answering Paragraph “83” of the Plaintiff’s Complaint, the Defendants deny the
10 allegations contained in said paragraph.

11 84. Answering Paragraph “84” of the Plaintiff’s Complaint, the Defendants admit that
12 their accounting practices did not change as a result of the Sun’s litigation with DR Partners and
13 Stephens Media. The Defendants deny all other allegations, and characterizations in said
14 paragraph.

15 85. Answering Paragraph “85” of the Plaintiff’s Complaint, the Defendants deny the
16 allegations contained in said paragraph.

17 86. Answering Paragraph “86” of the Plaintiff’s Complaint, the Defendants admit that
18 the Plaintiff and Defendants disagree as to meaning and interpretation of certain provisions of the
19 2005 JOA regarding editorial costs, and certain of those disagreements are the same or similar to
20 those between the Sun and the prior owners of the Las Vegas Review-Journal. The Defendants
21 deny the remaining allegations and characterizations in said paragraph.

22 87. Answering Paragraph “87” of the Plaintiff’s Complaint, the Defendants admit that
23 for the fiscal year ending March 31, 2017, the Las Vegas Review-Journal recorded a negative
24 EBITDA in the approximate amount of \$2.25 million. The Defendants are without sufficient
25 knowledge or information to form a response to the remaining characterizations and allegations in
26 said paragraph, and deny such characterizations and allegations.

27 88. Answering Paragraph “88” of the Plaintiff’s Complaint, the Defendants are without
28 sufficient knowledge or information upon which to base a response to said paragraph, and

1 therefore deny the allegations in said paragraph.

2 89. Answering Paragraph “89” of the Plaintiff’s Complaint, the Defendants admit the
3 allegations contained in said paragraph.

4 90. Answering Paragraph “90” of the Plaintiff’s Complaint, the Defendants are without
5 sufficient knowledge or information upon which to base a response to said paragraph, and
6 therefore deny the allegations in said paragraph.

7 91. Answering Paragraph “91” of the Plaintiff’s Complaint, the Defendants
8 affirmatively state that after the Defendants’ purchase of the Las Vegas Review-Journal, Jason
9 Taylor served as manager, from December 2015 until March 2016. The Defendants deny the
10 remaining allegations and characterizations in said paragraph.

11 92. Answering Paragraph “92” of the Plaintiff’s Complaint, the Defendants
12 affirmatively state that Jason Taylor created an unreasonable assessment of the anticipated
13 advertising revenues for the Las Vegas Review-Journal. The Defendants deny the remaining
14 allegations and characterizations contained in said paragraph.

15 93. Answering Paragraph “93” of the Plaintiff’s Complaint, the Defendants
16 affirmatively state that Jason Taylor created an unreasonable assessment of the anticipated
17 advertising revenues for the Las Vegas Review-Journal. The Defendants deny the remaining
18 allegations and characterizations contained in said paragraph.

19 94. Answering Paragraph “94” of the Plaintiff’s Complaint, the Defendants
20 affirmatively state that Jason Taylor left employment with the Defendants in March of 2016, and
21 that he was replaced with a new manager. New management advised the Plaintiff’s management
22 that the rate of decline in print advertising revenues would negatively impact the profitability of
23 the Las Vegas Review-Journal. The Defendants deny the remaining allegations and
24 characterizations contained in said paragraph, as worded.

25 95. Answering Paragraph “95” of the Plaintiff’s Complaint, the Defendants deny the
26 allegations contained in said paragraph.

27 96. Answering Paragraph “96” of the Plaintiff’s Complaint, the Defendants deny the
28 allegations contained in said paragraph.

1 97. Answering Paragraph “97” of the Plaintiff’s Complaint, the Plaintiff’s allegations
2 are vaguely worded with respect to time, and specifically what activity is the subject of its
3 allegation. Consequently, the Defendants are without sufficient knowledge or information upon
4 which to form a response, and therefore deny the allegations and characterizations contained in
5 said paragraph.

6 98. Answering Paragraph “98” of the Plaintiff’s Complaint, the 2005 JOA speaks for
7 itself. The Defendants deny the characterizations and allegations contained in said paragraph.

8 99. Answering Paragraph “99” of the Plaintiff’s Complaint, the Defendants deny the
9 allegations contained in said paragraph.

10 100. Answering Paragraph “100” of the Plaintiff’s Complaint, the Defendants are
11 without sufficient knowledge or information upon which to base a response to said paragraph, and
12 therefore deny the allegations in said paragraph.

13 101. Answering Paragraph “101” of the Plaintiff’s Complaint, the Defendants deny the
14 allegations contained in said paragraph.

15 102. Answering Paragraph “102” of the Plaintiff’s Complaint, the Defendants deny the
16 allegations contained in said paragraph.

17 103. Answering Paragraph “103” of the Plaintiff’s Complaint, the Plaintiff’s allegations
18 are vaguely worded with respect to time, specifically what activity is the subject of its allegation.
19 Consequently, the Defendants are without sufficient knowledge or information upon which to
20 form a response, and therefore deny the allegations and characterizations contained in said
21 paragraph.

22 104. Answering Paragraph “104” of the Plaintiff’s Complaint, the 2005 JOA, including
23 Appendix B, speaks for itself, and Defendants deny the unnecessary allegations and
24 characterizations contained in said paragraph.

25 105. Answering Paragraph “105” of the Plaintiff’s Complaint, the Plaintiff’s allegations
26 are vaguely worded with respect to time, specifically what activity is the subject of its allegation.
27 Consequently, the Defendants are without sufficient knowledge or information upon which to
28 form a response, and therefore deny the allegations and characterizations contained in said

1 paragraph.

2 106. Answering Paragraph “106” of the Plaintiff’s Complaint, the Defendants deny the
3 allegations contained in said paragraph.

4 107. Answering Paragraph “107” of the Plaintiff’s Complaint, the Defendants deny the
5 allegations contained in said paragraph.

6 108. Answering Paragraph “108” of the Plaintiff’s Complaint, the Defendants deny the
7 allegations contained in said paragraph.

8 109. Answering Paragraph “109” of the Plaintiff’s Complaint, the Defendants deny the
9 allegations contained in said paragraph.

10 110. Answering Paragraph “110” of the Plaintiff’s Complaint, the Defendants deny the
11 allegations contained in said paragraph.

12 111. Answering Paragraph “111” of the Plaintiff’s Complaint, the Defendants admit that
13 they informed the Plaintiff in March 2017 that they would be publishing the Las Vegas Review-
14 Journal with a redesigned front page commencing with the beginning of April 2017. Defendants
15 further affirmatively state that the redesigned front page was and is in full compliance with the
16 provisions of the 2005 JOA. The Defendants deny the remaining allegations and characterizations
17 in said paragraph.

18 112. Answering Paragraph “112” of the Plaintiff’s Complaint, the Defendants admit that
19 the Las Vegas Review-Journal was published with the aforementioned redesigned front page at the
20 beginning of April. Defendants further affirmatively state that the redesigned front page was and is
21 in compliance with the provisions with the 2005 JOA. The Defendants deny the remaining
22 allegations and characterizations in said paragraph.

23 113. Answering Paragraph “113” of the Plaintiff’s Complaint, the Defendants deny the
24 allegations contained in said paragraph.

25 114. Answering Paragraph “114” of the Plaintiff’s Complaint, the Defendants admit that
26 the redesigned front page of the Las Vegas Review-Journal has been published from April 2017 to
27 the present. The Defendants deny the remaining allegations and characterizations in said
28 paragraph.

1 115. Answering Paragraph “115” of the Plaintiff’s Complaint, the Defendants admit that
2 the Plaintiff, through its lawyers, sent to the Defendants a letter on or about May 12, 2016,
3 purporting to be its 30 day notice of intent to examine and audit the Las Vegas Review- Journal’s
4 books and records. The Defendants deny the remaining allegations and characterizations contained
5 in said paragraph.

6 116. Answering Paragraph “116” of the Plaintiff’s Complaint, the Defendants admit that
7 the Plaintiff stated that its “audit request” was made pursuant to Appendix D of the 2005 JOA.
8 The Defendants deny any remaining allegations or characterizations in said paragraph.

9 117. Answering Paragraph “117” of the Plaintiff’s Complaint, the Defendants admit that
10 they received a list of the documentation which the Plaintiff was requesting.

11 118. Answering Paragraph “118” of the Plaintiff’s Complaint, the Defendants admit and
12 affirmatively state that the Defendants responded in July 2016 to the Sun’s “request” by way of a
13 letter from its counsel objecting to the Sun’s request as being outside the scope of the Sun’s rights
14 under the 2005 JOA. The Defendants deny the remaining allegations and characterizations in said
15 paragraph.

16 119. Answering Paragraph “119” of the Plaintiff’s Complaint, the Defendants admit the
17 allegations contained in said paragraph.

18 120. Answering Paragraph “120” of the Plaintiff’s Complaint, the Defendants admit the
19 allegations contained in said paragraph.

20 121. Answering Paragraph “121” of the Plaintiff’s Complaint, the Defendants admit the
21 allegations contained in said paragraph.

22 122. Answering Paragraph “122” of the Plaintiff’s Complaint, the Defendants deny the
23 allegations contained in said paragraph, as worded.

24 123. Answering Paragraph “123” of the Plaintiff’s Complaint, the Defendants admit the
25 allegations contained in said paragraph.

26 124. Answering Paragraph “124” of the Plaintiff’s Complaint, the Defendants admit that
27 the Sun’s representatives met with the management of the Las Vegas Review-Journal and
28 explained its rationale for requesting the information it did. The Defendants deny the remaining

1 allegations and characterizations contained in said paragraph.

2 125. Answering Paragraph “125” of the Plaintiff’s Complaint, the Defendants admit the
3 allegations contained in said paragraph.

4 126. Answering Paragraph “126” of the Plaintiff’s Complaint, the Defendants admit the
5 allegations contained in said paragraph.

6 127. Answering Paragraph “127” of the Plaintiff’s Complaint, the Defendants admit that
7 the anticipated provision of documents and information to the Sun did not occur within the first
8 two weeks of January 2018, due to logistical considerations.

9 128. Answering Paragraph “128” of the Plaintiff’s Complaint, the Defendants admit that
10 the Plaintiff advised them on or about January 15, 2018 that it wanted immediate compliance with
11 its audit request, and would otherwise include a claim concerning the audit in its anticipated
12 arbitration demand. Defendants further admit that it subsequently agreed to share with the Sun
13 additional records and information (beyond that to which the Sun was actually entitled), and made
14 arrangements to begin the Sun’s audit on January 23, 2018. The Defendants deny the remaining
15 allegations and characterizations contained in said paragraph.

16 129. Answering Paragraph “129” of the Plaintiff’s Complaint, the Defendants deny the
17 allegations contained in said paragraph.

18 130. Answering Paragraph “130” of the Plaintiff’s Complaint, the Defendants admit the
19 allegations contained in said paragraph.

20 131. Answering Paragraph “131” of the Plaintiff’s Complaint, the Defendants deny the
21 allegations contained in said paragraph.

22 132. Answering Paragraph “132” of the Plaintiff’s Complaint, the Defendants
23 affirmatively state that they were prepared to commence the audit in January 2018, as agreed, but
24 objected to the Certified Public Accountant designated by the Plaintiff to examine the materials to
25 be provided. The 2005 JOA required that a law firm or a Certified Public Accounting Firm be the
26 entity conducting the audit. Upon learning of the Defendants’ objection, instead of redesignating a
27 person/or entity qualified under the 2005 JOA, the Plaintiff abandoned its audit efforts, and
28 commenced an arbitration proceeding with the American Arbitration Association. The Defendants

1 deny the remaining allegations and characterizations in said paragraph, as worded.

2 133. Answering Paragraph “133” of the Plaintiff’s Complaint, the Defendants admit the
3 allegations contained in said paragraph.

4 134. Answering Paragraph “134” of the Plaintiff’s Complaint, the allegations in such
5 paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory
6 language, to which no responsive pleading is required. To the extent any response is required, the
7 Defendants deny the allegations in said paragraph.

8 135. Answering Paragraph “135” of the Plaintiff’s Complaint, the Defendants admit the
9 allegations contained in said paragraph.

10 136. Answering Paragraph “136” of the Plaintiff’s Complaint, the Defendants admit that
11 an Administrative Call was conducted with the AAA on February 23, 2018, and that scheduling,
12 qualifications of the arbitrator, procedures, and potential discovery issues were discussed. The
13 official records of the AAA regarding the results and subject matter of the call speak for
14 themselves, and the Defendants consequently deny the remaining characterizations and allegations
15 in said paragraph.

16 137. Answering Paragraph “137” of the Plaintiff’s Complaint, the Defendants admit the
17 allegations contained in said paragraph.

18 138. Answering Paragraph “138” of the Plaintiff’s Complaint, the Defendants admit the
19 allegations contained in said paragraph.

20 139. Answering Paragraph “139” of the Plaintiff’s Complaint, the Defendants admit the
21 allegations contained in said paragraph.

22 140. Answering Paragraph “140” of the Plaintiff’s Complaint, the Defendants admit that
23 on March 22, 2018 they advised the Sun and the AAA that they contested and objected to the
24 AAA’s jurisdiction to resolve the four (4) claims set forth in the Sun’s Arbitration Demand. The
25 Defendants deny the remaining allegations and characterizations contained in said paragraph.

26 141. Answering Paragraph “141” of the Plaintiff’s Complaint, the Defendants admit that
27 on or about March 22nd, they proposed to discuss a three person arbitration panel as a
28 compromise solution for resolving the parties’ dispute, a settlement framework to which the

1 Plaintiff was not receptive. The Defendants deny the remaining characterizations and allegations
2 contained in said paragraph, as worded.

3 142. Answering Paragraph “142” of the Plaintiff’s Complaint, the Defendants deny the
4 allegations contained in said paragraph.

5 143. Answering Paragraph “143” of the Plaintiff’s Complaint, the Defendants deny the
6 allegations contained in said paragraph.

7
8 **FIRST CLAIM FOR RELIEF**
(Declaratory Relief)

9 144. Answering Paragraph “144” of the Plaintiff’s Complaint, the Defendants hereby
10 reallege and incorporate by reference as through fully set forth herein, the responses contained in
11 the paragraphs above.

12 145. Answering Paragraph “145” of the Plaintiff’s Complaint, the allegations in such
13 paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory
14 language, to which no responsive pleading is required. To the extent any response is required, the
15 Defendants deny the allegations in said paragraph.

16 146. Answering Paragraph “146” of the Plaintiff’s Complaint, the allegations in such
17 paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory
18 language, to which no responsive pleading is required. To the extent any response is required, the
19 Defendants deny the allegations in said paragraph.

20 147. Answering Paragraph “147” of the Plaintiff’s Complaint, the allegations in such
21 paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory
22 language, to which no responsive pleading is required. To the extent any response is required, the
23 Defendants deny the allegations in said paragraph.

24 148. Answering Paragraph “148” of the Plaintiff’s Complaint, the Defendants admit the
25 allegations contained in said paragraph.

26 149. Answering Paragraph “149” of the Plaintiff’s Complaint, the Defendants admit the
27 allegations contained in said paragraph.

28 150. Answering Paragraph “150” of the Plaintiff’s Complaint, the language of said

1 paragraph sets forth legal conclusions, alleged statements of law, and a description of the relief
2 sought by the Plaintiff, to which no responsive pleading is required. To the extent any response is
3 required, the Defendants deny the allegations contained in said paragraph, and deny that the
4 Plaintiff is entitled to any of the relief it seeks.

5 151. Answering Paragraph “151” of the Plaintiff’s Complaint, the Defendants deny the
6 allegations contained in said paragraph.

7 152. Answering Paragraph “152” of the Plaintiff’s Complaint, the Defendants deny the
8 allegations contained in said paragraph.

9
10 **SECOND CLAIM FOR RELIEF**
(Breach of Contract – Arbitration Provision)

11 153. Answering Paragraph “153” of the Plaintiff’s Complaint, the Defendants hereby
12 reallege and incorporate by reference as through fully set forth herein, the responses contained in
13 the paragraphs above.

14 154. Answering Paragraph “154” of the Plaintiff’s Complaint, the allegations in such
15 paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory
16 language, to which no responsive pleading is required. To the extent any response is required, the
17 Defendants deny the allegations in said paragraph.

18 155. Answering Paragraph “155” of the Plaintiff’s Complaint, the 2005 JOA speaks for
19 itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

20 156. Answering Paragraph “156” of the Plaintiff’s Complaint, the language of said
21 paragraph purports to set forth the ruling of the Nevada Supreme Court, and contains a legal
22 conclusion and purported interpretation of that conclusion. The referenced Order of the Nevada
23 Supreme Court speaks for itself. The Defendants deny the allegations and unnecessary
24 characterizations contained in said paragraphs.

25 157. Answering Paragraph “157” of the Plaintiff’s Complaint, the Defendants deny the
26 allegations contained in said paragraph.

27 158. Answering Paragraph “158” of the Plaintiff’s Complaint, the Defendants are
28 without sufficient knowledge or information upon which to base a response to said paragraph, and

1 therefore deny the allegations in said paragraph.

2 159. Answering Paragraph “159” of the Plaintiff’s Complaint, the Defendants deny the
3 allegations contained in said paragraph.

4 160. Answering Paragraph “160” of the Plaintiff’s Complaint, the Defendants deny the
5 allegations contained in said paragraph.

6 161. Answering Paragraph “161” of the Plaintiff’s Complaint, the Defendants admit that
7 the 2005 JOA contains provisions pertinent to editorial costs. As to the remaining
8 characterizations and allegations, such characterizations and allegations are legal conclusions, to
9 which no responsive pleading is required. To the extent any response is required, the Defendants
10 deny the remaining allegations in said paragraph.

11 162. Answering Paragraph “162” of the Plaintiff’s Complaint, the Defendants deny the
12 allegations contained in said paragraph.

13 163. Answering Paragraph “163” of the Plaintiff’s Complaint, the Defendants deny the
14 allegations contained in said paragraph.

15 164. Answering Paragraph “164” of the Plaintiff’s Complaint, the Defendants deny the
16 allegations contained in said paragraph.

17 165. Answering Paragraph “165” of the Plaintiff’s Complaint, the Defendants deny the
18 allegations contained in said paragraph.

19
20 **THIRD CLAIM FOR RELIEF**
(Breach of Contract – Editorial Costs: Section 4.2 and Related Provisions)

21 166. Answering Paragraph “166” of the Plaintiff’s Complaint, the Defendants hereby
22 reallege and incorporate by reference as through fully set forth herein, the responses contained in
23 the paragraphs above.

24 167. Answering Paragraph “167” of the Plaintiff’s Complaint, the allegations in such
25 paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory
26 language, to which no responsive pleading is required. To the extent any response is required, the
27 Defendants deny the allegations in said paragraph.

28 168. Answering Paragraph “168” of the Plaintiff’s Complaint, the 2005 JOA speaks for

1 itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

2 169. Answering Paragraph “169” of the Plaintiff’s Complaint, the Defendants deny the
3 allegations contained in said paragraph.

4 170. Answering Paragraph “170” of the Plaintiff’s Complaint, the Defendants are
5 without sufficient knowledge or information upon which to base a response to said paragraph, and
6 therefore deny the allegations in said paragraph.

7 171. Answering Paragraph “171” of the Plaintiff’s Complaint, the Defendants deny the
8 allegations contained in said paragraph.

9 172. Answering Paragraph “172” of the Plaintiff’s Complaint, the Defendants deny the
10 allegations contained in said paragraph.

11 173. Answering Paragraph “173” of the Plaintiff’s Complaint, the Defendants admit that
12 the 2005 JOA contains provisions pertinent to editorial costs. As to the remaining
13 characterizations and allegations, such characterizations and allegations are legal conclusions, to
14 which no responsive pleading is required. To the extent any response is required, the Defendants
15 deny the remaining allegations in said paragraph.

16 174. Answering Paragraph “174” of the Plaintiff’s Complaint, the Defendants deny the
17 allegations contained in said paragraph.

18 175. Answering Paragraph “175” of the Plaintiff’s Complaint, the Defendants deny the
19 allegations contained in said paragraph.

20 176. Answering Paragraph “176” of the Plaintiff’s Complaint, the Defendants deny the
21 allegations contained in said paragraph.

22 177. Answering Paragraph “177” of the Plaintiff’s Complaint, the Defendants deny the
23 allegations contained in said paragraph.

24 **FOURTH CLAIM FOR RELIEF**
25 **(Breach of Contract – the Review-Journal’s Independent Promotional Activities and**
26 **Expenses: Section 5.1.4)**

27 178. Answering Paragraph “178” of the Plaintiff’s Complaint, the Defendants hereby
28 reallege and incorporate by reference as through fully set forth herein, the responses contained in
the paragraphs above.

1 179. Answering Paragraph “179” of the Plaintiff’s Complaint, the allegations in such
2 paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory
3 language, to which no responsive pleading is required. To the extent any response is required, the
4 Defendants deny the allegations in said paragraph.

5 180. Answering Paragraph “180” of the Plaintiff’s Complaint, Section 5.1.4 of the 2005
6 JOA speaks for itself and the Defendants deny the characterizing of said provision, as worded.

7 181. Answering Paragraph “181” of the Plaintiff’s Complaint, the allegations in such
8 paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory
9 language, to which no responsive pleading is required. To the extent any response is required, the
10 Defendants deny the allegations in said paragraph.

11 182. Answering Paragraph “182” of the Plaintiff’s Complaint, the Defendants deny the
12 allegations contained in said paragraph.

13 183. Answering Paragraph “183” of the Plaintiff’s Complaint, the Defendants deny the
14 allegations contained in said paragraph.

15 184. Answering Paragraph “184” of the Plaintiff’s Complaint, the Defendants deny the
16 allegations contained in said paragraph.

17 185. Answering Paragraph “185” of the Plaintiff’s Complaint, the Defendants admit that
18 the 2005 JOA includes a Section 5.1.4 and Appendices A and B. As to the remaining
19 characterizations and allegations, such characterizations and allegations are legal conclusions, to
20 which no responsive pleading is required. To the extent any response is required, the Defendants
21 deny the remaining allegations in said paragraph.

22 186. Answering Paragraph “186” of the Plaintiff’s Complaint, the Defendants deny the
23 allegations contained in said paragraph.

24 187. Answering Paragraph “187” of the Plaintiff’s Complaint, the Defendants deny the
25 allegations contained in said paragraph.

26 188. Answering Paragraph “188” of the Plaintiff’s Complaint, the Defendants deny the
27 allegations contained in said paragraph.

28 189. Answering Paragraph “189” of the Plaintiff’s Complaint, the Defendants deny the

1 allegations contained in said paragraph.

2
3 **FIFTH CLAIM FOR RELIEF**
4 **(Breach of Contract – The Front Page Format: Section 5.1, and Appendices A and B)**

5 190. Answering Paragraph “190” of the Plaintiff’s Complaint, the Defendants hereby
6 reallege and incorporate by reference as through fully set forth herein, the responses contained in
7 the paragraphs above.

8 191. Answering Paragraph “191” of the Plaintiff’s Complaint, the allegations in such
9 paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory
10 language, to which no responsive pleading is required. To the extent any response is required, the
11 Defendants deny the allegations in said paragraph.

12 192. Answering Paragraph “192” of the Plaintiff’s Complaint, the Defendants admit and
13 affirmatively state that Section 5.1, and Appendices A and B set forth specifications which apply
14 to the Sun’s pages and its “noticeable mention” on the front page of the Las Vegas Review-
15 Journal. The Defendants deny the remaining allegations in said paragraph, as worded.

16 193. Answering Paragraph “193” of the Plaintiff’s Complaint, the Defendants deny the
17 allegations contained in said paragraph.

18 194. Answering Paragraph “194” of the Plaintiff’s Complaint, the Defendants deny the
19 allegations contained in said paragraph.

20 195. Answering Paragraph “195” of the Plaintiff’s Complaint, the Defendants deny the
21 allegations contained in said paragraph.

22 196. Answering Paragraph “196” of the Plaintiff’s Complaint, the Defendants admit that
23 the 2005 JOA includes a Section 5.1 and Appendices A and B. As to the remaining
24 characterizations and allegations, such characterizations and allegations are legal conclusions, to
25 which no responsive pleading is required. To the extent any response is required, the Defendants
26 deny the remaining allegations in said paragraph.

27 197. Answering Paragraph “197” of the Plaintiff’s Complaint, the Defendants deny the
28 allegations contained in said paragraph.

198. Answering Paragraph “198” of the Plaintiff’s Complaint, the Defendants deny the

1 allegations contained in said paragraph.

2 199. Answering Paragraph “199” of the Plaintiff’s Complaint, the Defendants deny the
3 allegations contained in said paragraph.

4 200. Answering Paragraph “200” of the Plaintiff’s Complaint, the Defendants deny the
5 allegations contained in said paragraph.

6
7 **SIXTH CLAIM FOR RELIEF**
(Breach of Contract – Audit)

8 201. Answering Paragraph “201” of the Plaintiff’s Complaint, the Defendants hereby
9 reallege and incorporate by reference as through fully set forth herein, the responses contained in
10 the paragraphs above.

11 202. Answering Paragraph “202” of the Plaintiff’s Complaint, the allegations in such
12 paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory
13 language, to which no responsive pleading is required. To the extent any response is required, the
14 Defendants deny the allegations in said paragraph.

15 203. Answering Paragraph “203” of the Plaintiff’s Complaint, the Defendants admit that
16 the quoted language in said paragraph appears in Appendix D to the JOA. As to the remaining
17 characterizations and allegations, such characterizations and allegations are legal conclusions, to
18 which no responsive pleading is required. To the extent any response is required the Defendants
19 deny the remaining allegations in said paragraph.

20 204. Answering Paragraph “204” of the Plaintiff’s Complaint, the Defendants deny the
21 allegations contained in said paragraph.

22 205. Answering Paragraph “205” of the Plaintiff’s Complaint, the Defendants deny the
23 allegations contained in said paragraph.

24 206. Answering Paragraph “206” of the Plaintiff’s Complaint, the Defendants deny the
25 allegations contained in said paragraph.

26 207. Answering Paragraph “207” of the Plaintiff’s Complaint, the Defendants admit that
27 Appendix D to the 2005 JOA contains an audit provision. As to the Plaintiff’s characterization of
28 that provision, such characterization is a legal conclusion, to which no responsive pleading is

1 required. To the extent a response is required, the Defendants are without sufficient knowledge or
2 information upon which to base a response to said paragraph, and therefore deny the allegations in
3 said paragraph.

4 208. Answering Paragraph “208” of the Plaintiff’s Complaint, the Defendants deny the
5 allegations contained in said paragraph.

6 209. Answering Paragraph “209” of the Plaintiff’s Complaint, the Defendants deny the
7 allegations contained in said paragraph.

8 210. Answering Paragraph “210” of the Plaintiff’s Complaint, the Defendants deny the
9 allegations contained in said paragraph.

10 211. Answering Paragraph “211” of the Plaintiff’s Complaint, the Defendants deny the
11 allegations contained in said paragraph.

12
13 **SEVENTH CLAIM FOR RELIEF**
(Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing)

14 212. Answering Paragraph “212” of the Plaintiff’s Complaint, the Defendants the
15 Defendants hereby reallege and incorporate by reference as through fully set forth herein, the
16 responses contained in the paragraphs above.

17 213. Answering Paragraph “213” of the Plaintiff’s Complaint, the allegations in such
18 paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory
19 language, to which no responsive pleading is required. To the extent any response is required, the
20 Defendants deny the allegations in said paragraph.

21 214. Answering Paragraph “214” of the Plaintiff’s Complaint, the Defendants deny the
22 allegations contained in said paragraph.

23 215. Answering Paragraph “215” of the Plaintiff’s Complaint, the allegations in such
24 paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory
25 language, to which no responsive pleading is required. To the extent any response is required, the
26 Defendants deny the allegations in said paragraph.

27 216. Answering Paragraph “216” of the Plaintiff’s Complaint, the Defendants are
28 without sufficient knowledge or information upon which to base a response to said paragraph, and

1 therefore deny the allegations in said paragraph.

2 217. Answering Paragraph “217” of the Plaintiff’s Complaint, the Defendants deny the
3 allegations contained in said paragraph.

4 218. Answering Paragraph “218” of the Plaintiff’s Complaint, the Defendants deny the
5 allegations contained in said paragraph.

6 219. Answering Paragraph “219” of the Plaintiff’s Complaint, the Defendants deny the
7 allegations contained in said paragraph.

8 220. Answering Paragraph “220” of the Plaintiff’s Complaint, the Defendants deny the
9 allegations contained in said paragraph.

10 **PRAYER FOR RELIEF**

11 221. Answering the provisions of the Plaintiff’s Complaint designated as its “Prayer for
12 Relief”, the statements contained therein constitute descriptions of the remedies sought by the
13 Plaintiff and require no response. To the extent the Plaintiff’s Prayer for Relief requires a
14 response, the Defendants deny that the Plaintiff is entitled to any of the relief it seeks from the
15 Court.

16 ***

17 Defendants deny any allegation not specifically admitted.

18 Defendants deny all argument made in the headings of the Sun’s complaint.

19 **AFFIRMATIVE DEFENSES**

20 **FIRST AFFIRMATIVE DEFENSE**

21 Plaintiff fails to state a claim upon which relief can be granted.

22 **SECOND AFFIRMATIVE DEFENSE**

23 Plaintiff’s claims are barred, in whole or in part, by the doctrine of accord and satisfaction.

24 **THIRD AFFIRMATIVE DEFENSE**

25 Plaintiff’s claims are barred, in whole or in part, by the doctrine of waiver.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 Plaintiff’s claims are barred, in whole or in part, by the doctrine of estoppel.

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FIFTH AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred, in whole or in part, by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred, in whole or in part, by the doctrine of setoff.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred, in whole or in part, by the doctrine of recoupment.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred, in whole or in part, by the Statute of Frauds.

NINTH AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred, in whole or in part, by a failure of a condition.

TENTH AFFIRMATIVE DEFENSE

The Defendants obligations were excused by Plaintiff’s conduct.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff’s claims fail for the want of any controversy as Plaintiff already settled its claims with Las Vegas Review-Journal.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred by the applicable statute of limitations.

THIRTEENTH AFFIRMATIVE DEFENSE

The Defendants did not have confidential relationship with the Plaintiff.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred, in whole or part, by the Parol Evidence Rule.

FIFTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrines of acquiescence, unclean hands, unjust enrichment and/or ratification, as well as other applicable equitable doctrines.

SIXTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, because the Defendants at all times acted in good faith and did not directly or indirectly induce any act or acts constituting a cause of action arising under any law.

1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 Plaintiff's claims are barred, in whole or part, by release, compromise and settlement.

3 **EIGHTEENTH AFFIRMATIVE DEFENSE**

4 Plaintiff's claims are barred, in whole or part, by payment.

5 **NINETEENTH AFFIRMATIVE DEFENSE**

6 Plaintiff's claims are barred, in whole or part, by mistake.

7 **TWENTIETH AFFIRMATIVE DEFENSE**

8 Plaintiff's claims are barred, in whole or part, by ratification.

9 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

10 Plaintiff's claims are barred, in whole or part, by acquiescence.

11 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

12 Plaintiff's claims are barred, in whole or in part, because the Court lacks jurisdiction over
13 them.

14 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

15 Plaintiff's claims for punitive damages are barred because none of the alleged acts or
16 omissions was or is malicious, willful, wanton, reckless, or grossly negligent.

17 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

18 Any alleged damages allegedly incurred by Plaintiff are the result of acts and omissions of
19 persons other than Defendants and therefore any alleged acts or omissions of the Defendants did
20 not proximately cause Plaintiff's alleged damages.

21 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

22 Plaintiff failed to mitigate its alleged damages.

23 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

24 Defendants' performance is excused by the doctrines of commercial frustration and/or
25 frustration of purpose.

26 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

27 Defendants' performance is excused under section 8.2 of the parties' agreement because of
28 events substantially beyond their control.

1 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

2 Pursuant to Nevada Rule of Civil Procedure 11, at the time of the filing of this Answer, all
3 possible affirmative defenses may not have been alleged inasmuch as sufficient facts and other
4 relevant information may not have been available after reasonable inquiry, and therefore, the
5 Defendants reserve their right to amend this Answer to allege additional affirmative defenses if
6 subsequent investigation warrants the same.

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, the Defendants pray for relief as follows:

- 10 1. Dismissal of Plaintiff's Complaint with prejudice;
11 2. An award of reasonable attorney's fees and costs to the Defendants for their
12 defense of this matter; and
13 3. For such other relief as the Court deems just and proper.

14 DATED this 30th day of September, 2019.

15 KEMP, JONES & COULTHARD, LLP

16 By: /s/ Michael Gayan

17 J. RANDALL JONES, ESQ.

18 Nevada Bar No. 1927

19 MICHAEL J. GAYAN, ESQ.

20 Nevada Bar No. 11135

21 3800 Howard Hughes Parkway, 17th Fl
22 Las Vegas, Nevada 89169
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1 **LAS VEGAS REVIEW-JOURNAL INC.'S COUNTERCLAIM**

2 **NATURE OF THE ACTION**

3 1. The Las Vegas Review-Journal was forced to file these counterclaims because the Las
4 Vegas Sun, its business partner under the parties' 2005 joint operating arrangement ("2005 JOA"),
5 has consistently failed to cooperate and to take all necessary steps in producing a successful joint
6 media product, the printed Review-Journal/Sun newspaper.¹ If not for the fact that the Review-
7 Journal is carrying the Sun financially and literally (as a daily insert to the Review-Journal
8 newspaper)—including printing and distributing the Sun newspaper, subsidizing the Sun's
9 newsroom, running its business operations, and providing the Sun with free exposure to the
10 Review-Journal's exponentially larger readership—the print edition of Sun newspaper would have
11 gone out of business years ago.

12 2. The 2005 JOA contractually requires the Sun to cooperate "in every reasonable way"
13 that will promote the creation of a successful joint product, and to preserve high standards of
14 newspaper quality. However, the Sun is not only flouting these contractual obligations, it is
15 actively working to *sabotage* the joint product. The Sun has intentionally allowed the printed Sun
16 newspaper to deteriorate. And it has been using the Review-Journal's financial resources, and its
17 free access to Review-Journal readers, to advertise *against* the joint Review-Journal/Sun print
18 product. A column on the front page of the Sun newspaper insert urged readers not to subscribe to
19 the Review-Journal newspaper and told readers that all the best content is on the
20 LasVegasSun.com website—a separate product outside of the 2005 JOA that is operated by the
21 Sun's parent company, Greenspun Media Group.

22 3. Although the Sun publicly complains about the 2005 JOA, the reality is that the two
23 newspapers enjoyed a profitable business partnership for many years. When the Sun's daily
24 edition was converted to a Sun-branded insert in the Review-Journal, it was a lucrative deal for the
25 Sun—the Sun's circulation increased by 700 percent, exposing multitudes of new readers to its
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27 ¹ Las Vegas Review-Journal, Inc. is the owner and publisher of the Las Vegas Review-Journal
28 newspaper. Las Vegas Sun, Inc. is the owner and publisher of the Las Vegas Sun newspaper.
Except where otherwise specified, references to the "Review-Journal" and the "Sun" refer to each
newspaper's publisher.

1 content and significantly increasing its brand awareness. In 2009, the Sun won a Pulitzer Prize.
2 However, it is not a secret that the print newspaper industry has faced many challenges in recent
3 years, due in large part to the smartphone-fueled rise of online news and social media, and the
4 corresponding exponential growth of digital advertising. Despite the changing times and onslaught
5 of new competition, the Review-Journal has done all that it can to continue producing a high-
6 quality printed paper for the Las Vegas community.

7 4. The Sun should have cooperated with the Review-Journal and taken all necessary steps
8 to help improve their joint product and meet these challenges. Instead, the Sun decided to throw in
9 the towel, and it is actively undermining the joint media product it is contractually obligated to
10 help create and support. To drive subscribers away from the printed Review-Journal/Sun and
11 divert them to LasVegasSun.com, the Sun has largely ceased running high-quality, breaking local
12 news content in its printed pages. Instead, the printed Sun is now filled with recycled national
13 wire-service stories, providing virtually no valuable breaking local news to readers. To be clear,
14 the Sun is still *producing* original local news content—in a newsroom subsidized by the Review-
15 Journal—but recently, its original local news content has run primarily on the separately-owned
16 LasVegasSun.com, at times behind an \$8.99 paywall. It would cost the Sun nothing to also publish
17 this valuable content in the printed Sun. But it won't, because doing that would not help the Sun
18 siphon readers from the printed Sun to LasVegasSun.com.

19 5. The Sun has even stooped to publishing advertisements in the Review-Journal/Sun
20 telling readers *not to subscribe* to the Review-Journal/Sun printed newspaper. For example, when
21 LasVegasSun.com put up its paywall, the Sun newspaper insert ran a message on the front page –
22 above the fold –telling readers to subscribe to LasVegasSun.com instead of buying a print
23 subscription because “*purchasing a print subscription to the Sun and R-J doesn't benefit the*
24 *Sun.*”² The Sun newspaper has also been running a permanent advertisement admitting that the
25 Sun's best content is on LasVegasSun.com, not in the printed Sun newspaper, and directing
26 readers (as recently as August 28, 2019) to go online “TO FIND EVERYTHING WE'VE GOT.”
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28 ² <https://m.lasvegassun.com/news/2018/jan/11/a-note-from-the-sun/>, last visited August 21, 2019
(emphasis added).

1 6. The Sun has blamed the Review-Journal for the declining quality of its printed
2 newspaper insert, when the evidence clearly shows the Sun is the master of its own decline. The
3 Sun falsely claims to be the victim of a plot to starve it of funds and drive it out of the market—
4 but the Sun clearly has the ability to produce timely, original local news content, as it is publishing
5 that content on LasVegasSun.com and has charged subscribers for it.

6 7. The Sun plainly does not want a successful business relationship with the Review-
7 Journal. And the Review-Journal should not be yoked to a business partner who is actively trying
8 to sabotage their joint product. Under the 2005 JOA, each party has the right to terminate the
9 agreement in the event of the other party's material breach. Moreover, it seems obvious that the
10 time has come for the parties to go their separate ways. Accordingly, these counterclaims seek
11 damages and a declaration from the Court terminating the 2005 JOA due to the Sun's material
12 breaches.

13 **PARTIES, JURISDICTION, AND VENUE**

14 8. Counterclaimant Las Vegas Review-Journal, Inc. is a Delaware corporation with its
15 principal place of business in Las Vegas, Nevada. It is the owner and publisher of the print and
16 online Las Vegas-Review-Journal newspaper, which serves the metropolitan Las Vegas area. It is,
17 and has been since on or about December 10, 2015, the ultimate successor in interest of DR
18 Partners.

19 9. Counterclaim-Defendant Las Vegas Sun, Inc. is a Nevada corporation with its principal
20 place of business in Henderson, Nevada. It is the owner and publisher of the print and online Las
21 Vegas Sun newspaper, which also serves metropolitan Las Vegas.

22 10. Jurisdiction and venue are proper in this Court because these counterclaims arise out of
23 events that occurred in Clark County, Nevada, and both parties' principal place of business is in
24 Clark County, Nevada.

25 **GENERAL ALLEGATIONS**

26 **A. The Review-Journal and the Sun Enter a Joint Operating Agreement To Rescue The**
27 **Failing Sun.**

1 11. The Sun newspaper was first published in 1950 and has a long history of publishing
2 original local news stories of interest to the community. On its website, the Sun boasts of its
3 longstanding reputation for “in-depth reporting,” and the “dozens of journalism awards” it has
4 won.³ Notwithstanding these claims, the Sun struggled to turn a profit. By the 1980s, the Sun was
5 operating at a substantial loss and on the verge of financial collapse.

6 12. In June 1989, Donrey of Nevada, Inc., then owner of the Review-Journal newspaper,
7 entered into a joint operating arrangement (“the 1989 JOA”) with the Sun pursuant to the
8 Newspaper Preservation Act, 15 U.S.C. §1801, et seq. (the “NPA”). That Act allows financially
9 troubled newspapers to partner with their competitors. Its goal is to prevent communities with
10 struggling papers from losing editorial diversity. As a result of the JOA, the Sun became
11 profitable.

12 13. In 2005, DR Partners, the then-successor in interest to Donrey of Nevada, Inc., and Las
13 Vegas Sun, Inc. amended and restated their JOA in a document entitled “Amended and Restated
14 Agreement.” Under the 2005 JOA, as under the prior agreement, the Review-Journal is
15 responsible for handling and paying the costs of all business functions of the Sun—including
16 production, distribution, and advertising—thereby eliminating these significant expenses for the
17 Sun. The Review-Journal and the Sun maintain separate and independent news and editorial
18 operations.

19 14. The 2005 JOA also provides that, instead of being distributed as a separate afternoon
20 newspaper, the Sun would be distributed mornings as a separately-branded newspaper insert
21 within the Review-Journal. This arrangement was highly lucrative for the Sun—its circulation
22 skyrocketed by 700 percent, exposing multitudes of new readers to its content, and significantly
23 increasing its brand awareness. In 2009, the Sun won a Pulitzer Prize for a year-long series of
24 original investigative reports, including 53 stories and 21 editorials, on construction deaths in Las
25 Vegas. Its website catalogues numerous other journalism awards received in this time period,
26 including awards for investigative reporting, writing, editing, art, design, and photography.

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³ <https://lasvegassun.com/about/>, last visited August 21, 2019.

1 **B. The 2005 JOA Requires the Sun to Take All Action Necessary to Carry Out The**
2 **JOA, and to Maintain High Quality Standards.**

3 15. The purpose of the 2005 JOA was, among other things, to provide the Las Vegas
4 metropolitan area with a high-quality joint media product and create a joint product that is
5 successful.

6 16. Consistent with that purpose, the 2005 JOA requires the parties to work together to
7 make the joint product successful.

8 17. This requirement is made explicit in Section 5.3 of the JOA. In that section, both
9 parties agreed “to take *all corporate action necessary* to carry out and effectuate the intent,
10 purposes and provisions of this Restated Agreement.” 2005 JOA, § 5.3 (emphasis added). They
11 also agreed to “*cooperate with the other party in every reasonable way that will promote*
12 *successful and lawful operation under this Restated Agreement for both parties.*” *Id.* (emphasis
13 added).

14 18. The JOA also required the parties to maintain the quality of their respective
15 newspapers. Section 5.2 states that each party “*agrees to preserve high standards of newspaper*
16 *quality throughout the term of this Restated Agreement consistent with United States*
17 *metropolitan daily newspapers.*” 2005 JOA, §5.2 (emphasis added).

18 **C. The Sun Sabotages The Joint Review-Journal/Sun Newspaper and Diverts**
19 **Readers to a Separate Online News Product Outside of the JOA.**

20 19. It is well-known that this is a challenging time for the print newspaper industry.
21 Smartphones have given nearly every adult in America 24-7 internet access, fueling rapid,
22 exponential growth in online news and social media. Many advertisers have fled to the vast array
23 of digital advertising platforms to reach customers and get their messages out. These radical
24 changes have broken down barriers and led to hyper-competition in the news industry—giving Las
25 Vegas citizens access to more competing voices and options than anyone could ever have
26 imagined, and at the same time depriving print newspapers of the revenue upon which they have
27 depended. This substantial threat to the print newspaper business was unforeseeable when the
28 parties executed the JOA 2005—after all, in 2005, there were no iPhones or Androids, and the
29 mass exodus from print to digital advertising had not occurred. Notwithstanding these game-

1 changing new developments, the Review-Journal has worked tirelessly to continue providing the
2 Las Vegas community with a quality printed newspaper.

3 20. In the face of these challenges, the Sun should have worked with the Review-Journal to
4 make the Review-Journal/Sun newspaper as successful as it could be. In fact, it was contractually
5 obligated to do so.

6 21. Instead, the Sun essentially abandoned the joint product and its obligations under the
7 business arrangement that had kept the Sun afloat for the last thirty years. And the Sun started
8 actively undermining the joint product it is contractually obligated to help create and support.
9 Rather than help make the Review-Journal/Sun stronger, the Sun has been aggressively working to
10 undermine and subvert it by diverting readers away from the joint printed newspaper to the Sun's
11 separately-owned online site, LasVegasSun.com.

12 22. LasVegasSun.com is outside of the JOA, meaning that it exclusively belongs to the
13 Sun's parent company, Greenspun Media Group, and the Review-Journal receives no revenue
14 from it.

15 23. Although the Review-Journal receives nothing from LasVegasSun.com, it is
16 involuntarily subsidizing it. Greenspun Media Group's owner has publicly admitted that he uses
17 the profit payments from the Review-Journal to fund the operations of LasVegasSun.com, and
18 other magazines and websites owned by the Greenspun Media Group.

19 24. To drive readers away from the Review-Journal/Sun newspaper and to
20 LasVegasSun.com, the Sun has largely ceased publishing original and/or breaking local news
21 stories in the printed Sun. Instead, the Sun hoards the breaking local news stories generated by its
22 newsroom for LasVegasSun.com and, on information and belief, other Greenspun Media Group
23 publications.

24 25. For example, the Sun won first place for Best Breaking News Reporting in the 2018
25 Nevada Press Association Better Newspaper Contest for its coverage of the October 1, 2017, mass
26 shooting on the Las Vegas Strip.⁴ The award-winning story appeared only on LasVegasSun.com,
27 never in print. In the following days, the printed Sun contained woefully little original coverage of
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⁴ <https://nevadapress.com/wabuskamangler/2018-contest-winners-for-urban-dailies/>.

1 the biggest breaking news story in Las Vegas history. On information and belief, the Sun instead
2 used its newsroom to produce content for a story about the shooting that ran in another Greenspun
3 Media publication outside of the JOA.

4 26. Other award-winning stories that ran on LasVegasSun.com but not in the Sun
5 newspaper include *Children on the Cusp: The Transition from Foster Care to Adulthood is*
6 *Leaving Some Behind*, an in-depth look at Clark County youths who had aged out of the foster-
7 care system, published on LasVegasSun.com on March 13, 2017, and *Celebrating the Las Vegas*
8 *Showgirl*, published on LasVegasSun.com on June 13, 2016.

9 27. More recent examples abound. On August 22, 2019, LasVegasSun.com provided live
10 coverage of a heated meeting of Clark County School District Board, which is facing a threatened
11 teachers' strike. The story was not published in the printed Sun. On August 20, 2019,
12 LasVegasSun.com ran an original story reporting on a poll showing Joe Biden leading Elizabeth
13 Warren and Bernie Sanders in Nevada; the story likewise never appeared in the printed Sun.

14 28. Instead of original content, the Sun now fills its printed pages with national syndicated
15 and wire service content that is readily available from other sources and often days old by the time
16 it appears in the Sun. When the printed Sun does run local stories, they are often stories that had
17 already appeared earlier in other Greenspun Media Group publications. For example, on August
18 15, 2019, LasVegasSun.com ran an article about a petition filed the day before (August 14) by the
19 Center for Biological Diversity that had the potential to derail a controversial proposal put forth by
20 Clark County to open protected lands to development. The story did not appear in the printed Sun
21 until over a week later, on August 22, 2019. Similarly, an article about the impact the
22 reorganization of the Bureau of Land Management would have on Nevadans appeared on
23 LasVegasSun.com on August 14, 2019, but did not appear in the printed Sun until August 21,
24 2019.

25 29. This means that instead of a co-branded newspaper with original reporting and in-depth
26 news stories from diverse perspectives, the Review-Journal/Sun newspaper has been reduced to a
27 single newspaper (the Review-Journal) with a slapped together insert containing recycled content
28

1 (the Sun). As a result, the printed Review-Journal/Sun newspaper is less attractive to readers and
2 subscribers, and in turn to advertisers, than it could be otherwise.

3 30. The Sun could easily run its original news stories in the printed Sun, in addition to
4 LasVegasSun.com, at no extra cost. The same newsroom—which the Review-Journal is
5 subsidizing—generates content for both the printed Sun and LasVegasSun.com. And because the
6 Review-Journal is carrying the costs of publishing and distributing the printed Sun, the cost to the
7 Sun is the same (i.e., zero dollars) whether its pages contain original news or days-old reprints.

8 31. In early 2018, Greenspun Media Group moved LasVegasSun.com behind a paywall.

9 32. For more than 30 days beginning on January 11, 2018, the Sun published a message to
10 its readers on the first page of its printed insert to the Review-Journal. It was called “A Note from
11 the Sun” (the “Note”).

12 33. In the Note, the Sun urged readers to “subscribe to the Las Vegas Sun online” and
13 promised that by doing so readers would be “doing your part in providing fact-based, quality
14 journalism to readers across the valley who depend on that information for their daily family,
15 business and political decisionmaking.”⁵

16 34. The Note did not explain why the “fact based, quality journalism” readers could access
17 on LasVegasSun.com was not appearing in the printed Sun. The Review-Journal, by contrast, also
18 has an online version (ReviewJournal.com) that is outside the parties JOA—but the most
19 important original, breaking news stories that appear in the online Review-Journal are also
20 published in the print newspaper.

21 35. The Note made clear that LasVegasSun.com was intended to be direct competition for
22 the Review-Journal/Sun newspaper. By subscribing to LasVegasSun.com, the Note told readers,
23 “you will ensure that Nevada has multiple, vibrant viewpoints on the news and competing
24 opinions about what the news means to each of us.”⁶ This, of course, was the entire point of the
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28 ⁵ <https://m.lasvegassun.com/news/2018/jan/11/a-note-from-the-sun/>, last visited August 21, 2019.

⁶ *Id.*

1 JOA, under which the Review-Journal has been carrying the production, distribution, and business
2 costs of the Sun to ensure that Nevada readers have access to diverse news and editorial content.⁷

3 36. The Note attacked the Review-Journal's management—the Sun's JOA business
4 partner—and blamed it for ongoing revenue and circulation decline.



12 37. The Note expressly told readers *not* to subscribe to the printed Review-Journal/Sun,
13 advising them that “*no, purchasing a print subscription to the Sun and R-J doesn’t benefit the*
14 *Sun in this current scenario.*”⁸

15 38. The Sun has continued to use the free printing and distribution being provided by the
16 Review-Journal to advertise *against* the Review-Journal. For example, every printed Sun now
17 carries an advertisement admitting that the best content is on LasVegasSun.com, not in the printed
18 paper, and directing readers to LasVegasSun.com “TO FIND EVERYTHING WE’VE GOT”:

19 39. To put it mildly, the Sun is not taking all actions necessary or cooperating with the
20 Review-Journal to successfully carry out the intent and purpose of the JOA. It is doing the exact
21 opposite. Instead of helping to make the Review-Journal/Sun newspaper a success, the Sun is
22 deliberately subverting it—starving the Sun’s pages of original content, loading them with
23 syndicated filler, and using its access to the Review-Journal’s large readership to try to convince
24 those readers to drop the printed newspaper in favor of LasVegasSun.com.
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27 ⁷ See, e.g., 1989 JOA, Preliminary Statement (“It is the firm belief of the parties that the continued
28 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.”).

⁸ <https://m.lasvegassun.com/news/2018/jan/11/a-note-from-the-sun/>, last visited August 21, 2019.

FIRST CAUSE OF ACTION—BREACH OF CONTRACT

40. The Review-Journal realleges paragraphs 1 through 39 of this complaint as if fully set forth herein.

41. The 2005 JOA requires the parties to “take all corporate action necessary to carry out and effectuate the intent, purposes, and provisions of this Restated Agreement.” 2005 JOA, § 5.3.

42. The 2005 JOA also requires each party “to cooperate with the other party in every reasonable way that will promote successful and lawful operation under this Restated Agreement for both parties.” 2005 JOA, § 5.3.

43. The 2005 JOA additionally requires the parties to “preserve high standards of newspaper quality throughout the term of this Restated Agreement consistent with United States metropolitan daily newspapers.” 2005 JOA, § 5.2.

44. The Sun has breached Section 5.3 by engaging in a course of conduct that includes, among other things: intentionally withholding original and/or breaking local news content from the printed Sun newspaper; filling the printed Sun newspaper with dated, recycled content such as days-old wire-service articles and stories that had already appeared days earlier on LasVegasSun.com instead of original content; taking these and other actions to undermine the quality of the printed product for the purpose of diverting readers from the printed Review-Journal/Sun newspaper to LasVegasSun.com, which is outside of the JOA; and telling readers not to subscribe to the Review-Journal/Sun.

45. The Sun has likewise breached Section 5.2 by failing to preserve high standards of newspaper quality consistent with United States metropolitan newspapers and instead relying primarily on recycled content to fill the Sun’s printed pages. By any objective measure, the printed Sun of today is a far cry from the high standards of newspaper quality required by the 2005 JOA.

46. The Sun’s breaches have damaged the Review-Journal. Among other things, the Sun’s conduct has diverted revenues and made the printed Review–Journal/Sun newspaper less attractive to readers, subscribers, and advertisers, causing a loss of revenue and profits to the JOA and Review–Journal. If not for the Sun’s breaches, the printed Review-Journal/Sun would have experienced higher circulation and greater profits. Furthermore, by undermining the quality of the

1 printed Review-Journal/Sun newspaper while simultaneously using the printed Sun to advertise
2 for and promote other business ventures with which Greenspun Media is affiliated and which are
3 outside the JOA, the Sun has improperly diverted sales and profits from the JOA and the Review-
4 Journal to those other business ventures and thereby has been unjustly enriched.

5 **SECOND CAUSE OF ACTION—BREACH OF THE IMPLIED COVENANT OF GOOD**
6 **FAITH AND FAIR DEALING**

7 47. The Review-Journal realleges paragraphs 1 through 46 of this complaint as if fully set
8 forth herein.

9 48. An implied covenant of good faith and fair dealing is recognized in every contract
10 under Nevada law. Accordingly, in the 2005 JOA there was an implied covenant of good faith and
11 fair dealing between the Review-Journal and the Sun whereby each party covenanted not to do
12 anything to destroy or injure the rights of the other to receive the benefits of the agreement.

13 49. The Sun breached the covenant of good faith and fair dealing by, among other things,
14 intentionally causing the printed Sun to deteriorate and using the Review-Journal's resources and
15 the joint media product created under the JOA to advertise against the Review-Journal/Sun
16 newspaper and urge readers to instead subscribe to its owner's online product outside of the JOA.

17 50. The Sun's breaches of the covenant have damaged the Review-Journal. Among other
18 things, the Sun's disloyalty and subversion of the JOA have diverted revenues and made the
19 printed Review-Journal/Sun newspaper less attractive to readers, subscribers, and advertisers,
20 causing a loss of revenue and profits to the JOA and Review-Journal. If not for the Sun's conduct,
21 the printed Review-Journal/Sun would have experienced higher circulation and greater profits.
22 Furthermore, by undermining the quality of the printed Review-Journal/Sun newspaper while
23 simultaneously using the printed Sun to advertise for and promote other business ventures with
24 which Greenspun Media is affiliated, the Sun has improperly diverted sales and profits from the
25 JOA and the Review-Journal to those other business ventures and thereby has been unjustly
26 enriched.

27 **THIRD CAUSE OF ACTION—DECLARATORY RELIEF (TERMINATION FOR**
28 **MATERIAL BREACH)**

1 51. The Review-Journal realleges paragraphs 1 through 50 of this complaint as if fully
2 set forth herein.

3 52. The 2005 JOA allows a party to terminate the agreement in the event of a material
4 breach by the other party. Specifically, Section 9.1.2 provides, in relevant part: “[I]f either party
5 defaults in the performance of any of its material obligations hereunder and does not cure such
6 default within sixty (60) days after receiving written notice thereof from the other party, then such
7 other party may, at its election, and in addition to all other remedies available to it at law or in
8 equity, terminate this restated Agreement.”

9 53. The Sun’s conduct, as alleged herein, was disloyal and a breach of trust. It went to
10 the essence of the agreement, as the entire purpose of the 2005 JOA was to create a high quality,
11 joint media product that would contain a daily Sun newspaper within a daily Review-Journal
12 newspaper. The Sun’s conduct, as alleged herein, was designed to subvert these efforts by
13 sabotaging the printed Sun and diverting readers to LasVegasSun.com, a product outside of the
14 JOA. By engaging in this conduct, the Sun has already irreparably damaged reader goodwill,
15 irreparably harmed the Review-Journal, and has destroyed the mutual trust essential to the parties’
16 continued business relationship. Accordingly, the Sun’s breaches are incurable, such that any
17 alleged legal obligation on the part of the Review-Journal to give notice or wait out a cure period
18 before seeking relief from this Court was excused.

19 54. A justiciable controversy exists between the Review-Journal and the Sun, insofar as
20 the Review-Journal contends that the Sun is in material breach of the 2005 JOA such that the
21 Review-Journal is entitled to terminate the agreement, and, on information and belief, the Sun
22 contends there has been no such breach. The Review-Journal, as a party to the 2005 JOA, has a
23 legally protected interest in the controversy, and the issue is ripe for judicial determination.

24 55. The Review-Journal is entitled to a judicial declaration that the Sun is in material
25 breach of Sections 5.3 and 5.2 of the 2005 JOA, and the implied covenant of good faith and fair
26 dealing, and that the 2005 JOA is therefore terminated.

27 **FOURTH CAUSE OF ACTION—DECLARATORY RELIEF (TERMINATION FOR**
28 **FRUSTRATION OF PURPOSE)**

1 56. The Review-Journal realleges paragraphs 1 through 55 of this complaint as if fully
2 set forth herein.

3 57. The Review-Journal is entitled to a judicial declaration that its obligation to
4 continue performance under the JOA is excused pursuant to the doctrine of frustration of purpose.
5 The proliferation of smartphones and mobile devices that made internet access ubiquitous, and the
6 exponential growth of online advertising, was not foreseeable when the JOA was executed in
7 2005. Nor was it foreseeable that in the face of this existential threat to the print newspaper
8 industry, the Sun would essentially abandon the JOA and divert readers to its separate online
9 product, LasVegasSun.com. These events have destroyed the value of the JOA and rendered it
10 unenforceable due to the commercial frustration of its intended purpose.

11 58. There has been another frustration of purpose, as well. Both the original JOA
12 agreement and the 2005 Amendment were made under the NPA. The purpose of the NPA is to
13 preserve editorial voices that otherwise might be lost by permitting a failing newspaper and
14 another newspaper to combine their business operations, and thus achieve profitability for the
15 business as a whole. But the NPA was never intended to cause the risk of loss of editorial voices
16 by requiring the JOA as a whole to lose money. As a result of the Sun's conduct, the Sun has
17 become an albatross around the neck of the Review-Journal with no associated benefits, in an
18 increasingly challenging business environment for print newspapers. The continuation of the JOA
19 would frustrate the purpose of the statute under which it was formed, and the basis of the parties'
20 bargain.

21 59. A justiciable controversy exists between the Review-Journal and the Sun, insofar as
22 the Review-Journal contends that its performance under the 2005 JOA is excused and, on
23 information and belief, the Sun contends that the Review-Journal's performance is not excused.
24 The Review-Journal, as a party to the 2005 JOA, has a legally protected interest in the
25 controversy, and the issue is ripe for judicial determination.

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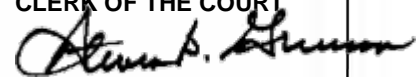
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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2019, I served a true and correct copy of the foregoing **FIRST AMENDED ANSWER TO COMPLAINT AND COUNTERCLAIMS** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Pam Montgomery
An Employee of Kemp, Jones & Coulthard, LLP

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DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS SUN, INC., a Nevada
corporation,

Plaintiff,

v.

NEWS+MEDIA CAPITAL GROUP LLC,
a Delaware limited liability company; and
LAS VEGAS REVIEW-JOURNAL, INC.,
a Delaware limited liability company,

Defendants.

LAS VEGAS REVIEW-JOURNAL, INC.,
a Delaware corporation,

Counterclaimant,

v.

LAS VEGAS SUN, INC., a Nevada
corporation,

Counter-defendant.

Case No.: A-18-772591-B
Dept. No.: XVI

**~~PROPOSED~~ FINDINGS OF FACTS,
CONCLUSIONS OF LAW, AND ORDER
AFFIRMING THE ARBITRATION
AWARD**

Hearing Date: October 22, 2019

JAN 03 2020

1 This matter came before the Court on October 22, 2019, at 1:30 P.M., with all parties
2 appearing by and through their counsel of record, on (a) Plaintiff Las Vegas Sun, Inc.’s Motion
3 to Confirm Arbitration Award, in Part, and to Vacate or, Alternatively, Modify or Correct the
4 Award, in Part, (b) Defendants News+Media Capital Group LLC’s and Las Vegas-Review
5 Journal, Inc.’s Motion to Vacate the Arbitration Award, and (c) Defendants News+Media
6 Capital Group LLC’s and Las Vegas-Review Journal, Inc.’s Conditional Countermotion to
7 Confirm Arbitration Award, in Part, and to Vacate the Award, in Part (collectively, the
8 “Motions”).

9 The Court, having considered the papers filed in support of and in opposition to the
10 Motions, having heard arguments of counsel, and for good cause appearing, enters the following
11 findings, conclusions and Order:¹

12 **BACKGROUND**

13 1. On June 10, 2005, Plaintiff Las Vegas Sun, Inc. (the “Sun”) and Defendant Las
14 Vegas Review-Journal, Inc.’s predecessor executed a joint operating arrangement (the “JOA”).

15 ***The Sun’s Complaint and the Arbitration***

16 2. On April 10, 2018, Plaintiff Las Vegas Sun, Inc. (the “Sun”) filed its Complaint
17 against Defendants News+Media Capital Group LLC and Las Vegas Review-Journal, Inc.
18 (collectively, the “Review-Journal”) in the above-captioned matter regarding disputes related to
19 the JOA, and moved this Court to compel arbitration of certain (but not all) claims outlined in
20 the Complaint.

21 3. This Court granted the Sun’s motion to compel arbitration via an order entered
22 on November 21, 2018.

23 4. In the arbitration proceedings, the parties engaged in discovery, submitted
24 written briefs, and presented arguments and evidence before the Arbitrator.

25 5. After a multi-day arbitration hearing, the Arbitrator issued a Final Award of
26

27 ¹ Any finding of fact more properly characterized as a conclusion of law shall be deemed so.
28 Any conclusion of law more properly characterized as a finding of fact shall be deemed so.

1 Arbitrator on July 2, 2019 (the “Award”).

2 ***The Arbitration Award***

3 6. The Award contains the Arbitrator’s rulings on the following claims and requests
4 for relief: (a) the Sun’s requests for declaratory relief related to interpretation of various JOA
5 provisions (i.e., Section 4.2, Section 5.1.4, and the audit provision in Appendix D); (b) the
6 Sun’s breach of contract claims related to those same sections of the JOA; (c) the Sun’s claim
7 for tortious breach of the implied covenant of good faith and fair dealing related to those same
8 sections of the JOA; and (d) both parties’ requests for an award of attorneys’ fees and costs
9 related to the arbitration proceedings. The full contents of the Award are the subject of various
10 motions to seal pending before this Court.

11 ***The Parties’ Motions to Confirm/Vacate the Award***

12 7. On September 13, 2019, the Sun filed its Motion to Confirm Arbitration Award,
13 in Part, and to Vacate or, Alternatively, Modify or Correct the Award, in Part (the “Sun’s
14 Motion”).

15 8. On September 18, 2019, the Review-Journal filed its Motion to Vacate
16 Arbitration Award.

17 9. On September 30, 2019, the Review-Journal filed its opposition to the Sun’s
18 Motion along with a Conditional Countermotion to Confirm Arbitration Award, in Part, and to
19 Vacate the Award, in Part.

20 10. By October 11, 2019, the parties completed briefing the motions.

21 11. On October 22, 2019, this Court heard arguments on the parties’ motions.

22 12. On December 4, 2019, this Court issued its six-page Minute Order resolving the
23 parties’ motions, affirming the Award in its entirety, and directing the parties to prepare and
24 submit this more detailed Order for the Court’s review and signature.

25 **DISCUSSION, FINDINGS AND CONCLUSIONS**

26 ***The RJ’s Motion to Vacate Arbitration Award***

27 13. The first issue raised by the Review-Journal as the basis to vacate the Award
28 focused on whether the Arbitrator disregarded the plain language of the JOA by failing to

1 subtract editorial expenses from revenues in order to calculate EBITDA (earnings before
2 interest, taxes, depreciation, and amortization) for the purposes of determining the Sun's share
3 of profits under the JOA.

4 14. Under Nevada law, "[t]he party seeking to attack the validity of an arbitration
5 award has the burden of proving, by clear and convincing evidence, the statutory or common-
6 law ground relied upon for challenging the award." *Washoe Cty. Sch. Dist. v. White*, 133 Nev.
7 301, 303, 396 P.3d 834, 838 (2017) (quoting *Health Plan of Nev., Inc. v. Rainbow Med., LLC*,
8 120 Nev. 689, 695, 100 P.3d 172, 176 (2004)). There are two common-law grounds recognized
9 in Nevada under which a court may review private binding arbitration award: (1) whether the
10 award is arbitrary, capricious, or unsupported by the agreement; and (2) whether the arbitrator
11 manifestly disregarded the law." *Id.* at 306. The Nevada Supreme Court explained the
12 distinction between the two as: "the former standard ensures that the arbitrator does not
13 disregard the facts or the terms of the arbitration agreement," while "the latter standard ensures
14 that the arbitrator recognizes applicable law." *Id.*

15 15. Moreover, "[j]udicial inquiry under the manifest-disregard-of-the-law standard is
16 extremely limited." *Id.* When a party seeks to vacate an arbitration award based on manifest
17 disregard of the law, they must show more than a mere objection to the results of the arbitration.
18 *Id.* Consequently, the Court's focus is not on whether the Arbitrator correctly interpreted the
19 law, but "whether the arbitrator, knowing the law and recognizing that the law required a
20 particular result, simply disregarded the law." *Id.*

21 16. In the instant action, the Arbitrator was presented with the JOA's plain language
22 and determined that under the JOA, editorial expenses should not be included in the EBITDA
23 calculation. There appears to be a colorable justification for the Arbitrator's findings on this
24 issue. The Arbitrator concluded:

25 The term "Retention" was very similar to earnings before interest, taxes,
26 depreciation and amortization (EBITDA). The prior (pre-2005) computation of
27 "Retention" included Editorial Expenses of the RJ as allowable deductible
28 expenses. On the other hand, a specific provision of the JOA (4.2), a provision
which was new to the calculation in the 2005 JOA, specifically indicates that
the RJ and Sun would each bear their own editorial costs meaning that the RJ
would not, in keeping the books of the JOA, be permitted to deduct editorial

1 expenses of the RJ in computing EBITDA of the JOA and the subsequent
2 annual profits payments (if any) to the Sun. The weight of the evidence leads to
3 the conclusion that the RJ has improperly deducted the RJ editorial expenses
reducing the EBITDA of the JOA resulting in improperly low annual profits
payments to the Sun.

4 17. Consequently, the Court finds that the Review-Journal has failed to meet its
5 burden by clear and convincing evidence that the Arbitrator manifestly disregarded the JOA's
6 contract provisions as to the deduction of editorial expenses.

7 18. Next, the Arbitrator considered Section 5.1.4 of the JOA to determine the impact
8 of promotional activities and expense on the EBITDA. The Arbitrator concluded that under his
9 interpretation of Section 5.1.4 there was evidence of impermissible deductions. The Arbitrator
10 noted:

11 The weight of the evidence indicated that the RJ charged all promotional
12 expenses to the JOA (both expenses that would be allowed as promotion of both
the RJ and Sun in equal prominence and additional promotional activities
13 expenses of the RJ only) resulting in lower EBITDA and payments to the Sun.
There was not enough evidence presented in this matter to make a definitive
14 damages calculation of wrongfully charged additional promotional activities
expenses by the RJ. A crucial element of a breach of contract action is the proof
15 of damages beyond speculation. Fortunately, the "audit" awarded in this matter
could determine the damages (and additional profits payments due), if any, from
16 the RJ's charging of all (both proper and additional) promotional expenses to
the JOA EBITDA. It is the finding of this tribunal that additional promotional
activities may not be included in the expenses charged to the JOA EBITDA.

17
18 19. In light of the Arbitrator's analysis and reliance of Section 5.1.4 of the JOA, the
19 Court finds that there is not clear and convincing evidence that the Arbitrator manifestly
20 disregarded the JOA's contract provisions as to promotional activities and expenses.

21 20. Next, the Court reviews the Review-Journal's contentions that the Arbitrator
22 exceeded his authority when he issued a two-page supplementary non-binding interpretation
23 regarding the ordered audit.

24 21. In determining the grounds for invalidating an arbitration award based on the
25 assertion that an Arbitrator exceeded his authority, in *Washoe*, the Nevada Supreme Court
26 noted:

27 "The Nevada Arbitration Act provides specific grounds for invalidating an
28 arbitration award. NRS 38.241(1)(d) dictates that a court shall vacate an
arbitration award if the arbitrator exceeded his powers." *Health Plan of Nev.*,

1 *Inc.*, 120 Nev. at 697, 100 P.3d at 178 (internal citation omitted). In particular,
2 “[a]rbitrators exceed their powers when they address issues or make awards
3 outside the scope of the governing contract.” *Id.* “However, allegations that an
4 arbitrator misinterpreted the agreement or made factual or legal errors do not
5 support vacating an award as being in excess of the arbitrator’s powers.” *Id.*
6 Moreover, “[a]rbitrators do not exceed their powers if their interpretation of an
7 agreement, even if erroneous, is rationally grounded in the agreement.” *Id.* at
8 698, 100 P.3d at 178. As such, “[t]he question is whether the arbitrator had the
9 authority under the agreement to decide an issue, not whether the issue was
10 correctly decided.” *Id.* Therefore, “[a]n award should be enforced so long as the
11 arbitrator is arguably construing or applying the contract” and “there is a
12 colorable justification for the outcome.” *Id.* Nonetheless, “[t]he deference
13 accorded an arbitrator . . . is not limitless; he is not free to contradict the express
14 language of the contract.” *Int’l Ass’n of Firefighters, Local 1285 v. City of Las*
15 *Vegas*, 107 Nev. 906, 910, 823 P.2d 877, 879 (1991).

16 *Washoe*, 133 Nev. at 304.

17 22. It must be pointed out that Appendix D to the JOA provides that the Sun has a
18 right to a yearly audit as the Arbitrator noted:

19 Appendix D to the JOA allowing for the Claimant to “...appoint an certified
20 public accounting firm or law firm as Sun’s representative to examine and audit
21 the books and records of the Review-Journal and the other publications whose
22 earnings are included in EBITDA for the purposes of verifying the
23 determinations of the changes to the Annual Profit Payments...” (this provision
24 has been referred to by both parties as “audit”). Respondent indicated that an
25 “audit” has never been refused however the conduct of Respondent certainly has
26 done just about everything possible to blunt, avoid, deter and postpone an
27 “audit”. In accordance with the scope of this tribunal’s authority, Claimant’s
28 request for an “audit” is granted. Claimant may undertake the “audit” for the
periods covered by this award (December 15, 2015 through March 31, 2018)
and forward per the declaratory relief granted. Respondent had requested that
this award, if an “audit” be directed, limit the scope and/or party to conduct the
“audit”. This award does not define the scope of the “audit” as part of the award
as such specificity may be beyond the scope of the tribunal’s authority.

29 23. In review of the Award, the Arbitrator ordered an audit but recognized there is
30 no provision for the creation of audit rules or guidelines in the JOA. Additionally, the Arbitrator
31 noted that neither party requested any of audit rules or guidelines provided in the Award. It is
32 clear in review of the Award that the Arbitrator was well aware of the limits of his authority and
33 simply suggested a non-binding legal evaluation and recommendation as to the guideline for an
34 audit. Thus, the Arbitrator’s non-binding legal opinion is not a sufficient basis to vacate the
35 Award.

36 24. Next, the Court has to consider whether the Arbitrator issued an Award that was
37 arbitrary and capricious. Under Nevada law, a court’s review of the arbitrary-and-capricious

1 standard is limited to whether the arbitrator's findings are supported by substantial evidence in
2 the record. *Washoe*, 133 Nev. at 308. Further, "The arbitrary-and-capricious standard does not
3 permit a reviewing court to vacate an arbitrator's award based on a misinterpretation of the
4 law." *Id.*

5 25. As this Court has already found, the Arbitrator based his rulings on his
6 interpretations of the JOA. Under the facts of this case and the JOA, there is substantial
7 evidence to support the Award.

8 ***The Sun's Motion to Confirm Arbitration Award, in Part, and to Vacate or, Alternatively,***
9 ***Modify or Correct the Award, in Part***

10 26. After reviewing Section 5.1.4, the Arbitrator determined that House Ads were
11 not additional promotional activities and expenses. The Sun argues that the Arbitrator's ruling is
12 arbitrary and capricious and a manifest disregard of the law. Nonetheless, the Court finds that
13 the Arbitrator did consider section 5.1.4 in relation to House Ads, and as a result the Court
14 affirms the Award on this issue.

15 27. Additionally, after weighing the evidence in this matter, the Arbitrator denied the
16 Sun's claims for tortious breach of the implied covenant of good faith and fair dealing. The
17 Court again reiterates that its inquiry under the manifest-disregard-of-the law standard is
18 extremely limited. Consequently, the Court will not reassess and weigh the evidence that the
19 Arbitrator relied on to make his decision. It is clear to the Court that the Arbitrator understood
20 that there is a distinction between contract and tort claims, and the unique nature of the
21 covenant of good faith and fair dealing as it relates to contracts versus torts. Further, the
22 Arbitrator noted the sections of the JOA to which the tort claims potentially applied. Although it
23 is not set forth in detail, the Arbitrator evaluated the parties' unique relationship, and he
24 determined there was insufficient evidence of intentional conduct on this issue. Therefore, he
25 found that the Review-Journal's conduct "does not qualify for tortious breach." Consequently,
26 with respect to the Sun's claim for tortious breach of the implied covenant of good faith and fair
27 dealing, the Court finds that the Arbitrator did not manifestly disregard the law or the JOA, and
28 the decision was not arbitrary and capricious.

1 28. Also, the Arbitrator noted that both parties requested attorneys' fees, costs and
2 the cost of arbitration; but, found that no provision in the JOA addressed awarding attorneys'
3 fees and costs in connection with this matter. Rather, the Arbitrator interpreted Appendix D of
4 the JOA and found that Appendix D addressed the award of arbitration fees and costs. As a
5 consequence, the Arbitrator awarded only fees and costs of the arbitration. Thus, the Court finds
6 that the Arbitrator did consider the entire JOA and more specifically Appendix D to support his
7 ruling. Accordingly, the Court affirms the Arbitrator's ruling on attorneys' fees and costs.

8 29. Lastly, the Sun argues that the Arbitrator failed to enter a ruling on whether the
9 Review-Journal breached the JOA audit provision. However, the Arbitrator determined that the
10 Review-Journal has never refused to conduct an audit. Therefore, the Arbitrator simply ordered
11 that an audit be conducted and this decision is affirmed.

12 **ORDER**

13 IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the Arbitration
14 Award is confirmed in its entirety.

15 IT IS FURTHER ORDERED that Defendants Review-Journal's Motion to Vacate the
16 Arbitration Award is DENIED.

17 IT IS FURTHER ORDERED that Plaintiff Las Vegas Sun, Inc.'s Motion to Confirm
18 Arbitration Award, in Part, and to Vacate or, Alternatively, Modify or Correct the Award, in
19 Part the Sun's Motion to Vacate the Arbitration Award is GRANTED IN PART and DENIED
20 IN PART as provided for herein.

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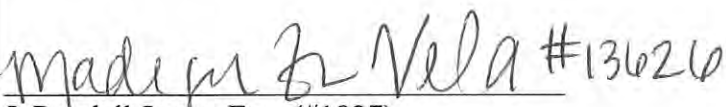
IT IS FURTHER ORDERED that Defendants News+Media Capital Group LLC and Las Vegas-Review Journal, Inc.'s Conditional Countermotion to Confirm Arbitration Award, in Part, and to Vacate the Award, in Part is GRANTED IN PART and DENIED IN PART as provided for herein.

Dated this 22nd day of July, 2020.


The Honorable Timothy C. Williams

Submitted by:

KEMP, JONES & COULTHARD, LLP

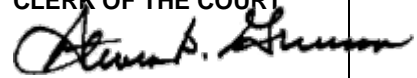
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Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS SUN, INC., a Nevada
corporation,

Plaintiff,

v.

NEWS+MEDIA CAPITAL GROUP LLC, a
Delaware limited liability company; and
LAS VEGAS REVIEW-JOURNAL, INC., a
Delaware limited liability company,

Defendants.

LAS VEGAS REVIEW-JOURNAL, INC., a
Delaware corporation,

Counterclaimant,

v.

LAS VEGAS SUN, INC., a Nevada
corporation,

Counter-defendant.

Case No.: A-18-772591-B
Dept. No.: 16

**NOTICE OF ENTRY OF FINDINGS OF
FACTS, CONCLUSIONS OF LAW, AND
ORDER AFFIRMING THE
ARBITRATION AWARD**

1 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the **FINDINGS OF**
2 **FACTS, CONCLUSIONS OF LAW, AND ORDER AFFIRMING THE ARBITRATION**
3 **AWARD** was entered in the above-entitled matter on January 28, 2020, a copy of which is
4 attached hereto.

5 DATED this 28th day of January, 2020.

6 KEMP, JONES & COULTHARD, LLP

7
8 /s/ Michael Gayan

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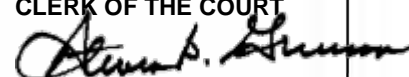
21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on the 28th day of January, 2020, I served a true and correct copy of
23 the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACTS, CONCLUSIONS OF**
24 **LAW, AND ORDER AFFIRMING THE ARBITRATION AWARD** via the Court's
25 electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules,
26 Administrative Order 14-2, to all parties currently on the electronic service list.

27 /s/ Pamela Montgomery

28 An Employee of Kemp, Jones & Coulthard, LLP

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Attorneys for Defendants/Counterclaimant

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS SUN, INC., a Nevada
corporation,

Plaintiff,

v.

NEWS+MEDIA CAPITAL GROUP LLC,
a Delaware limited liability company; and
LAS VEGAS REVIEW-JOURNAL, INC.,
a Delaware limited liability company,

Defendants.

LAS VEGAS REVIEW-JOURNAL, INC.,
a Delaware corporation,

Counterclaimant,

v.

LAS VEGAS SUN, INC., a Nevada
corporation,

Counter-defendant.

Case No.: A-18-772591-B
Dept. No.: XVI

**~~PROPOSED~~ FINDINGS OF FACTS,
CONCLUSIONS OF LAW, AND ORDER
AFFIRMING THE ARBITRATION
AWARD**

Hearing Date: October 22, 2019

JAN 03 2020

1 This matter came before the Court on October 22, 2019, at 1:30 P.M., with all parties
2 appearing by and through their counsel of record, on (a) Plaintiff Las Vegas Sun, Inc.’s Motion
3 to Confirm Arbitration Award, in Part, and to Vacate or, Alternatively, Modify or Correct the
4 Award, in Part, (b) Defendants News+Media Capital Group LLC’s and Las Vegas-Review
5 Journal, Inc.’s Motion to Vacate the Arbitration Award, and (c) Defendants News+Media
6 Capital Group LLC’s and Las Vegas-Review Journal, Inc.’s Conditional Countermotion to
7 Confirm Arbitration Award, in Part, and to Vacate the Award, in Part (collectively, the
8 “Motions”).

9 The Court, having considered the papers filed in support of and in opposition to the
10 Motions, having heard arguments of counsel, and for good cause appearing, enters the following
11 findings, conclusions and Order:¹

12 **BACKGROUND**

13 1. On June 10, 2005, Plaintiff Las Vegas Sun, Inc. (the “Sun”) and Defendant Las
14 Vegas Review-Journal, Inc.’s predecessor executed a joint operating arrangement (the “JOA”).

15 ***The Sun’s Complaint and the Arbitration***

16 2. On April 10, 2018, Plaintiff Las Vegas Sun, Inc. (the “Sun”) filed its Complaint
17 against Defendants News+Media Capital Group LLC and Las Vegas Review-Journal, Inc.
18 (collectively, the “Review-Journal”) in the above-captioned matter regarding disputes related to
19 the JOA, and moved this Court to compel arbitration of certain (but not all) claims outlined in
20 the Complaint.

21 3. This Court granted the Sun’s motion to compel arbitration via an order entered
22 on November 21, 2018.

23 4. In the arbitration proceedings, the parties engaged in discovery, submitted
24 written briefs, and presented arguments and evidence before the Arbitrator.

25 5. After a multi-day arbitration hearing, the Arbitrator issued a Final Award of
26

27 ¹ Any finding of fact more properly characterized as a conclusion of law shall be deemed so.
28 Any conclusion of law more properly characterized as a finding of fact shall be deemed so.

1 Arbitrator on July 2, 2019 (the “Award”).

2 ***The Arbitration Award***

3 6. The Award contains the Arbitrator’s rulings on the following claims and requests
4 for relief: (a) the Sun’s requests for declaratory relief related to interpretation of various JOA
5 provisions (i.e., Section 4.2, Section 5.1.4, and the audit provision in Appendix D); (b) the
6 Sun’s breach of contract claims related to those same sections of the JOA; (c) the Sun’s claim
7 for tortious breach of the implied covenant of good faith and fair dealing related to those same
8 sections of the JOA; and (d) both parties’ requests for an award of attorneys’ fees and costs
9 related to the arbitration proceedings. The full contents of the Award are the subject of various
10 motions to seal pending before this Court.

11 ***The Parties’ Motions to Confirm/Vacate the Award***

12 7. On September 13, 2019, the Sun filed its Motion to Confirm Arbitration Award,
13 in Part, and to Vacate or, Alternatively, Modify or Correct the Award, in Part (the “Sun’s
14 Motion”).

15 8. On September 18, 2019, the Review-Journal filed its Motion to Vacate
16 Arbitration Award.

17 9. On September 30, 2019, the Review-Journal filed its opposition to the Sun’s
18 Motion along with a Conditional Countermotion to Confirm Arbitration Award, in Part, and to
19 Vacate the Award, in Part.

20 10. By October 11, 2019, the parties completed briefing the motions.

21 11. On October 22, 2019, this Court heard arguments on the parties’ motions.

22 12. On December 4, 2019, this Court issued its six-page Minute Order resolving the
23 parties’ motions, affirming the Award in its entirety, and directing the parties to prepare and
24 submit this more detailed Order for the Court’s review and signature.

25 **DISCUSSION, FINDINGS AND CONCLUSIONS**

26 ***The RJ’s Motion to Vacate Arbitration Award***

27 13. The first issue raised by the Review-Journal as the basis to vacate the Award
28 focused on whether the Arbitrator disregarded the plain language of the JOA by failing to

1 subtract editorial expenses from revenues in order to calculate EBITDA (earnings before
2 interest, taxes, depreciation, and amortization) for the purposes of determining the Sun's share
3 of profits under the JOA.

4 14. Under Nevada law, "[t]he party seeking to attack the validity of an arbitration
5 award has the burden of proving, by clear and convincing evidence, the statutory or common-
6 law ground relied upon for challenging the award." *Washoe Cty. Sch. Dist. v. White*, 133 Nev.
7 301, 303, 396 P.3d 834, 838 (2017) (quoting *Health Plan of Nev., Inc. v. Rainbow Med., LLC*,
8 120 Nev. 689, 695, 100 P.3d 172, 176 (2004)). There are two common-law grounds recognized
9 in Nevada under which a court may review private binding arbitration award: (1) whether the
10 award is arbitrary, capricious, or unsupported by the agreement; and (2) whether the arbitrator
11 manifestly disregarded the law." *Id.* at 306. The Nevada Supreme Court explained the
12 distinction between the two as: "the former standard ensures that the arbitrator does not
13 disregard the facts or the terms of the arbitration agreement," while "the latter standard ensures
14 that the arbitrator recognizes applicable law." *Id.*

15 15. Moreover, "[j]udicial inquiry under the manifest-disregard-of-the-law standard is
16 extremely limited." *Id.* When a party seeks to vacate an arbitration award based on manifest
17 disregard of the law, they must show more than a mere objection to the results of the arbitration.
18 *Id.* Consequently, the Court's focus is not on whether the Arbitrator correctly interpreted the
19 law, but "whether the arbitrator, knowing the law and recognizing that the law required a
20 particular result, simply disregarded the law." *Id.*

21 16. In the instant action, the Arbitrator was presented with the JOA's plain language
22 and determined that under the JOA, editorial expenses should not be included in the EBITDA
23 calculation. There appears to be a colorable justification for the Arbitrator's findings on this
24 issue. The Arbitrator concluded:

25 The term "Retention" was very similar to earnings before interest, taxes,
26 depreciation and amortization (EBITDA). The prior (pre-2005) computation of
27 "Retention" included Editorial Expenses of the RJ as allowable deductible
28 expenses. On the other hand, a specific provision of the JOA (4.2), a provision
which was new to the calculation in the 2005 JOA, specifically indicates that
the RJ and Sun would each bear their own editorial costs meaning that the RJ
would not, in keeping the books of the JOA, be permitted to deduct editorial

1 expenses of the RJ in computing EBITDA of the JOA and the subsequent
2 annual profits payments (if any) to the Sun. The weight of the evidence leads to
3 the conclusion that the RJ has improperly deducted the RJ editorial expenses
reducing the EBITDA of the JOA resulting in improperly low annual profits
payments to the Sun.

4 17. Consequently, the Court finds that the Review-Journal has failed to meet its
5 burden by clear and convincing evidence that the Arbitrator manifestly disregarded the JOA's
6 contract provisions as to the deduction of editorial expenses.

7 18. Next, the Arbitrator considered Section 5.1.4 of the JOA to determine the impact
8 of promotional activities and expense on the EBITDA. The Arbitrator concluded that under his
9 interpretation of Section 5.1.4 there was evidence of impermissible deductions. The Arbitrator
10 noted:

11 The weight of the evidence indicated that the RJ charged all promotional
12 expenses to the JOA (both expenses that would be allowed as promotion of both
the RJ and Sun in equal prominence and additional promotional activities
13 expenses of the RJ only) resulting in lower EBITDA and payments to the Sun.
There was not enough evidence presented in this matter to make a definitive
14 damages calculation of wrongfully charged additional promotional activities
expenses by the RJ. A crucial element of a breach of contract action is the proof
15 of damages beyond speculation. Fortunately, the "audit" awarded in this matter
could determine the damages (and additional profits payments due), if any, from
16 the RJ's charging of all (both proper and additional) promotional expenses to
the JOA EBITDA. It is the finding of this tribunal that additional promotional
activities may not be included in the expenses charged to the JOA EBITDA.

17
18 19. In light of the Arbitrator's analysis and reliance of Section 5.1.4 of the JOA, the
19 Court finds that there is not clear and convincing evidence that the Arbitrator manifestly
20 disregarded the JOA's contract provisions as to promotional activities and expenses.

21 20. Next, the Court reviews the Review-Journal's contentions that the Arbitrator
22 exceeded his authority when he issued a two-page supplementary non-binding interpretation
23 regarding the ordered audit.

24 21. In determining the grounds for invalidating an arbitration award based on the
25 assertion that an Arbitrator exceeded his authority, in *Washoe*, the Nevada Supreme Court
26 noted:

27 "The Nevada Arbitration Act provides specific grounds for invalidating an
28 arbitration award. NRS 38.241(1)(d) dictates that a court shall vacate an
arbitration award if the arbitrator exceeded his powers." *Health Plan of Nev.*,

1 *Inc.*, 120 Nev. at 697, 100 P.3d at 178 (internal citation omitted). In particular,
2 “[a]rbitrators exceed their powers when they address issues or make awards
3 outside the scope of the governing contract.” *Id.* “However, allegations that an
4 arbitrator misinterpreted the agreement or made factual or legal errors do not
5 support vacating an award as being in excess of the arbitrator’s powers.” *Id.*
6 Moreover, “[a]rbitrators do not exceed their powers if their interpretation of an
7 agreement, even if erroneous, is rationally grounded in the agreement.” *Id.* at
8 698, 100 P.3d at 178. As such, “[t]he question is whether the arbitrator had the
9 authority under the agreement to decide an issue, not whether the issue was
10 correctly decided.” *Id.* Therefore, “[a]n award should be enforced so long as the
11 arbitrator is arguably construing or applying the contract” and “there is a
12 colorable justification for the outcome.” *Id.* Nonetheless, “[t]he deference
13 accorded an arbitrator . . . is not limitless; he is not free to contradict the express
14 language of the contract.” *Int’l Ass’n of Firefighters, Local 1285 v. City of Las*
15 *Vegas*, 107 Nev. 906, 910, 823 P.2d 877, 879 (1991).

16 *Washoe*, 133 Nev. at 304.

17 22. It must be pointed out that Appendix D to the JOA provides that the Sun has a
18 right to a yearly audit as the Arbitrator noted:

19 Appendix D to the JOA allowing for the Claimant to “...appoint an certified
20 public accounting firm or law firm as Sun’s representative to examine and audit
21 the books and records of the Review-Journal and the other publications whose
22 earnings are included in EBITDA for the purposes of verifying the
23 determinations of the changes to the Annual Profit Payments...” (this provision
24 has been referred to by both parties as “audit”). Respondent indicated that an
25 “audit” has never been refused however the conduct of Respondent certainly has
26 done just about everything possible to blunt, avoid, deter and postpone an
27 “audit”. In accordance with the scope of this tribunal’s authority, Claimant’s
28 request for an “audit” is granted. Claimant may undertake the “audit” for the
periods covered by this award (December 15, 2015 through March 31, 2018)
and forward per the declaratory relief granted. Respondent had requested that
this award, if an “audit” be directed, limit the scope and/or party to conduct the
“audit”. This award does not define the scope of the “audit” as part of the award
as such specificity may be beyond the scope of the tribunal’s authority.

29 23. In review of the Award, the Arbitrator ordered an audit but recognized there is
30 no provision for the creation of audit rules or guidelines in the JOA. Additionally, the Arbitrator
31 noted that neither party requested any of audit rules or guidelines provided in the Award. It is
32 clear in review of the Award that the Arbitrator was well aware of the limits of his authority and
33 simply suggested a non-binding legal evaluation and recommendation as to the guideline for an
34 audit. Thus, the Arbitrator’s non-binding legal opinion is not a sufficient basis to vacate the
35 Award.

36 24. Next, the Court has to consider whether the Arbitrator issued an Award that was
37 arbitrary and capricious. Under Nevada law, a court’s review of the arbitrary-and-capricious

1 standard is limited to whether the arbitrator's findings are supported by substantial evidence in
2 the record. *Washoe*, 133 Nev. at 308. Further, "The arbitrary-and-capricious standard does not
3 permit a reviewing court to vacate an arbitrator's award based on a misinterpretation of the
4 law." *Id.*

5 25. As this Court has already found, the Arbitrator based his rulings on his
6 interpretations of the JOA. Under the facts of this case and the JOA, there is substantial
7 evidence to support the Award.

8 ***The Sun's Motion to Confirm Arbitration Award, in Part, and to Vacate or, Alternatively,***
9 ***Modify or Correct the Award, in Part***

10 26. After reviewing Section 5.1.4, the Arbitrator determined that House Ads were
11 not additional promotional activities and expenses. The Sun argues that the Arbitrator's ruling is
12 arbitrary and capricious and a manifest disregard of the law. Nonetheless, the Court finds that
13 the Arbitrator did consider section 5.1.4 in relation to House Ads, and as a result the Court
14 affirms the Award on this issue.

15 27. Additionally, after weighing the evidence in this matter, the Arbitrator denied the
16 Sun's claims for tortious breach of the implied covenant of good faith and fair dealing. The
17 Court again reiterates that its inquiry under the manifest-disregard-of-the law standard is
18 extremely limited. Consequently, the Court will not reassess and weigh the evidence that the
19 Arbitrator relied on to make his decision. It is clear to the Court that the Arbitrator understood
20 that there is a distinction between contract and tort claims, and the unique nature of the
21 covenant of good faith and fair dealing as it relates to contracts versus torts. Further, the
22 Arbitrator noted the sections of the JOA to which the tort claims potentially applied. Although it
23 is not set forth in detail, the Arbitrator evaluated the parties' unique relationship, and he
24 determined there was insufficient evidence of intentional conduct on this issue. Therefore, he
25 found that the Review-Journal's conduct "does not qualify for tortious breach." Consequently,
26 with respect to the Sun's claim for tortious breach of the implied covenant of good faith and fair
27 dealing, the Court finds that the Arbitrator did not manifestly disregard the law or the JOA, and
28 the decision was not arbitrary and capricious.

1 28. Also, the Arbitrator noted that both parties requested attorneys' fees, costs and
2 the cost of arbitration; but, found that no provision in the JOA addressed awarding attorneys'
3 fees and costs in connection with this matter. Rather, the Arbitrator interpreted Appendix D of
4 the JOA and found that Appendix D addressed the award of arbitration fees and costs. As a
5 consequence, the Arbitrator awarded only fees and costs of the arbitration. Thus, the Court finds
6 that the Arbitrator did consider the entire JOA and more specifically Appendix D to support his
7 ruling. Accordingly, the Court affirms the Arbitrator's ruling on attorneys' fees and costs.

8 29. Lastly, the Sun argues that the Arbitrator failed to enter a ruling on whether the
9 Review-Journal breached the JOA audit provision. However, the Arbitrator determined that the
10 Review-Journal has never refused to conduct an audit. Therefore, the Arbitrator simply ordered
11 that an audit be conducted and this decision is affirmed.

12 **ORDER**

13 IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the Arbitration
14 Award is confirmed in its entirety.

15 IT IS FURTHER ORDERED that Defendants Review-Journal's Motion to Vacate the
16 Arbitration Award is DENIED.

17 IT IS FURTHER ORDERED that Plaintiff Las Vegas Sun, Inc.'s Motion to Confirm
18 Arbitration Award, in Part, and to Vacate or, Alternatively, Modify or Correct the Award, in
19 Part the Sun's Motion to Vacate the Arbitration Award is GRANTED IN PART and DENIED
20 IN PART as provided for herein.



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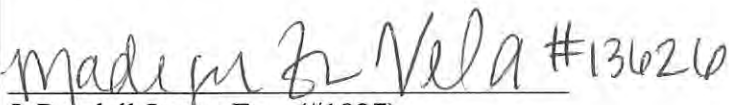
1 IT IS FURTHER ORDERED that Defendants News+Media Capital Group LLC and Las
2 Vegas-Review Journal, Inc.'s Conditional Countermotion to Confirm Arbitration Award, in
3 Part, and to Vacate the Award, in Part is GRANTED IN PART and DENIED IN PART as
4 provided for herein.

5 Dated this 22nd day of July, 2020.

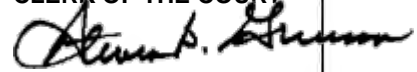
6
7 
8 The Honorable Timothy C. Williams
9 

9 Submitted by:

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

25 LAS VEGAS SUN, INC., a Nevada
26 corporation,
27 Plaintiff,

28 vs.

29 NEWS+MEDIA CAPITAL GROUP LLC, a
30 Delaware limited liability company; and LAS
31 VEGAS REVIEW-JOURNAL, INC., a
32 Delaware limited liability company;

33 Defendants.

34 LAS VEGAS REVIEW-JOURNAL, INC., a
35 Delaware corporation,
36 Counterclaimant,

37 vs.

38 LAS VEGAS SUN, INC., a Nevada
39 corporation,
40 Counter-Defendant.

CASE NO.: A-18-772591-B

DEPT.: 16

JUDGMENT

110376113.1

FEB 06 2020

1 Plaintiff Las Vegas Sun, Inc.'s Motion to Confirm Arbitration Award, in Part, and to Vacate
2 or Alternatively, Modify or Correct the Award, in Part; Defendants News+Media Capital Group
3 LLC's and Las Vegas Review-Journal, Inc.'s Motion to Vacate the Arbitration Award; and
4 Defendants News+Media Capital Group, LLC's and Las Vegas Review-Journal, Inc.'s Conditional
5 Countermotion to Confirm Arbitration Award, in Part and to Vacate the Award, in Part, came on
6 for hearing before the Court, the Honorable Timothy C. Williams presiding, and good cause
7 appearing, **the Court finds as follows:**

8 On January 28, 2020, this Court entered its Findings of Facts, Conclusions of Law, and
9 Order Affirming the Arbitration Award, which, *inter alia*, confirmed the arbitrator's award of
10 \$1,662,720 in damages on Plaintiff Las Vegas Sun, Inc.'s Third Claim for Relief (Breach of
11 Contract—Editorial Costs: Section 4.2 and Related Provisions), and \$261,459.94 of simple interest
12 on this damages award through January 28, 2020, against Defendants News+Media Capital Group
13 LLC's and Las Vegas Review-Journal, Inc.

14 On January 28, 2020, this Court entered its Findings of Facts, Conclusions of Law, and
15 Order Affirming the Arbitration Award, which, *inter alia*, confirmed the arbitrator's award of
16 \$40,666.38 in fees and costs of arbitration to Plaintiff Las Vegas Sun, Inc., against Defendants
17 News+Media Capital Group LLC's and Las Vegas Review Journal, Inc.

18 **IT IS HEREBY ORDERED AND ADJUDGED** that judgment, pursuant to NRS
19 38.243(1), is entered in favor of Las Vegas Sun, Inc., in the amount of \$1,924,179.94, with post-
20 judgment interest of \$250.54 per day accruing thereon from January 28, 2020, until paid in full.

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28

IT IS HEREBY FURTHER ORDERED AND ADJUDGED that judgment, pursuant to NRS 38.243(1), is entered in favor of Las Vegas Sun, Inc., in the amount of \$40,666.38, with post-judgment interest accruing thereon from January 28, 2020, until paid in full, as contemplated by NRS 17.130(2).

DATED this 10 day of Feb, 2020.


DISTRICT COURT JUDGE

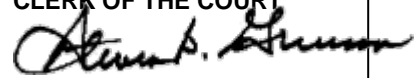
Submitted by:

/s/ *Kristen L. Martini*

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DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS SUN, INC., a Nevada
corporation,

Plaintiff,

v.

NEWS+MEDIA CAPITAL GROUP LLC, a
Delaware limited liability company; and LAS
VEGAS REVIEW-JOURNAL, INC., a
Delaware limited liability company;,,

Defendants.

CASE NO.: A-18-772591-B

DEPT.: 16

NOTICE OF ENTRY OF JUDGMENT

///

110467268.1

1 PLEASE TAKE NOTICE that a “Judgment” was entered on February 18, 2020. A copy of
2 the Judgment is attached hereto.

3 DATED this 18th day of February, 2020.

4 By: /s/ Kristen L. Martini

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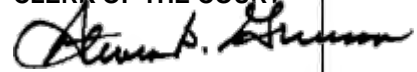
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DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS SUN, INC., a Nevada
corporation,
Plaintiff,

vs.

NEWS+MEDIA CAPITAL GROUP LLC, a
Delaware limited liability company; and LAS
VEGAS REVIEW-JOURNAL, INC., a
Delaware limited liability company;

Defendants.

LAS VEGAS REVIEW-JOURNAL, INC., a
Delaware corporation,
Counterclaimant,

vs.

LAS VEGAS SUN, INC., a Nevada
corporation,
Counter-Defendant.

CASE NO.: A-18-772591-B

DEPT.: 16

JUDGMENT

110376113.1

FEB 06 2020

1 Plaintiff Las Vegas Sun, Inc.'s Motion to Confirm Arbitration Award, in Part, and to Vacate
2 or Alternatively, Modify or Correct the Award, in Part; Defendants News+Media Capital Group
3 LLC's and Las Vegas Review-Journal, Inc.'s Motion to Vacate the Arbitration Award; and
4 Defendants News+Media Capital Group, LLC's and Las Vegas Review-Journal, Inc.'s Conditional
5 Countermotion to Confirm Arbitration Award, in Part and to Vacate the Award, in Part, came on
6 for hearing before the Court, the Honorable Timothy C. Williams presiding, and good cause
7 appearing, **the Court finds as follows:**

8 On January 28, 2020, this Court entered its Findings of Facts, Conclusions of Law, and
9 Order Affirming the Arbitration Award, which, *inter alia*, confirmed the arbitrator's award of
10 \$1,662,720 in damages on Plaintiff Las Vegas Sun, Inc.'s Third Claim for Relief (Breach of
11 Contract—Editorial Costs: Section 4.2 and Related Provisions), and \$261,459.94 of simple interest
12 on this damages award through January 28, 2020, against Defendants News+Media Capital Group
13 LLC's and Las Vegas Review-Journal, Inc.

14 On January 28, 2020, this Court entered its Findings of Facts, Conclusions of Law, and
15 Order Affirming the Arbitration Award, which, *inter alia*, confirmed the arbitrator's award of
16 \$40,666.38 in fees and costs of arbitration to Plaintiff Las Vegas Sun, Inc., against Defendants
17 News+Media Capital Group LLC's and Las Vegas Review Journal, Inc.

18 **IT IS HEREBY ORDERED AND ADJUDGED** that judgment, pursuant to NRS
19 38.243(1), is entered in favor of Las Vegas Sun, Inc., in the amount of \$1,924,179.94, with post-
20 judgment interest of \$250.54 per day accruing thereon from January 28, 2020, until paid in full.

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1 **IT IS HEREBY FURTHER ORDERED AND ADJUDGED** that judgment, pursuant to
2 NRS 38.243(1), is entered in favor of Las Vegas Sun, Inc., in the amount of \$40,666.38, with post-
3 judgment interest accruing thereon from January 28, 2020, until paid in full, as contemplated by
4 NRS 17.130(2).

5 DATED this 10 day of Feb, 2020.

6
7 
8 DISTRICT COURT JUDGE
9 

Submitted by:

10 /s/ Kristen L. Martini

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