

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/Cross-Respondents

vs.

LAS VEGAS SUN, INC., a Nevada
corporation,

Respondent/Cross-Appellant.

Electronically Filed
May 12 2020 03:17 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court No. 20-11725-1
District Court Case No. 19-72594

**NOTICE OF DISTRICT COURT'S FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING DEFENDANT NEWS+MEDIA
CAPITAL GROUP LLC'S AND DEFENDANT/COUNTERCLAIMANT
LAS VEGAS REVIEW-JOURNAL, INC.'S MOTION TO SEAL ALL
MATERIALS GENERATED IN THE PRIVATE ARBITRATION**

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Las Vegas Review-Journal, Inc.*

On May 1, 2020, the Review-Journal filed a Notice of May 1, 2020, District Court Minute Order Granting Appellants’/Cross-Respondents’ Motion to Seal All Materials Generated in the Private Arbitration in this Court. On May 18, 2020, the Sun filed its Renewed Motion to *Unseal* Arbitration Award as Not Confidential or Sensitive. On May 26, 2020, the Review-Journal filed its opposition, which relied in part on the district court’s minute order. The day after the Review-Journal’s brief was filed, the Review-Journal obtained notice that the district court had filed its Findings of Fact, Conclusions of Law, and Order Granting Defendant News+Media Capital Group LLC’s and Defendant/Counterclaimant Las Vegas Review-Journal, Inc.’s Motion to Seal All Materials Generated in the Private Arbitration (the “Order”). The Review-Journal prepared and filed a notice of entry of the Order in the district court on May 28, 2020, which is attached hereto as **Exhibit 1**. *See* NRAP 31(e).¹ Because the Order supersedes the district court’s minute order, the Review-Journal respectfully requests that the record be supplemented to include the Order, which further supports denying the Sun’s motion to unseal the Award.

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¹ The Review-Journal’s opposition cites to portions of the district court’s May 1, 2020 minute order at fn 1, 2, 5, and 9. Those citations are at: (i) 14:17-11, 17:7-11; (ii) 15:9-11; (iii) 12:26-13:3, 13:23-28, 12:2-4; and (iv) 14:1-3 of the Order, respectively.

DATED this 28th day of May, 2020.

KEMP JONES, LLP

/s/ J. Randall Jones

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CERTIFICATE OF SERVICE

I certify that I am an employee of Kemp Jones, LLP and that on May 28, 2020, I caused the foregoing NOTICE OF DISTRICT COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING DEFENDANT NEWS+MEDIA CAPITAL GROUP LLC'S AND DEFENDANT/COUNTERCLAIMANT LAS VEGAS REVIEW-JOURNAL, INC.'S MOTION TO SEAL ALL MATERIALS GENERATED IN THE PRIVATE ARBITRATION to be served by electronically filing the foregoing with the Clerk of the Supreme Court of Nevada by using the court's electronic filing system, which will send notice of electronic filing to the following:

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DATED this 28th day of May, 2020.

/s/ Ali Augustine
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EXHIBIT 1



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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.: 16

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER GRANTING DEFENDANT
NEWS+MEDIA CAPITAL GROUP
LLC'S AND DEFENDANT/
COUNTERCLAIMANT LAS VEGAS
REVIEW-JOURNAL, INC.'S MOTION
TO SEAL ALL MATERIALS
GENERATED IN THE PRIVATE
ARBITRATION**

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1 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the **FINDINGS OF**
2 **FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING DEFENDANT**
3 **NEWS+MEDIA CAPITAL GROUP LLC’S AND DEFENDANT/COUNTERCLAIMANT**
4 **LAS VEGAS REVIEW JOURNAL, INC.’S MOTION TO SEAL ALL MATERIALS**
5 **GENERATED IN THE PRIVATE ARBITRATION** was entered in the above-entitled matter
6 on May 22, 2020, a copy of which is attached hereto.

7 DATED this 28th day of May, 2020.

8 KEMP JONES, LLP

9 /s/ Michael Gayan

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May, 2020, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING DEFENDANT NEWS+MEDIA CAPITAL GROUP LLC'S AND DEFENDANT/COUNTERCLAIMANT LAS VEGAS REVIEW JOURNAL, INC.'S MOTION TO SEAL ALL MATERIALS GENERATED IN THE PRIVATE ARBITRATION** 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.

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DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS SUN, INC., a Nevada
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Plaintiff,

v.

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

Case No.: A-18-772591-B

Dept. No.: 16

**[PROPOSED] FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER
GRANTING DEFENDANT
NEWS+MEDIA CAPITAL GROUP
LLC'S AND DEFENDANT/
COUNTERCLAIMANT LAS VEGAS
REVIEW-JOURNAL, INC.'S MOTION
TO SEAL ALL MATERIALS
GENERATED IN THE PRIVATE
ARBITRATION**

Hearing Date: March 11, 2020

Hearing Time: 9:00 a.m.

This matter came before the Court on March 11, 2020, at 9:00 a.m., with all parties appearing by and through their counsel of record on Defendant News+Media Capital Group LLC's and Defendant/Counterclaimant Las Vegas Review-Journal, Inc.'s (collectively, the "Review-Journal", "RJ", or "Defendants") Motion to Seal All Materials Generated in the Private Arbitration. The Court, having considered the papers and pleadings on file herein, having heard oral argument of counsel, and with good cause appearing and there being no just reason for delay, makes the following findings of fact, conclusions of law, and order:

I.

FINDINGS OF FACT

A. Background

1. In April 2018, the Las Vegas Sun, Inc. ("Sun" or "Plaintiff") filed suit against the Review-Journal in the Eighth Judicial District Court. Shortly thereafter, this Court ordered the parties to arbitrate the Sun's accounting-related claims under the parties' 2005 joint operating arrangement ("JOA").

2. Under Appendix D of the JOA, the Sun agreed to maintain the confidentiality of the Review-Journal's financial records. Specifically, although Appendix D requires that the Sun's auditor maintain the confidentiality of a Review-Journal audit, it allows the auditor to share certain financial information with the Sun's management. The JOA also provides that any arbitration be conducted "according to the commercial arbitration rules of the American Arbitration Association" (AAA) and further provides that the arbitrator "be bound by [the] terms of confidentiality to the same extent as the Sun's representative." The referenced Commercial Arbitration Rules of AAA expressly contemplate a private, confidential proceeding. *See* R-25 ("the arbitrator and the AAA shall maintain the privacy of the hearings unless the law provides to the contrary").

3. On February 8, 2019, as part of the arbitration proceedings, the Arbitrator entered a Stipulated Confidentiality and Protective Order (the "Arbitration PO"). Section I(A) of the Arbitration PO orders that:

Confidential Information: In conformity with, and subject to, the provisions of Appendix D of the Amended and Restated Agreement dated June 10, 2005

1 (“2005 JOA”), all information of any kind, including, but not limited to, all
2 briefs, depositions, hearing transcripts, and any discovery generated in the
3 course of this arbitration, such as any document, object, file, photograph, video,
4 tangible thing, interrogatory answers, answers to requests for admissions,
5 testimony in a debtor’s exam or other deposition, or other material shall be
6 deemed “Confidential Information.”

7 4. The Sun states that “a blanket confidentiality designation was used to facilitate
8 the expedited 60-day arbitration time constraint.” 02/26/20 Sun Opp., 3:22-26. The Sun further
9 states that this designation provision was copied from a 2016 arbitration protective order
10 between the Sun and the Review-Journal’s former owner. *Id.*

11 5. In July 2019, the Arbitrator issued his written decision (“Award”).

12 6. On August 8, 2019, this Court entered a Stipulated Confidentiality and Protective
13 order related to the proceedings before this Court (the “State Court PO”). Section I(A) of the
14 State Court PO orders that:

15 Confidential Arbitration Information: In conformity with, and subject to, the
16 provisions of Appendix D of the Amended and Restated Agreement dated June
17 10, 2005 (“2005 JOA”), all information generated in the AAA arbitration
18 between the parties, including, but not limited to, all arbitration briefs,
19 depositions, hearing transcripts, and any discovery generated in the course of
20 the arbitration case, such as any document, object, file, photograph, video,
21 tangible thing, interrogatory answers, answers to requests for admissions,
22 testimony in a deposition, or other arbitration material shall be deemed
23 “Confidential Information,” unless such arbitration material was designated
24 “Highly Confidential” (as defined below), in which case the information shall
25 be subject to the heightened protections set out in this stipulated confidentiality
26 and protective order, provided only, however, that such Confidential
27 Information and Highly Confidential Information would have been entitled to
28 confidentiality protections under Appendix D of the 2005 JOA or Nevada Rule
of Civil Procedure 26(c).

B. The Motions to Seal, Unseal, and to Modify

7. In September 2019, the parties filed dueling motions to vacate/confirm the
Award. With its motion, the Sun filed nearly 4,000 pages of confidential arbitration materials,
but did not cite to or rely upon the majority of them.

8. Along with these motions and motions seeking other relief (i.e., leave to amend
and dismissal of counterclaims), the parties also filed several motions to seal and/or unseal the
arbitration-related documents. The filed pleadings and hearing dates are as follows:

Motion Name and File Date	Opposition Date	Reply Date	Hearing Date	Motion Subject
9/9/19 Sun's Motion for Leave to File Documents Under Seal [Exhibits 6-10, 15-17, 20-21, and 22 of Opposition to Defendants' Motion for Leave to Amend Answer and Assert Counterclaim and Portions of Opposition]	9/30/19 RJ Limited Opposition	10/11/19 Sun Reply	10/31/19	8/30/19 RJ Motion to Amend
9/13/19 Sun's Motion for Leave to File Documents Under Seal [Volumes 2-17 of Sun's Motion to Confirm Arbitration Award and Motion to Confirm Arbitration Award]	9/30/19 RJ Limited Opposition	10/11/19 Sun Reply	10/31/19	9/13/19 Sun Motion re: Arb. Award
9/18/19 RJ's Motion for Leave to File Documents Under Seal [Exhibits B and C to Defendants' Motion to Vacate Arbitration Award and Portions of Motion to Vacate]	9/30/19 Sun Limited Opposition	10/11/19 RJ Reply	10/31/19	RJ Motion re: Arb. Award
9/30/19 RJ's Motion to Seal [Defendants' Opposition to Plaintiff's Motion to Confirm Arbitration Award and Conditional Countermotion, including Exhibits A-K]	10/10/19 Sun Limited Opposition	11/1/19 RJ Reply	11/6/19	Sun Motion re: Arb. Award
9/30/19 Sun's Motion for Leave to File Documents Under Seal [The Sun's Opposition and Exhibits to Defendants' Motion to Vacate Arbitration Award]	10/10/19 RJ Limited Opposition	11/1/19 Sun Reply	11/6/19	RJ Motion re: Arb. Award
10/11/19 RJ's Motion for Leave to File Documents Under Seal [Exhibits E-H to Defendants' Reply in Support of Motion to Vacate Arbitration Award and Portions of the Reply]	10/21/19 Sun Limited Opposition	11/8/19 RJ Reply	11/12/19	RJ Motion re: Arb. Award
10/11/19 Sun's Motion for Leave to File Documents Under Seal [Exhibits 3-6 to Reply in support of Sun's Motion to Confirm Arbitration Award and References Thereto]	10/21/19 RJ Limited Opposition	11/8/19 Sun Reply	11/12/19	Sun Motion re: Arb. Award

Motion Name and File Date	Opposition Date	Reply Date	Hearing Date	Motion Subject
11/18/19 Sun’s Motion for Leave to File Documents Under Seal [Exhibits 7 and 9 to Sun’s Reply in Support of Motion to Dismiss Counterclaims, etc. and References Thereto]	12/2/19 RJ Non-Opposition	<i>Stay Entered</i>	<i>Stay Entered</i>	Sun Motion to Dismiss
12/2/19 Sun’s Motion for Leave to File Documents Under Seal [Exhibits 5, 7, and 9 to Sun’s Opposition to Defendants’ Emergency Motion to Stay Case, etc. and References Thereto]	<i>Stay Entered</i>	<i>Stay Entered</i>	<i>Stay Entered</i>	RJ Motion to Stay

9. At the hearings on October 31, November 6, and November 12, 2019, the Court heard argument regarding the parties’ various motions to seal and/or unseal. The Court took those motions under submission. During the hearing on November 6, 2019, the Court asked the parties to address whether the Court could modify the language of the State Court PO to address the parties’ dispute over its meaning and scope, specifically whether it was meant to be read consistent with the Arbitration PO. In response, the Review-Journal noted its intent to file a motion to modify the State Court PO. The Review-Journal filed that motion on November 19, 2019.

C. The Stay, Confirmation Order, and Supplemental Briefing

10. On November 20, 2019, this Court stayed the Review-Journal’s Counterclaims pending resolution of the Sun’s action filed in the United States District Court, District of Nevada, styled as *Las Vegas Sun, Inc. v. Adelson, et al.*, Case No. 2:19-CV-01667-GMN-BNW (the “Federal Action”).

11. On December 4, 2019, this Court stayed this entire action pending resolution of the Federal Action. At the same hearing, this Court invited additional briefing on the following subjects with respect to the parties’ requests to seal and/or unseal the arbitration-related documents: (1) the public policy issues regarding maintaining the confidentiality of private arbitration; (2) whether filing a motion to vacate and/or confirm an arbitration award opens up

1 the entire confidential arbitration record to public view; and (3) whether the State Court
2 Confidentiality Order between the parties may be modified.

3 12. Later on December 4, 2019, this Court entered a Minute Order confirming the
4 Award.

5 13. On January 10, 2020, this Court entered a Minute Order vacating the pending
6 motions under submission regarding the sealing and unsealing of arbitration documents and
7 stated that, in the event of the stay being lifted, the matters will renew for consideration and
8 decision.

9 14. Because the case was stayed and the parties had expressed intention of filing an
10 appeal of the confirmation order, on January 16, 2020, the Review-Journal filed a Motion for
11 Leave to File Additional Briefing Requested by Court on Order Shortening Time to address the
12 Court's three questions listed in ¶ 11 herein. That motion was heard on January 29, 2020. The
13 Court granted the motion in part and the parties were given leave to file additional briefing
14 related to the various pending motions concerning the sealing of the arbitration-related records
15 in this action.

16 15. On January 28, 2020, the Court entered its Findings of Facts, Conclusions of
17 Law, and Order Affirming the Arbitration Award. The Court made no reference to any
18 confidential document besides the Award and limited any quotation of the Award because "the
19 full contents of the Award are the subject of various motions to seal pending before this Court."

20 16. On February 12, 2020, the Review-Journal filed its Motion to Seal All Materials
21 Generated in the Private Arbitration (the "Motion"), followed by the Sun's opposition on
22 February 26, 2020, and the Review-Journal's reply on March 4, 2020. Along with its reply, the
23 Review-Journal filed a Motion for Leave to File Under Seal [Exhibits 9-10 of its reply]. The
24 Motion was heard on March 11, 2020. The Motion sought, among other things, to resolve the
25 sealing issues for all pending motions filed by both parties.

26 17. At the March 11, 2020, hearing, this Court heard oral argument from the parties
27 on the Motion and granted the Sun's request to file additional briefing on the matter. The Court
28 also ordered the supplemental briefs be filed under seal.

18. On March 25, 2020, the Sun filed its Supplemental Brief in Opposition to the Review-Journal’s Motion. Along with its supplemental brief, the Sun also filed a Motion for Leave to Unseal its supplemental brief, which the Review-Journal opposed. On April 8, 2020, the Review-Journal filed its Responsive Supplemental Brief in support of its Motion, which was the last brief submitted on this issue.

II.

CONCLUSIONS OF LAW

A. Court’s Review of Arbitration Award

19. In *Washoe Cty. Sch. Dist. v. White*, 133 Nev. 301 (2017), the Nevada Supreme Court discussed the district court’s mandate in reviewing an arbitration award. From *Washoe*, it is apparent that a district courts’ review of the arbitration record is substantially limited. Highlighting the restraint district courts should provide to an arbitrators’ decision, the Nevada Supreme Court cautioned district courts that arbitrators are permitted to make: misinterpretations—even if erroneous provided it is rationally grounded in the agreement, make factual or legal errors, incorrectly decide an issue, and/or incorrectly interpret the law. *Id.* at 304.

20. Instead of using the district courts’ judgment, the parties have requested to be subject to the informed judgment of the arbitrator in reaching fair solutions to problems that arise during the arbitration. *See Int’l Ass’n of Firefighters, Local 1285 v. City of Las Vegas*, 107 Nev. 906, 910, 823 P.2d 877, 879 (1991). While the arbitrator’s authority is not limitless, a district courts’ desire to use its own judgment instead of the arbitrator’s judgment is extremely restricted. *See Washoe*, 133 Nev. 301 (2017).

B. Nevada’s Strong Public Policy Favoring Private Arbitration

21. Nevada courts have repeatedly emphasized that encouraging litigants to choose arbitration over traditional litigation serves significant public policy objectives. *See, e.g., Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 252, 89 P.3d 36, 39 (2004) (“Nevada’s version of the Uniform Arbitration Act (UAA) clearly favors arbitration. And we have previously recognized a strong policy in favor of arbitration”); *State ex rel. Masto v.*

Second Jud. Dist. Ct., 125 Nev. 37, 44, 199 P.3d 828, 832 (2009) (“As a matter of public policy, Nevada courts encourage arbitration and liberally construe arbitration clauses in favor of granting arbitration”); *Tallman v. Eighth Jud. Dist. Ct.*, 131 Nev. 713, 720, 359 P.3d 113, 118–119 (2015) (referring to “Nevada’s fundamental policy favoring the enforceability of arbitration agreements”); *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 553, 96 P.3d 1159, 1162 (2004) (“Strong public policy favors arbitration”); *Phillips v. Parker*, 106 Nev. 415, 417, 794 P.2d 716, 718 (1990) (“Courts are not to deprive the parties of the benefits of arbitration they have bargained for, and arbitration clauses are to be construed liberally in favor of arbitration.”); *Morgan v. Las Vegas Sands, Inc.*, 118 Nev. 315, 321–22, 43 P.3d 1036, 1040 (2002) (“[T]he essence of the Nevada court-annexed arbitration program is, of course, to resolve as many matters in the arbitration process as possible.”).

22. “One of the principal reasons people agree to arbitrate rather than litigate, is to maintain confidentiality.” *ITT Indus., Inc. v. Rayonier, Inc.*, 2005 WL 1744988, at *2 (S.D.N.Y. July 20, 2005); *Original Appalachian Artworks*, 2017 WL 5476798, at *4 (“[P]arties often enter into [arbitration] to maintain confidentiality”). Courts recognize that because arbitrations are “inherently private,” there is a corresponding “strong public policy in favor of preserving the confidentiality of such private proceedings.” *Perdue v. Citigroup Glob. Markets, Inc.*, 2008 WL 11336459, at *4 (N.D. Ga. May 14, 2008) (collecting cases); *see also Guyden v. Aetna, Inc.*, 544 F.3d 376, 385 (2d Cir. 2008) (“[C]onfidentiality is a paradigmatic aspect of arbitration.”). Courts around the country have noted that parties submit to arbitration precisely because that forum is private and, consequently, promotes an open and frank dialogue. *See, e.g., Original Appalachian Artworks*, 2017 WL 5476798, at *4 (“[P]arties often enter into them to maintain confidentiality; and . . . it promotes the voluntary execution of private arbitration agreements—a sound public policy objective.”).

23. Nevada’s strong public policy favoring private arbitration requires the Court to honor and protect the parties’ agreement to privately and confidentially arbitrate their dispute. Any other outcome would hinder one of the main reasons for arbitrating in the first place and, as a result, discourage parties from agreeing to arbitrate in lieu of litigation. *See, e.g., Civil Rights*

1 *for Seniors v. Admin. Office of the Cts.*, 129 Nev. 752, 313 P.3d 216 (2013) (holding that
2 unsealing Foreclosure Mediation program records would “have a chilling effect on open and
3 candid FMP participation, undermining the Legislature’s interest in promoting mediation.”);
4 *Trs. of Plumbers & Pipefitters Union Local 525 Health & Welfare Tr. Plan v. Developers Sur.*
5 *& Indem. Co.*, 120 Nev. 56, 62, 84 P.3d 59, 62 (2004) (discussing “Nevada’s policy to
6 encourage pretrial dispute resolution,” and declining to embrace a ruling that would “not only
7 remove the incentive to settle, [but] would create an incentive to litigate.”).¹

8 24. Jurisdictions throughout the country similarly acknowledge this “bedrock
9 principle,” explaining the “important public interest in protecting the rights of parties who
10 submit to confidential arbitration.” *Pasternak v. Dow Kim*, 2013 WL 1729564, at *3 (S.D.N.Y.
11 Apr. 22, 2013); *Century Indem. Co. v. Certain Underwriters at Lloyd’s, London*, 592 F. Supp.
12 2d 825, 828 (E.D. Pa. 2009) (recognizing that “a sound public policy objective” is “promot[ing]
13 the voluntary execution of private arbitration agreements.”); *Glob. Reinsurance Corp.-U.S.*
14 *Branch v. Argonaut Ins. Co.*, 2008 WL 1805459, at *1 (S.D.N.Y. Apr. 21, 2008) (holding
15 “federal policy in favor of arbitration is promoted by permitting one of the principle advantages
16 of arbitration—confidentiality—to be achieved.”); *Original Appalachian Artworks, Inc. v. Jakks*
17 *Pac., Inc.*, 2017 WL 5476798, at *4 (N.D. Ga. Mar. 6, 2017), *aff’d*, 718 F. App’x 776 (11th Cir.
18 2017) (sealing arbitration records of “contract dispute between private parties” due to
19

20
21 ¹ One court discussed the expectations of privacy in the context of arbitration and settlement,
22 which illustrates a common basis for maintaining the confidentiality of both ADR forms.

23 [T]he court is concerned about the public policy that favors settlement through
24 the arbitration and mediation process. The success of such alternative dispute
25 resolution mechanisms depends on the candor and forthrightness of the parties
26 involved. In this complex case, the Arbitration Agreement included provisions
27 that tightly controlled dissemination of documents related to the Arbitration
28 process; those confidentiality provisions likely provided PRPs with an incentive
to participate in the Arbitration/Mediation process. While defendants should be
permitted discovery of those confidential documents that are relevant to their
defenses, the court should protect such information from disclosure that might
adversely affect other PRPs, and in the long run, undermine the success of
alternate dispute mechanisms.

City of Tacoma v. Great Am. Ins. Cos., No. C97-5504-RJB, 2005 WL 8174121, at *2 (W.D.
Wash. Mar. 24, 2005).

1 “legitimate concerns involving the parties’ privacy interests and the potential for reputational
2 harm in light of the confidential arbitration.”); *Barkley v. Pizza Hut of Am., Inc.*, 2015 WL
3 5915817, at *2 (M.D. Fla. Oct. 8, 2015) (recognizing that courts “tend to honor parties’
4 decisions to enter into confidential arbitration [and] keep those proceedings, including awards,
5 confidential” because “it promotes the voluntary execution of private arbitration agreements—a
6 sound public policy objective.”).

7 25. Furthermore, Nevada public policy favors all forms of ADR to help relieve the
8 pressure on the overburdened Nevada court system. Nevada courts have some of the highest
9 caseloads in the nation. To meet the demands of ballooning dockets, the Nevada Judiciary has
10 employed a multi-prong strategy to create efficiencies and reduce caseloads. This strategy
11 includes creating the Nevada Court of Appeals in 2015, establishing specialty courts in certain
12 districts (e.g., business court, construction defect court), appointing a Discovery Commissioner
13 in the Eighth Judicial District, amending the Nevada Rules of Civil Procedure and,
14 implementing various forms of ADR programs. Nevada’s ADR programs include but are not
15 limited to pre-litigation filing requirements (e.g., NRS 40.600, et seq.), various mediation
16 programs and requirements, mandatory arbitration for cases with less than \$50,000 in
17 controversy (presided over by the ADR Commissioner), the voluntary early settlement program
18 (EDCR 2.34(h)), the district court settlement judge program, the short-trial program (governed
19 by the Nevada Short Trial Rules), the ability for district courts to compel parties to participate in
20 mandatory settlement conferences (EDCR 2.51), and the mandatory Supreme Court settlement
21 program (NRAP 16).

22 26. The Nevada Supreme Court has emphasized the benefits of arbitration, including
23 the financial impact on the parties and the court. *See Casino Props., Inc. v. Andrews*, 112 Nev.
24 132, 135, 911 P.2d 1181, 1182 n.2 (1996) (explaining that Nevada’s mandatory arbitration
25 rules, similar to those of New Jersey, aim “to provide the parties with a quick and inexpensive
26 means of resolving their dispute while, at the same time, reducing the court’s caseload.”); *see*
27 *also* Statement of Assemblymen Don Gustavson, Nev. Assembly Cmte. Mins., 4/24/2001
28 (explaining arbitration provides “a place to go as an alternative to court, to save the court’s time

and money, as well as to save money for the parties involved.”).

C. Arbitrator’s Authority

27. The Nevada Legislature provided Arbitrators with the power to order and maintain confidentiality of arbitration proceedings. *See, e.g.* Statement of Frank Cassas, Member, Construction Industry Panel of Arbitrators of the AAA, Nev. Assembly Cmte. Mins., 4/24/2001 (explaining Nevada “placed the discovery process under the control of the arbitrator, giving the arbitrator the authority to prevent the abuse of the process.”); *Golden Boy Promotions, Inc. v. Top Rank, Inc.*, No. 2:10-CV-01619-RLH, 2011 WL 686362, at *2 (D. Nev. Feb. 17, 2011) (“[I]t is apparent that the parties did not intend for the information in the Term Sheet to become public because it contains detailed, confidential business dealings. This is supported by the fact that the agreement itself contains a confidentiality provision and that the arbitrator ordered the parties to keep the details of the agreement confidential.”); *Decapolis Grp., LLC v. Mangesh Energy, Ltd.*, No. 3:13-CV-1547-M, 2014 WL 702000, at *2 (N.D. Tex. Feb. 24, 2014) (sealing award that “contains sensitive information such as business strategies and the developmental progress of their oil and gas exploration” and holding “any public interest in the Award is minimal and counterbalanced by the interest in confidentiality expressed in the parties’ agreement.”); *Nationwide Mut. Ins. Co. v. Westchester Fire Ins. Co.*, No. 08-CV-673-BBC, 2009 WL 275561, at *1 (W.D. Wis. Feb. 4, 2009) (“[P]etitioner has moved to seal its motion to confirm the arbitration award in an effort to comply with a confidentiality order entered by the panel that entered the arbitration award. That motion will be granted.”); *Barkley*, 2015 WL 5915817, at *2; *Century Indem. Co.*, 592 F. Supp. 2d at 828.

28. Further, it is clear under NRS 38.231(1) that the arbitrator’s authority includes among other matters, [the ability to] determine the admissibility, relevance, materiality, and weight of any evidence. Additionally, pursuant to NRS 38.233(5), an arbitrator is authorized to issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this State. Thus, the role of a private arbitrator in binding arbitration differs little if any from a trial judge and jury. *See, e.g., City of*

1 *Newark v. Law Dep't of New York*, 754 N.Y.S.2d 141, 144, 194 Misc.2d 246, 248 (2002).

2 29. The Court points out that in reaching its decision, it was of paramount
3 significance that this particular matter involved sophisticated parties who entered into a highly
4 complex JOA. The Review-Journal and the Sun have been involved in a very intimate business
5 arrangement for decades predicated on the United States Congress' creation of the Newspaper
6 Preservation Act. This Act allows competing newspapers to enter into a unique operating
7 agreement and yet avoid U.S. antitrust laws. As the parties entered into an agreement that
8 allowed them to share and disclose private and confidential business information related to their
9 respective companies, the Court cannot overlook the import of such a complex arrangement.
10 Under this unique background, the parties ultimately submitted their dispute to binding
11 arbitration under the terms and conditions of their JOA. Thus, due to the distinct nature of the
12 parties' business relationship described above, the Court took significant notice of the Nevada
13 Supreme Court's mandate not to deprive the parties of the benefits of the arbitration that they
14 bargained for.

15 30. Turning to the instant case, the Court must determine whether to overrule the
16 Arbitration PO, which made the materials filed in the underlying private arbitration confidential.
17 In light of an arbitrator's role as the equivalent of a trial judge and jury in a private arbitration,
18 the Court finds that with its limited mandate in confirming, modifying, and/or vacating an
19 arbitration award, it would be improper to replace the Arbitrator's evidentiary judgments with
20 this Court's judgment.

21 31. In reaching this determination, the Court considered several issues.
22 Consideration was given to the Court's restricted mandate in the arbitration process, and the
23 limited judicial resources needed to fulfill that mandate. Additionally, the procedural history
24 that followed the Arbitrator's Award and the first party seeking to enforce the fruits of the
25 arbitration were weighed. *See Redeemer Comm. of Highland Credit Strategies Funds v.*
26 *Highland Capital Mgmt., L.P.*, 182 F. Supp. 3d 128, 133 (S.D.N.Y. 2016). The Court also
27 considered Nevada's strong public policy in favor of arbitration and securing the benefits of a
28 bargained-for private arbitration. The Court further considered the compelling reasons favoring

the public’s interest in the access of the information in private arbitration against the Court’s duty to guard against court filings that might have become a vehicle for improper purposes. *See Kamakana v. City & Cty. Of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). Also, the parties’ relationship and how it related to the Newspaper Preservation Act was of particular concern.

32. After much consideration, the Court finds that the Arbitrator had the authority to issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure. It is also clear from the history that throughout this case, the Arbitrator used his authority and discretion to determine the admissibility, relevance, materiality, and weight of the evidence.

D. SRCR 3(4)

33. Under SRCR 3(4), the court may seal records if “compelling privacy or safety interests . . . outweigh the public interest in access to the court record.” Nevada’s sealing rule enumerates examples of when public interest in privacy outweighs the public interest in access to judicial records. *See id.*

34. Specifically, under SRCR 3(4), the public’s interest in privacy trumps the public interest in access to court records upon a court finding that:

- (a) The sealing or redaction is permitted or required by federal or state law;
- (b) The sealing or redaction furthers an order entered under NRCP 12(f) or JCRCP 12(f) or a protective order entered under NRCP 26(c) or JCRCP 26(c);
- (c) The sealing or redaction is of the confidential terms of a settlement agreement of the parties; [or]
- ...
- (h) The sealing or redaction is justified or required by another identified compelling circumstance.

Id.

35. The Arbitration PO establishing the confidentiality of the arbitration records at issue in this matter constitute a ‘compelling circumstance’ under subsection SRCR 3(4)(h). The Court further finds that additional compelling circumstances exist in light of the benefits of the arbitration agreement, Nevada’s public policies concerning the public’s right to information and private arbitration, the Newspaper Preservation Act’s influence on the parties’ agreement, and this Court’s restricted review of the Arbitrator’s determinations.

36. Moreover, the Court has grave concerns about the use of a motion to vacate and/or confirm an arbitration award as a tool to transform a bargained for private dispute into a public dispute by merely filing a motion. The Court reiterates that it was not required to consider the vast majority of the materials sought to be unsealed in order to render a decision on the Sun’s motion to confirm arbitration award, in part, and to vacate or, alternatively, modify or correct the award in part. *See In re Nat’l Consumer Mortg.*, LLC, 512 B.R. 639, 641 (D. Nev. 2014) (holding that because a litigant’s proprietary algorithm “was irrelevant to the issues tried in this matter,” the “public’s right to know th[e] information as part of a court record is low.”). Furthermore, a motion to confirm or vacate an arbitration award is the statutorily required “next step” following arbitration and does not negate the parties’ right to privacy of the arbitration proceedings. NRS 38.239, 241.

37. Finally, the parties stipulated to specific confidentiality and privacy under the terms and conditions of a binding arbitration agreement; their decision consequently binds them. Accordingly, when considering the deference given to the arbitrator in *Washoe Cty. Sch. Dist. v. White*, as well as this Court’s limited mandate, the Court finds that it would be an error if it were to exceed its limited charge and expand the thrust of the Arbitration PO.

E. Modification of the State Court PO

38. Courts possess inherent authority to modify *any* interlocutory order prior to entry of final judgment. *See Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 733 (1994). Similarly, Rule 54(b) expressly grants this Court power to modify orders before judgment. *See Nev. R. Civ. P. 54(b)* (“any order or other decision, however designated . . . may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.”).

39. Furthermore, Section V of the State Court PO, Modification of this Order, states: “This order may be modified by the Court at any time for good cause shown, or pursuant to a stipulated order by the parties to this action. The entry of this order shall be without prejudice to the rights of any party to apply for modification of this order or for additional or different protections.”

40. The Court further finds that, as a result of its present ruling herein, pursuant to Section V of the State Court PO, there is good cause to modify the State Court PO. *See Kamakana*, 447 F.3d at 1183 (recognizing modification provisions are often contained in stipulated protective orders).

41. To the extent that the State Court PO is read to replace or expand the Arbitration PO, the Arbitration PO will be shown deference. Thus, the Arbitration PO, which makes all arbitration-related materials of any kind confidential, will continue to control all remaining materials generated in the binding private arbitration that this Court did not rely on to fulfill its limited mandate. Furthermore, the Court finds that it has already made public the relevant and limited parts of the record that were required to render its decision in this matter in its December 4, 2019, Minute Order. All other arbitration-related records shall remain sealed.

III. ORDER

42. ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant News+Media Capital Group LLC's and Defendant/Counterclaimant Las Vegas Review-Journal, Inc.'s Motion to Seal All Materials Generated in the Private Arbitration is GRANTED.

43. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that each of the Court's findings of fact is to be considered a conclusion of law, and each of the Court's conclusions of law are to be considered as a finding of fact, as may be necessary or appropriate to carry out this Order.

44. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the following motions to seal are hereby GRANTED and the Clerk of the Court is instructed that all documents filed under seal with these motions shall remain sealed:

- a. 9/9/19 Sun's Motion for Leave to File Documents Under Seal [Exhibits 6-10, 15-17, 20-21, and 22 of Opposition to Defendants' Motion for Leave to Amend Answer and Assert Counterclaim and Portions of Opposition];

- b. 9/13/19 Sun’s Motion for Leave to File Documents Under Seal [Volumes 2-17 of Sun’s Motion to Confirm Arbitration Award and Motion to Confirm Arbitration Award];
 - c. 9/18/19 Defendants’ Motion for Leave to File Documents Under Seal [Exhibits B and C to Defendants’ Motion to Vacate Arbitration Award and Portions of Motion to Vacate];
 - d. 9/30/19 Defendants’ Motion to Seal [Defendants’ Opposition to Plaintiff’s Motion to Confirm Arbitration Award and Conditional Countermotion, including Exhibits A-K];
 - e. 9/30/19 Sun’s Motion for Leave to File Documents Under Seal [The Sun’s Opposition and Exhibits to Defendants’ Motion to Vacate Arbitration Award];
 - f. 10/11/19 Defendants’ Motion for Leave to File Documents Under Seal [Exhibits E-H to Defendants’ Reply in Support of Motion to Vacate Arbitration Award and Portions of the Reply];
 - g. 10/11/19 Sun’s Motion for Leave to File Documents Under Seal [Exhibits 3-6 to Reply in support of Sun’s Motion to Confirm Arbitration Award and References Thereto];
 - h. 11/18/19 Sun’s Motion for Leave to File Documents Under Seal [Exhibits 7 and 9 to Sun’s Reply in Support of Motion to Dismiss Counterclaims, etc. and References Thereto];
 - i. 12/2/19 Sun’s Motion for Leave to File Documents Under Seal [Exhibits 5, 7, and 9 to Sun’s Opposition to Defendants’ Emergency Motion to Stay Case, etc. and References Thereto]; and
 - j. 3/4/20 Defendants’ Motion for Leave to File Under Seal [Exhibits 9–10 to Reply in Support of Motion to Seal All Materials Generated in the Private Arbitration].
45. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the following motion seeking to unseal the parties’ private arbitration materials is hereby DENIED and the

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Clerk of the Court is instructed that all documents sought to be unsealed with this motion shall remain sealed: 3/25/20 Sun's Motion for Leave to Unseal the Sun's Supplemental Opposition to Defendants' Motion to Seal All Documents Generated in the Private Arbitration.

46. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff Las Vegas Sun, Inc.'s requests to unseal filings related to the above-referenced motions are hereby DENIED.

47. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that News+Media Capital Group LLC's and Las Vegas Review-Journal, Inc.'s Motion to Modify Protective Order on Order Shortening Time is hereby GRANTED. The Court will give deference to the Arbitration Protective Order, dated February 8, 2019, and the Arbitration Protective Order will continue to control all remaining materials generated in the binding private arbitration.

IT IS SO ORDERED.

Dated this 22nd day of May, 2020.


The Honorable Timothy C. Williams

CG

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