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 corporation, Appellants/Cross-Respondents v. LAS VEGAS SUN, INC., a Nevada corporation, Respondent/Cross-Appellant.	Supreme Court No. 80511 Electronically Filed Jun 01 2020 10:15 p.m. Elizabeth A. Brown Clerk of Supreme Court

APPELLANTS/CROSS-RESPONDENTS' APPENDIX
VOL. 3

Appeal from the Eighth Judicial District Court of the State of Nevada in and for the County of Clark
The Honorable Timothy Williams
District Court Case No: A-18-772591-B

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June, 2020, the foregoing **Appellants'/Cross Respondents' Appendix – Volume 3** was served electronically 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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Defendants' Reply in Support of Motion to Vacate Arbitration Award
(Including Exhibits E-H, Excluding Exhibits A-B)
[Filed Under Seal/Portions Redacted]
[Page Nos. 406-473]

Defendants' Reply in Support of Motion to Vacate Arbitration Award
(Including Exhibits E-H, Excluding Exhibits A-B)
[Filed Under Seal/Portions Redacted]
[Page Nos. 406-473]

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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 corporation; and DOES, I-X, inclusive,

Defendants.

Case No. A-18-772591-B

DEPT.: XVI

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO VACATE ARBITRATION AWARD

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I. Introduction

The Sun agrees that, as a matter of Nevada law, the parties' contract must be enforced as written, according to its plain language.[1] The Sun also agrees that the Arbitrator was "confined to interpreting and applying the agreement, and his award need not be enforced if it is . . . unsupported by the agreement."[2] And, finally, the Sun agrees that arbitrators exceed their powers in violation of NRS 38.241(1) "when they address issues or make awards outside the scope of the governing contract."[3]

Tellingly though, the Sun spends virtually its entire opposition manufacturing reasons why the plain language of the 2005 JOA should not be faithfully followed. [redacted] As often happens when plain language is ignored, this leads to an unintended and unfair result—[redacted].[4]

To recap: Appendix D to the 2005 JOA sets forth in precise detail how to calculate EBITDA for purposes of determining the Sun's "Annual Profits Payment." [redacted]

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[1] Plaintiff's Opposition to Defendants' Motion to Vacate Arbitration Award ("Sun Opp.") at 14.
[2] Plaintiff's Motion to Confirm Arbitration Award, In Part, And To Vacate Or, Alternatively, Modify or Correct The Award, In Part, at 10 (citing *Health Plan of Nev., Inc. v. Rainbow Medical, LLC,* 120 Nev. 689, 100 P. 3d 172 (2004).
[3] *Id.* at n. 6.
[4] *Coblentz v. Hotel Employees & Rest. Employees Union Welfare Fund,* 112 Nev. 1161, 1169, 925 P.2d 496, 500-01 (1996); *Wichinsky v. Mosa,* 109 Nev. 84, 89, 847 P.2d 727, 730-31 (1993).

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[redacted]

The Sun's entire claim was obviously and necessarily manufactured. The 2005 JOA states: "***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.***" Ex. A, App'x D, p. 19 (emphasis added)[5]. The incorporated 2004 profit and loss statement for Stephens Media Group—the Review-Journal's prior owner—clearly shows that the Review-Journal's editorial and promotional expenses are deducted from earnings in the "Retention" calculation. Ex. B. Full stop. Therefore, the Review-Journal's calculations complied with the contract. [redacted] Unable to argue against the contract's plain language or the controlling law—[redacted]—the Sun's entire opposition is a confusing series of post-hoc rationales for why something different than the specific EBITDA calculation negotiated, and unmistakably illustrated, in the profit and loss statement incorporated by reference should be used. [redacted]

[5] References to Exhibits A-D refer to the exhibits attached to the Declaration of Michael Gayan, which was filed concurrently with the Review-Journal's motion. The 2005 JOA (Ex. A) and the 2004 Stephens Media profit and loss statement (Ex. B) are attached to this reply brief as well, for the Court's convenience.

[redacted] The Court should not be fooled by the Sun's attempts to confuse a very simple issue. [redacted].[6]

II. [redacted]

A. The 2005 JOA Clearly Requires The Review-Journal's Editorial Expenses To Be Deducted In The EBITDA Calculation.

There is no mystery about how the parties to the 2005 JOA intended EBITDA to be calculated. They wrote it in plain English in the contract:

> **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.**

Ex. A, App'x D, p. 19 (emphasis added).

It is undisputed that the Stephens Media profit and loss statement for the period ended December 31, 2004 showed the Review-Journal's editorial expenses being deducted:

[redacted][7]

The Sun first grouses that the Stephens Media profit and loss statement was not physically attached to the 2005 JOA, but this does not matter. Because it was expressly referenced in the 2005 JOA, it is part of that agreement. *Pentax Corp. v. Boyd*, 111 Nev. 1296, 1300, 904 P.2d 1024, 1026-27 (1995); *Paseo Verde Gibson Apts. LLC v. Valley Ass'n, Inc.*, No.

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[6] [redacted]

[7] "Gayan Decl." refers to the Declaration of Michael Gayan, filed concurrently with the Review-Journal's motion.

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216CV03000KJDPAL, 2018 WL 1536806, at *3 (D. Nev. Mar. 29, 2018). The Sun then dismissively rejects the idea that the parties' intent as to how the EBITDA should be calculated can be gleaned from a "single sentence"—but of course it can. The "single sentence" in question literally states the parties' intent as to how EBITDA should be calculated. Ex. A, App'x D, p. 19 ("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.").

The 2005 JOA is susceptible to only one possible reading. The parties intended that the Review-Journal's editorial costs would be deducted from earnings when calculating EBITDA. This reading is confirmed by the fact that the Sun knew for the first nine years of the agreement that the Review-Journal was deducting its editorial costs, but it never complained. *See* Ex. E, 15 PA 3355:5-17, 3375:11-17 [redacted]

[redacted] The Sun does not and cannot dispute this basic legal principle. *See* Sun Opp. 13 (citing *Coblentz*) [redacted]

[8] [redacted]

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B. [redacted]

1. The EBITDA Formula And Section 4.2 Are Perfectly Consistent.

After accepting the Review-Journal's EBITDA calculations for nine years, the Sun [redacted] It accomplished this by manufacturing a phony conflict between the clear EBITDA formula based on the Stephens Media profit and loss statement and Section 4.2 of the 2005 JOA, which requires the Review-Journal and Sun to each bear their own editorial costs. Ex. A, ¶ 4.2. [redacted] The Stephens Media profit and loss statement requires EBITDA to be calculated by subtracting expenses paid by the Review-Journal, including its editorial costs, from revenues. Ex. A, App'x D, p. 19; Ex. B. This formula ***assumes*** that the Review-Journal ***is bearing its own editorial costs***. As the Review-Journal explained in its motion and the Sun does not dispute, EBITDA is a measure of profit. Profit is revenue minus expenses. A company can ***only*** deduct costs from EBITDA if it is bearing those costs.

[redacted] Section 4.2 was not any newer than the EBITDA formula in Appendix D.[9] Both provisions were new to the 2005 JOA, a fact even the Sun must concede. Sun Opp. 8-9.

[9] "EBITDA" was not a term or concept used in the 1989 Agreement. Under that Agreement, the Sun's 10% profits payment was based on operating profit ("Agency Revenues over Agency Expenses"). *See* Gayan Decl., Ex. D, App'x D.

[redacted] Appendix D expressly states the parties' intent as to the EBITDA calculation and directs them to a document—the Stephens Media profit and loss statement—that walks them through how to calculate EBITDA and shows, specifically, that the Review-Journal's editorial costs are to be deducted from earnings. Ex. A, App'x. D, pp. 18-19; Ex. B. Section 4.2, on the other hand, does not tell the parties anything about how to calculate EBITDA. The word "EBITDA" does not even appear in Section 4.2. It just states that each party must bear its own editorial costs—which, again, is entirely consistent with requiring the Review-Journal to deduct its editorial costs when calculating EBITDA, as shown on the Stephens Media profit and loss statement.

2. [redacted]

First, the Sun contends that if the Review-Journal deducts its editorial costs from the EBITDA calculation then it is somehow not "bearing" those costs. This is just not so. As explained above, costs that a company bears are ***supposed*** to be deducted from EBITDA. In fact, ***the only time it is ever appropriate*** for a company to deduct costs from EBITDA is when the company itself is bearing those costs. Anything else would be accounting fraud.

Moreover, we know that the parties to the 2005 JOA did not use the phrase "bear costs" to mean that the costs being borne could not be deducted from EBITDA. We know this because the 2005 JOA requires the Review-Journal to bear ***all*** of the costs of operating under the JOA—including printing costs, business expenses, capital expenditures, and so on. Ex. A, ¶ 5.1 ("***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 the Review-Journal.***") (emphasis added). ***If the Sun's interpretation of the phrase "bear costs" were correct, it would***

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mean that no costs of any type could be deducted from EBITDA at all, because the Review-Journal is required to "bear" all of the newspapers' costs (except for the Sun's editorial costs). If this were the case, then the whole concept of EBITDA would fly out the window because revenues without costs deducted are not EBITDA, they are just pure revenue. The fact that the parties required the Review-Journal to "bear" ***all*** costs, and also required an EBITDA calculation, shows that they could not possibly have been using the phrase "bear costs" idiosyncratically to mean that the costs being borne could not be deducted from EBITDA.

Second, the Sun argues that Section 4.2 was negotiated before Appendix D. Sun Opp. 20:11-12. If anything, this argument just confirms that the Sun's reading of the contract is incorrect. After all, the Sun claims that Section 4.2 reflects the parties' intent that the Review-Journal's editorial costs should be ignored in the EBITDA calculation. If this were true, and if Section 4.2 was negotiated ***before*** Appendix D, then the parties would ***never*** have written in Appendix D that EBITDA was to be calculated "in a manner consistent with the computation of 'Retention' on the profit and loss statement for Stephens Media Group for the period ended December 31, 2004," Ex. A, App'x D, p. 19. They would have ***rejected*** the Stephens Media profit and loss statement as a template because that statement shows the Review-Journal's editorial costs being deducted. The fact that the parties ***first*** negotiated Section 4.2 ***and then*** decided to use a profit and loss statement on which the Review-Journal's editorial costs were deducted to show how to calculate EBITDA ***proves*** that Section 4.2 was ***not*** intended to prohibit the Review-Journal's editorial costs from being deducted from EBITDA.

Third, the Sun argues that calculating EBITDA according to the contract's plain language would render Section 4.2 meaningless. This is obviously wrong because, as explained above, Section 4.2 does not say anything about how EBITDA should be calculated. Section 4.2 of the 2005 JOA establishes that the parties are to bear their own editorial costs. Ex. A, ¶ 4.2. This is different from the 1989 Agreement, which required the Review-Journal to bear both its own

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editorial costs as well as the editorial costs of the Sun. Gayan Decl., Ex. D, ¶ A.1.[10] That change, therefore, necessitated that the Review-Journal no longer deduct ***the Sun's*** editorial expenses.

[redacted]

However, that is a misquote. [redacted]

[redacted].[11]

[redacted]

[10] The Sun claims that it always paid its own editorial expenses and that the 1989 Agreement treated the parties "the same" as far as the payment of editorial expenses. That is false. The 1989 Agreement required the Review-Journal to pay the Sun an amount for editorial and news expenses that equaled 65% of what the Review-Journal allocated for its own editorial expenses. Gayan Decl., Ex. D, ¶ A.1. The Review-Journal paid this amount to the Sun in monthly installments, payable on the first day of each month. *Id.* ("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.").

[11] [redacted] "[I]t is black-letter law that the terms of an unambiguous private contract must be enforced irrespective of the parties' subjective intent." *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 129 S. Ct. 2195, 174 L. Ed. 2d 99 (2009) (citing Williston on Contracts).

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[redacted]

The plain language of the 2005 JOA requires editorial costs to be deducted as part of the EBITDA calculation. [redacted]

C. The Sun's Arguments For Why The Court Should Ignore The Contract's Plain Language Have No Merit.

The Sun does not seriously dispute that the 2005 JOA says what it says, [redacted] The Sun's arguments are convoluted, and some of its points are more in the nature of asides than fully-developed arguments—but either way they all fall apart when confronted with actual facts.

1. The Review-Journal Is Not "Charging" The "JOA" For Its Editorial Costs.

Throughout its brief, the Sun insinuates that the Review-Journal is trying to "charge" its editorial costs "to the joint operation." *E.g.*, Sun Opp. 14, 18, 19. The Sun wants to create the impression that there is a separate JOA entity, with its own set of books, which is responsible for paying joint expenses of the Review-Journal and Sun insert. From this false premise, the Sun then suggests that, by deducting its editorial expenses from earnings in the EBITDA calculation, the

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Review-Journal is improperly shifting its separate costs onto the "joint operation's EBITDA." *E.g.*, Sun Opp. 12:12.

Under the 2005 JOA, there is no separate JOA entity paying expenses of the "joint operation." The major change in the 2005 JOA was that the Sun went from being a separate newspaper to being an insert in the Review-Journal. Consistent with the fact that the Sun was being reduced to an insert in the Review-Journal, the Review-Journal itself became responsible for all expenses of the Review-Journal and Sun insert, except for the Sun's editorial costs. Ex. A, 5.1 ("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 the Review-Journal."). This is why the parties used the profit and loss statement of the Review-Journal's owner—which shows the Review-Journal's expenses being deducted—as the roadmap for how to calculate EBITDA.

The Sun is trying to confuse the Court, [redacted] Under the 1989 Agreement, the Sun and Review-Journal were separate newspapers, the expenses of the joint operation were supposed to have been paid by a separate entity called the "Agency," and the Sun was to receive a share of the Agency's profits. Gayan Decl., Ex. D, Art. 2, App'x B, D.[12] However, as the Sun itself acknowledges, those "Agency" concepts were ***eliminated*** in the 2005 JOA. *See, e.g.*, Sun Opp. 5:2-4, 8:11-13.

The 2005 JOA makes clear that the Sun is not receiving a share of profits from a separate entity. Instead, the Sun's Annual Profits Payment is an annual payment ***from the Review-Journal.*** *See* Ex. A, App'x. D, p. 18. The EBITDA calculation only comes into play because the formula to determine the amount of the Sun's annual payment from the Review-Journal is tied to whether the EBITDA rises or falls. Specifically, the Sun's payment was set at $12 million in 2005, and

[12] The Sun argues in its opposition that the Review-Journal breached the 1989 Agreement because the Agency was never actually established. However, Mr. Greenspun admitted he knew the parties never created a separate legal entity to act as the "Agency," and, in any event, any claimed breaches of the 1989 Agreement were released by both parties by virtue of the "clean slate" release in the 2005 JOA. Ex. A, ¶ 10.13.

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after that the payment increases or decreases each year by the same percentage that the EBITDA rises or falls. *Id.*[13] Tying the Sun's payment to the EBITDA keeps it in proportion to the Review-Journal's financial results. And again, the expenses to be deducted in calculating EBITDA are shown on the Stephens Media profit and loss statement, and are all paid by the Review-Journal and not some fictional separate entity.

In sum, when the Sun accuses the Review-Journal of charging its separate expenses to the "joint operation," it is trying to trick the Court [redacted]. These concepts simply do not exist under the 2005 JOA. There is no way to "charge" the "joint operation" for expenses because there is no separate entity and no separate set of books. There is no separate "JOA EBITDA" that differs from the EBITDA calculation the parties agreed to in the contract, i.e., the calculation based on the Stephens Media profit and loss statement. The Review-Journal is doing exactly what the 2005 JOA requires—it is calculating the EBITDA of all of its print publications, and its calculations are consistent with the computation of "Retention" in the Stephens Media profit and loss statement for the period ended December 31, 2004.

2. Basing The EBITDA Calculation On The Stephens Media Profit And Loss Statement Is An Express Contractual Requirement, Not "Zombie Accounting."

Throughout its brief, the Sun scoffs at the idea that the EBITDA calculation could possibly be based on the 2004 Stephens Media profit and loss statement. It derides the Review-Journal for supposedly trying to "resurrect 1989 JOA-era financial statements" and engaging in "zombie accounting." *E.g.,* Sun Opp. 16:14-15. These arguments are strange, as they seem to assume the Court will not read the parties' contract. As explained above, the 2005 JOA ***requires*** the parties to calculate EBITDA "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." Ex. A, App'x D, p. 19. This is an express contractual requirement that the Sun's owner and publisher, Brian Greenspun, agreed to when he negotiated the 2005 JOA. *See* Sun Opp. 18:4-8 [redacted]

[13] Contrary to the Sun's bare, unsupported assertion in a footnote 8, there is no basis whatsoever for this structure to raise any "antitrust concerns."

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[redacted] It is not some crazy idea that the Review-Journal pulled out of thin air. [redacted] As noted above, the Review-Journal's editorial expenses were already listed as a deduction in the 2004 Stephens Media profit and loss statement. *See* Ex. B. Thus, by deducting those expenses in the EBITDA calculation, the Review-Journal was not "adding new lines of deductions." It was deducting the same items that were deducted in the Stephens Media profit and loss statement, [redacted]

The Sun argues that using the Stephens Media profit and loss statement to calculate EBITDA produces the "absurd result" of allowing the Review-Journal's editorial costs to be deducted because they appeared "above the retention line" but not the Sun's editorial costs, because they appeared "below the retention line." Sun Opp. 18:16-20. No one is saying that. The parties expressly agreed and wrote in their contract that EBITDA was to be calculated consistent with the computation of "retention" in the Stephens Media profit and loss statement. Yes, that statement shows the Review-Journal's editorial costs being deducted but not the Sun's editorial costs. That is the entire point. The Sun's editorial costs cannot be deducted because under Section 4.2 the Review-Journal is no longer paying the Sun's editorial costs. Only costs the Review-Journal pays can be deducted from EBITDA; it cannot deduct costs paid by someone else.

The Sun's remaining complaints about using the Stephens Media profit and loss statement are meritless and all basically reduce to the idea that the Sun now, in retrospect, wishes the parties had selected another method for calculating EBITDA. The Sun argues that some expenses reflected in the Stephens Media profit and loss statement no longer apply. Sun Opp. 18:20-26. That does not matter. The JOA does not say that if the expenses stop being incurred they must be created out of thin air. If those expenses exist, however, then they must be deducted. The Sun also

claims that the 2005 JOA "expressly disallowed" certain items listed in the Stephens Media profit and loss statement. But in support of this proposition, the Sun only cites Sections 4.2 and 5.1.4 of the 2005 JOA. As discussed herein, these provisions say nothing about EBITDA or Appendix D and certainly do not "expressly disallow" certain expenses from being deducted in the EBITDA calculation. The Sun mentions a few other items it claims are also "disallowed" by the 2005 JOA—but the Sun cites no contract provisions supporting this claim. [redacted]

3. The Sun Relies On Language That Only Applies To The EBITDA Calculation For Years Prior To 2005.

Throughout its brief, the Sun tries to confuse the issues by citing a provision that it calls "the Second Paragraph" of Appendix D to the 2005 JOA. What the Sun actually seems to be referring to is the first clause of the first sentence of the second paragraph of Appendix D. It states:

> 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 [sic] 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 . . . .

Ex. A, App'x D, p. 18 (emphasis added). The Sun devotes pages and pages of its brief to arguing that this clause requires the Review-Journal's editorial expenses to be excluded from the EBITDA calculation. *See, e.g.*, Sun Opp. 8:24-28; 15:1-12.

There is a huge flaw in the Sun's argument. This clause, on its face, is expressly limited to "***any period that includes earnings prior to April 1, 2005***." Ex. A, App'x D, p. 18 (emphasis added). [redacted] The years 2015 through 2018 do not include earnings prior to April 1, 2005. Thus, this provision cannot apply to the EBITDA calculations at issue here.[14]

[14] This language is in the Agreement because the formula for determining the Sun's annual profits payment in the years following the $12 million payment in 2005 requires a comparison of the EBITDA for the fiscal year just ended to the prior fiscal year. Ex. A, App'x D, p. 18. Thus, when the Sun's payment was calculated for the first time in 2006, the EBITDA calculation would have included earnings prior to April 1, 2005. The clause, by its clear terms, only applies to this unique situation (pre-April 1, 2005, earnings).

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The Sun argues that if the Review-Journal's editorial costs were excluded from the EBITDA calculation for years prior to 2005, then the parties must have intended them to be excluded from post-2005 calculations as well. Sun Opp. 15:13-19. There are numerous flaws in this argument, the most obvious one being that if the parties had intended the Review-Journal's editorial costs to be excluded from post-2005 calculations, they would have written that in the agreement—but they did not. Instead, they expressly wrote that EBITDA was to be calculated consistent with the computation of "Retention" in the 2004 Stephens Media profit and loss statement. Ex. A, App'x D, p. 19. That profit and loss statement shows editorial expenses being deducted. Ex. B. Moreover, Appendix D specifically lists additional specific costs that must be excluded from the EBITDA calculation. The Review-Journal's editorial costs are not on that list. Ex. A, App'x D, p. 19. The JOA's plain language precludes the interpretation urged by the Sun.

[redacted] As explained above, the first year of the calculation would have included earnings for periods prior to April 1, 2005, so the special rule for those time periods would have applied. The years 2015 through 2018, which are at issue here, are not the "first year" of the 2005 JOA. [redacted]

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[redacted]

Although unclear, the gist of the Sun's "Second Paragraph" argument appears to be that, in retrospect, the parties should not have used the Stephens Media profit and loss statement as a template for calculating EBITDA because it allowed different deductions than the parties had allowed for earnings prior to April 1, 2005. But the Sun agreed to both provisions. And, to be clear, the provisions are not inconsistent—they just set out different rules for different time periods. The Sun's eleventh-hour dissatisfaction with the deal that it made is not a basis to rewrite the contract. *Reno Club v. Young Inv. Co.*, 64 Nev. 312, 324, 182 P.2d 1011, 1016–17 (1947) ("Courts cannot make for the parties better agreements than they themselves have been satisfied to make or rewrite contracts because they operate harshly or inequitably as to one of the parties."); 11 Williston on Contracts § 31:5 (4th ed.) ("[W]hen interpreting a contract, a court may not insert, delete, or ignore contractual provisions . . . even if the resulting contract would be economically more efficient or advantageous to one or both of the parties, or more fair or equitable, in the court's view, than the agreement the parties were satisfied to make.").

III. [redacted]

A. The 2005 JOA Clearly Requires Promotional Expenses To Be Deducted From EBITDA.

Under the 2005 JOA, the Review-Journal's promotional expenses must be deducted from EBITDA for the same reason that the Review-Journal's editorial expenses must be deducted. As explained above, the 2005 JOA contains explicit instructions on how to calculate EBITDA: "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." Ex. A, App'x D, p. 19.

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The Stephens Media profit and loss statement for the period ended December 31, 2004 shows the Review-Journal's promotional expenses being deducted:

[redacted]

[redacted] The Sun does not dispute that the profit and loss statement shows promotional expenses being deducted. Based on the contract's plain language, the 2005 JOA is susceptible to only one possible reading: the parties intended that the Review-Journal's promotional expenses would be deducted from earnings when calculating EBITDA.

[redacted]

[15] At times, the Review-Journal engages in promotional activity in which some or all of the cost is returned in trade with the other entity or in sales of advertising to the other entity.

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B. Section 5.1.4 Does Not Say That Promotional Expenses Cannot Be Deducted From EBITDA.

[redacted]

Although the 2005 JOA clearly allows the Review-Journal to promote itself at times without promoting the Sun as well, whether the Review-Journal can or cannot promote itself independently is irrelevant to the EBITDA calculation. Nowhere in the 2005 JOA does it say that if the Review-Journal engages in promotional activities that do not feature the Sun equally, it is forbidden from deducting the cost of those promotions from earnings when calculating EBITDA for the purposes of the Sun's Annual Profits Payment. Moreover, Appendix D specifically lists costs that must be excluded from the EBITDA calculation. Costs for promotions that only feature the Review-Journal are not on that list. Ex. A, App'x D, p. 19.[16]

At best, if the Sun believes it was damaged by not being included in equal prominence in the Review-Journal's promotional activities, then the Sun's remedy was to seek damages based on any losses it allegedly occurred by virtue of not being included in the Review-Journal's promotional activities—a fact the Sun impliedly concedes, having sought leave to amend its complaint to assert precisely this damage claim. *See* Sun's Proposed First Amended Complaint, ¶¶ 190-91. [redacted]

C. The Sun, Again, Tries To Confuse The Court By Conflating The 2005 JOA And The Terminated 1989 Agreement.

[redacted]

[16] In support of its argument that the Review-Journal should not be permitted to deduct the costs of promotional activities that do not feature the Sun, the Sun states that under the 2005 JOA, it is "reliant on the RJ for all promotional activity." Sun Opp. 24:1. This is untrue. Section 5.1.4 of the 2005 JOA allows both papers to engage in independent promotional activities at their own expense. Ex. A, ¶ 5.1.4.

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[redacted]

As explained above, there is no separate entity. No promotional costs are being "charged" to the "joint operation." The JOA does not pay for anything, cannot be "charged" for anything, and does not have its own EBITDA because it is not a separate entity. These are concepts from the 1989 Agreement that do not apply since that agreement was terminated and replaced by the 2005 JOA. Moreover, it makes perfect sense that the promotional activities for the Review-Journal that do not include the Sun would still be deducted when calculating EBITDA for the purpose of the Sun's Annual Profits Payment. Under the formula in Appendix D, the Sun's Annual Profits Payment is tied to the EBITDA, rising when the EBITDA rises and falling when the EBITDA falls. Thus, the Sun reaps the benefit of any successful promotions, whether or not the promotions feature the Sun equally. Ex. A, App'x D. And as noted above the 2005 JOA expressly allows the parties to engage in independent promotional activities. Ex. A, 5.1.4.

D. The Stephens Media Profit & Loss Statement Is Not "Outdated" or a "Delusion." It Is The Tool The Parties Chose To Show How To Calculate EBITDA.

As it does with editorial expenses, the Sun argues that the EBITDA calculation cannot be based on the 2004 Stephens Media profit and loss statement because it is "outdated" and using it would be "unreasonable and impractical." Sun Opp. 23:9-10. The Sun also argues, bizarrely, that the Review-Journal's reliance on the Stephens Media profit and loss statement to show how to calculate EBITDA is a "delusion." Sun Opp. 23:19-21.

As explained above, the 2005 JOA, on its face, *requires* the parties to calculate EBITDA the same way that "Retention" is calculated in the 2004 Stephens Media profit and loss statement. Ex. A, App'x D, p. 19. The parties chose that profit and loss statement to be the roadmap for how

to calculate EBITDA going forward. The 2004 profit and loss statement was not outdated in April 2005 when the 2005 JOA was entered. It was the most recent profit and loss statement available at the time. And using it made sense, since the Review-Journal was paying all of the costs of the Review-Journal and Sun under the 1989 Agreement, and would continue to do so under the 2005 JOA (except for the Sun's editorial costs). As also noted above, the Sun may not be happy now with the deal that it made fourteen years ago, [redacted]

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[redacted] As mentioned above, the EBITDA calculation for the purpose of determining the Sun's Annual Profits Payment is determined by reference to the 2004 Stephens Media profit and loss statement. Ex. A, App'x D, p. 18. Everything that is deducted on the profit and loss statement is properly deducted from the EBITDA calculation. *Id.* [redacted]

IV. [redacted]. An arbitration award may be vacated as "arbitrary and capricious" if the arbitrator's findings are not supported by substantial evidence. *Graber v. Comstock Bank*, 111 Nev. 1421, 1427-28, 905 P.2d 1112, 1115-116 (1995).

[redacted] The issue, however, is not how much evidence was submitted to the Arbitrator in total. The issue is whether the evidence that was submitted justifies the Arbitrator's ruling. [redacted]

[17] [redacted]

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[redacted]

[redacted] Under Nevada law, an arbitrator may not consider parol evidence when the contract provision at issue is clear, as it is here. *Kreeger,* 2005 WL 8161910 at *2 (vacating arbitration award in part because the contract was "clear and explicit" and the arbitrator "did not adequately explain the basis for . . . admitting parol evidence to vary or contradict express terms of the contract"); *see also Klabacka v. Nelson*, 133 Nev. 164, 171 (2017) ("[w]here a written contract is clear and unambiguous on its face, extraneous evidence cannot be introduced to explain its meaning"); *Ringle v. Burton*, 120 Nev. 82, 91 (2008) ("The parol evidence rule does not permit the admission of evidence that would change the contract terms when the terms of a written agreement are clear, definite, and unambiguous.").

V. [redacted]

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VI. Conclusion

[redacted]. Again, the language of the 2005 JOA is crystal clear as to how the parties intended EBITDA to be calculated:

> **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.**

Ex. A, App'x D, p. 19 (emphasis added).

The Stephens Media profit and loss statement for the period ended December 31, 2004 unmistakably shows the Review-Journal's editorial expenses and promotional expenses being deducted in the "Retention" calculation:

[redacted]

The Sun's opposition brief is nearly thirty pages—[redacted]

[redacted]

DATED this 11th day of October, 2019.

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Certificate of Service

I hereby certify that on the 11th day of October, 2019, the foregoing **DEFENDANTS' REPLY IN SUPPORT OF MOTION TO VACATE ARBITRATION AWARD** was served on the following by Electronic Service to all parties on the Court's service list.

/s/ [signature]
An employee of Kemp, Jones & Coulthard, LLP

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Defendants' Reply in Support of Motion to Vacate Arbitration Award, **Exhibits E-H**
[Filed Under Seal]
[Page Nos. 430-473]

Defendants' Reply in Support of Motion to Vacate Arbitration Award, **Exhibits E-H**
[Filed Under Seal]
[Page Nos. 430-473]

Plaintiff's Reply in Support of Motion to Confirm Arbitration Award, in Part, and to Vacate or, Alternatively, Modify or Correct the Award, in Part and Conditional Countermotion to Confirm Arbitration Award, in Part and Opposition to Defendants' Conditional Countermotion to Confirm Arbitration Award, in Part, and to Vacate the Award, in Part

(Including Exhibits)

[Page Nos. 474-551]

Plaintiff's Reply in Support of Motion to Confirm Arbitration Award, in Part, and to Vacate or, Alternatively, Modify or Correct the Award, in Part and Conditional Countermotion to Confirm Arbitration Award, in Part and Opposition to Defendants' Conditional Countermotion to Confirm Arbitration Award, in Part, and to Vacate the Award, in Part

(Including Exhibits)

[Page Nos. 474-551]

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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

PLAINTIFF'S REPLY TO DEFENDANTS' NEWS+MEDIA CAPITAL GROUP LLC AND LAS VEGAS REVIEW JOURNAL, INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO CONFIRM ARBITRATION AWARD, IN PART, AND TO VACATE OR, ALTERNATIVELY, MODIFY OR CORRECT THE AWARD, IN PART

AND

DEFENDANTS' CONDITIONAL COUNTERMOTION TO CONFIRM ARBITRATION AWARD, IN PART, AND TO VACATE THE AWARD, IN PART

[REDACTED]

Case Number: A-18-772591-B

I. INTRODUCTION

The Sun submitted to this Court volumes of testimony and documents admitted during the Arbitration hearing to support its Motion to Confirm in Part and Vacate in Part the Arbitration Award. But the RJ[1] never addresses these details in its Opposition.[2] Instead, the RJ offers vague pronouncements that are inapplicable, incorrect, or misleading, or inconsistent with other positions taken by the RJ.

The RJ also now makes an overarching request that this Court "not engage in piecemeal review but rather vacate the Award in its entirety." Opp'n 2. This request is unprecedented, and the RJ offers no basis for this Court to grant it. The RJ would have this Court disregard two years of litigation between the parties, hundreds of admitted exhibits, and eight days of hearing testimony, and in its place adopt the RJ's superficial arguments about what the RJ believes the 2005 JOA means. Paradoxically, this argument is also inconsistent with the relief the RJ requested in its own Motion to Vacate Arbitration Award, which failed to challenge let alone address other portions of the Arbitration Award. The RJ's continuous change in position to suit whatever it needs at the time is not foreign to this Court.[3] And again, the RJ's inconsistency, together with its vague and erroneous arguments, are indicative of the desperate and meritless nature of the RJ's position, a position so tortured apparently even the RJ has difficulty articulating it or keeping it straight.

The RJ's Opposition makes very clear that the RJ has yet to comprehend the basic mechanics of the parties' governing agreement (the 2005 JOA) and tenets of contract interpretation, the fundamental accounting principles clearly applied and understood by the Arbitrator, and the drafting parties' historical practices and intentions. The RJ's confusion is highlighted in its argument that the Arbitrator's rulings on editorial and promotional expenses "conflate" the 2005 JOA and the 1989 JOA. The RJ's arguments ignore the plain language of the 2005 JOA.

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[1] Defendants News+Media Capital Group LLC and Las Vegas Review-Journal, Inc., are together referred to as the "RJ."

[2] Defendants' News+Media Capital Group LLC and Las Vegas Review-Journal, Inc.'s Opposition to Plaintiff's Motion to Confirm Arbitration Award, in Part, and to Vacate or, Alternatively, Modify or Correct the Award, in Part And Conditional Countermotion to Confirm Arbitration Award, in part, and to Vacate the Award in Part is referred to as "Opposition."

[3] *See generally* Pl.'s Mot. to Compel Arbitration & Pl.'s Opp'n to Defs.' Mot. for R.

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What the RJ also fails to comprehend, and what the Sun and the Arbitrator easily understood, is that the transformation between the two agreements resulted in a change in obligations and significant change in accounting for the joint operation EBITDA. These changes rendered the RJ's historical accounting practices inapplicable post-2005. Yet, as a practical matter, the 2005 JOA cannot be interpreted without considering the 1989 JOA due to the parties' express references to the 1989 JOA, many provisions of which must be considered when calculating the base-line year EBITDA under the 2005 JOA. The RJ's lack of foundational competency in accounting under the 2005 JOA plagues the RJ's Opposition. The result is shallow, inconsistent, and inaccurate arguments. The Arbitrator's interpretations of the 2005 JOA concerning editorial and promotional expenses are the only reasonable interpretations that harmonize the 2005 JOA. This was understood by the Arbitrator, who is trained, licensed, and expert qualified in accounting.

Despite the Arbitrator's undeniable accounting knowledge and proper finding that the 2005 JOA prohibits the RJ from charging its editorial and individual promotional expenses to the joint operation, the Arbitrator erred in ruling on certain other claims and issues not based in accounting. Specifically, the Arbitrator manifestly disregarded the law or consciously ignored the 2005 JOA, and entered arbitrary and capricious findings on the Sun's other claims. These erroneous portions of the Award include where the Arbitrator improperly excluded the RJ's individual house ads from Section 5.1.4's broad requirements requiring their exclusion from the joint operation EBITDA, failed to make any ruling on the Sun's claim for breach of the audit provision, applied an incorrect legal standard to the Sun's claims for tortious breach, and interpreted the 2005 JOA to not allow for an award of attorney fees. Where the Arbitrator committed these errors, the Sun seeks to vacate and/or modify those portions of the Award. Rather than address the Sun's arguments, the RJ deflects and continues to torture the language of the 2005 JOA, and overlooks governing law and uncontroverted evidence. The RJ's arguments are without merit. An order granting the Sun's Motion[4] is required.

/ / /

[4] Plaintiff's Motion to Confirm Arbitration Award, in Part, and to Vacate or, Alternatively, Modify or Correct the Award, in part is referred to herein as the "Motion."

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II. STATEMENT OF FACTS

The RJ does not dispute the Sun's Statement of Facts set forth in the Sun's Motion. *See generally* Opp'n 3. The RJ refers this Court to its separately-filed Motion to Vacate Arbitration Award as an alternative, claiming that "[m]any of those facts support the Review-Journal's Countermotion." *Id.* But the RJ has not controverted the Sun's pointed explanation as to how woefully inaccurate the facts in the RJ's Motion to Vacate Arbitration Award are. *See* Pl.'s Opp'n to Defs.' Mot. to Vacate Arbitration Award 5-13. The Sun therefore directs this Court to, and incorporates herein, the corrected facts set forth in the Sun's Opposition to Defendants' Motion to Vacate Arbitration Award, along with the statement of fact included in the Sun's instant Motion.

III. THE RJ'S REQUEST THAT THE AWARD BE SET ASIDE IN ITS ENTIRETY HAS NO BASIS IN FACT OR LAW

Although its heading requests setting the Award aside in its "entirety,"[5] in its five-sentence argument the RJ broadly claims that the Arbitrator's ruling on editorial and promotional costs "substantially deviates" from the 2005 JOA. Opp'n 3 (incorporating its Motion to Vacate Arbitration Award). The RJ's defective understanding of the JOAs takes center stage when it attempts to support this sweeping assertion in the four sentences that follow—that is, that the Arbitrator "conflated the now-terminated 1989 JOA with the 2005 JOA and then applied terms and concepts from the 1989 Agreement" to rewrite the 2005 JOA. *See id.*

As discussed in the Sun's Opposition to Defendants' Motion to Vacate Arbitration Award, the Arbitrator properly found that, under the 2005 JOA, the RJ cannot charge its editorial costs and its independent promotional costs against the joint operation EBITDA. *See* Pl.'s Opp'n to Defs.' Mot. to Vacate Arbitration Award 2-10, 13-25. Lest one forget, the RJ maintains that because Stephens Media's 2004 Profit and Loss Statement included the Review-Journal's editorial expenses in its "Retention" line item, the lone "Retention Sentence" in Appendix D of the 2005 JOA overrides every other provision in the 2005 JOA and allows the RJ to charge its editorial costs against the joint operation EBITDA. *See* Pl.'s Opp'n to Defs.' Mot. to Vacate Arbitration Award

[5] As stated above, the RJ has not provided any basis or authority to support its request to set aside the Award in its entirety. *See generally id.*

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7-9, 13-23. The fact that the RJ hypocritically accuses the Arbitrator of applying 1989 JOA concepts to the 2005 JOA accounting is shocking, although it is simultaneously characteristic of the RJ.

The Arbitrator did not apply the 1989 JOA accounting treatment to the 2005 JOA when concluding that the RJ is prohibited from charging its editorial costs and individual promotional expenses to the joint operation EBITDA. While portions of the parties editorial and promotional costs were once allowable expenses of the joint operation under the 1989 JOA (*i.e.*, the parties' editorial and promotional cost "allocations" under Appendix A.1), the parties to the 2005 JOA deliberately and substantially changed how the parties were to account for editorial and promotional costs (among several other things). *See id.* Under the 2005 JOA, those RJ's editorial costs and independent promotional expenses are specifically described as being separate from the joint operation, with the RJ to independently bear and subsidize those expenses. Sections 4.2 and 5.1.4, and related provisions, of the 2005 JOA, specifically state that the RJ must bear its editorial costs and independent promotional expenses. *See id.*

The Arbitrator, a CPA, understood the changes that the parties made between the 1989 JOA and the 2005 JOA, and the accounting changes that resulted as a deliberate intention of the drafters. Consequently, the Arbitrator accurately concluded that it would be contrary to Section 4.2 and related provisions of the 2005 JOA for the RJ to force the Sun to "bear" or subsidize the RJ's editorial expenses charged against the joint operation EBITDA. *See generally id.* The Arbitrator also properly concluded that expenses for promotional activities that do not mention the Sun in equal prominence must be excluded from the joint operation EBITDA. *See generally id.* Unlike the RJ, the Arbitrator understood that the 1989 JOA-era accounting was no longer applicable in the post-2005 JOA era.

The RJ's convoluted argument that the Arbitrator conflated the JOAs appears to be premised on—but fails to comprehend—the fact that the Arbitrator, and the parties, are required to consult the 1989 JOA when interpreting the 2005 JOA. The Arbitrator's consultation of the 1989 JOA is a necessary result of the 2005 JOA's express references to provisions of the 1989 JOA. *See,*

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e.g., 1 PA 21. The Second Paragraph of Appendix D references, by section, the previously allowed 1989 JOA expenses that are now disallowed when calculating the 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.

Id. (emphasis added). Thus, not only are the drafting parties' intentions made obvious by the significant changes they made when entering into the 2005 JOA, including where prior expenses provisions are now "Intentionally omitted," but the drafters made their intentions undisputable by cross-referencing specific 1989 JOA provisions to illustrate that those previously-allowed expenses must be excluded from the parties' calculation of EBITDA under the 2005 JOA. The RJ cannot complain about the Arbitrator considering what the drafting parties demanded, and expressly referenced, in the 2005 JOA.

Indeed, for the several reasons set forth in the Sun's Opposition to Defendants' Motion to Vacate Arbitration Award, and the admitted evidence cited to therein, the Arbitrator's findings are correct. The Arbitrator's reading of the 2005 JOA as precluding the RJ from charging its editorial costs and independent promotional costs against the joint operation EBITDA is the only way to read all of the 2005 JOA harmoniously, evidencing the accuracy of the ruling as a matter of law.

IV. THE ARBITRATOR'S RULING ON TRADE AGREEMENTS AS INDEPENDENT PROMOTIONAL ACTIVITIES AND EXPENSES MUST BE CONFIRMED

It is undisputed that the RJ has ceased nearly all efforts to promote the Newspapers jointly. The Arbitrator correctly found that any promotional agreements that failed to mention the Sun were disallowed expenses that could not be charged to reduce the joint operation EBITDA. 2 PA 38.

Now having been found liable for its flagrant breaches of the 2005 JOA by improperly charging these expenses, the RJ argues the Arbitrator must be wrong. *See* Opp'n 4-6. First, the RJ argues that the Arbitrator's finding that the RJ must rightfully pay for its independent promotional activities is a "penalty," while oddly boasting that "[a]wareness of the Review-Journal *necessarily* creates awareness of the Sun" *Id.* at 4-5 (emphasis added). Second, the RJ avoids the plain language

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of Section 5.1.4 and argues that since trade agreements end up being, in their view, a "wash," using JOA assets unilaterally to benefit the RJ should be allowed for it does not harm the Sun. *Id.* at 5. These arguments are meritless, as they are directly contradictory to the plain language of Section 5.1.4. The Arbitrator correctly found that the RJ must separately pay for its Sun-excluded trade agreements pursuant to the 2005 JOA. *See* 2 PA 38.

The RJ's first assertion that the Arbitrator's finding amounts to a penalty could not be more wrong. *See* Opp'n 4-5. The 2005 JOA provides the RJ shall promote both Newspapers "in equal prominence," and if the RJ undertakes additional promotional activities that do not feature the Sun in equal prominence, it must do so at its "own expense." *See* 1 PA 4 (emphasis added). The Arbitrator's interpretation of the plain language of Section 5.1.4 of the 2005 JOA cannot be deemed a penalty where both parties agreed to each pay separately for independent promotions. Section 5.1.4 creates a mandatory prerequisite that the Sun shall be mentioned in equal prominence to the Review-Journal in order for a promotional expense to be an allowable charge to the joint operation EBITDA; otherwise, it must be a separate expense. *See id.* The damages arising from the RJ's failure to undertake additional promotional activities "at their own expense" is, appropriately, and necessarily, the amount of those expenses, which is what the Arbitrator concluded. *See* 2 PA 40-42. Rather than a penalty, the Arbitrator applied Section 5.1.4 to give the parties exactly what they both bargained for under the 2005 JOA.

The fact that Section 5.1.4 does not spell out a monetary remedy for the RJ's breach, or that Section 5.1.4 is not an "accounting provision" in the RJ's view, is irrelevant and incorrect. *See* Opp'n 4-5. The RJ's assertion that Section 5.1.4 was required to expressly state that the RJ's breach would result in money damages, or that it should have included language to make it an "accounting provision,"[6] whatever the RJ considers an "accounting provision," is unsupported by any theory in contract law or the 2005 JOA. *See* Opp'n 4-5.

[6] While it is unclear what the RJ now believes is required for a contractual provision to be deemed an "accounting provision." Section 5.1.4 describes which party is burdened with an "expense" for independent additional promotional activities, and was understood by the CPA Arbitrator and other accounting witnesses, including the RJ's former controller. *See, e.g.*, Pl.'s Opp'n to Defs.' Mot. to Vacate Arbitration Award 24-35; *see also id.* at Ex. 1 at 268:9-269:6 (where the former RJ Controller John Perdigao testified about how

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Section 5.1.4 unambiguously states that the RJ must separately pay for promotional expenses that do not mention the Sun in "equal prominence." 1 PA 4. This provision directly contradicts the RJ's overarching argument that the Arbitrator's ruling amounts to a "penalty" that is "'disproportionate to the damage which could have been anticipated from breach of the contract, and which is agreed upon in order to enforce performance.'" *See* Opp'n 4 (quoting *Am. Fire & Safety, Inc. v. Cty. of N. Las Vegas*, 109 Nev. 357, 360, P.2d 352, 355 (1993)). Clearly, the foreseeable outcome of the RJ's failure to mention the Sun in a promotion is that the RJ would have to bear the expense independently. The parties agreed in Section 5.1.4 that the RJ would include the Sun in equal mention in the promotion of the Newspapers, or it would be required to pay for those expenses independently. Thus, the RJ cannot complain that its liability amounts to a "disproportionate" and "unanticipated" "penalty" when the RJ is imposing the damage upon itself each time it elects to exclude the Sun from its promotions, in violation of the 2005 JOA. The RJ's arguments are unsupported by any fact and directly contradict the clear and unambiguous directive set forth in Section 5.1.4.

Relatedly, the RJ's attempt to glorify the sheer volume of its independent trade agreements to deflect from its clear breaches of Section 5.1.4, and claim that those trade agreements "necessarily create[ ] awareness of the Sun," Opp'n 5, in no way excuses the RJ from its obligations under Section 5.1.4. Again, the language and requirements of Section 5.1.4 are explicit: if the RJ fails to mention the Sun in equal prominence (or, as here, fails to mention the Sun at all), then the RJ must bear the expense alone and not apply those expenses to reduce the joint operation EBITDA, and therefore the Sun's annual profit payments. The RJ failed to introduce any credible evidence that demonstrates a benefit to the Sun (only offering its own self-aggrandizing opinions). Irrespective of the RJ's irrelevant personal beliefs, Section 5.1.4 states precisely what the Sun bargained for, and to what the RJ's predecessors agreed—a "mention of equal prominence **for the Sun**." 1 PA 4 (emphasis added). The parties did not bargain for the RJ to reduce the Sun's profit payments for the expenses of the RJ's independent promotional activities so long as the RJ could,

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the RJ should have set up its books with accounts for the RJ to pay *separately* for RJ-only promotions under Section 5.1.4).

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in its own discretion, argue that the promotion somehow and in some way generates a byproduct of Sun "awareness." A more specious, unreasonable, and self-serving reading of Section 5.1.4 does not exist.

To recall, in the 2005 JOA, the parties contracted for the RJ to assume all obligations to promote the Sun, and the Sun agreed to give up the millions of dollars per year that it was receiving under the 1989 JOA to fund the Sun's promotional activities. *Compare* 1 PA 4 § 5.1.4 *with* 2 PA 227 (Appendix A.1 of the 1989 JOA). The previous owners of the Review-Journal had no misunderstanding about their duty to promote the Sun and to do so in equal prominence pursuant to Section 5.1.4. *E.g.*, 16 PA 3622:7-23; *see also id.* at 3615:19-3617:11. Below is an example of a promotional expenditure that was typical under prior ownership of the Review-Journal:

Ex. 1. The above example of a Review-Journal promotion demonstrates the type of joint promotional activity required under Section 5.1.4, which was a proper promotional expense to be charged against the joint operation EBITDA. *See id.*; *see also* 2 PA 52-57. The Arbitrator correctly

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found that the RJ's current promotional activities, which fail to mention the Sun at all and are in stark contrast to the prior owners' promotions, cannot be included as expenses of the joint operation. The RJ's argument that the Arbitrator's finding amounts to a penalty cannot override Section 5.1.4's unequivocal mandate that the RJ promote the Sun with equal prominence, a prerequisite before a promotional expense may be charged against the joint operation EBITDA. Any promotion not conforming to that mandate must be paid for individually by the RJ.

Concerning the RJ's second challenge to the Arbitrator's finding that it must post the revenue earned from trade agreements to the joint operation while separately expensing those costs itself, the RJ contends that the finding violates GAAP's matching principle.[7] Opp'n 5-6. According to the RJ, since the trade is a "wash," being neither an increase nor a decrease in joint operation revenue, the trade has no effect on the joint operation. *Id.* at 5. This is absurd.

According to the RJ, it can rightfully offer JOA resources to third parties (amounting to millions of dollars' worth of advertising in the Newspapers) in exchange for third-party promotions (including signage, television commercials, ads in programs, honorable mentions, and tickets and accommodations) that do not promote the Sun or are otherwise available to the Sun, but promote only the RJ, its sister publications, or its non-JOA digital website operations—all without bearing the expense for these promotions independently.[8] *See id.* However, the Arbitrator properly rejected the RJ's argument and found that such RJ-only promotional activities are expressly disallowed under the 2005 JOA. 2 PA 40-42; 1 PA 4 § 5.1.4 ("Either the Review-Journal or Sun may undertake additional promotional activities for their respective newspaper at their own expense.").

Under basic accounting principles conforming with the 2005 JOA, which the Arbitrator recognized, when the RJ enters into a trade agreement using JOA resources (newspaper advertisements) there are two parts of the trade that must be "booked." For example, the trade customer (such as a baseball field/stadium) agrees to give the RJ tickets and a box for the baseball

[7] It should be noted that the RJ's apparent understanding of accounting principles derives from the *Attorney's Handbook of Accounting, Auditing, and Financial Reporting*, § 4.04[2] (4th ed. 2017). *See* Defs.' Mot. to Vacate Arbitration Award 21.

[8] To be clear, there is no dispute that the RJ must book the revenues and expenses associate with a trade agreement under GAAP; the RJ's complaint is that the expense portion must be paid for outside of the JOA.

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games, and a large advertisement on its field or visual display (worth $100,000) in exchange for ads in the Newspapers (also worth $100,000). In recording the accounting for this trade agreement, the $100,000 advertising value in the Newspapers must be booked as revenue to the joint operation under generally accepted accounting principles (GAAP). This is because the JOA has earned the revenue when it publishes the ads for the third-party, *e.g.*, when the Newspapers [redacted]

But, booking the trade value as revenue to the joint operation does not change the fact that the expenses are disallowed under the parties' agreement. *Id.* [redacted] (Emphasis added)). As the second part of accounting for a trade agreement, the inquiry is where to book the expense. If the RJ complied with Section 5.1.4 and included the mention of the Sun in equal prominence, then the trade would be an allowed promotional activity and expense of the joint operation, which could be charged to the joint operation EBITDA. Alternatively, if the RJ did not promote the Sun in equal prominence as required under Section 5.1.4 (and has, for example, promoted only itself or its separate-entity website), the RJ must "book" the expense outside of the joint operation, *i.e.*, pay for it separately, and not charge it to the joint operation EBITDA.

The Arbitrator correctly saw through the emptiness of the RJ's "matching principle" argument. There are several completely acceptable ways of handling the award under GAAP. The RJ knows one way to do this extremely well. [redacted]

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[redacted]

Despite its proper practice for entities outside the JOA, the RJ has failed to set up its accounting system correctly to separate out expenses that should not be charged to the joint operation. *See* 2 PA 41 [redacted] *see also* Pl.'s Opp'n to Defs.' Mot. to Vacate Arbitration Award 24-35; *see also id.* at Ex. 1 at 268:9-269:6 [redacted] The RJ ignores the requirements under the 2005 JOA by never promoting the Sun in equal prominence and either obliviously or resolutely charging all expenses to the joint operation, irrespective of whether the expenses are disallowed.[9]

For these reasons, the Arbitrator's finding and conclusion that the 2005 JOA prohibits the RJ from charging its independent promotional activity expenses to the joint operation EBITDA is correct and should be confirmed.

V. THE LAW AND SUBSTANTIAL EVIDENCE DEMONSTRATE THE ARBITRATOR'S FINDINGS REGARDING HOUSE ADS MUST BE VACATED

While the Arbitrator ruled properly on the promotional activity issue, he inconsistently applied the ruling and incorrectly carved-out from Section 5.1.4 those promotions referred to as "house ads." 2 PA 38, 40-41. This nonexistent exception for house ads that the Arbitrator arbitrarily

[9] The RJ's additional assertion that the Arbitrator rewrote the equal prominence provision is without merit. *See* Opp'n 6. At the outset, this clause was well understood by the Review-Journal's previous owners. *See supra*. Additionally, this finding is not a "rewrite." Section 5.1.4 is clear in that the Sun must be mentioned in equal prominence, a requirement under the 2005 JOA. 1 PA 4. The following sentence in Section 5.1.4 then states that the individual paper must bear the expense for any additional, individual promotions. *Id.* The RJ's reading flies in the face of the plain language of Section 5.1.4.

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read into Section 5.1.4 gives the RJ an unrestricted license to promote itself, alone, in the newspaper and not bear the expense of those independent promotions. This interpretation disregards the broad, unqualified language of Section 5.1.4, and is at odds with the Arbitrator's correct declaration that the RJ is prohibited from charging its independent promotional expenses against the joint operation EBITDA. The RJ has not—and cannot—counter the Sun's contract interpretation analysis of Section 5.1.4 or the necessary conclusion that house ads are included Section 5.1.4 as it is written. *Compare* Mot. 14-15 *with* Opp'n 6-15. The Arbitrator's ruling on this issue must be vacated.

A. Whether a House Ad is Published to Fill Space in the Newspaper is Irrelevant under Section 5.1.4

The RJ argues that house ads are "fillers" for holes in the newspaper; therefore, the Arbitrator's finding that house ads are not included Section 5.1.4 was correct. Opp'n 7-8. Though house ads may sometimes be used as "fillers" in the newspaper, it is unreasonable to conclude that house ads are not promotional advertisements under Section 5.1.4. The two are not mutually exclusive, and a house ad being a "filler" does not affect its function as a promotional advertisement. Besides the fact that the RJ might choose to use full pages for one house ad on occasion, or that it might find space it needs to fill in another occasion, the RJ's use of house ads under either circumstance is irrelevant to the contractual obligations imposed upon the RJ by the 2005 JOA.

Applying governing rules of contract interpretation, Section 5.1.4 unambiguously provides that "any" promotion that is used as "an advertising mechanism or to advance circulation" must mention the Sun in equal prominence or it will be deemed an independent promotional activity of the RJ, for which the RJ must bear the expense. 1 PA 4. Section 5.1.4's use of the term "any" means "all" promotional activities used as an advertising mechanism or to advance circulation. *See Diamond v. Linnecke*, 87 Nev. 464, 467, 489 P.2d 93, 95 (1971).

House ads are essential promotional devices used by all newspapers. *See, e.g.*, 11 PA 222:7-12 [redacted] 2 PA 47-85. The RJ, too, uses

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its house ads as a promotional device to advertise or advance circulation. *See* C291 (illustrating the RJ's house ads that promote the Newspapers as an advertising medium or to highlight different sections in the Newspapers to increase circulation); *see also* **Ex. 2**. Because the RJ's publication of house ads are "promotional" activities under Section 5.1.4, the RJ's house ads must comply with the mandates of Section 5.1.4. That is, the RJ must include the Sun in equal mention, or pay for its individual house ads separately.

Nonetheless, the RJ attempts to distinguish house ads from other promotional activities and urges, "House Ads are not 'promotional activities' *in the ordinary sense*." Opp'n 8 (emphasis added). This argument contravenes the RJ's hearing testimony, *see supra*, and is nonsensical because house ads are used industrywide, including by the RJ itself, for the precise purpose of promotion. In fact, as used by the RJ, a major volume of its house ads appear in the main pages of the Review-Journal, including as full-, half-, and quarter-page advertisements. *See, e.g.*, 2 PA 78-83; *see also* **Ex. 2**. Moreover, the RJ uses its house ads to promote itself along with its separate website entity in the majority of its house ads. *See, e.g.*, 2 PA 78-81, 83.

An example of a half-page house ad the RJ published in Section 2B of the Review-Journal illustrates the falsity of the RJ's argument that it uses house ads are mere fillers for newshole:

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2 PA 79; **Ex. 2**. In this half-page house ad, the RJ promotes its print and digital operations—lvrj.com (which redirects the user to reviewjournal.com)—an entity that is outside the joint operation. 10 PA 2031:4-2033:3. Attached as **Exhibit 2** are over a dozen more examples of the RJ publishing large house ads in the main pages of its newspaper for the specific purpose of promoting itself and its website, or sister publications, as stand-out advertisements.

The evidence presented to the Arbitrator, and published to the world, shows that the RJ uses house ads for promotional purposes, in a very ordinary and traditional sense. And yet, the RJ continues to publish its promotional house ads to the exclusion of the Sun, with nothing preventing it from publishing house ads that comply with the terms of the 2005 JOA, and promote the Sun "in equal prominence." Under the RJ's proposed interpretation (and the Arbitrator's erroneous finding), the RJ and its digital operation, a non-party stranger to the Sun and the JOA, gets free advertising in the Newspapers. Any other customer would have to pay the standard advertising rate to appear in these ads, and the corresponding revenue would go to the joint operation. This interpretation and result is a manifest abuse of discretion.

The RJ's argument that mentioning the Sun in its house ads that promote other sections of the Review-Journal, which occur only in the Review-Journal, is "virtually impossible" because the Sun "has nothing to do with" those products is, once again, contrary to the plain language of Section 5.1.4. *See* Opp'n 13-14. Moreover, this position taken by the RJ is a new phenomenon. The Review-Journal's previous owners complied with this provision for more than 10 years. *See* 16 PA 3622:7-23. (Indeed, if the provision that the RJ must promote the Sun was truly "impossible" it is beyond suspect that the provision was written as it was, and that it would take the Review-Journal 14 years to complain of this purported "impossibility"). The prior owners used to promote the Sun alongside the RJ, in equal mention, even in classified house ads— despite that the Sun does not have its own classified section. *See, e.g.*, 2 PA 52-57; *see also* **Ex. 1**. Additionally, where it would be truly "impossible" or inappropriate to include the Sun in a mention of equal prominence in any promotion of the newspaper, the advertisement would categorically be deemed an independent promotion, and the RJ must be pay for it separately.

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For the RJ to also argue that its promotions for a job fair or employment opportunity, and the like, are not to advertise or advance circulation is equally meritless. *See* Opp'n 13. If a third party were to publish in the newspaper a job fair or an employment opportunity, it most certainly would be an advertisement. And if it truly is promotion for something other than the Review-Journal, then by definition it would be deemed an additional promotional activity. The RJ is no different from a third-party customer of the JOA, and must pay the joint operation for the fair market value of the ad.

Section 5.1.4 requires the RJ to promote the Sun in equal prominence for all promotional activities that either increase circulation or advertising. 1 PA 4. If the RJ does not mention the Sun in equal prominence in its promotional activities as required under Section 5.1.4, it must separately pay for the expense. Section 5.1.4 provides no exception for house ads, and no evidence exists to support any finding that the house ads are not promotional activities. The plain language of Section 5.1.4 mandates the RJ to pay the joint operation the fair market value for all house ads the RJ published that failed to mention the Sun in equal prominence. The RJ chose not to promote the Sun, and the Arbitrator's finding and the RJ's claim that the RJ may use JOA resources to the exclusion of the Sun for its house ads, of *any* type, contravenes the plain language of Section 5.1.4.

B. House Ads Constitute an Expense

The RJ argues that house ads, as "in house promotional ads," "do not result in an 'expense'" to the joint operation, and therefore should be excluded from Section 5.1.4. *See* Opp'n 8-11. This is wrong on two levels.

At the most basic level, creating and publishing house ads cost the joint operation. Graphic designers are required to create the ads (like the one above), which costs the joint operation salary and overhead; newspaper layout staff are required to build the pages containing the house ads, again costing the joint operation salary and overhead; and the newspapers were required to be printed with the house ads, costing the joint operation newsprint and ink. *See, e.g.*, 9 PA 1898:1-9. These costs are undisputable.

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But the expense of the RJ's house ads to the joint operation is more than basic, raw costs of production. The RJ's house ads that exclude the Sun from mention in equal prominence deprives the joint operation of any meaningful opportunity where the amount of newsprint used could have been used for news content or paid advertising. Instead, the RJ has chosen to insert itself, and its non-JOA digital operation, into the newspaper for free, and the joint operation is deprived of the revenue for those promotions despite the expense to the joint operation. 8 PA 25 1658:24-1659:17, 1661:1-8, 1676:8-1677:2; 9 PA 1902:14-1904:8.

To illustrate, when the RJ elects to publish advertisements that promote only the RJ and make no mention of the Sun, the RJ breaches Section 5.1.4. The Arbitrator properly agreed with this. But house ads are no different—the RJ could have easily published house ads that complied with its obligations under Section 5.1.4, but it consciously elected not to. The same is true when the RJ published house ads promoting its digital entity, lvrj.com and reviewjournal.com, instead of promoting the Newspapers jointly and the Sun in equal prominence. And when the RJ chooses to promote itself, or its website (a literal third-party under the 2005 JOA), the value accruing to the RJ's promotions is something that must be reimbursed to the joint operation. The RJ's digital operation has received millions of dollars' worth of house ads. A sampling of the Review-Journal paper published from March 19, 2016, to March 17, 2019, that was submitted during the arbitration hearing revealed that out of 1,306 house ads, the RJ mentioned the Sun in only 3.75% of them (for a total of 49 mentions of the Sun only). 2 PA 48, 49. The RJ consistently mentioned its digital operation in its house ads, even in the majority of the 49 house ads mentioning the Sun.[10] *See id.* at 51-65. The overwhelming, and undisputed evidence presented to the Arbitrator demonstrated that the RJ promotes itself, alongside its non-JOA, separate entity digital operation, daily, while intentionally omitting the Sun.[11]

[10] Out of the RJ's mere 49 mentions of the Sun in its 1,306 sampled house ads, the Sun was mentioned only 19 of those times without the house ad also mentioning the RJ's website. 2 PA 51-57.

[11] This behavior by the RJ bears notice for an additional reason: the RJ argues that it is "impossible" to include the Sun in equal prominence, but magically finds a way to include its non-JOA digital operations in ads.

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[redacted]

[redacted]8 PA 25 1658:24-1659:17, 1661:1-8, 1676:8-1677:2; 9 PA 1902:14-1904:8. By failing to include the Sun in its house ads, the RJ becomes a third-party customer of newspaper and the joint operation. *Id.* While the RJ argues that the Sun's expert's opinion on this issue was "impromptu" and unsupported at the arbitration hearing, Opp'n 9-10, the RJ neglects to mention that it never objected to, controverted, or challenged Ms. Cain's testimony on this topic at any time during the arbitration hearing. *See generally* 8 PA 1619-9 PA 1932. An opposition to a motion to confirm an arbitration award is not a timely place to first object to the admission of evidence, or to argue about its weight. Ms. Cain's testimony is substantial evidence in support of the Sun's damage calculation for the RJ's illegal house ads, and the RJ has waived its ability to challenge Ms. Cain's testimony on the basis that the opinion exceeded her report or that she was otherwise unqualified to testify on the subject.[12]

The RJ's citation to witness testimony describing how house ads were accounted for at other newspapers to argue that house ads do not result in an "expense" is unpersuasive. *See* Opp'n 8-9. Stating the obvious, the 2005 JOA here is unique, and testimony about how other newspapers account for house ads does not support the Arbitrator's finding that house ads are not promotional activities subject to Section 5.1.4 and must be paid for independently when they are individual promotional activities. *See* 8 PA 1658:16-1659:17. Under this contract, the 2005 JOA, the RJ alone bears the burden to promote both newspapers. *Id.* (Indeed, this is the only JOA the Sun is aware of where one newspaper is published inside of the host paper.) Sections 5.1 and 5.1.4 of the 2005 JOA

[12] In order to calculate damages for house ads that did not mention the Sun in equal prominence, two items are needed: (1) the quantity or estimate of house ads not featuring the Sun in equal prominence; and (2) the advertising rate from the RJ's rate cards. Damages are easily calculated by multiplying these two inputs. The Sun's expert report was due March 1, 2019, *see* **Ex. 3**, but the RJ did not produce its rate card until it March 22, 2019, and final arbitration exhibits were due April 1, 2019. *See* **Ex. 4**; **Ex. 5**. The RJ did not produce the rate cards until after Ms. Cain's expert report; yet, the RJ never challenged the Sun's admission of the rate cards or Ms. Cain's testimony on this point, or her qualification as a Certified Public Accountant. See 8 PA 1619-9 PA 1932; 7 PA 1489:1-3; 15 PA 2604:5-3607:23; 2 PA 47-85. The Sun included the damages calculation during its closing based upon the admitted evidence and testimony. 17 PA 3889:3-3891:19. The Sun again provided the foundational information in its post-hearing brief, without challenge from the RJ. *See* 6 PA 1115-16.

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set forth the RJ's obligation to promote the Sun. *See* 1 PA 3-4. These provisions were included in the 2005 JOA as a result of the Newspapers being jointly published in a single-package yet separately-branded product, and the RJ taking over all promotional obligations for both Newspapers. *See* Pl.'s Opp'n to Defs.' Mot. to Vacate Arbitration Award 23-24. The Sun relinquished its 40% promotional cost allocation that was provided for under the 1989 JOA—saving the RJ millions of dollars per year—in exchange for the RJ's commitment in Section 5.1.4 to promote the Newspapers, and the Sun in "equal prominence."

In summary, the RJ's argument and the Arbitrator's finding that house ads do not result in an "expense" to the joint operation is unsupported by the evidence. No different from its other independent promotional activities, including activities like trade agreement that do not include an exchange of money, or any promotion of another third-party customer, the RJ independent house ads costs the joint operation. The RJ must be required to pay for its independent house ads under Section 5.1.4.

C. Section 5.1.4 Encompasses All Promotional Activities, and the Arbitrator's Focus on the Term "Additional" to Exclude House Ads was Arbitrary and Capricious

The RJ piggybacks on the Arbitrator's erroneous finding [redacted].[13] Opp'n 11-13. For the reasons stated above, *supra* § V(B), the Arbitrator's finding that the RJ's independent house ads [redacted] was reversible error. 2 PA 38, 42 (emphasis added).

The RJ and the Arbitrator misconstrued the "additional" promotional activity requirement set forth in Section 5.1.4. Instead of addressing the plain language of the provision, the RJ tries to carve out an exclusion to its compulsory promotion requirement by arguing that it can use JOA assets for promotions to increase circulation or as an advertising medium that do not mention the

[13] The RJ challenges the Sun's use of the phrase "promotional *materials*" instead of "promotional *activities*," as if that were consequential. *See* Opp'n 11. It is not.

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Sun if (under the RJ's analysis) the promotions have no "expenses." Opp'n 12. This argument misstates Section 5.1.4—the point is the RJ must include the Sun in these promotions, as prior owners did. The RJ is making a choice on what type of house ad it is including, and when it does not include the Sun in equal prominence, the RJ must pay for the ads. The Sun bargained for inclusion in these promotions, and letting the RJ breach its promotional requirements must be remedied.

Moreover, the RJ speciously misquotes the Arbitration Award. The Arbitrator found house ads are [redacted] 2 PA 38 (emphasis added). The Arbitrator did not say (as the RJ contends) that "House Ads are not 'promotional activities' under Section 5.1.4 of the JOA." Opp'n 12. The Arbitrator did not make such a broad finding. Importantly, the modifier in Section 5.1.4, "additional," was always used by Arbitrator, and thus the Sun's arguments regarding the Arbitrator's improper focus on the word "additional" as ignoring the preceding sentences in Section 5.1.4 and renders them meaningless are meritorious. *See* Mot. 14-17, 16 n.9.

[redacted] as used in Section 5.1.4, the Arbitrator wrongfully limited Section 5.1.4's unqualified reference to "any" promotional activities, and therefore, all promotional activities. It bears repeating the beginning of Section 5.1.4 as a result:

> 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.

1 PA 4 (emphases added). And, as explained above, and in the Sun's several post-arbitration briefs filed in this Court, no exception for house ads exists in this language. The RJ's argument that 5.1.4 does not "encompass all promotional materials" is belied by the language in the provision. *See Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013) (describing contract interpretation principles).

The Arbitrator's finding is also contrary to the drafting parties' intent, and effectively denies the Sun its bargained-for promotional value, which reduces the Sun's compensation under the 2005

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JOA. To recall, Section 5.1.4 was put in place of the Sun receiving a promotional budget equaling 40% of whatever the Review-Journal would spend on promotional activities. Thus, by including the RJ's independent promotions as an expense of the joint operation without requiring the RJ and its separate digital entity to pay the fair market value of those promotions effectively reduces the value returned by the joint operation to the Sun and completely denies the Sun its specifically bargained-for benefit that was recognized by prior owners of the Review-Journal.

While the Arbitrator correctly ruled on the broader issue (*i.e.*, requiring an audit to determine if promotional activities do not feature the Sun in equal prominence and in those cases requiring separate payment by the RJ for the same), the Arbitrator did not evenly apply the ruling. Section 5.1.4 clearly identifies allowed and disallowed promotional expenses: if the Sun is mentioned in equal prominence, it's an allowable promotional expense; if the Sun is not mentioned in equal prominence, it is an "additional" promotion that must be paid for independently. Where the RJ's independent house ads do not mention the Sun in equal prominence, they are by definition "additional" and the joint operation must be compensated at fair market value for these breaches of the 2005 JOA.

D. The Arbitrator's House Ad Ruling Failed for Other Independent Reasons

In a last ditch effort to convolute its position and repeat itself, the RJ restates arguments previously made in its Opposition but reargues them as "independent reasons" that support the Arbitrator's ruling. *See* Opp'n 13 (repeating its arguments that it is "impossible" to promote both newspapers, the Sun did not prove damages in the form of an expense resulting from the house ads, and Section 5.1.4 does not provide a remedy). These arguments are without merit for the reasons already discussed *supra* §§ V(A), V(B), IV. Addressing the RJ's one outstanding argument that the Arbitrator's house ad ruling was correct because RJ's independent house ads somehow "benefit" the Sun outrageously misses the mark. *See id.* at 13-14. As explained above, the RJ publishes a significant amount of house ads that are for its separate digital operation, an entity outside the JOA and wholly unrelated to the Sun. No reasonable person would consider these ads as a "benefit" to the Sun. More fundamentally, and already belabored, the 2005 JOA requires the RJ to promote both

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Newspapers. In exchange for giving up its promotional budget (the Sun previously received 40 percent of the RJ's promotional budget under the 1989 JOA), the RJ agreed to promote the Sun in equal prominence. As already mentioned, the parties did not bargain for the RJ to reduce the Sun's profit payments for the expenses of the RJ's independent promotional activities so long as the RJ could, in its own discretion, argue that the promotion somehow and in some way generates a byproduct of Sun "awareness." The RJ's argument fails.

V. THE RJ'S TORTIOUS BREACHES MUST BE REMEDIED THROUGH AN ORDER VACATING THE ARBITRATOR'S DENIAL OF THE SUN'S CLAIM FOR TORTIOUS BREACH OF THE IMPLIED COVENANT OF GOOD FAITH

The Arbitrator's ruling on the Sun's tortious breach claim must be vacated and the RJ has failed to demonstrate otherwise. Despite the Arbitrator's other findings that demonstrate the RJ's tort liability, *see generally* 2 PA 35-46, the Arbitrator manifestly disregarded Nevada law by creating his own arbitrary legal standard and summarily concluding that [redacted] *Id.* at 44.

Rather than focusing on the Sun's argument and the Arbitrator's finding, the RJ asserts that no special relationship exists between the parties to support any tortious breach claim, a finding not addressed by the Arbitrator. *See* Opp'n 15-16; *see also* 2 PA 44. The RJ also argues that the Arbitrator properly denied the Sun's tort claims because it was not arbitrable and the Arbitrator lacked jurisdiction to enter an award for tort damages. Opp'n 18-19. The RJ's arguments fail, and the Arbitrator's finding on the Sun's tort claims must be vacated.

A. Substantial Evidence was Admitted to Establish the Parties' Special Relationship

The Arbitrator was presented with clear and convincing evidence that a special relationship exists between the parties in this case. *See* 2 PA at 147-150; 6 PA 1119-20. As fully briefed and demonstrated to the Arbitrator, a special relationship exists between the RJ and Sun by sheer virtue of the JOA itself—the RJ has all accounting and operational control. *See id.* The Sun is wholly reliant on the RJ for the Sun's Annual Profits Payments, for proper accounting practices, and to conduct itself in a manner that effectuates the goals of the JOA. *See id.* The 2005 JOA's delegation

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of significant financial control to the RJ creates the "superior-inferior power differential" between the parties.[1] *See K Mart Corp. v. Ponsock*, 103 Nev. 39, 49, 732 P.2d 1364, 1371 (1987) (an agreement evincing a "superior-inferior power differential" warrants tort liability), *abrogated on other grounds by Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990).

In addition, as a result of the 2005 JOA's creation under the Newspaper Preservation Act, the recognized public interest supports the finding of a special relationship between the parties. Such a finding is consistent with federal policy allowing the Sun, a newspaper in a trusting position, to rely on the RJ's good faith and fair dealing for the survival of both newspapers. *See* 15 U.S.C. § 1801 (declaring, "the public policy of the United States to preserve the publication of the newspapers in any city, community, or metropolitan area where a joint operating arrangement has been heretofore entered into . . . ."). The RJ's attempt to support the Arbitrator's denial of the Sun's tortious breach claims on the basis that a special relationship does not exist fails as a matter of law.

B. The "Sophisticated-Businessman Exception" does Not Apply in this Case

The RJ's assertion that the sophisticated-businessman exception precludes a finding of liability, *see* Opp'n 16-17, is misplaced, for that exception is inapplicable here. *See* 2 PA 149-50; 6 PA 1119-20. The sophisticated-businessman exception is generally applicable where "agreements have been heavily negotiated and the aggrieved party was a sophisticated businessman" and when the sophisticated person argues that the contract is unconscionable or seeks to preclude the other party from exercising rights under the contract. *E.g.*, *Aluevich v. Harrah's*, 99 Nev. 215, 660 P.2d 986 (1983). Unlike the cases in which the sophisticated-businessman exception applies, the Sun is seeking to enforce the 2005 JOA. The exception does not apply here—and the Arbitrator did not find that it did.

C. Substantial Evidence was Admitted and Demonstrates the RJ's Tortious Conduct

The Sun provided substantial evidence to the Arbitrator demonstrating the ubiquitous and shameful tortious breaches by the RJ. While the RJ asserts that its significant editorial costs increases and promotional activities were mere business decisions, this contradicts the evidence

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adduced during the arbitration hearing. *See* Opp'n 17-18. The RJ's systematic tortious conduct is succinctly exemplified in the RJ's then-publisher Craig Moon's directive to the Review-Journal's accounting department to write hundreds of thousands of dollars off as debt for the specific purpose of making the Sun's payment as close to zero as possible. 10 PA 2151:5-16. That instruction was made under the RJ's owner, Sheldon Adelson's, stated desire to get rid of the Sun and break the 2005 JOA. 14 PA 3064:22-3065:23, 3071:10-16. The RJ eliminated the Sun's visible presence to the public, literally and purposefully, and in violation of the contract, even removing the Sun from the electronic replica edition, 16 PA 3572:6-3573:6, all while choosing to omit the Sun from nearly every single promotion. *See supra* (The RJ's own expert testified that the RJ has a choice to mention the Sun its promotional activities, but that the RJ chooses not to. 12 PA 2773:16-2674:15; 13 PA 2790:16-21.) Coinciding with these breaches, was the RJ's outright refusals to permit and cooperate in the Sun's requested audit. *E.g.*, 2 PA 86-121. Nothing as severe or pervasive ever occurred with the Review-Journal's previous owners. The evidence demonstrated that the RJ's conduct was "[g]rievous and perfidious misconduct," as the RJ, in a superior and entrusted position, engaged in conduct that explicitly violated the contract and the RJ lacked any reasonable contractual basis to support its conduct. *See State, Univ. & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 989-90, 103 P.3d 8, 19-20 (2004). Because of the overwhelming, and clear and convincing evidence admitted during the arbitration that proved the RJ perfidious and grievous misconduct, the Award must be vacated in this regard.

D. <u>The Sun's Tortious Breach Claims were Properly Compelled to Arbitration</u>

The RJ attempts to relitigate for the third time the propriety of this Court's order compelling the Sun's tortious breach claims to arbitration, contending that the parties did not "agree" to arbitrate tort claims.[14] Opp'n 18-19. This argument should be rejected for the third time. Through the Sun's claims for tortious breach, the Sun asserted that the RJ breached its duty of good faith

[14] This issue was previously before this Court through the Sun's Motion to Compel Arbitration and the RJ's Motion for Reconsideration. The Sun moved to compel arbitration on the arbitrable claims, which was heard on October 24, 2018, and the RJ argued that the arbitration provision did not include tort claims. This Court entered its order compelling arbitration on the Sun's tortious breach of the implied covenant claim on November 15, 2018. The RJ then moved for reconsideration, rearguing this issue, which this Court denied. *See* Order (Jan. 10, 2019).

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and fair dealing under the 2005 JOA with respect to its unlawful charging of editorial expenses and independent promotional activities to the joint operation EBITDA, and bad faith delays and obstruction of the Sun's audit requests (in addition to the RJ's unilateral redesign of the Front Page, and bad faith breach of the arbitration provision). *See* Compl. For the RJ's tortious acts that related to arbitrable claims, the Sun's ancillary tortious breach claims were required to be arbitrated as well. This Court was correct in finding the same, and compelling the tort claim to arbitration.

Where tort claims are inextricably tied to contract issues that are subject to an arbitration provision, those tort claims fall within the scope of arbitration clauses as well. *See, e.g.*, *Int'l Asset Mgmt., Inc. v. Holt*, 487 F. Supp. 2d 1274, 1288 (N.D. Okla. 2007); Thomas A. Oehmke, 1 Commercial Arbitration § 24:98 ("Tort claims are arbitrable where they arise out of, and relate to operations or activities under a contract which contains a broad arbitration clause."). The Nevada Supreme Court interpreted the arbitration provision in the 2005 JOA, at the RJ's predecessor's insistence, and adopted the Review-Journal's broad interpretation of the provision. The Nevada Supreme Court concluded that any disputes concerning amounts owed to the Sun, including accounting, contract interpretation, and information disputes bearing on the calculation of the amounts owed to the Sun, must be arbitrated. *See* Mot. to Compel Arbitration (citing *DR Partners v. Las Vegas Sun, Inc.*, No. 68700 (Nev. May 19, 2016)).

The Sun's claims stemming from the parties' disputes over editorial costs, promotional costs, and the audit concern "amounts owed to [the] Sun," and indeed, the Sun's tortious breach claims would not have arisen had the RJ fully complied with the 2005 JOA in these respects, and not breached the contract in a tortious manner. *Cf. Gregory v. Electro-Mechanical Corp.*, 83 F.3d 382, 384 (11th Cir. 1996) (holding that the complaint itself stated that the facts constituting defaults under the agreement were critical to the other "tort claims" and none of the tort claims would have been brought if defendant had fully complied with the contract). Because the Sun's tortious breach claims are predicated on the RJ's breaches of Section 4.2 and related provisions (editorial cost dispute), Section 5.1.4 (promotional cost dispute), and the audit provision (audit dispute), which involve matters already covered by the 2005 JOA's broad arbitration provision as evaluated by the

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Nevada Supreme Court, *see DR Partners*, *supra*, the Sun's related tortious breach claims are similarly subject to arbitration. Irrespective of the claim for relief, any dispute over amounts owed to the Sun is arbitrable.

VI. THE RJ'S INCONSISTENT ARGUMENT REGARDING ATTORNEY FEES FAILS, AND AN ORDER VACATING THE ARBITRATOR'S DENIAL OF ATTORNEY FEES IS WARRANTED

With respect to whether attorney fees should be awarded, one thing should be very clear: The RJ argued for the award of attorney fees until the moment that the Sun became the prevailing party in the arbitration. Only then did the RJ's position change. The RJ should be estopped from now arguing that attorney fees are not recoverable because of its prior, diametrically inconsistent stance on attorney fees.

As described in the Sun's Motion, the plain language of Appendix D provides for attorney fees, and both the drafters of the 2005 JOA and the RJ have always interpreted it the same. *See* 2 PA 133-34; 3 PA 507-08; 6 PA 1124; 6 PA 1180-81; *see also* 17 PA 3930-32. Before the RJ lost in arbitration, the RJ expressly prayed for an award attorney fees and costs in defense of the matter. *See* Ans. to Compl. 29 (filed Dec. 14, 2018). In lieu of filing an Answering Statement in Arbitration, the RJ submitted its Answer to the Sun's Complaint. *Id.* The RJ's request for attorney fees, along with the Sun's like request, was before the Arbitrator.

The parties' joint interpretation that attorney fees were recoverable in arbitration pursuant to the 2005 JOA is not new. All parties to the 2005 JOA have consistently interpreted the agreement as authorizing an award of attorney fees and costs. This was undisputed by the drafting parties to the 2005 JOA. Both the Sun's and the Review-Journal's prior owner's requests for attorney fees were pending before the arbitrator in the prior arbitration conducted in 2016. In that arbitration, at the close of the hearing, the arbitrator stated that attorney fees were going to be awarded if he were to render a decision:

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[redacted]

Ex. 6 at 433:6-16; *see also id.* at 14:19-23 [redacted] Shortly after this statement was made, the parties settled that action.

The RJ only now supports the Arbitrator's erroneous interpretation that the 2005 JOA does not allow for an award of attorney fees. The RJ should be equitably estopped from arguing otherwise for the sole reason that its loss has now come to fruition. *In re Harrison Living Tr.*, 121 Nev. 217, 223, 112 P.3d 1058, 1061-62 (2005) ("Equitable estoppel functions to prevent the assertion of legal rights that in equity and good conscience should not be available due to a party's conduct." (quoting *Topaz Mutual Co. v. Marsh*, 108 Nev. 845, 853, 839 P.2d 606, 611 (1992))).

Notwithstanding the RJ's newfound, situational interpretation of the attorney fee provision, common sense and logic reveal the absurdity of the RJ's new interpretation. There is no dispute that the RJ is in complete control over all non-editorial functions of the joint operation, which includes total control over the Newspaper promotions, and the joint operation accounting and the EBITDA calculation, and therefore the Sun's profits payments. And the Sun has only two mechanisms available to it that checks the RJ's conduct. It may audit the RJ's books and records to ensure that the RJ is complying with the 2005 JOA, and it may initiate a lawsuit against the RJ. Therefore, when the RJ fails to participate and cooperate in the Sun's requested audit, or refuses to abide by the plain meaning of the 2005 JOA and abuses the Sun through its unreasonable and

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oppressive conduct, the Sun is required to sue the RJ. The Sun is then forced to incur millions of dollars in legal fees.

As stated in the Sun's Motion, for years the Sun has been litigating these issues with the RJ, while the RJ has delayed, hindered, and obstructed the Sun's rights and attempts to enforce its rights under the 2005 JOA. It is implausible and absurd to interpret the fee provision in the 2005 JOA to disallow an attorney fee award where the Sun prevails in these actions. The result of this interpretation: the Sun is required to lose money in order to enforce its rights under the contract, and suffer a loss even when successful in doing so. Mot. 27. In other words, RJ could use its near-complete control over the joint operation and financial power to breach the 2005 JOA, where the Sun's limited recourse still causes the Sun to suffer additional financial harm. *See id.* Such a result defies the 2005 JOA and the parties' expressed intentions. The JOA must be given a reasonable meaning, and the Arbitrator was required to "endeavor to give a construction most equitable to the parties and which will not give one of them an unfair or unreasonable advantage over the other."[15] *See, e.g.*, 11 Williston on Contracts § 32:11 (4th ed); *Canton Ins. Office v. Woodside*, 90 F. 301, 303-04 (9th Cir. 2019).

The RJ cannot reconcile the absurdity and harsh result stemming from its ever-changing argument that attorney fees are not recoverable in arbitration when it is convenient for the RJ. The Arbitrator's finding that the 2005 JOA does not authorize an award of attorney fees must be vacated as a result.

VII. THE OMITTED AUDIT BREACH FINDING MUST BE VACATED

The RJ incorrectly argues that the Sun did not seek audit-related relief. Opp'n 21. In its Complaint, the Sun requested and prayed for such relief. *See, e.g.*, Compl. ¶¶ 201-11 (Apr. 10, 2018). Following hearings on the Sun's Motion to Compel Arbitration and the RJ's subsequent Motion for Reconsideration, the claims compelled to arbitration included the Sun's Sixth Claim for Relief (Breach of Contract-Audit). *See, e.g.*, Order (Jan. 15, 2019). The Arbitration Award itself

[15] The parties' previously proffered interpretation of the attorney fee provision is fair to both parties of the 2005 JOA, as it incentivizes the RJ to comply with the terms of the JOA and allows the RJ to recover its fees where the RJ prevails.

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provides [redacted]

2 PA 36.

In line with the Sun's requested relief, the Arbitrator heard evidence regarding this claim. The Sun's COO testified about the Sun's frequent and repeated attempts to audit the books and records as permitted under the 2005 JOA. 16 PA 3577-3579:22. For example, Mr. Cauthorn described how the RJ delayed, hindered, and refused the Sun's audit requests. *See id*. In closing, the Sun described how the Sun has been damaged by the RJ's breaches. 17 PA 3892. The Sun addressed its requested relief in its post-hearing brief. *See* 6 PA 1118.

The Sun's request for an order vacating or correcting or modifying the Award on this issue is not an untimely request to modify or correct the Arbitrator's ruling, as the RJ claims. *See* Opp'n 21. The Sun's request to this Court seeks to correct substantive errors, not simply modification or corrections that are allowed under the AAA rules or NRS Chapter 38. The American Arbitration Association Commercial Rule R-50 is limited and pertains only to those minor errors in the award, which strictly consist of "clerical, typographical, or computational errors."[16] Nevada's statutes reiterate the same. *See* NRS 38.242(1) (entitled, "Modification or correction of award," and providing that the court shall modify or correct the award if there was "an evidence mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award," the arbitrator "made an award on a claim not submitted to the arbitrator," or the award is "imperfect in a matter of form not affecting the merits of the decision on the claims submitted"). The Arbitrator's error in providing factual findings indicative of the RJ's breach of the audit provision, but failing to rule on the Sun's claim for breach of contract, exceeds the types of corrections properly submitted through a motion to modify or correct the award.

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[16] *Available at* https://www.adr.org/sites/default/files/Commercial%20Rules.pdf (last visited Oct. 11, 2019).

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VIII. THE RJ'S CONDITIONAL COUNTERMOTION LACKS MERIT

The RJ's conditional countermotion asking for alternative relief is inconsistent with its Motion to Vacate Arbitration Award and its opposition here. *E.g.*, *compare* Opp'n 22 *with* Defs.' Mot. to Vacate Arbitration Award. The Sun disagrees with the RJ's request, and to the extent this Court considers the RJ's conclusory countermotion, the Sun incorporates its arguments made above and those made in the Sun's Opposition to Defendants' Motion to Vacate Arbitration Award.

IX. CONCLUSION

For the reasons stated above and as set forth its Motion, the Sun asks this Court to confirm the Arbitration Award, in part, and vacate the Arbitration Award, in part.

DATED this 11th day of October, 2019.

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By: */s/ E. Leif Reid*

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DECLARATION OF E. LEIF REID IN SUPPORT OF PLAINTIFF'S REPLY TO DEFENDANTS' NEWS+MEDIA CAPITAL GROUP LLC AND LAS VEGAS REVIEW JOURNAL, INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO CONFIRM ARBITRATION AWARD, IN PART, AND TO VACATE OR, ALTERNATIVELY, MODIFY OR CORRECT THE AWARD, IN PART AND DEFENDANTS' CONDITIONAL COUNTERMOTION TO CONFIRM ARBITRATION AWARD, IN PART, AND TO VACATE THE AWARD, IN PART

I, E. LEIF REID, declare under penalty of perjury and based on personal knowledge that:

1. I am an attorney at Lewis Roca Rothgerber Christie LLP, and am counsel of record for Plaintiff Las Vegas Sun, Inc. (the "Sun"). This declaration is filed in support of the Sun's Reply to Defendants' News+Media Capital Group LLC and Las Vegas Review Journal, Inc.'s Opposition to Plaintiff's Motion to Confirm Arbitration Award, in part, and to Vacate or, Alternatively, Modify or Correct the Award, in part and Defendants' Conditional Countermotion to Confirm Arbitration Award, in part, and to Vacate the Award, in part ("Reply"). I have personal knowledge of the matters discussed herein and if called upon to do so, I am able to competently testify as to all of these matters.

2. Attached as **Exhibit 1** to the Sun's Reply is a true and correct copy of a circular ad published by the Las Vegas Review-Journal.

3. Attached as **Exhibit 2** to the Sun's Reply are true and correct copies of examples of large house ads published by the Las Vegas Review-Journal.

4. Attached as **Exhibit 3** to the Sun's Reply is a true and correct copy of email correspondence dated February 26, 2019, from Lance Tanaka confirming discovery deadlines, and is filed concurrently under seal.

5. Attached as **Exhibit 4** to the Sun's Reply is a true and correct copy of email correspondence dated March 22, 2019, from Douglass Mitchell transmitting "RJ Production 08," and is filed concurrently under seal.

6. Attached as **Exhibit 5** to the Sun's Reply is a true and correct copy of the American Arbitration Association Preliminary Hearing Record and Order March 26, 2019, and is filed concurrently under seal.

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7. Attached as **Exhibit 6** to the Sun's Reply is a true and correct copy of excerpts from the October 4, 2016, Transcript of Proceedings, Volume 2, in AAA Case No. 01-16-0001-9187, and is filed concurrently under seal.

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

Executed this 11th day of October, 2019.

/s/ E. Leif Reid
E. Leif Reid, Esq.

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CERTIFICATE OF SERVICE

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DATED this 11th day of October, 2019.

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

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EXHIBIT LIST

EXHIBIT NO.	DESCRIPTION	NO. OF PAGES
1	Circular Ad published by Las Vegas Review-Journal	1
2	Examples of large house ads published by Las Vegas Review-Journal	19
3	Email correspondence dated February 26, 2019, confirming discovery deadlines (FILED UNDER SEAL)	2
4	Email correspondence dated March 22, 2019, transmitting "RJ Production 08" (FILED UNDER SEAL)	2
5	American Arbitration Association Preliminary Hearing Record and Order March 26, 2019 (FILED UNDER SEAL)	2
6	Excerpts from October 4, 2016, Transcript of Proceedings, Volume 2, AAA Case No. 01-16-0001-9187 (FILED UNDER SEAL)	12

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EXHIBIT 2

Sisolak says marijuana tax not going to education

Politicians address Women's Chamber

By Ramona Giwargis
Las Vegas Review-Journal

Democratic gubernatorial nominee Steve Sisolak told business leaders on Friday that if some Nevadans knew that revenue from a marijuana sales tax isn't all going toward education, they would not have voted to legalize cannabis.

"It is not trickling down. It is not going to education," Sisolak told the crowd at the Women's Chamber of Commerce of Nevada 2018 candidate forum. "I know for a fact marijuana would not be legal in certain areas if it wasn't going to education. The Legislature was in a time crunch and didn't put it there, but it's my intention to make sure the money goes to education."

While Sisolak did not specify whether he was talking about recreational or medical marijuana, revenue from a 15 percent wholesale tax on cannabis goes into the Distributive School Account. Revenue from a 10 percent excise tax on recreational sales goes to Nevada's rainy day fund.

Sisolak was one of nearly a dozen candidates at the event at the Palace Station Hotel and Casino, where the office seekers were given three minutes to introduce themselves before taking questions from chamber members.

Bizuayehu Tesfaye Las Vegas Review-Journal @bizutesfaye

Democratic gubernatorial candidate Steve Sisolak greets Lorraine Pesso of Henderson during the Women's Chamber of Commerce candidate forum event.

The Clark County commissioner said small-business owners are "frustrated" with the mountain of paperwork and red tape. If elected, he would streamline the application process.

"Small businesses are the backbone of our state," Sisolak told the crowd. "I've signed the front of checks — not the back of checks — so I know what it's like to run a business."

Sisolak is in a tight race for governor against Republican Attorney General Adam Laxalt, who sent a representative to the event.

Wes Duncan, a Republican running to replace Laxalt as attorney general, used his three minutes to talk about mental health. The Silver State ranks last in access to mental health care and services — but Duncan said he's got a plan to reverse the trend.

Duncan, an Iraq War veteran, plans to use settlement funds from the Attorney General's Office to open psychiatric emergency rooms throughout the state. He also supports bolstering transitional housing and resources for domestic violence victims as well as launching mobile outreach teams to help people in rural areas.

"Everyone in here probably has a story about a family member or someone close to them that they know that has dealt with a mental health issue," Duncan said.

Other candidates at the bipartisan luncheon Friday included Democratic Rep. Dina Titus and GOP businessman Danny Tarkanian.

Tarkanian, who has lived in Southern Nevada since 1973, told the attendees that improving Nevada's struggling education system is the key to growing the economy.

Titus stressed the importance of female entrepreneurs in the state. She said the number of women-owned businesses has increased by 70 percent.

Contact Ramona Giwargis at rgiwargis@reviewjournal.com or 702-380-4538. Follow @RamonaGiwargis on Twitter.

Man facing child sex trafficking counts already on probation

By Katelyn Newberg
Las Vegas Review-Journal

A 24-year-old man facing child sex trafficking charges was on probation for attempted prostitution involving an adult at the time of his arrest, court and police records show.

William Hoard is accused of contacting multiple teenage girls through the social media app Snapchat with promises of "making money" by selling sex, according to arresting documents.

The new charges came as he was on probation for prostituting an adult. Court records show he was convicted of pandering and attempted pandering in October.

William Hoard

In the new case, two undercover detectives with the Metropolitan Police Department's vice enforcement unit met the four girls at a casino hotel known for prostitution in June, according to the report.

The girls agreed to do "anything sexual" for $150 each and were arrested for soliciting prostitution.

The youngest girl was 15 years old, one was 16 and two were 17, police said. The 16-year-old and one of the 17-year-olds told officers they separately met Hoard through Snapchat and introduced the other two girls to him.

Hoard attempted to prostitute some of the girls and told two of them to steal men's money, according to an arrest report. He also persuaded at least one to send him graphic photos of herself, according to the report.

Hoard "did not seem to care" about the girls' ages, the report said When one girl told him the age of the 15-year-old, he still "expected" her to sell herself, it said.

Hoard, whose city of residence was redacted in the report, was located by Metro's criminal apprehension team on Wednesday and jailed at the Clark County Detention Center. He was booked on 14 counts, including child sex trafficking, kidnapping, child abuse and accepting or receiving the earnings of a prostitute.

He remained behind bars Friday after bail was set at $200,000, according to court records.

Police urge anyone with information on Hoard's activities or who might have been a victim to contact vice detectives at 702-828-3455. Anonymous tips can be left with Crime Stoppers at 702-385-5555.

Contact Katelyn Newberg at knewberg@reviewjournal.com or 702-383-0240. Follow @k_newberg on Twitter.

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RONDA CHURCHILL/LAS VEGAS REVIEW-JOURNAL

Palm Beach County Clerk and Comptroller Sharon Bock speaks during a meeting of the Nevada Supreme Court commission studying the state's guardianship system at UNLV on Friday. The 26-member panel questioned Bock about her county's subpoena powers in auditing suspicious guardianship cases.

Guardianship panel likes Florida model

Palm Beach County has subpoena power

By COLTON LOCHHEAD
LAS VEGAS REVIEW-JOURNAL

Members of a Nevada Supreme Court panel looking for help to fix the state's beleaguered guardianship system know one thing: An office in Palm Beach County, Florida, that watchdogs its guardianship system has some much needed bite.

On Friday, the 26-person panel spent several hours talking to that county's comptroller and clerk, Sharon Bock, at the UNLV Thomas & Mack Moot Court.

So why Palm Beach County?

Both Nevada and Florida are considered top retirement destinations, and both have over-65 populations that are well above the national average. But the commission's interest went beyond the two states' age similarities.

Since 2011, Bock's office has been auditing and investigating guardianship in her county looking for fraud and exploitation, a practice virtually unheard of in Nevada. In 2014, the Florida Legislature gave the office full subpoena power in audits, meaning it can obtain important documents such as bank records and even personal emails from guardians if fraud is suspected.

The clerk's office is not a law enforcement agency, but its auditors, led by Anthony Palmieri, have investigated over 900 guardianship cases. From those, the office has found more than $5.1 million in missing assets and fraud, Bock told the panel.

Since the audits have been done by deputy clerks trained in forensic accounting investigations, Bock said law enforcement agencies in Palm Beach have been more willing to pursue criminal charges. Since 2011, 20 guardians have been criminally prosecuted there

The office audits every guardianship case in the county, Bock said, and its compliance rate for guardianship cases is 100 percent, meaning that all of the cases meet Florida law for filing annual accountings.

In Nevada, those numbers aren't quite on Palm Beach County's level yet. Back in March the Clark County guardianship court reported that less than half of its roughly 3,100 cases were compliant. That number has since risen to 72 percent as of Friday, according to the court.

Most panel members seemed receptive to the idea, but many worried about where the funding for such an investigative office would come from.

The panel unanimously agreed that the state should work toward adopting a plan similar to the Palm Beach model.

"I think what they're doing is great," said Chief Deputy District Attorney Jay Raman, who heads the district attorney's Elder Abuse Unit. "I wish we could just transplant it here."

Contact Colton Lochhead at clochhead@reviewjournal.com or 702-383-4638. Find @ColtonLochhead on Twitter.

Judge approves referendum seeking to repeal state's new commerce tax

By SANDRA CHEREB
LAS VEGAS REVIEW-JOURNAL CAPITAL BUREAU

CARSON CITY — A state judge Friday signed off on new language for a proposed referendum seeking to repeal Nevada's new commerce tax.

Carson City District Judge James Wilson issued an order after a brief telephone conference call with lawyers.

A group called RIP Commerce Tax, led by Republican state Controller Ron Knecht, now faces the difficult challenge of collecting 55,000 signatures — about 17,000 from each of Nevada's four congressional districts — over the next four weeks. Signatures must be turned in by June 21.

But first organizers must refile the referendum with the secretary of state's office. Knecht late Friday conceded the effort will be difficult.

On May 11, the Nevada Supreme Court ruled the original measure's description of effect — a required 200-word explanation of what the petition does — was flawed because it didn't tell voters what effect it would have on the state budget.

Justices invalidated about 20,000 signatures already collected and told supporters they'd have to start over.

The commerce tax was part of a $1.5 billion revenue package pushed by Gov. Brian Sandoval and approved by the 2015 Legislature to fund the state budget and the governor's education agenda. It imposes a levy on businesses with $4 million or more in annual revenue and is projected to generate $60 million a year.

The referendum would give voters the final say on whether it stays on the books or is repealed.

The Coalition for Nevada's Future, a group of business interests that supported the tax, challenged the petition in court, claiming among other things that the way it was written was misleading and deceptive.

Contact Sandra Chereb at schereb@reviewjournal.com or 775-461-3821. Find @SandraChereb on Twitter.

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REGIONAL BRIEFS

MISDEMEANOR CHARGE

Channel 13 news anchor arrested on suspicion of DUI

An anchor at KTNV-TV, Channel 13 was arrested Thursday afternoon after she was suspected of drunken driving, the station reported Friday afternoon.

Rikki Cheese
News anchor was arrested for second time on suspicion of DUI

"We have some news to share with you about KTNV anchor Rikki Cheese," the station's report begins.

Cheese is facing one misdemeanor charge of driving under the influence, the station reported. It's unclear what time she was arrested or where.

This was her second DUI arrest. The first one happened in February 2009.

CAESARS PALACE

Police seek help locating five in jewelry store robbery

Police are seeking the public's help finding five men in connection with a jewelry store robbery Thursday night at Caesars Palace.

Just after 10:30 p.m., five men robbed a jewelry store "in the area of Las Vegas Boulevard and Flamingo Road," the Metropolitan Police Department said.

According to Metro Lt. Charles Jenkins, the robbery occurred in the Forum Shops Rolex store at Caesars Palace, 3500 Las Vegas Blvd. South.

Police described the five men connected with the robbery as 18 to 20 years old, weighing between 140 and 180 pounds and standng between 5-foot-6 and 5-foot-11 inches tall.

Anyone with information can contact Metro's robbery section at 702-828-3591, or Crime Stoppers at 702-385-5555.

MAN DEAD

NLV police investigating possible road-rage shooting

North Las Vegas police are investigating a possible road-rage shooting that left a 35-year-old man dead near Craig Road and North Fifth Street early Friday.

About 3:30 a.m. officers responded to reports of a shooting in the area and found a man dead in a car. Witnesses at the scene told police that the shooting was related to a road-rage incident.

North Las Vegas police are searching for a dark-colored Mitsubishi Eclipse in connection with the shooting.

NORTHEAST VALLEY

Man wounded when someone fires shots into his bedroom

A man was wounded after someone fired multiple shots through his bedroom window in northeast Las Vegas early Friday, Las Vegas police said.

The man was asleep in his apartment near Lamb Boulevard and Washington Avenue when he was shot about 4:50 a.m., police said. He was taken to an area hospital with nonlife-threatening injuries.

BOULDER HIGHWAY

Man dies crossing road after being hit by motorcycle

A man died after he was hit by a motorcycle while trying to cross Boulder Highway in Henderson just before midnight Thursday, police said.

The 56-year-old man was not in a crosswalk when he crossed Boulder Highway near Coogan Drive. He was pronounced dead at the scene.

The motorcyclist who hit him was taken to an area hospital with minor injuries. Henderson police said that neither speed nor impairment were considered factors in the crash.

U.S. MARSHALS

Murder suspect from Florida arrested near the Strip

A murder suspect from Florida was arrested Friday afternoon in Las Vegas, the U.S. Marshals Service announced.

The U.S. Marshals Fugitive Task Force arrested Steve Evans, 32, near Tropicana Avenue and Las Vegas Boulevard South after a warrant was issued.

Evans was wanted by the Hillsborough County Sheriff's Office in connection with a nightclub altercation that ended in the death of a man on May 16.

Evans was booked into the Clark County Detention Center, where he awaits extradition proceedings. According to the sheriff's office, Evans faces charges of first-degree murder and aggravated assault with a firearm.

HENDERSON

Man dies after crashing his motorcycle into barrier

A man died after he crashed his motorcycle into a concrete barrier in Henderson on Friday afternoon.

The crash occurred about 3:45 p.m. as the motorcyclist headed north on Stephanie Street just north of Russell Road, Henderson police spokeswoman Michelle French said.

The motorcyclist, identified only as a 71-year-old man, died at a hospital.

Greece to evacuate main refugee camp

Thousands to relocate to newly formed units

By COSTAS KANTOURIS
THE ASSOCIATED PRESS

IDOMENI, Greece — Greek authorities will start a gradual evacuation of the country's main informal camp for refugees and other migrants within the next 10 days, officials said Monday.

Police and government officials said the estimated 8,400 people at Idomeni, on the closed northern border with Macedonia, will be sent to newly completed, organized camps.

Riot police units were being moved Monday from other parts of Greece to Idomeni.

Giorgos Kyritsis, a government spokesman for the refugee crisis, said the operation should start Tuesday or Wednesday and insisted police would not use force.

"I believe the (operation) will be completed in a week to 10 days," Kyritsis told private Star television.

"We are not talking about a police roundup operation, but ... there is a need for people to leave Idomeni. We currently have 6,500 available places in existing shelters and will complete the rest over the next few days."

Greece has been trying for months to persuade Idomeni camp residents to move, and few at the camp Monday appeared to welcome the news.

"It's much better here than in the camps. That's what everybody who's been there said," Hind Al Mkawi, a 38-year-old refugee from Damascus, told the AP.

"I've heard (of the pending evacuation) too. It's not good ... because we've already been here for three months and we'll have to spend at least another six in the camps before relocation. It's a long time. We don't have money or work — what will we do?"

About 54,000 migrants have been stuck in Greece since a series of Balkan border closures in March.

The government said its campaign of voluntary evacuations was already working, with police reporting that eight buses carrying about 400 people left Idomeni Sunday.

Abdo Rajab, a 22-year-old refugee from Raqqa in Syria, has spent the past three months in Idomeni, and is now considering paying smugglers to be taken to Germany clandestinely.

"We hear that tomorrow we will all go to camps," he said. "I don't mind, but my aim is not reach the camps but to go Germany."

Recording deepens Brazil political crisis

By MAURICIO SAVARESE
THE ASSOCIATED PRESS

RIO DE JANEIRO — Brazil's interim government came under fire Monday as a secret recording emerged of the new planning minister discussing a purported pact to push for President Dilma Rousseff's impeachment to stall a huge corruption probe that has engulfed much of the nation's political class.

Even some allies of acting President Michel Temer called for the firing or resignation of Planning Minister Romero Juca, also a senator who is under investigation in the multibillion-dollar kickback scheme at state oil company Petrobras.

Juca, who seems in the recording to be plotting how to remove Rousseff, initially said he would remain in office only to announce a few hours later that he was taking a leave of absence.

Rousseff, Brazil's first female president, was suspended from office by the Senate this month for allegedly using accounting tricks to hide deficits in the federal budget to bolster support for her embattled government.

"This shows the true reason behind the coup against our democracy and president Rousseff's mandate," tweeted Ricardo Berzoini, former minister of political relations who lost his post when Rousseff was suspended. "Their objective is to stop the Petrobras probe, to sweep the investigations under the rug."

Temer, who was vice president, took over after distancing himself from Rousseff and whipping up votes in Congress for her suspension. He will remain in power while the Senate conducts a trial.

The day began with a published transcript of a conversation between Juca and Sergio Machado, a former senator who until recently headed another state oil company, Transpetro.

Soon after the transcripts were published by the newspaper Folha de S.Paulo, Juca called a news conference and said his comments had been taken out of context.

He said he was not pushing to impeach Rousseff, but rather noting that things would be different under a different government, especially in Brazil's struggling economy.

By the afternoon, the newspaper posted on its website the hour-plus recorded conversation broken up into two parts. Juca never mentions the economy.

The recording is sure to deepen Brazil's political crisis. Rousseff supporters and the president herself have long argued her administration was the victim of a coup orchestrated by opposition lawmakers, in large part to dilute the Petrobras investigation.

US embargo on selling arms to Vietnam lifted

Obama to speak directly to Vietnamese people

By NANCY BENAC
THE ASSOCIATED PRESS

HANOI, Vietnam — Eager to banish lingering shadows of the Vietnam War, President Barack Obama lifted the U.S. embargo on selling arms to America's former enemy Monday and made the case for a more trusting and prosperous relationship going forward. Activists said the president was being too quick to gloss over serious human rights abuses in his push to establish warmer ties.

After spending his first day in Vietnam meeting with government leaders, Obama will spend the next two days speaking directly to the Vietnamese people and meeting with civil society groups and young entrepreneurs. It's all part of his effort to "upgrade" the U.S. relationship with an emerging economic power in Southeast Asia and a nation that the U.S. also hopes can serve as a counterweight to Chinese aggression in the region.

Tracing the arc of the U.S.-Vietnamese relationship through cooperation, conflict, "painful separation" and a long reconciliation, Obama marveled during a news conference with the Vietnamese president that "if you consider where we have been and where we are now, the transformation in the relations between our two countries is remarkable."

President Tran Dai Quang said at a state luncheon that he was grateful for the American people's efforts to end "an unhappy chapter in the two countries' history," referring to the 1965-1975 U.S. war with Vietnam's communists, who now run the country.

Veterans were split. Bernard Edelman, deputy director of government affairs for the Vietnam Veterans of America, cited the good cooperationsurrounding efforts to account for troops still missing in action.

"The war's over," he said, noting his group hasn't taken an official position.

But Steve Rylant of Loveland, Colorado, who served at Ubon Air Base in Thailand during the Vietnam war, said he was "offended."

Asked if there would come a better time for lifting the embargo, Rylant said, "For me, there's never a time.

CAROLYN KASTER/THE ASSOCIATED PRESS
President Barack Obama arrives for a news conference with Vietnamese President Tran Dai Quang on Monday at the International Convention Center in Hanoi, Vietnam. Obama spent his first day in Vietnam meeting with government leaders.

... It's just really difficult for us to try and agree to any kind of a thing like this with Vietnam, I guess."

Vietnam holds about 100 political prisoners and there have been more detentions this year, some in the past week. In March, seven bloggers and activists were sentenced for "abusing democratic freedoms" and "spreading anti-state propaganda."

Austrians elect pro-EU candidate

By GEORGE JAHN
THE ASSOCIATED PRESS

VIENNA — A pro-European Union candidate eked out a victory Monday over a right-wing, anti-migrant rival to become Austria's next president, in a tight contest viewed Europe-wide as a proxy fight pitting the continent's political center against its growingly strong populist and anti-establishment movements.

European mainstream parties joined Austrian supporters of Alexander Van der Bellen in congratulating him on his victory over Norbert Hofer, with German Foreign Minister Frank-Walter Steinmeier declaring: "All of Europe is now breathing more easily."

But with less than a percentage point separating the two, Hofer's Freedom Party and its allies across Europe also had reason to celebrate what they cast as a major political surge by one of their own. Hofer had been narrowly ahead of Van der Bellen, a Greens politician running as an independent, after the counting of votes directly cast on Sunday. But around 700,000 absentee ballots still remained to be tallied Monday, and those numbers swung the victory to Van der Bellen.

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Boom News for the baby boomer generation

Paul Harasim
COMMENTARY

Boomers try to rediscover love

Divorce. The love of your life dies.

They are two of the most common characteristics of single baby boomers.

Not surprisingly, another common characteristic of many single boomers is that they're back in the dating scene.

They've made a choice to try and rediscover love, to try and start out on a new path in life with a fascinating new someone.

Studies generally show the majority of married people met spouses through people they knew. Friends, mutual acquaintances, common associations give birth to further associations — such as dance, church and singles groups.

Unfortunately, because many boomers moved to Las Vegas from somewhere else in the recent past, deep friendships with common associations of people aren't the norm. So it's common for both men and women to try online dating or enlist the help of matchmakers.

As a matchmaker and dating coach in Las Vegas, Patti Novak, owner of Vegas Valley Introductions, starts out with a 90 minute complimentary interview to get a sense of a person's character and traits. She does a criminal background check. She says too many people starting to date again want to learn too much too fast.

Politics and religion on a first date, for instance, are a no-no, she says. Get to know someone first before taking on subjects that can create friction even among lifelong friends. She says her work not only saves time for her clients, but also ensures that whomever you date has similar qualities to you. She's guested on "Oprah," CNN and "Today."

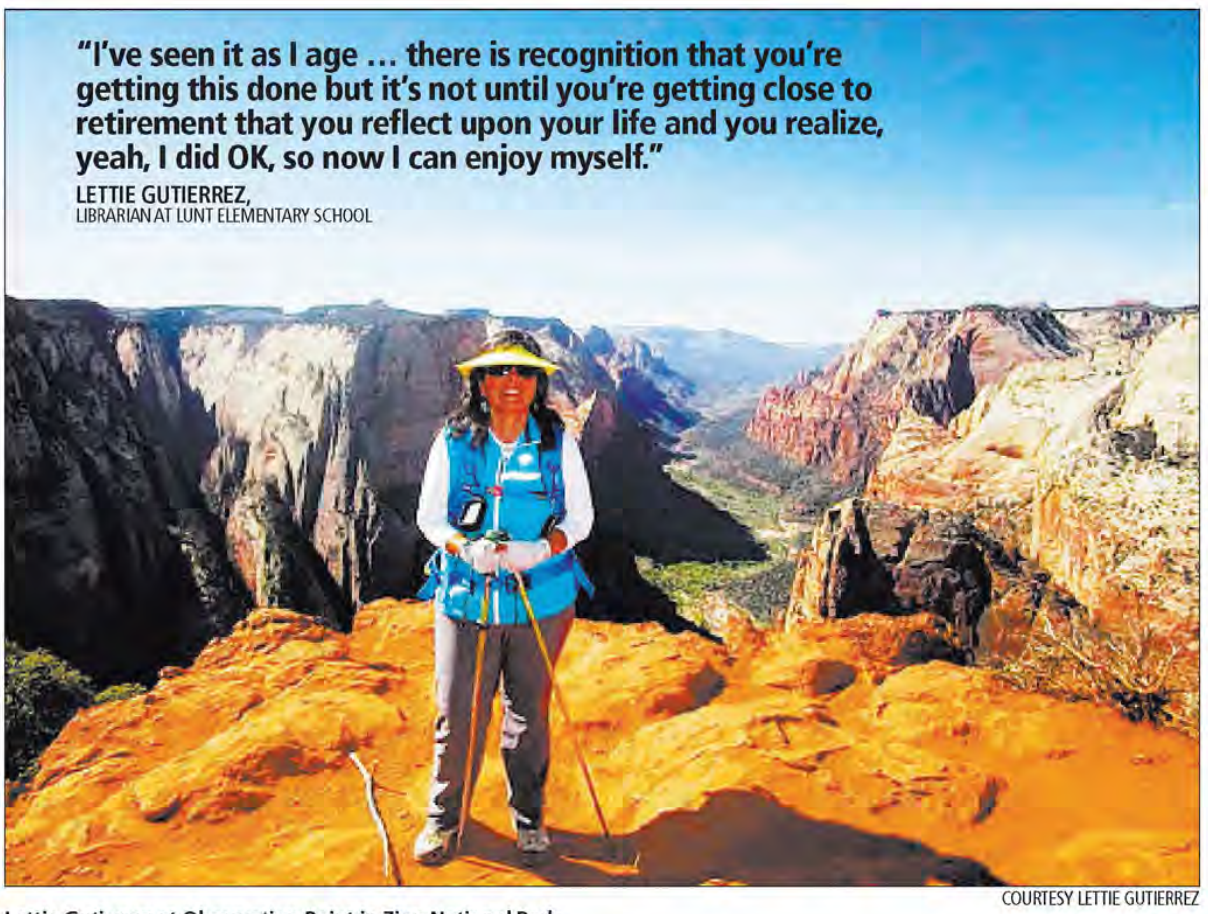
Ken Solin, author of the "Boomer Guide to Finding True Love Online" and a contributor to the Huffington Post and AARP's online magazine, suggests a busy daytime cafe is ideal for a first date. One reason is safety, another is that you can leave easily if the date isn't working out.

Solin, who also works as a date coach, says never to lie about anything online."If you lie about something like your age, the other person is going to think, 'What else did she lie about?'"

Always list your four or five best qualities, he says, and expect the other individual to have some of them.

Despite the "opposites attract" cliche, he says a relationship doesn't last when you have nothing in common.

Paul Harasim's column runs Sunday, Tuesday and Friday in the Nevada section and Thursday in the Life section. Contact him at pharasim@reviewjournal.com or 702-387-5273. Follow @paulharasim on Twitter.



COURTESY LETTIE GUTIERREZ

Lettie Gutierrez at Observation Point in Zion National Park.

Research shows aging is not all gloom and doom

It's called the U-bend and it measures greater contentment as people age

By JOAN PATTERSON
SPECIAL TO THE LAS VEGAS REVIEW-JOURNAL

So, you can't remember what you had for dinner last night, your knees ache and after years of perfect vision there is now a collection of snazzy drugstore reading glasses stashed all over the house.

Congratulations, it's only going to get better. Really.

In their book, "Lighter as We Go: Virtues, Character Strengths and Aging" (Oxford University Press, 2015), authors Mindy Greenstein and Jimmie Holland point to some of the latest research showing an increase in reported well-being as we age. One significant finding is a pattern that emerges called the U-bend.

In a nutshell, feelings of satisfaction are high in early adulthood such as the 20s, then start to curve downward and hit rock bottom in middle age, around the late 40s to early 50s. Then, despite all those preconceptions about growing older, well-being actually starts to curve upward and keeps rising into at least the eighth decade.

"One of the interesting aspects of the U-bend is how robust it is across many different countries and kinds of societies ... this finding keeps coming up again and again over large groups of people," said Greenstein, a clinical psychologist and consultant to the geriatric psychiatry group at Memorial Sloan Kettering Cancer Center.

Not everyone becomes more content after middle age. Individual life experiences, circumstances and genetics play a role in our feelings of satisfaction. But in looking at the data as a whole, experts say it is hard to deny that there's a shift taking place into the graying years.

Based on her own conversations with older adults, Greenstein has found the tendency as we age to have a greater appreciation for what gives life meaning, including relationships and simple day-to-day pleasures and blessings.

"It's getting more comfortable with mistakes and with just being who you are regardless of how it looks to anybody else, which just has a liberating kind of element," added the 53-year-old, who noted that her own U-bend is on the "upswing."

The pressures of middle age, such as raising children and striving for promotions at work, can also start to wane once someone hits their 50s or 60s, or at least be seen from a new perspective.

Lettie Gutierrez, who is 62 and a librarian at Lunt Elementary School, said she isn't surprised by the research. She saw how her own parents felt a sense of accomplishment working and raising a family, but relished the freedom that came with growing older and pursuing other interests.

"I've seen it as I age ... there is recognition that you're getting this done but it's not until you're getting close to retirement that you reflect upon your life and you realize, yeah, I did OK, so now I can enjoy myself," she said.

The avid hiker, who trekked 800 miles last year, has noticed that she tends to "enjoy the beauty of wherever I'm at more," and believes the adversities of life can build up one's resilience and equanimity. She has watched her siblings face battles with cancer and come out with a sense of peace greater than her own.

When Michael O'Connor, a former electronic technician at the Nevada Test Site and seismologist, retired at age 64, he was still a Type A guy, the kind who loved his job, worked hard and played hard. For him, travel meant skiing and bicycling trips in different corners of the world. Yet, if he could do it all over again, he would probably retire a decade earlier.

Life has slowed some for the 72-year-old. He jokes that he's downshifted to a Type B personality. But there has also been a change in perspective with age. Little things, such as the dinner gatherings he and some friends take turns hosting once a month are something he relishes.

When asked if he feels wiser with age and has a better sense of his place in the world, of who he is, O'Connor doesn't hesitate.

"I think almost anyone would answer that in the affirmative. I mean, you learn a little more about yourself every day. I certainly have."

SUN00003563

Top Rank adds combustible Conlan to stable

Northern Ireland fighter to follow McGregor template

By GILBERT MANZANO
LAS VEGAS REVIEW-JOURNAL

Remember the boxer from Northern Ireland who raised his middle fingers at the judges after a controversial loss at the Rio Olympics? That's Michael Conlan, and the star from Belfast signed his first professional contract with Top Rank this week.

BOXING NOTEBOOK

Conlan, 24, had five other contracts in front of him, but went with Bob Arum's Las Vegas-based company because of its reputation for turning foreign boxers into stars in America.

Top Rank is home to stars such as Manny Pacquiao (Philippines), Vasyl Lomachenko (Ukraine), Gilberto Ramirez (Mexico), Terence Crawford (U.S.) and many others. Floyd Mayweather Jr., Oscar De La Hoya and Miguel Cotto all were once with Top Rank.

"It's a dream come true," said Conlan, who will compete as a junior featherweight. "I'm with the best here at Top Rank. If you look at Top Rank's track record of turning Olympians into professional world champions, it was an easy decision."

Conlan, who has 72,000 followers on Twitter, hopes to follow the blueprint Irishman Conor McGregor used to become a star in the UFC. To put into perspective how popular Conlan is back home, he beat out McGregor to win the RTE Sports Person of the Year last December.

"McGregor created a market here that I can tap into," Conlan said. "I'm good friends with Conor and I'm sure he'll help me along the way. It's great to have people like him support me."

Conlan's pro debut will be at Madison Square Garden in New York City on St. Patrick's Day, according to a tweet by Arum posted Friday.

The Irish boxer needs no introduction in the U.K., but he gained fame worldwide after his Olympic outburst. Conlan dominated the quarterfinal bout and made his voice heard by ripping the judges after they gave the win to Russia's Vladimir Nikitin.

Schedule

- **Friday:** Knockout Night at the D, Downtown Las Vegas Events Center, 6:30 p.m., CBSSN
- **Nov. 5:** Manny Pacquiao vs. Jessie Vargas, Thomas & Mack Center, 6 p.m., Top Rank PPV
- **Nov. 18:** Knockout Night at the D, Downtown Las Vegas Events Center, TBD, CBSSN
- **Nov. 19:** Andre Ward vs. Sergey Kovalev, T-Mobile Arena, 6 p.m., HBO PPV
- **Dec. 17:** TGB Promotions, MGM Grand Garden, TBD

NOVEMBER UNDERCARDS

The Nov. 5 pay-per-view undercard is set for Manny Pacquiao-Jessie Vargas at Thomas & Mack Center.

Las Vegan Jessie Magdaleno will get his first title shot when he faces WBO junior featherweight titlist Nonito Donaire in the co-main event.

Rising star Oscar Valdez will make his first WBO featherweight defense against Japan's Hiroshige Osawa, the mandatory challenger. Zou Shiming, the two-time Olympic gold medalist from China, meets Thailand's Kwanpichit Onesongchaigym for the vacant WBO flyweight belt.

Ticket sales are off to a brisk start, according to Arum, with only a few hundred $54 tickets left. Arum said he is optimistic the event will sell out the 18,000-seat venue.

"Instead of scaling it back," Arum said, "what we did from the get-go was we took almost 7,000 seats and made them $50. We gave people the opportunity to see Manny Pacquiao live in person for $50. That's a big thing."

Also, the first match on the Sergey Kovalev-Andre Ward undercard Nov. 19 at T-Mobile Arena has been announced. Isaac Chilemba, a tough veteran from Malawi, faces Oleksandr Gvozdyk, a rising contender from the Ukraine, in a light heavyweight battle.

CANELO, GGG UPDATES

With Saul "Canelo" Alvarez sidelined the rest of the year with a fractured right thumb, that creates an opening Dec. 10 on HBO.

Gennady "GGG" Golovkin hopes to slide into that spot for his next bout and it could be a good one. Daniel Jacobs, arguably the best middleweight not named Golovkin, is in negotiations to face the three-belt knockout artist from Kazakhstan. Madison Square Garden is the frontrunner to land the match.

Michael Conlan, right, from Northern Ireland fights Russia's Vladimir Nikitin in a bantamweight 56-kg quarterfinal at the Rio Olympics on Aug. 16. Nikitin was awarded the decision, prompting Conlan to raise his middle fingers to the judges.
JAE C. HONG/ THE ASSOCIATED PRESS

SHOWDOWN IN THE UK

Anthony Crolla and Jorge Linares meet Saturday in Manchester, England, in a matchup between the two best lightweights. Crolla risks his WBA belt against Linares' WBC belt, with the 135-pound lineal title at stake. The showdown can be found on the AWE channel or Klowdtv.com at 2:30 p.m.

Contact Gilbert Manzano at gmanzano@reviewjournal.com or 702-383-0492. Follow @gmanzano24 on Twitter.

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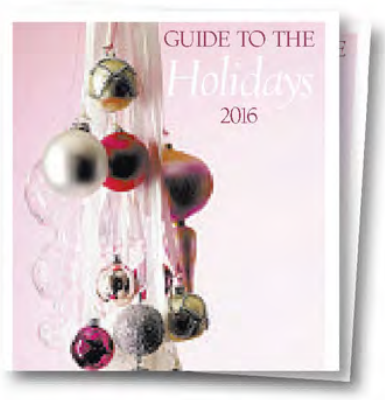

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SUN00003638

BOOM

Master carver, massive memorial

Totem pole dedicated to kin who died of cancer

By Ron Judd
The Seattle Times

SEATTLE — Most people know that totem poles, the signature artwork of Northwest coastal tribes, use imagery to tell stories. But few among us can grasp the story's meaning, feel the deep inspiration of the carver — or even know where to start reading the tale.

Case in point: Tsimshian carver David Boxley's latest vertical masterpiece, a majestic, 27-foot totem raised this spring at the entrance to Northwest Hospital in the Northgate area to honor the life of his recently departed sister-in-law, Cindy Sue James — and the loving care afforded to her there by hospital staff during her final days.

It's logical to assume that the figure at the pole's apex — in this case, a broad-winged eagle, representing the eagle clan of the Tsimshian people of Southeast Alaska — is the primary inspiration behind the painstaking work to convert an old-growth log to a work of art. It's true to an extent; James died from uterine cancer, and the pole is a tribute to her bravery.

But Northwest coastal tribal tradition is more nuanced.

Before speaking at the ceremonial dedication of the pole, dubbed "Eagle's Spirit," in early May, Debora Juarez, a Puyallup native, current Seattle City Council member and member of the Blackfeet Tribe, contacted Puget Sound tribal leaders to collect their impressions of Boxley's design. One of them, Swinomish Tribal Chairman Brian Cladoosby, told her that understanding the pole's iconography required turning nonnative cultural norms upside-down.

"Leaders, women, are always at the bottom of a totem pole — holding the people up," Cladoosby told her. Other tribal leaders echoed the sentiment, noting that the Eurocentric interpretation of someone "at the bottom of the totem pole" carries a derogatory meaning.

Family's rock

Not so in the minds of carvers, past or present. Boxley, 65, one of the most active and honored totem pole-carvers alive, said he placed his sister-in-law exactly where she belonged: as a literal foundation for her family and people.

This is why "Eagle's Spirit" is anchored to Mother Earth by a representation of James. The "signature dimples" on the carved figurine give a hint of her effervescence to visitors and patients at the hospital that James believed deserved honor for its treatment of the suffering and the disabled — particularly those suffering cancer.

In her stylized depiction on the pole, Boxley has left James, a local accountant, standing in immortality securely but tenderly clutching the shoulders of her grandson, Dominic, 7, "the light of her life, from the day he was born."

Boxley placed his relative — a longtime dear friend, fellow tribal dancer and enthusiastic warrior in the battle to preserve the threatened north coast tribal culture of the Tsimshian, Haida and Tlingit — at the pole's base because she was a bedrock for her people.

"She was the glue around her family," Boxley says. "She was really strong."

Spiritual medium

Boxley's medium is the Western red cedar, the cloud-scraping green sentinel tree that housed and clothed his ancestors, and still provides what many consider spiritual solitude to those lucky enough to enter the ethereal, mossy domains of the last stands of the coastal giants from Oregon to Southeast Alaska. When the tree's flesh — a fragrant, fibrous wood with the hue of a sockeye and legendary weatherproof longevity — is cut, pushed, prodded, willed and shaped over many months into a totem, the resulting pole will keep telling its story for centuries.

James deserved all of that, Boxley says. But the totem is unique in that it sprung from her own imagination. In countless visits to the hospital following her first cancer diagnosis, James and her sister Michelle passed by an aging totem pole that had stood for four decades at the old entrance to Northwest, part of UW Medicine.

One day James, whose forceful personality was legend, took aside her favorite nurse and blurted: "You guys ought to get rid of that ugly totem pole," Boxley recalls. "She said, 'You should make a new one to honor all the cancer patients who have come through this hospital. And I know who could do the work: my brother-in-law.'

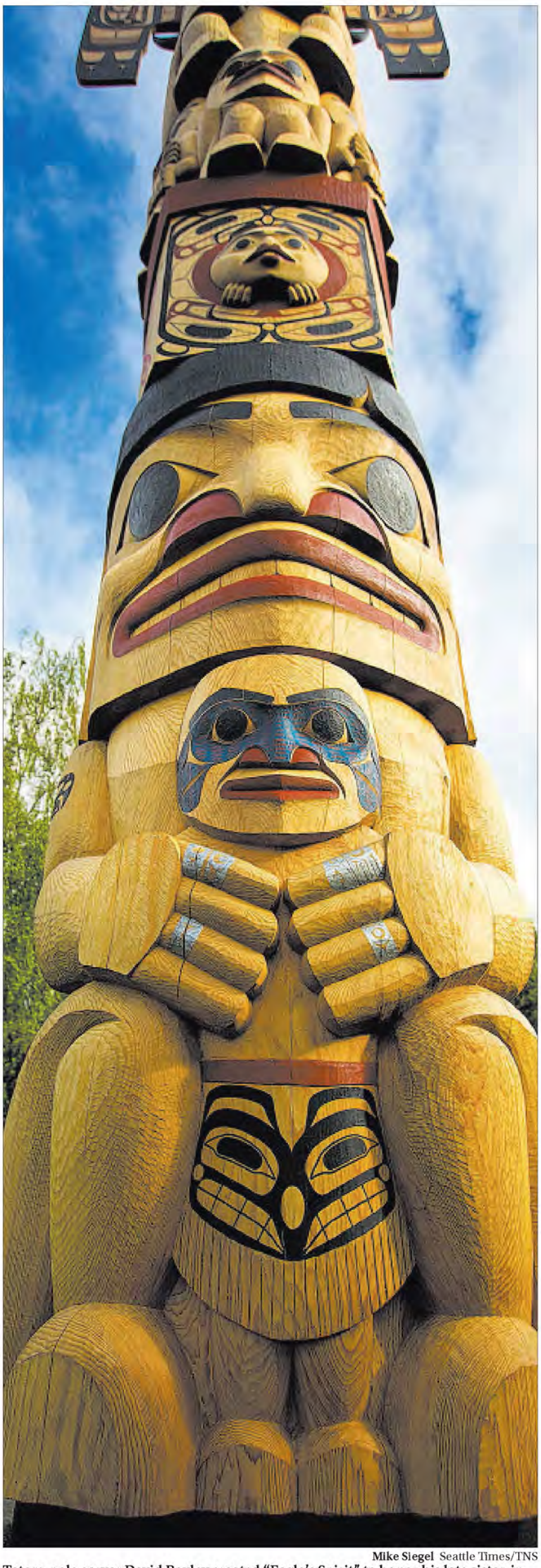
"One thing led to another," Boxley says. "I did a drawing (of his concept for the pole); took it to Cindy; and she approved every bit of it, even planned a good deal of what's going to happen (at the pole's dedication)."

Symbolism abounds

The pole's top figure represents the family's clan, the Eagle, or Laxskiik, of the Tsimshian Nation. The next figure down, a shaman wearing a colorful bear-claw headdress and holding a rattle and mortar and pestle, represents doctors and caregivers battling cancer — and giving comfort to those who, like James, prove incurable.

The center figures on the pole represent past, present and future cancer patients. On either side of the bentwood box upon which they sit are memorial ribbons honoring victims of cancer. From the center peeks a diminutive figure — "Mouse Woman," James' identity in her many years of tribal dancing.

At the base of the pole is James herself, holding her grandson, her face and features carved by Boxley's son, David Robert, also a skilled tribal artist. It is, in totem-pole terms, a remarkable likeness, Boxley says.



Mike Siegel Seattle Times/TNS
Totem-pole carver David Boxley created "Eagle's Spirit" to honor his late sister-in-law, Cindy James, who "was the glue around her family."

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SUN00004028

Las Vegas drivers unite after horrific shooting

Gallagher, others offer proceeds from sales of shirts, decals to victims

By Ron Kantowski
Las Vegas Review-Journal

People in auto racing are used to dealing with tragedy.

It's an all too regular occurrence, one of speed sport's harsh realities. But people in auto racing know of the inherent risks when they sign up.

"This was something different," Spencer Gallagher said.

The NASCAR Xfinity Series driver was speaking of the unspeakable trag-

MOTOR SPORTS NOTEBOOK

edy, of 58 concert goers being slaughtered by a madman at Sunday's Route 91 Harvest music festival, and nearly 500 more being injured by his bullets.

It was our own Day of Infamy, an hour so grim and gruesome that we'll never forget where we were and what we were doing when the madman went into the bell tower, or our version of it.

Spencer Gallagher was sleeping. He said it sheepishly, as if he was a little embarrassed to be in repose when so many in his hometown were under siege. But it was around 1 a.m. in Charlotte, which is where most NASCAR drivers lay their head on the pillow during racing season.

When he awoke and heard the awful news, Gallagher first thought of his girlfriend, Marina. Was she safe? The driver said his girl works for the same company that promoted the Route 91 festival, that she was back home, that she had tickets for the show.

Marina did not use those tickets. She was safe.

Spencer Gallagher's second thought: What can I do to help the victims?

He put up a Twitter post from Allegiant, his sponsor and his father Maury's Las Vegas-based airline, urging victims and family members to contact Allegiant for assistance in their travel needs.

He reached out to the other Las Vegans who make their livings driving in NASCAR: Kyle Busch, Kurt Busch, Brendan Gaughan, Noah Gragson.

They agreed to print up Vegas Strong T-shirts and stickers with a racing theme, available for purchase by race fans and anybody else who wants them, with proceeds going to the shooting victims. The website, driversforvegas.com, should be up to accept preorders Friday, with shipping expected to begin Monday.

It's not a lot, Gallagher said. It's mostly a gesture to show that when the engines start up again, the Las Vegas drivers will be remembering, too.

Busch whacked

Three weeks ago it was written here that Kurt Busch was on a roll heading into NASCAR's playoffs, and probably should not be counted out of them.

Well, you can officially count him out.

The 2004 Cup Series champion and winner of this year's Daytona 500 was eliminated from championship contention after the first three-race playoff segment. Busch will join Ryan Newman, Austin Dillon and Kasey Kahne in trying to stay out of the way of the remaining title contenders when the Round of 12 begins Sunday at Charlotte Motor Speedway.

"Devastated for all you fans," the 39-year-old Las Vegas driver wrote on his Twitter account after finishing 20th at Dover, Delaware, on Sunday. "We didn't execute effectively in the playoffs. Will work hard and push for results in the remaining races."

At the Bullring

The Pac-12 is the Conference of Champions, according to Bill Walton and others. On Saturday night, the Las Vegas Motor Speedway Bullring will be the track of champions as eight drivers will be crowned as such during the last night of 2017 competition.

Championships in NASCAR Super Late Models, NASCAR Super Stocks, NASCAR Bombers, USLCI Legends, USLCI Thunder Cars, USLCI Bandolero Outlaws, USLCI Bandolero Bandits and Skid Plate Cars will be determined on the 3/8ths mile paved oval beginning at 7 p.m.

Hot dogs and Coca-Cola products cost only $2, making the Bullring one of Southern Nevada's most fan friendly sports venues. For tickets, call 702-644-4444 or visit LVMS.com.

Contact Ron Kantowski at rkantowski@reviewjournal.com or 702-383-0352. Follow @ronkantowski on Twitter.

Schedule

NASCAR Monster Cup
- **What:** Bank of America 500.
- **When:** Friday, practice, 10:30 a.m. (NBCSN), qualifying, 4:20 p.m. (NBCSN). Saturday, practice, 8 a.m. (NBCSN), practice, 10:30 a.m. (NBCSN). Sunday, race, 11 a.m. (KSNV-3).
- **Where:** Charlotte Motor Speedway (oval, 1.5 miles), Charlotte, N.C.
- **Distance:** 501 miles (334 laps).
- **Last year:** Jimmie Johnson won on his way to a series championship.
- **Last race:** Kyle Busch notched his second consecutive playoff victory.
- **Next race:** Alabama 500, Oct. 15, Talladega Superspeedway, Talladega, Ala.

NASCAR Xfinity
- **What:** Drive For The Cure 300.
- **When:** Friday, practice, noon (NBCSN), practice, 3 p.m. (NBCSN). Saturday, qualifying 9:05 a.m. (NBCSN), race, noon (NBCSN).
- **Where:** Charlotte Motor Speedway (oval, 1.5 miles), Charlotte, N.C.
- **Distance:** 300 miles (200 laps).
- **Last year:** Joey Logano took first after starting third.
- **Last race:** Ryan Blaney secured a crucial playoff win.
- **Next race:** Kansas Lottery 300, Oct. 14, Kansas Speedway, Kansas City, Kan.

NASCAR Camping World Truck
What: No race this weekend.

Formula One
- **What:** Japan Grand Prix.
- **When:** Friday, qualifying, 11 p.m. Saturday, race, 10 p.m.
- **Where:** Suzuka International Racing Course (circuit, 3.6 miles), Suzuka, Japan.
- **Distance:** 191.1 miles (53 laps).
- **Last year:** Nico Rosberg won from the pole, his last victory in a championship season.
- **Last race:** Max Verstappan took first in Malaysia.
- **Next race:** United States Grand Prix, Oct. 22, Circuit of the Americas, Austin, Texas.

NHRA
- **What:** No race this weekend.

Setting your own morning line can give you a leg up

I wrote a couple of months ago about a powerful tool that can help you improve your betting strategy and promised to return to the subject. I'm doing that today with a little help from a friend.

MIKE BRUNKER
HORSE RACING

First a brief refresher on the concept of making your own morning line: The object is to help you find horses that offer value because their chances of winning are better than the public perceives.

The best way to do that is to use the formula below to ensure that your estimated odds are fair, not just ballpark guesses.

To begin with, you need a target: For simplicity's sake, let's use a range of 122 points for short fields of five or six horses up to 130 points for full fields. So in the case of Saturday's eighth race at Keeneland, which has 13 entries, we'd use 130 points. Simple, right?

Next go through the race and assign odds to each horse that you believe reflect its chances of winning.

When you're done, calculate the field's total points using this chart. The total based on your odds should be within a point or two of 130. If it's not, go back and "massage" your odds until it is.

Making a morning line

Odds	Pts
1-5	83
2-5	71
3-5	63
4-5	56
1-1	50
6-5	45
7-5	42
3-2	40
8-5	39
9-5	36
2-1	33
5-2	29
3-1	25
7-2	22
4-1	20
9-2	18
5-1	17
6-1	14
8-1	11
9-1	10
10-1	9
12-1	8
15-1	6
20-1	5
30-1	3
50-1	2

My friend, a former racetrack linemaker, has been out of the business for a few years, but the concepts he mastered still hold true. Here are a couple of simple ones to get you started, with more coming the next time we return to this subject.

The first is to understand the difference between a racetrack's morning line and yours. My friend calls the track's version the "will be" line, because it represents the linemaker's prediction of how the public will bet. Yours is a "should be" line, or your estimation of each horse's true odds of winning.

The two should not be viewed as disconnected: You will occasionally miss something that the track's linemaker considers important. When that happens, re-examine your reasoning and look for anything that might have escaped your attention. If you remain confident in your assessment and the actual odds during wagering resemble the track's line, head to the betting window. (Caveat: Some sharp players I know demand a 50 percent premium. In other words, if you think a horse's fair odds of winning are 2-1, demand at least 3-1 before betting.)

The second piece of advice my friend shares this week is that it pays to "get to know your linemaker." In other words, if you play a track regularly, develop a profile of the track's linemaker just as you would the track itself. Is he good at assessing first-time starters? Does he take a stand and try to pinpoint exact prices on heavy favorites? Those are just a few of the questions you'll want to be able to answer.

Stay tuned for more, but now let's handicap.

#RJhorseracing featured races

This week our intrepid handicappers tackled Saturday's $500,000 Claiborne Breeders' Futurity and the $1 million Shadwell Turf Mile at Keeneland, both of which have Breeders' Cup implications.

In the Futurity, our 'capping corps likes 2-1 favorite Free Drop Billy, followed by Enticed (15-1) and Ezmosh (6-1). I'll throw my lot in with Enticed, who looks to have a lot of upside.

In the Shadwell, the crew sides with the second choice, Heart to Heart (7-2), over favored Miss Temple City (3-1) and a real bomb, Le Ken (30-1). I'll stick with Miss Temple City.

Contact Mike Brunker mbrunker@reviewjournal.com or 702-383-4656. Follow @mike_brunker on Twitter.

SUN00004038

Pedestrian bridge linking Strip resorts reopening

Construction on another continues through Dec. 29

By Art Marroquin
Las Vegas Review-Journal

The pedestrian bridge linking the New York-New York and MGM Grand will reopen by noon Monday, just one day before the Golden Knights play their first preseason home game at the nearby T-Mobile Arena, the Nevada Department of Transportation said.

However, construction on the bridge connecting the New York-New York and Excalibur on the Strip's southern end will continue through Dec. 29, with ongoing traffic lane restrictions beneath the span running between 10 p.m. and 8 a.m. on weeknights, NDOT spokesman Tony Illia said.

The stairs, escalators and elevators leading to the bridge between New York-New York and the Excalibur remain closed, but people will be allowed to walk across the 165-foot-long span until Oct. 15, Illia said. After that, pedestrians will have to cross the neighboring bridges in order to access New York-New York.

Nevada Department of Transportation
The bridge connecting MGM Grand and New York-New York will reopen Monday.

"We've been coordinating with the Las Vegas Convention and Visitors Authority, along with all the neighboring properties, to make accommodations for special events and holidays," Illia said.

Renovations started in June 2016 to the four pedestrian bridges at Las Vegas Boulevard and Tropicana Avenue, allowing for new escalators, tempered-glass panes, aluminum panels and lighted handrails.

The $30.2 million makeover is primarily funded by the Las Vegas Convention and Visitors Authority. Clark County will assume responsibility for the bridges when the project concludes.

The renovation was supposed to be completed by mid-2018, but construction was expedited so that all four bridges would be open in time for New Year's Eve, when a three-mile stretch of the Strip will shut down to make room for revelers ringing in 2018.

Expediting the work drove up construction costs by $235,000, NDOT officials said.

The 23-year-old pedestrian bridges aren't just the oldest in Southern Nevada, but also one of the state's busiest crossings, with roughly 130,000 pedestrians daily.

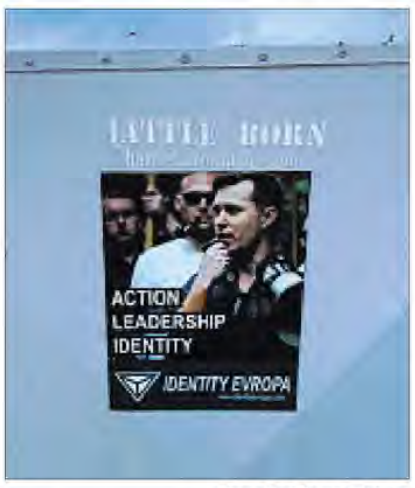
Contact Art Marroquin at amarroquin@reviewjournal.com or 702-383-0336. Find @AMarroquin_LV on Twitter.

Southern Strip pedestrian bridges reopen

- **December 2016:** Excalibur and Tropicana
- **June:** Tropicana and MGM Grand
- **Monday:** New York-New York and MGM Grand
- **December:** Excalibur and New York-New York

Source: Nevada Department of Transportation

White supremacist group flyer hung at UNLV, removed



Brett Le Blanc Twitter
An advertisement for the white supremacist group Identity Evropa was seen on UNLV's campus Tuesday morning on a book drop near the Cottage Grove Avenue parking garage.

By Natalie Bruzda
Las Vegas Review-Journal

An advertisement for the white supremacist group Identity Evropa was found on UNLV's campus Tuesday morning on a book drop near the Cottage Grove Avenue parking garage.

The group is focused on the preservation of "white American culture" and promoting the white European identity, according to the Anti-Defamation League. The ADL says the group mainly targets college campuses in distributing flyers, posters and stickers.

About three hours after the advertisement was first noticed by a UNLV student, facilities personnel took it down.

UNLV spokesman Francis McCabe said the sign was posted in violation of a university policy that sets rules for the posting of signs, flyers, placards or any similar printed material.

McCabe said he's not aware of any other Identity Evropa advertisements on campus.

On social media, the group advertises the schools it has targeted with the hashtag "project siege." Other recent college campuses the group has targeted include the University of Virginia, the University of Illinois and Shasta College in Redding, California.

The advertisement appeared more than a month after a violent white nationalist rally in Charlottesville, Virginia.

Christopher Roys, student body president, said he was unaware of the advertisement but stood by a statement he made after the rally in Charlottesville.

"Our university should continue to reaffirm that students should not have to be afraid for their safety and should not feel endangered on campus," Roys said in an Aug. 14 statement. "White supremacy is a scourge on humanity, just as other hate groups (are), and we all should oppose them collectively."

Contact Natalie Bruzda at nbruzda@reviewjournal.com or 702-477-3897. Follow @NatalieBruzda on Twitter.

Sites available for the posting of signs, flyers

- Student union bulletin boards
- Lied Library bulletin boards
- Marjorie Barrick Museum
- Thomas & Mack Center
- Residence halls
- Flyers of a political or nonprofit nature may be passed out by hand in the academic mall, Classroom Building Complex mall and east/west mall areas only

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Projects everywhere, but staffing is short

County preps for surge in public works needs

By Michael Scott Davidson
Las Vegas Review-Journal

Planned local construction projects — including the stadium that will be the Raiders' home — could face delays unless Clark County finds a way to increase staffing in its public works department.

Public works is still rebuilding from staffing cuts made during the Great Recession, department director Denis Cederburg told county commissioners at their Tuesday meeting.

The county administered an average of 22 public construction projects a year over the past four years.

For the next five years, that number is expected to jump to 35. The $2 billion in capital improvement projects include proposed pedestrian bridges along the Strip, expanding sections of the 215 Beltway and roadway rehabilitation projects.

"How are we ever gonna do that? We're going to rely a lot on consultants," Cederburg told commissioners.

For public projects, the county will tap the same funding sources that pay for construction, such as fuel taxes, sales taxes and resort corridor revenues.

But commissioners Jim Gibson and Steve Sisolak told Cederburg they were also concerned that public works may not be quick enough in processing applications and conducting surveys for private developers' plans.

The stadium that the NFL's Raiders will share with UNLV will need close to 40 on-site and off-site transportation improvement measures, according to a traffic study submitted to the county this year.

"If this were a business, success would be determined by how well we responded to our customer," Gibson said. "It wouldn't be good enough in my business if 10 percent of the time we might not be able to get there."

Seeking private developer input

Commissioners directed Cederburg to determine whether private developers would be willing to pay higher application fees to help solve the problem. The county would use the extra revenue to hire additional government staff or third-party consultants to assist in the application review process.

Sisolak said his conversations with private-sector representatives led him to believe a rate hike would be embraced.

"The folks I'm talking to on the development side are happy to pay. They just want to get approval (for their projects)," he said.

Southern Nevada Home Builders Association spokesman Matt Walker said Wednesday that his organization is ready to talk.

The commercial real estate industry is willing to listen, said Jay Heller, president of NAIOP Southern Nevada.

Additional solutions considered

The county is also considering other ways it could expedite plans through the review process.

For less complex projects, that could mean reducing the number of times plans must be submitted for approval. For others, it could mean an expedited acquisition of a right-of-way.

Cederburg said keeping the county's side efficient will benefit private developers and the economy.

"If you're building a shopping center and you've taken out a loan to build it, you can't start paying that loan back until you start leasing your property," he said.

Man gets life for killing mom

Dinunzio will serve at least 10 years for 2015 strangulation

By Rachel Crosby
Las Vegas Review-Journal

A Las Vegas man who drunkenly strangled his mother in 2015 told a judge on Wednesday he was sorry.

His defense attorney said he was being genuine. So did a prosecutor. But that didn't stop District Judge William Kephart from sentencing the man, David Dinunzio, to life in prison.

"I don't care if your mother is the worst person there is in your mind — she's your mother," Kephart said. "And that's why it's so deplorable to me."

Dinunzio, 38, pleaded guilty in June to second-degree murder and must spend a minimum of 10 years behind bars before he becomes eligible for parole. His mother, Francine Dinunzio, was found dead in her south valley home Aug. 13, 2015.

"This has not been an easy case for anybody," Chief Deputy District Attorney Jacqueline Bluth told the judge. "It destroys the family in so many different ways."

While arguing that he should spend his life in prison, Bluth said Dinunzio's criminal history is lengthy, speckled with at least 29 misdemeanor convictions. She also mentioned his yearslong struggle with mental illness, alcohol and drugs.

"This is someone who has had chance and chance and chance again to change and didn't," she said.

The only person who tried to help him was his mother, Bluth said, and "he ended up killing her."

"I don't doubt that he is sorry," she said. "But the sorry is not going to bring back Francine Dinunzio for all the loved ones that are here."

David Dinunzio, who pleaded guilty in June to strangling his mother, receives a life sentence Wednesday at the Regional Justice Center.

Elizabeth Brumley
Las Vegas Review-Journal

Those loved ones dabbed tears from their eyes as the hearing unfolded. None of them wished to speak, but many submitted letters for the judge to consider before he made his decision.

Dinunzio's attorney, Ryan Bashor, described his client as a "screw-up," but noted that Dinunzio is finally sober and on the right track. Bashor asked for the minimum sentence of 10 to 25 years in prison.

"I believe that he was under the influence when this happened, that he loved his mother, that his mother was trying to — for, I don't know, the thousandth time — help him," Bashor said. "This was the ultimate wake-up call."

The judge didn't buy it.

"I know you've got some turmoil going on in your mind," Kephart said to Dinunzio. "I do believe that there's pure remorse. I do."

But in reference to the words "wake-up call," Kephart argued that "it's really not a wake-up call to him."

"I think it's a wake-up call to the community," the judge said. "The public needs to know what kind of garbage goes on."

Addressing Dinunzio, the judge added, "Irrespective of what your family says, what you say, what your attorneys say, I will give you as much time in prison as I can give you, simply because of the nature of the offense of what you did."

Before the hearing ended, Kephart recommended Dinunzio seek counseling.

"This is going to haunt you, if it hasn't already started," the judge said. "It's going to haunt you for the rest of your life."

Contact Rachel Crosby at rcrosby@reviewjournal.com or 702-380-8135. Follow @rachelacrosby on Twitter.

Attorneys to oppose execution drug mix

By Rachel Crosby
Las Vegas Review-Journal

Defense attorneys for the Nevada man who has asked to be executed in less than two months said Wednesday they plan to formally oppose the state's proposed fatal drug cocktail.

The cocktail includes three drugs: diazepam, which is normally used to treat anxiety and muscle spasms; fentanyl, used for pain; and cisatracurium, a paralytic.

Instead, in the coming weeks, the defense plans to propose an alternative with the help of a medical expert.

The biggest problem the defense has with the current proposed cocktail is the paralytic, Assistant Federal Public Defender David Anthony, who is representing the condemned inmate, Scott Dozier, said in court Thursday.

"I'm not an expert, so I don't want to speak too much out of turn," Anthony clarified to District Judge Jennifer Togliatti.

But he said the biggest problem, as he understands, is that the paralytic "is unnecessary and it should be removed because it simply disguises whether or not Mr. Dozier is in distress during the execution."

Also, he said, the defense believes the state's planned dosage for the two remaining drugs, diazepam and fentanyl, is "woefully inadequate" — not to kill Dozier, but to put him in a state where he isn't aware of what's happening to him.

Anthony said the medical expert is expected to suggest to the court a stronger dosage of those drugs in writing within the next two weeks. A hearing on the matter is slated for Oct. 11.

Should Dozier's execution proceed, he would be the first Nevada inmate executed in more than a decade. Nearly a year ago, he wrote the judge and asked that his appeals cease and his execution be carried out.

Dozier was sent to death row nearly 10 years ago after a Clark County jury convicted him in September 2007 of killing 22-year-old Jeremiah Miller at the now-closed La Concha Motel.

In 2005, Dozier was convicted in Arizona of second-degree murder.

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SUN00004214

Gabriella Angotti-Jones Las Vegas Review-Journal @gabriellaangojo

Steve Hill, chairman of the Las Vegas Stadium Authority, speaks at an authority meeting Sept. 14 at the Clark County Government Center.

Analysts: More churn in administration likely

Gubernatorial hopefuls mull changes to agency

By Nicole Raz
Las Vegas Review-Journal

Steve Hill won't be the last official to leave Nevada Gov. Brian Sandoval's administration in coming months, local analysts say.

Hill, executive director of the Governor's Office of Economic Development, confirmed Thursday that he is a candidate for a leading role at the Las Vegas Convention and Visitors Authority. The confirmation followed Republican Assembly Leader Paul Anderson's Wednesday announcement that he is resigning his seat, which he confirmed is to succeed Hill at the economic development office.

Shakeups are to be expected around this time — 15 months left of Sandoval's term, said David Damore, a professor of political science at UNLV.

Likewise, Fred Lokken, a political science professor at Truckee Meadows Community College in Reno, said people serving in the administration "can't count on being able" to serve in their roles under a new governor.

"I'd be surprised if we don't see more (shakeups)," Lokken said.

It is entirely possible that the next governor could dissolve the state agency or that it could "morph into something else," Lokken said.

Morphing into what?

Morphing into something else is more likely, as none of the three official Nevada gubernatorial candidates told the Review-Journal they plan to dissolve the office.

Clark County Commissioner Steve Sisolak, a Democrat, made his Nevada gubernatorial campaign official in June.

Sisolak said he would take a "fresh look" at the agency.

"I think that they've done a good job with economic development. At the same time I'd like to see more community involvement with different jurisdictions," Sisolak said.

He said he also would like to see a different approach to tax abatements.

A total of 111 companies received tax abatements in the past two fiscal years.

Nevada's Economic Forum — the state's five fiscal forecasters — estimates economic development tax credit programs are slated to cost Nevada about $79.6 million over the next two fiscal years.

"Everybody's already getting a tax abatement because there's no corporate income tax here," Sisolak said. "I think we need to do a better job of telling our story of what we have here."

Sisolak said the tax abatements tend to pick winners and losers and tend to exclude local small businesses, as tax abatements are only available to companies that export at least half of their goods outside of Nevada.

"I don't know if I'd eliminate them," Sisolak said, but he said he would be more restrictive with them. "The way it's being handled does cut down on what you can give back to schools and pubic safety. ... I'd be interested if you had some type of incentive that could apply to everybody."

Dan Schwartz

State Treasurer Dan Schwartz made his Republican gubernatorial bid official earlier this month.

Schwartz said he "wouldn't necessarily" dissolve the office, but he would consider "bringing it under the scope of the lieutenant governor," depending on who is elected.

Schwartz said he questions the use of tax abatements.

"Why are we giving away all of our tax base?" Schwartz said. "Tesla's done a great job, but they've sold all of their tax abatements to MGM. They're not using them."

He would still use them but with stronger oversight he said.

"I would make sure that the people we give tax abatements to really need them. And, if they don't let's highlight the advantages of doing business in Nevada."

Jared Fisher

Las Vegas business owner Jared Fisher threw his hat into the ring in April, also running as a Republican.

Fisher said that the economic development office has been "an effective agency" overall, but he would like to see tax abatements offered less often as an incentive to get companies to set up shop in the state.

"You don't always have to give away the farm to get them to come to Nevada," he said, adding that he would go after economic development more aggressively.

He said he would pursue information technology companies in California and other high-tech companies on the East Coast and try to repeal the commerce tax.

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What is GOED?

Gov. Brian Sandoval created the Governor's Office of Economic Development in 2011 with five objectives:

- Establishing a state clearinghouse of economic development information
- Growing sectors through financing and incentives, including tax abatements
- Facilitating export growth
- Increasing foreign direct investment in targeted sectors
- Coordinating strategic planning efforts between education and economic development

▶ LVCVA

Continued from Page 1A

who intends to resign as Nevada Assembly minority floor leader.

Hill's candidacy for an LVCVA post shocked some board members.

"Steve Hill's name popping up came as a surprise to everybody, including me," said LVCVA Chairman Lawrence Weekly, a Clark County commissioner.

"He comes across as a nice guy, and he seems very qualified, but there may be other candidates that are equally qualified," he said.

A spokesman for the LVCVA said Wednesday that the board is seeking a president. A recommendation approved in January 2016 called for the hiring of four "C-suite" executives to support President and CEO Rossi Ralenkotter, 70, including a chief operating officer.

It's unclear if and how Ralenkotter's titles would be split, but an LVCVA spokesman said Thursday that no additional positions are planned beyond those four.

The LVCVA has come under scrutiny in a series of stories published by the Review-Journal that uncovered questionable spending of taxpayer dollars by the tourism agency.

The expenditures included millions of dollars for lavish entertainment services and scores of rides for Ralenkotter and former Las Vegas Mayor Oscar Goodman by LVCVA security officers.

$1.1 million cost

In the 2016 meeting, the board was told the restructuring proposal would cost $1.1 million in salary and benefits and to add support staff for the new executives. An agency spokesman did not confirm the new executives' salaries Thursday.

Since the proposal was approved, the LVCVA promoted Rana Lacer, formerly senior vice president of finance, to chief financial officer and hired Barbara Bolender as chief human resource officer, replacing retired senior vice president of human resources Mark Olson.

Also hired was Jacqueline Peterson, chief communications and public affairs officer. The fourth position to be added is a chief operations officer who would handle the day-to-day administrative work currently handled by Ralenkotter.

The C-suite structure was recommended by resort executives serving on the LVCVA board, major convention center customers and a consultant. The restructuring is expected to keep the agency on track in its goals to expand visitation to Southern Nevada, to keep the convention center competitive and to develop an executive leadership succession plan.

Hill, who spoke to a group of real estate professionals Thursday on the planned Las Vegas stadium project, said he plans to continue to chair the Las Vegas Stadium Authority if he goes to work for the LVCVA.

In an interview Thursday, Hill said he anticipates continuing his unpaid volunteer role leading the nine-member board overseeing development of the planned 65,000-seat domed football stadium.

Hill has led the GOED since Gov. Brian Sandoval established the office. He was appointed to lead the Southern Nevada Tourism Infrastructure Committee in 2015, and when that board recommended the formation of a stadium authority in 2016, he was chosen by Sandoval to chair that board.

On Wednesday, it was announced that Anderson would succeed Hill at the GOED.

"Paul is an accomplished businessman, a proven leader and widely respected," Hill said in a statement issued Thursday morning. "He will play a vital role in continuing to move Nevada's economy forward and we are very fortunate to have him join GOED."

Seeking opportunity

Hill said he's hopeful for the LVCVA opportunity.

"The LVCVA is an exceptional organization and has played a central role in the success of Las Vegas," he said in his statement. "I am both honored and excited that Rossi would consider me for a position with the LVCVA. I look forward to meeting with members of the board to discuss their vision for the organization and how I might play a role."

After his appearance on a panel discussion about the stadium Thursday, Hill said it was clear to him that he needed to explain his status, because he kept getting congratulatory remarks from people, even though he hadn't been hired by the LVCVA.

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SUN00004216

Newest anti-trafficking weapon: billboards

Clear Channel teams up with FBI for campaign

By Briana Erickson
Las Vegas Review-Journal

The message that began displaying Thursday on 10 billboards throughout the Las Vegas Valley is short and simple: "Human Trafficking. We'll listen. We'll help."

But the effort — a new partnership between the FBI and advertising corporation Clear Channel Outdoor — has the potential to change lives, Aaron C. Rouse, special agent in charge for the FBI in Nevada, said during a news conference Thursday in Las Vegas.

"Our outreach will assist us in reaching out to the people who feel like they cannot speak for themselves," Rouse said. "They have no voice, but they may have a moment. Somebody who sees them may have a moment to get us involved."

The FBI has seen 700 cases of human trafficking throughout the nation, and the bureau aims to ensure Nevada isn't a safe haven for abusers, Rouse said.

As part of the joint partnership, the 10 billboards will be rotated among Clear Channel Outdoor's 56 digital billboards, said Adam Barthelmess, its Las Vegas branch president.

In June, Clear Channel Outdoor approached the FBI to donate advertising space for a campaign. Officials with the agency felt human trafficking needed the attention, he said.

Erik Verduzco Las Vegas Review-Journal @Erik_Verduzco

Aaron C. Rouse, special agent in charge for the FBI in Nevada, unveils a campaign against human trafficking at a news conference Thursday at the John Lawrence Bailey Building in Las Vegas.

Clear Channel Outdoor has worked to bring awareness and has held similar campaigns in 20 markets in the United States. This is the first such campaign in Las Vegas.

In San Francisco, a victim saw a hotline number on one of the transit bus shelters, Barthelmess said. After making the call, the victim was soon rescued.

"What we're launching today in Las Vegas has the same power to affect someone's life in the same way," he said. "We are putting a face on this crime, and its victims are being heard."

The messages will appear in English, Spanish and Chinese, based on the FBI's research on those targeted by this crime, Rouse said.

"This is not simply an American issue," he said. "We want to make sure that the people that are entering this country that are being victimized by human traffickers have a way out."

The billboards will also feature the number for a 24-hour hotline: 888-373-7888.

"This is not about law enforcement," Rouse said. "This is about saving lives."

The staff answering the phones is trained to deal with human trafficking situations. By opening up the lines to the public, Rouse said, he hopes to hold more abusers accountable.

"This is not a victimless crime," he said. "Let the people shine the light on these cockroaches and make them scatter."

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Clear Channel Outdoor

The advertising corporation has donated more than $2 million of media space in similar partnerships throughout the year, said Adam Barthelmess, its Las Vegas branch president.

"Media companies, as well as the public, have the power, duty and responsibility to insert themselves in this dialogue," he said Thursday. "We will offer a life raft for those in need and put human traffickers out of business."

Henderson mayor chosen for women leaders' program

By Sandy Lopez
Las Vegas Review-Journal

Henderson Mayor Debra March has been chosen to participate in Governing Institute's 2018 Women in Government Leadership Program.

March is the first woman selected to represent Nevada and one of 25 women chosen to participate in the nationwide program, which focuses on promoting and supporting elected women leaders. The yearlong program has participants from 20 states and includes members of local and state governments.

Debra March

"I am deeply honored to have been selected as a member of the 2018 Leadership Class and excited to join with my female colleagues in the program from across the country to highlight and encourage women's leadership roles at all levels of government," said March in a press release.

"There are a number of studies that show that organizations are more successful when women are participating," said Julia Burrows, director of the Governing Institute. "The difference that women make in leadership roles includes better decision-making, more points of view are considered when passing legislation and, since 50 percent of the population are women, it makes sense to reflect that."

Nominations were received for nearly 150 women for the class of 2018. There are 75 alumnae of the program, which was founded in 2014.

The class was selected based on career and educational accomplishments, personal recommendations, a commitment to actively participate and the goal of seating a diverse class, according to the news release.

Each class also includes a woman not serving in elected office but with an interest in running for office, Burrows said.

Contact Sandy Lopez at slopez@reviewjournal.com or 702-383-4686. Follow @JournalismSandy on Twitter.

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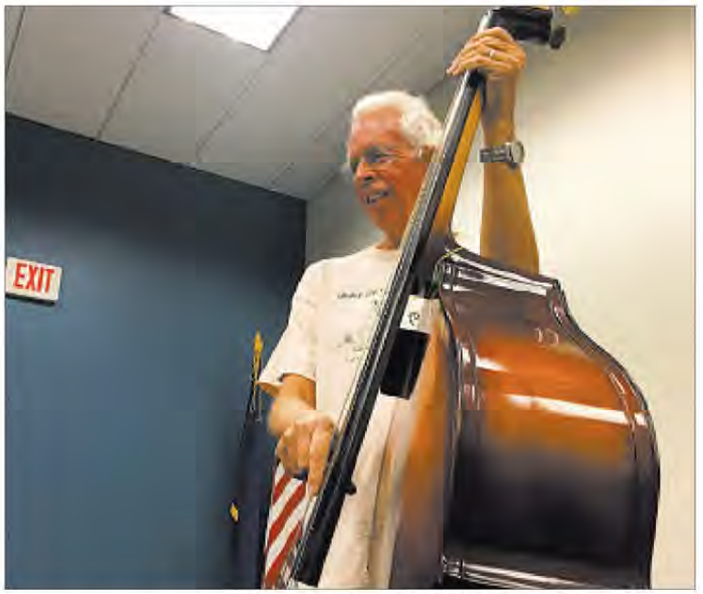

Diego Mendoza-Moyers View @dmendozamoyers

Herb Gilkey, the Nevada Old-Time Fiddlers Association's lone bass player, started the group in 2000 after a bluegrass festival inspired him, his wife and other fiddlers to have their own group.

▶ FIDDLERS

From Page 11A

band where there may be a fiddler, guitar, bass, a banjo, mandolin, a lot of vocals," Gilkey said. "We wanted to focus on fiddling, and so we just decided to kind of pass the word around and people just started showing up out of the woodwork."

For West Virginia native Odie Parkins, the fiddle and banjo were part of the culture while growing up, he said.

"To find some folks that appreciate it and still like it here, it's the one thing from home that I have," he said.

Another fiddler, Vera Vann-Wilson, took up the instrument after encountering NOFA in 2004. Her late second husband was a jazz violinist, she said.

"I decided I wanted to play, and so they offered beginner sessions and help and assistance, and they got me started," she said. "... It's just very helpful for anybody that wants to even start learning or to get better at it."

Vann-Wilson, who grew up in the South and was familiar with fiddle music, said playing with the group allowed her to meet others from the same area and connect to her roots.

What makes playing fiddle tunes unique, according group members, is the free-wheeling style and a signature touch each musician gives to a song.

"It's kind of the opposite of orchestra," Gilkey said. "In orchestra and band, you go by the written music, exactly. Fiddling is the opposite. You learn the basic melody, then make it your own. No two fiddlers play the same tune twice. Everybody has their own little things."

Music preservation is also important to the group.

"A lot of the things I play are very old tunes from people that I learned (from) that are now dead," Parkins said. "The only way that those are going to survive is if I play it for someone else. It is a piece of history. Even if you don't play, you can remember what you heard, and it's alive.

"If somebody remembers hearing it, it's still there."

Contact Diego Mendoza-Moyers at dmendozamoyers@reviewjournal.comor call 702-383-0496. Follow @dmendozamoyers on Twitter.

SUN00004233

PREPS

FOOTBALL TODAY

Three games to watch

■ **Valor Christian (Colo.) at Faith Lutheran —** The Crusaders will try to avenge last season's 30-21 loss to the Eagles.

■ **Centennial at Green Valley —** After going 1-8 last season, Centennial opened the year with a come-from-behind upset of Sierra Vista.

■ **Desert Pines at Durango —** The Jaguars won the past two Class 3A state titles. They move up to 4A this season and open against Durango.

Review-Journal high school challenge picks

Justin Emerson
Last week: 2-3
Season: 2-3
■ Mater Dei (Calif.) 34, Bishop Gorman 28
■ Faith Lutheran 29, Valor Christian (Colo.) 28
■ Liberty 45, Saguaro (Ariz.) 30
■ Desert Pines 42, Durango 20
■ Green Valley 28, Centennial 22

Sam Gordon
Last week: 2-3
Season: 2-3
■ Mater Dei (Calif.) 37, Gorman 24
■ Faith Lutheran 28, Valor Christian (Colo.) 24
■ Liberty 38, Saguaro (Ariz.) 28
■ Desert Pines 42, Durango 10
■ Green Valley 31, Centennial 13

Ben Gotz
Last week: 3-2
Season: 3-2
■ Mater Dei (Calif.) 35, Bishop Gorman 21
■ Faith Lutheran 38, Valor Christian (Colo.) 30
■ Liberty 41, Saguaro (Ariz.) 20
■ Desert Pines 31, Durango 10
■ Green Valley 28, Centennial 17

Damon Seiters
Last week: 2-3
Season: 2-3
■ Mater Dei (Calif.) 31, Bishop Gorman 24
■ Faith Lutheran 27, Valor Christian (Colo.) 24
■ Liberty 27, Saguaro (Ariz.) 20
■ Desert Pines 33, Durango 13
■ Green Valley 28, Centennial 20

Prep rankings

Class 4A

School	Record	Prev.
1. Bishop Gorman	0-0	1
2. Liberty	0-0	2
3. Arbor View	1-0	3
4. Faith Lutheran	0-0	4
5. Desert Pines	0-0	5
6. Legacy	1-0	10
t7. Green Valley	1-0	6
t7. Foothill	0-0	7
9. Canyon Springs	0-0	9
10. Centennial	1-0	—

Class 3A

School	Record	Prev.
1. Virgin Valley	1-0	1
2. Moapa Valley	0-1	2
3. Sunrise Mountain	0-0	3
4. Cheyenne	1-0	5
5. Democracy Prep	1-0	—

Ground attack sends Palo Verde to win in opener

By Sam Gordon
Las Vegas Review-Journal

Palo Verde running back Michael Torres sensed some fatigue from his team's opponent, Mojave, in the second half of their football game on Thursday night.

As the Rattlers got slower, the Panthers got stronger.

Palo Verde's patented double-wing offense generated 365 rushing yards and a 29-6 road victory in the first

More preps

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televised Thursday Night Lights game of the prep football season.

Torres led the way with 15 carries for 100 yards and a touchdown. Jaylin Henderson, Jacob Gosz-Siqueiros and Karsonne Winters added rushing scores for the Panthers.

"We're still trying to figure out who can do what," Palo Verde coach Joe Aznarez said. "It was kind of (run) by fire tonight. We had a lot of mistakes so a lot of guys got opportunities."

Those mistakes included a pair of fumbles near the goal line in the first half, but the Panthers (1-0) found a groove and nabbed a 9-6 halftime lead. They scored 20 unanswered points in the second half and wore down the Rattlers (0-2) with their brigade of rushers.

"They started to get slower. You see them on their knees," Torres said. "We just had to take advantage of that and punch it in."

▶ GORMAN

Continued from Page 1C

after state, so we saw 250-something days on the board," Gorman senior offensive lineman Beau Taylor said. "Now that it's like two or three, it's getting real. Everyone on the team knows what happened last year, and all the returners know how it feels. We have a bitter taste in our mouth from last year, so we're trying to get back at them for that."

Senior defensive back Kyu Kelly, who has committed to Stanford, said the matchup with Mater Dei was front and center during offseason workouts.

"Just coming in the weight room in January, we all knew all these bench presses, all these curls, they're all for Mater Dei," Kelly said. "Going through all those practices every day, it really gets you driving, gets you going, because you know that team is coming."

The Monarchs finished the 2017 season 15-0 and ranked No. 1 in the nation by USA Today. They currently are ranked No. 3 and bring plenty of firepower to Las Vegas to take on the 11th-ranked Gaels.

"They're good," Gorman coach Kenny Sanchez said. "They were loaded last year, and they lost a lot of guys and they had, I think, 24 transfers come in and they're loaded again."

Gorman hopes to lean on the strength of its offensive line, especially as junior Micah Bowens replaces graduated quarterback Dorian Thompson-Robinson, who is competing for the starting job at UCLA as a freshman.

Along with the 6-foot-4-inch, 285-pound Taylor, the Gaels will start senior Cade Briggs (6-3, 280), senior Kenny Collins (5-10, 265), junior Hayden Engel (6-4, 260) and senior Jordan Mack (6-3, 305).

"Every person on our line right now either started last year or had a whole bunch of experience," said Taylor, who has committed to UCLA. "Our line will be our foundational block. We're hoping to be the leaders of the team, lead the offense and just set the tone of the game as well."

Bowens didn't start last season but has five scholarship offers as a dual-threat quarterback. He follows high-profile starters Thompson-Robinson and Tate Martell for the Gaels.

"The past two years or three or however many we've had these big-name quarterbacks," Taylor said. "Coach told us yesterday, the past few years we've always had big names, but this year they just haven't heard our names yet."

The game comes with an added measure of intrigue after it was reported Wednesday that the Monarchs would forfeit their season-opening win over Bishop Amat for using an ineligible player.

"I don't even know who it is," Sanchez said of the ineligible player. "It's just something you hear about. They had to forfeit the game, but it has nothing to do with Friday night. They're showing up, and they're going to be here."

And after his team fell behind 28-7 in last year's loss to the Monarchs, Taylor hopes for a strong start.

"As an (offensive) lineman, I want to start with the ball and pound it down the field and just set the tone for the game," he said.

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Erik Verduzco Las Vegas Review-Journal @Erik_Verduzco

Senior offensive lineman Beau Taylor said Bishop Gorman has had a timer in its locker room since its loss to Mater Dei last year, counting down the days until Friday's rematch.

Friday's schedule

All times 7 p.m. unless noted
■ Mater Dei (Calif.) at Bishop Gorman, 6 p.m.
■ Arbor View at Valencia (Calif.), 6:30 p.m.
■ Foothill at Galena
■ Coronado at Cimarron-Memorial
■ Liberty at Saguaro (Ariz.)
■ Desert Oasis at Valley
■ Desert Pines at Durango
■ Silverado at Bonanza
■ Centennial at Green Valley
■ Valor Christian (Colo.) at Faith Lutheran
■ Cheyenne at Boulder City
■ Dixie (Utah) at Legacy
■ Western at Rancho
■ Sunrise Mountain at Del Sol
■ Virgin Valley at Pahrump Valley
■ Democracy Prep at Moapa Valley
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SUN00004303

Officers shoot suspect in stabbings

Two women injured in west valley attacks

By Mike Shoro
Las Vegas Review-Journal

Las Vegas police shot a man they said randomly stabbed two women Friday afternoon in the west valley.

The man stabbed two women — one on a bus and another on the street — and carried a knife as he ran from officers near Spring Mountain Road and Rainbow Boulevard, Metropolitan Police Department Capt. Jamie Prosser told reporters at a Friday briefing.

Police say there is no connection between the man and the victims.

"We believe it to be completely random," Prosser said.

An officer shot the man as he made his way past an occupied bus stop on Rainbow, south of the intersection with Spring Mountain. He was hospitalized in critical condition at University Medical Center, Prosser said.

The women were treated and released from the county hospital.

Police were called on reports of the man stabbing a woman multiple times about 12:50 p.m. inside a Regional Transportation Commission bus in front of 7000 Spring Mountain Road. She was able to escape the bus and run for help, Prosser said.

The man got off the bus, grabbed another woman walking down the street, put her in a chokehold and began to stab her, Prosser said. She escaped as police arrived.

The man tried to flee, knife in hand, Prosser said.

"Our officers gave a lot of verbal commands to stop, to put the knife down, and he failed to comply," she said.

Officers used a stun gun on the attacker, but it didn't stop him, she said.

Police continued their commands as he fled toward an occupied bus stop along the west sidewalk of Rainbow, south of the intersection. An officer then used a low-lethal beanbag shot gun on the man, but that, too, proved ineffective, Prosser said.

One officer shot the man next to the bus stop.

An anonymous person captured cellphone footage of officers trying to stop the man as he jogged away from them.

The video first shows officers following closely behind the man as he heads down Spring Mountain. He appears to try to open the door of a Jeep that slows to a stop along the road before continuing to jog away.

He continued jogging as he was hit with beanbag rounds, and at one point he briefly turned toward officers before he resumed jogging.

The man moved past the bus stop, and an officer fired multiple times from his handgun, the video shows. At least one person is visible in the video holding shopping bags under the covered bus stop.

No officers were injured. Metro will release the identity of the officer who shot the man after 48 hours have passed.

Friday's police shooting was the seventh for Metro this month. The Henderson Police Department also had a police shooting this month.

Eight of Metro's 17 officer-involved shootings in 2018 have been fatal.

Contact Mike Shoro at mshoro@reviewjournal.com or 702-387-5290. Follow @mike_shoro on Twitter.

Death ruled natural for officer at jail

By Katelyn Newberg
Las Vegas Review-Journal

The Clark County coroner's office said corrections officer Kyle Eng died from natural causes related to a heart condition after he was found unconscious at the Las Vegas jail shortly after a fight with an inmate.

A Facebook post from the Metropolitan Police Department on July 30 said Eng died while on duty after he was "involved in a fight with an inmate." The post was later edited to remove the reference to a fight, but the city later said that Eng was involved in "a minor incident with an inmate."


Kyle Eng

The coroner's office said Eng, 51, died from a cardiac arrhythmia, or irregular heart beat, and hypertensive and atherosclerotic cardiovascular disease, which can cause heart attacks.

He was found unconscious in the jail early July 19 and taken to University Medical Center, where he later died.

Eng's dream was to be a police officer, and he left his job as a truck driver and manager with Anderson Dairy to chase that dream. In his application to be a corrections officer, he said he would "give it all to reach my dream," Department of Public Safety Chief Michele Freeman said at his funeral on July 30.

He entered training to become a corrections officer in January, and had worked at the jail about a month when he died. At Eng's funeral, his friends and family described him as their own "Superman" who loved his family and new job.

"Whatever situation we were in, we knew our dad was only a phone call away," said Eng's youngest daughter, Alyssa.

Contact Katelyn Newberg at knewberg@reviewjournal.com or 702-383-0240. Follow @k_newberg on Twitter.

Las Vegas man convicted in Oct. shooting death

By David Ferrara
Las Vegas Review-Journal

A 32-year-old Las Vegas man was convicted of first-degree murder Friday for fatally shooting a man inside a vacant northeast valley home.

A week after the killing, a woman who witnessed the Oct. 23 shooting of her friend, 35-year-old Daniel Contreras, was kidnapped for nearly 24 hours, beaten and sexually assaulted, the woman testified.

She told jurors that when she saw Kurtis Richards, the gunman, in a trailer where she was held captive, he said, "I might have to keep you."

A jury took less than two hours to find Richards guilty of first-degree murder with a deadly weapon.

The woman and Contreras had gone to a house to smoke methamphetamine, according to Richards' arrest report. Richards arrived at the house, pulled out a handgun and demanded "the stuff," the report said.


Kurtis Richards

Contreras and Richards struggled as the woman ran outside. That's when she said she heard three gunshots and "started crying."

Another witness identified Richards as the shooter, prosecutors said.

Defense attorney Roy Nelson argued that prosecutors focused on the kidnapping and had not proved that Richards killed Contreras.

A week after the shooting at the home on the 5800 block of East Carey Avenue, the witness learned that Contreras was dead. She decided to move home and tell her mother what happened, she testified.

The day she was supposed to meet her mother, the witness said, she was approached by a drug dealer who asked if she wanted to get high one last time.

They drove with another woman to a trailer, where the witness was attacked and forced to perform a sex act. Ultimately, the witness was released and was told by her abductors not to talk to police.

While Richards was not charged in the kidnapping, three others have pleaded guilty to charges in connection with it and are awaiting sentencing.

Richards, who prosecutors said has a list of criminal convictions dating back to 2005, faces life in prison without the possibility of parole.

Contact David Ferrara at dferrara@reviewjournal.com or 702-380-1039. Follow @randompoker on Twitter.

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Three killed in air ambulance crash

It took off at N. Dakota capital; cause unknown

By Blake Nicholson
The Associated Press

BISMARCK, N.D. — An air ambulance on its way to pick up a patient crashed shortly after taking off in North Dakota, killing all three people on board, and military officials involved in the response said the plane may have broken up in midair.

The twin-engine Bismarck Air Medical airplane took off about 10:30 p.m. Sunday and crashed shortly after in a field about 20 miles northwest of Bismarck. Air traffic control officials lost contact with the pilot about 11 p.m., Morton County spokeswoman Maxine Herr said.

CHI St. Alexius Health and Bismarck Air Medical said in a statement that the pilot, a paramedic and a registered nurse had been heading to Williston, in northwestern North Dakota, to pick up a patient. The statement did not provide their names.

"It is a sad day here for both of our organizations," Kurt Schley, president of CHI St. Alexius Health Bismarck, and Dan Schaefer, operations chief for Bismarck Air Medical and Metro Area Ambulance Operations, said. "We are grieving for the family members of those who were on board."

The Morton County Sheriff's Office, Civil Air Patrol and Air Force Rescue Coordination Center based at Tyndall Air Force Base in Florida located the crash scene around early Monday using radar and cellphone technology, Herr said.

The Associated Press

A photo provided Monday by the Morton County Sheriff's Office shows the wreckage of a Bismarck Air Medical airplane that crashed late Sunday, killing all three on board.

An analysis by the Air Force team indicated the plane might have broken up at about 14,000 feet, and "that corresponded with what they found on the ground," said Civil Air Patrol Lt. Col. Sean Johnson.

He said he didn't want to speculate on the cause. The National Transportation Safety Board and the Federal Aviation Administration were investigating. FAA records show that the Cessna 441 turboprop was built in 1982. Bismarck Air Medical is listed as the registered owner.

National Weather Service meteorologist Jeff Schild said there was light snow in the area at the time but no hazardous weather. Johnson said there was the potential for fog or haze.

Gov. Doug Burgum issued a statement Monday expressing condolences to family members, friends and colleagues of those who died.

"We are forever grateful for their service," it said, in part.

Lawyer says ex-lover duped fraud suspect

The Associated Press

TRENTON, N.J. — A woman charged with scamming GoFundMe donors out of more than $400,000 with a fake story about a homeless veteran was duped by her former boyfriend and genuinely thought she was helping the man, her attorney said Monday.

James Gerrow told ABC's "Good Morning America" that Mark D'Amico was "calling the shots" in the alleged scheme that resulted in criminal charges last week against Katelyn McClure, D'Amico and homeless Marine Johnny Bobbitt.

Katelyn McClure

The criminal complaint alleges the three concocted a feel-good story about the couple reaching out to help Bobbitt after he gave McClure his last $20 when her car ran out of gas in Philadelphia last year. Then McClure and D'Amico allegedly spent all the money on luxury items and casino trips.

"People have to understand that this was an abusive relationship. Mr. D'Amico was the one behind this and he was the one calling all the shots," Gerrow said. "She didn't understand or appreciate that this may very well be a crime."

It was unclear which attorney represents D'Amico. An attorney who was representing the couple last week declined to comment Monday on Gerrow's allegations.

McClure and D'Amico are charged with conspiracy and theft by deception. Bobbitt also is charged.

Less than an hour after the couple set up the page to solicit donations, McClure sent a text message to a friend acknowledging the story was "completely made up," prosecutors said last week.

"Ok so wait the gas part is completely made up, but the guy isn't," said Scott Coffina, the prosecutor of Burlington County in New Jersey, quoting the text message at a news conference Thursday. "I had to make something up to make people feel bad. So shush about the made up stuff."

Man killed in vintage-plane crash was pilot in WWII

The Associated Press

FREDERICKSBURG, Texas — The 93-year-old passenger who was killed when a World War II-era fighter aircraft crashed in South Texas had been a WWII pilot, according to group that arranges fighter plane rides for veterans.

The P-51D Mustang had just participated in a flyby Saturday when it crashed in Fredericksburg, about 70 miles north of San Antonio. The pilot was also killed.

Texas Department of Public Safety Sgt. Orlando Moreno on Monday identified the pilot as 73-year-old Cowden Ward Jr. of Burnet and his passenger as Vincent Losada, 93, of San Antonio.

Freedom Flyers posted on Facebook that Ward was flying an "honored passenger, a WWII B17 pilot," when he crashed. Ward was the founder of Freedom Flyers and often flew veterans in his plane, which was deployed in World War II and the Korean War, the group said.

Ward's plane was taking part in ceremonies organized by the National Museum of the Pacific War in Fredericksburg. The day included a battle re-enactment showcasing WWII equipment and weapons.

Chris Arntz, an Army veteran who attended the program with his wife and daughter, said Ward's plane had just flown over the crowd when it appeared to nose dive.

The National Transportation Safety Board and Federal Aviation Administration are investigating.

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Plaintiff's Reply to Defendants' News+Media Capital Group LLC and Las Vegas Review-Journal, Inc.'s Opposition to Plaintiff's Motion ot Confirm Arbitration Award, in Part, and to Vacate or, Alternatively, Modify or Correct the Award, in Part, and Defendants' Conditional Countermotion to Confirm Arbitration Award, in Part, and to Vacate the Award, in Part, **Exhibits 3-6**

[Filed Under Seal]

[Page Nos. 530-551]

Plaintiff's Reply to Defendants' News+Media Capital Group LLC and Las Vegas Review-Journal, Inc.'s Opposition to Plaintiff's Motion ot Confirm Arbitration Award, in Part, and to Vacate or, Alternatively, Modify or Correct the Award, in Part, and Defendants' Conditional Countermotion to Confirm Arbitration Award, in Part, and to Vacate the Award, in Part, **Exhibits 3-6**

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[Page Nos. 530-551]

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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

REPLY IN SUPPORT OF 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

Hearing Date: October 16, 2019
Hearing Time: 9:00 a.m.

Case Number: A-18-772591-B

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The 2005 JOA expressly replaced the 1989 JOA in its entirety after the Transition Date, *see* Mot., Ex. A (2005 JOA) at § 5.1 and Appendix D, but the Sun defends the Arbitrator's undeniable and inexplicable comingling of these two separate contracts. *See e.g.*, Sun Reply at 5:24–27; *see also* Mot., Ex. C (Award) at 5, 7, 10–11.[1] The Sun does this because it used inadmissible parol evidence to confuse the Arbitrator into ignoring the plain, unambiguous language of 2005 JOA, a fully integrated contract,[2] and now expects this Court to do the same thing—a regrettable result that would violate binding Nevada law.

During the arbitration and now in its papers filed with this Court, the Sun makes repeated references to a JOA-specific EBITDA. *See* Sun Reply at 3:3, 3:18, 4:21, 4:26, 5:6, 5:19, 5:21, 6:10, 6:16, 6:22, 7:13–14, 8:20, 9:27, 10:5, 11:14, 11:17, 12:18, 13:4–5, 25:2, 27:22–23. No such thing exists. The 2005 JOA does not require, involve, or even mention keeping separate accounting or making separate calculations for the joint operation—a concept found in the 1989 JOA and abandoned by the parties in 2005. Under the 2005 JOA, ***the Review-Journal's EBITDA is the exclusive basis for calculating the Sun's profit payment.*** *See* Mot., Ex. A (2005 JOA) at Appendix D. The Sun misused this contractual relic (i.e., separate books and EBITDA) during the arbitration and obviously confused the Arbitrator on this key issue—a mistake that permeates the entirety of the erroneous Award. *See, e.g.*, Mot., Ex. C (Award) at 5, 7, 10–11.

The parties' chosen contractual description of the EBITDA calculation could not be any clearer: it must follow the method used in the Stephens Media 2004 P&L statement. *See* Mot., Ex. A (2005 JOA) at Appendix D. That agreed-upon EBITDA calculation, ***which the Sun accepted for nine (9) years without complaint***, includes deductions of the Review-Journal's editorial and promotional expenses. *See* Mot., Ex. B (P&L) at 2. Critically, that calculation ***is not impacted*** by the JOA sections that address the parties' editorial and promotional expenses—

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[1] The Arbitrator made repeated references to the books, EBITDA, revenues, and expenses "of the JOA." The 2005 JOA requires none of those things.

[2] When parties intentionally reduce their agreement to writing in a way that shows consideration of the legal ramifications, Nevada law conclusively presumes the entire agreement is contained

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neither of which remotely discusses, references, or concerns the EBITDA calculation. *See* Mot., Ex. A (2005 JOA) at §§ 4.2, 5.1.4. That being the case, the Arbitrator had no authority to "harmonize the 2005 JOA" by rewriting the parties' crystal-clear, heavily negotiated, and agreed-to EBITDA calculation—an act that created new contractual obligations out of thin air. Sun Reply at 3:9–10. Nevada law plainly precludes the Arbitrator from doing what he did on these key issues, which if allowed to stand could pervert the parties' contract for the next 20 years. The Arbitrator's decision to exceed his authority under the 2005 JOA and Nevada law requires an order vacating the Award in its entirety.

At a minimum, the Court should vacate the Arbitrator's decisions related to (1) editorial expenses, (2) promotional expenses, and (3) the blue-penciled audit terms, because they flatly contradict the 2005 JOA's plain language and run counter to Nevada law and the substantial evidence. *See* Review-Journal Opp., filed September 30, 2019, Section III.B. Despite filing briefs that total nearly 100 pages, the Sun provides no lawful justification for the Arbitrator's deviation from the unambiguous contractual language on these key issues.

If the Court decides to salvage any part of the Award, it should confirm the Arbitrator's rulings that find ample support in the 2005 JOA, Nevada law, and the substantial evidence, specifically those: (1) excluding House Ads from promotional activities under the JOA; (2) determining the Review-Journal's conduct under the JOA was not a tortious breach of the implied covenant of good faith and fair dealing; (3) limiting relief on the Sun's audit claim to specific performance; and (4) finding the parties may not recover attorney's fees and litigation costs under the 2005 JOA. *See* Review-Journal Opp., filed September 30, 2019, Section III.C.

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in the writing. *See Brunzell v. Woodbury*, 85 Nev. 29, 33, 449 P.2d 158, 160 (1969).

DATED this 14th day of October, 2019.

KEMP, JONES & COULTHARD, LLP

/s/ Michael Gayan

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of October, 2019, I served a true and correct copy of the foregoing **REPLY IN SUPPORT OF 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** 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/ Pamela Montgomery

An Employee of Kemp, Jones & Coulthard, LLP

A-18-772591-B Las Vegas Sun Inc, Plaintiff(s)
vs.
News+Media Capital Group LLC, Defendant(s)

October 22, 2019 01:30 PM All Pending Motions

HEARD BY: Williams, Timothy C. COURTROOM: RJC Courtroom 03H

COURT CLERK: Darling, Christopher

RECORDER:

REPORTER: Isom, Peggy

PARTIES PRESENT:

James J Pisanelli	**Attorney for Counter Defendant, Plaintiff**
Jon Randall Jones	**Attorney for Counter Claimant, Defendant**
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Kristen L. Martini	**Attorney for Counter Defendant, Plaintiff**
Leif Reid	**Attorney for Counter Defendant, Plaintiff**
Michael J Gayan	**Attorney for Counter Claimant, Defendant**
Nicole Scott	**Attorney for Counter Defendant, Plaintiff**
Richard L. Stone	**Attorney for Counter Claimant, Defendant**

JOURNAL ENTRIES

APPEARANCES CONTINUED: Benjamin Lipman, Esq. present as General Counsel for Deft. Las Vegas Review-Journal.

PLAINTIFF'S MOTION TO CONFIRM ARBITRATION AWARD, IN PART, AND TO VACATE OR, ALTERNATIVELY, MODIFY OR CORRECT THE AWARD, IN PART...DEFENDANTS' MOTION TO VACATE ARBITRATION AWARD

Argument by Mr. Reid. CONFERENCE AT BENCH. Arguments by Mr. Reid and Mr. Jones. Mr. Jones provided document for Court's review. Colloquy regarding scheduling other pending matters from today. As to the Arbitration Motions, Court stated will issue decision after review of issues regarding exceeding powers, common law, sufficient evidence, and manifest disregard. COURT ORDERED, outstanding pending matters from today CONTINUED.

CONTINUED TO: 10/31/19 1:00 PM PLAINTIFF'S MOTION FOR LEAVE TO FILE DOCUMENTS UNDER SEAL AS TO MOTION TO CONFIRM ARBITRATION AWARD, IN PART, AND TO VACATE OR, ALTERNATIVELY, MODIFY OR CORRECT THE AWARD...DEFENDANTS' MOTION FOR LEAVE TO FILE DOCUMENTS UNDER SEAL AS TO MOTION TO VACATE...PLAINTIFF'S MOTION FOR LEAVE TO FILE DOCUMENTS UNDER SEAL AS TO OPPOSITION TO DEFENDANTS' MOTION FOR LEAVE TO AMEND ANSWER AND ASSERT COUNTERCLAIM...PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS...STATUS CHECK: EXPEDITED DISCOVERY AND APPLICABILITY OF ASSERTED PRIVILEGES