

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAR 01 2013 4:23pm

BY Kathy Klein
KATHY KLEIN, DEPUTY

YACOV JACK HEFETZ, an individual,
Plaintiff,

vs.

CHRISTOPHER BEAVOR, an
individual,
Defendant.

CASE NO: A-11-645353-C
DEPT NO.: XXXVIII

VERDICT FORM

We, the jury in the above-entitled action find:

For Plaintiff _____

For Defendant 0

If you find in favor of Plaintiff: \$ _____

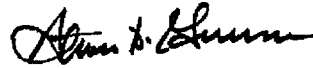
DATED this 1 day of March, 2013.

Holly Howard
FOREPERSON

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MAR 04 2013
CLERK OF THE COURT

A-11-645353-C
VER
Verdict
2270479




CLERK OF THE COURT

JUDGE
MARC A. SAGGESE, ESQ.
Nevada Bar No. 7166
SAGGESE & ASSOCIATES, LTD.
732 S. Sixth Street, Suite 201
Las Vegas, Nevada 89101
Telephone 702.778.8883
Facsimile 702.778.8884
Marc@MaxLawNV.com
Attorney for Defendants/Counterclaimants

DISTRICT COURT
CLARK COUNTY, NEVADA

YACOV JACK HEFETZ, an individual,

Plaintiff,

vs.

CHRISTOPHER BEAVOR, an individual;
SAMANTHA BEAVOR, an individual; DOES I
through X and ROE ENTITIES I through X,
inclusive,

Defendants.

Case No.: A-11-645353-C
Dept. No.: XXVIII

JUDGMENT

CHRISTOPHER BEAVOR, an individual;
SAMANTHA BEAVOR, an individual,

Counterclaimants,

vs.

YACOV JACK HEFETZ, an individual; DOES I
through X; and ROE CORPORATIONS I
through 10, inclusive,

Counter-Defendant.

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Stp Dis	<input type="checkbox"/> Sum Jdgmt	FINAL DISPOSITIONS <input type="checkbox"/> Time Limit Expired <input type="checkbox"/> Dismissed (with or without prejudice) <input type="checkbox"/> Judgment Satisfied/Paid In full
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Stp Jdgmt	<input type="checkbox"/> Non-Jury Trial	
<input type="checkbox"/> Jdgmt c- Arb Award	<input type="checkbox"/> Default Jdgmt	<input checked="" type="checkbox"/> Jury Trial	
<input type="checkbox"/> Mot to Dis (by deft)	<input type="checkbox"/> Transferred		

5/14/13 (28)

1 I. JUDGMENT ON JURY VERDICT

2 This action came on for trial before the Court, Honorable Ronald J. Israel, District Judge,
3 presiding and a jury on February 25, 26, 27, 28, and March 1, 2013, the issues having been duly
4 tried and the jury having duly rendered its verdict on March 1, 2013, the Court enters this
5 Judgment pursuant to N.R.C.P. 54.
6

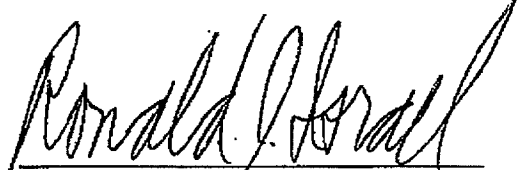

7 IT IS ORDERED AND ADJUDGED that Judgment on the jury verdict is entered in
8 favor of Defendant Christopher Beavor.
9

10 II. NOTICE OF ENTRY OF JUDGMENT


11 Within ten (10) days after entry of this Judgment, Defendant shall serve written notice of
12 such entry, together with a copy of this Judgment, upon Plaintiff and shall file notice of entry
13 with the clerk of the court.
14

15 IT IS SO ORDERED.

16 DATED this 17 day of May, 2013.

17
18 
19 DISTRICT COURT JUDGE 

20 Respectfully Submitted,
21

22 
23 MARC A. SAGGESE, ESQ.
24 Nevada Bar No. 7166
25 SAGGESE & ASSOCIATES, LTD.
26 732 S. Sixth Street, Suite 201
27 Las Vegas, Nevada 89101
28 Telephone 702.778.8883
Facsimile 702.778.8884
Marc@MaxLawNV.com
Attorney for Defendants/Counterclaimants



CLERK OF THE COURT

1 NJUD
2 MARC A. SAGGESE, ESQ.
3 Nevada Bar No. 7166
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6 Las Vegas, Nevada 89101
7 Telephone 702.778.8883
8 Facsimile 702.778.8884
9 Marc@MaxLawNV.com
10 Attorney for Defendant Christopher Beavor

DISTRICT COURT
CLARK COUNTY, NEVADA

11 YACOV JACK HEFETZ, an individual,

12 Plaintiff,

13 vs.

14 CHRISTOPHER BEAVOR, an individual;
15 SAMANTHA BEAVOR, an individual; DOES I
16 through X and ROE ENTITIES I through X,
17 inclusive,

18 Defendants.

Case No.: A-11-645353-C
Dept. No.: XXVIII

NOTICE OF ENTRY OF JUDGMENT

19 PLEASE TAKE NOTICE that the JUDGMENT was duly entered in the above referenced
20 case on the 17th day of May, 2013.

21 DATED this 21ST day of May, 2013.

22 /s/ MARC A. SAGGESE, ESQ.

23 MARC A. SAGGESE, ESQ.
24 Nevada Bar No. 7166
25 SAGGESE & ASSOCIATES, LTD.
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Marc@MaxLawNV.com
Attorney for Defendant Christopher Beavor

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H. Stan Johnson, Esq.
Brian A. Morris, Esq.
Cohen-Johnson, LLC
255 E. Warm Springs Road, Ste. 100
Las Vegas, NV 89119
702.823.3400

and that there is regular communication between the place(s) of mailing and the place(s) so addressed.

/s/ Lin Smith

An Employee of Saggese & Associates, Ltd.

1 **JUDG**

2 **MARC A. SAGGESE, ESQ.**

3 Nevada Bar No. 7166

4 **SAGGESE & ASSOCIATES, LTD.**

5 732 S. Sixth Street, Suite 201

6 Las Vegas, Nevada 89101

7 Telephone 702.778.8883

8 Facsimile 702.778.8884

9 Marc@MaxLawNV.com

10 *Attorney for Defendants/Counterclaimants*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 YACOV JACK HEFETZ, an individual,

14 Plaintiff,

15 vs.

16 CHRISTOPHER BEAVOR, an individual;
17 SAMANTHA BEAVOR, an individual; DOES I
18 through X and ROE ENTITIES I through X,
19 inclusive,

20 Defendants.

21 CHRISTOPHER BEAVOR, an individual;
22 SAMANTHA BEAVOR, an individual,

23 Counterclaimants,

24 vs.

25 YACOV JACK HEFETZ, an individual; DOES I
26 through X; and ROE CORPORATIONS 1
27 through 10, inclusive,

28 Counter-Defendant.

Case No.: A-11-645353-C

Dept. No.: XXVIII

JUDGMENT

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Stip Dis	<input type="checkbox"/> Sum Jdgmt	FINAL DISPOSITIONS <input type="checkbox"/> Time Limit Expired <input type="checkbox"/> Dismissed (with or without prejudice) <input type="checkbox"/> Judgment Satisfied/Paid in full
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Stip Jdgmt	<input type="checkbox"/> Non-Jury Trial	
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<input type="checkbox"/> Min to Dis (by deft)	<input type="checkbox"/> Transferred		

1 **I. JUDGMENT ON JURY VERDICT**

2 This action came on for trial before the Court, Honorable Ronald J. Israel, District Judge,
3 presiding and a jury on February 25, 26, 27, 28, and March 1, 2013, the issues having been duly
4 tried and the jury having duly rendered its verdict on March 1, 2013, the Court enters this
5 Judgment pursuant to N.R.C.P. 54.
6

7 IT IS ORDERED AND ADJUDGED that Judgment on the jury verdict is entered in
8 favor of Defendant Christopher Beavor.
9

10 **II. NOTICE OF ENTRY OF JUDGMENT**

11 Within ten (10) days after entry of this Judgment, Defendant shall serve written notice of
12 such entry, together with a copy of this Judgment, upon Plaintiff and shall file notice of entry
13 with the clerk of the court.
14

15 IT IS SO ORDERED.

16 DATED this 17 day of May, 2013.

17 
18 DISTRICT COURT JUDGE 
19

20 Respectfully Submitted,
21


22 
23 **MARC A. SAGGESE, ESQ.**
24 Nevada Bar No. 7166
25 **SAGGESE & ASSOCIATES, LTD.**
26 732 S. Sixth Street, Suite 201
27 Las Vegas, Nevada 89101
28 Telephone 702.778.8883
Facsimile 702.778.8884
Marc@MaxLawNV.com
Attorney for Defendants/Counterclaimants

EXHIBIT 1

PA00008

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAR 01 2013 4:23pm

BY Kathy Klein
KATHY KLEIN, DEPUTY

YACOV JACK HEFETZ, an individual,)

Plaintiff,)

vs.)

CHRISTOPHER BEAVOR, an
individual,)

Defendant.)

CASE NO: A-11-645353-C
DEPT NO.: XXVIII

VERDICT FORM

We, the jury in the above-entitled action find:

For Plaintiff _____

For Defendant 0

If you find in favor of Plaintiff: \$ _____

DATED this 1 day of March, 2013.

Holly Howard
FOREPERSON

RECEIVED

MAR 04 2013

CLERK OF THE COURT

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VER
Verdict
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CLERK OF THE COURT

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4 Las Vegas, Nevada 89101
5 Telephone 702.778.8883
Facsimile 702.778.8884
6 Marc@MaxLawNV.com
Attorney for Defendant Christopher Beavor

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 YACOV JACK HEFETZ, an individual,

11 Plaintiff,

12 vs.

13 CHRISTOPHER BEAVOR, an individual;
14 SAMANTHA BEAVOR, an individual; DOES I
through X and ROE ENTITIES I through X,
15 inclusive,

16 Defendants.

Case No.: A-11-645353-C
Dept. No.: XXVIII

NOTICE OF WITHDRAWAL OF
ATTORNEY

17 Pursuant to Supreme Court Rule 46, MARC A. SAGGESE, ESQ., hereby gives notice of
18 his withdrawal as attorney of record for Defendant, CHRISTOPHER BEAVOR, a final
19 determination having being entered in this matter.
20

21 DATED this 25th day of March, 2013.

22 /s/ MARC A. SAGGESE, ESQ.

23 MARC A. SAGGESE, ESQ.
24 Nevada Bar No. 7166
25 SAGGESE & ASSOCIATES, LTD,
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28 Marc@MaxLawNV.com

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H. Stan Johnson, Esq.
Brian A. Morris, Esq.
Cohen-Johnson, LLC
255 E. Warm Springs Road, Ste. 100
Las Vegas, NV 89119
702.823.3400

/s/ Alexis Vardoulis

An Employee of Saggese & Associates, Ltd.*

COHEN-JOHNSON, LLC
6293 Dean Martin Drive, Suite G
Las Vegas, Nevada 89118
(702) 823-3500 FAX: (702) 823-3400

1 **MNTR**
2 **COHEN-JOHNSON, LLC**
3 **H. STAN JOHNSON**
4 Nevada Bar No. 00265
5 sjohnson@cohenjohnson.com
6 **BRIAN A. MORRIS, ESQ.**
7 Nevada Bar No. 11217
8 bam@cohenjohnson.com
9 255 W. Warm Springs Rd., Ste. 100
10 Las Vegas, Nevada 89119
11 Telephone: (702) 823-3500
12 Facsimile: (702) 823-3400
13 *Attorneys for Plaintiffs*

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

10 YACOV JACK HEFETZ, an individual,

11 Plaintiff,

12 vs.

Case No.: A645353
Dept. No.: XXVIII

13 CHRISTOPHER BEAVOR, an individual;
14 SAMANTHA BEAVOR, an individual; DOES I
15 through X and ROES ENTITIES I through X,
16 inclusive,

Defendants.

17 **MOTION FOR NEW TRIAL OR IN THE ALTERNATIVE MOTION FOR JUDGMENT**
18 **NOTWITHSTANDING VERDICT (JNOV)**

19 COME NOW, Plaintiff, YACOV JACK HEFETZ, by and through his attorneys of record
20 H. Stan Johnson, Esq. of Cohen-Johnson, LLC, and pursuant to Nevada Rule of Civil Procedure
21 (NRCP) 59, hereby filed this Motion for New Trial, or in the Alternative Motion for Judgment
22 Notwithstanding Verdict (JNOV) and hereby mover for an Order granting his Motion.

23 This Motion is made and based upon the following Points and Authorities, all papers
24 and pleadings on file herein, the Affidavit of H. Stan Johnson, Esq., attached hereto, and any

25 ///

26 ///

27 ///

28 ///

1 and all oral argument as may be allowed at the time of hearing.

2 DATED this 10th day of June, 2013.

3 COHEN-JOHNSON, LLC

4
5 By: /s/ H. Stan Johnson
6 H. STAN JOHNSON, ESQ.
7 Nevada Bar No. 0265
8 BRIAN A. MORRIS, ESQ.
9 Nevada Bar No.: 11217
10 255 W. Warm Springs Rd., Ste. 100
11 Las Vegas, Nevada 89119
12 *Attorneys for Plaintiff*

13 **NOTICE OF MOTION**

14 TO: CHRISTOPHER BEAVOR, Defendant; and

15 PLEASE TAKE NOTICE that the forging Motion will be considered on the ____ day
16 of _____, 2013 at _____ in Department _____ or as soon thereafter
17 as counsel may be heard.

18 Dated this 10th day of June, 2013.

19 COHEN-JOHNSON, LLC

20 By: /s/ H. Stan Johnson
21 H. STAN JOHNSON, ESQ.
22 Nevada Bar No. 0265
23 BRIAN A. MORRIS, ESQ.
24 Nevada Bar No.: 11217
25 255 W. Warm Springs Rd., Ste. 100
26 Las Vegas, Nevada 89119
27 *Attorneys for Plaintiff*

POINTS AND AUTHORITIES

I.

FACTS

The civil case *Yacov Jack Hefetz vs. Christopher Beavor* (hereinafter referred to as *Hefetz v. Beavor*) was heard before a jury between February 26, 2013 through March 1, 2013. The case arose out of Defendant's failure to meet his obligations as guarantor of a defaulted personal loan in the amount of \$6,000,000.00.

On or about March 29, 2007, Defendant entered into a Loan Agreement whereby Borrower procured a loan in the amount of \$6,000,000.00 (the "Loan") from lender the Herbert Frey Revocable Family Trust ("Lender"). As part of the inducement for the loan, Defendant signed an unconditional and irrevocable personal guarantee of full and prompt payment of the principal and interest due and owing on the Loan.

Defendants agreed to repay the Loan "regardless of any defense, right of set-off or claims which [Defendants] may have against [the holder of the Loan]," and agreed to "refrain from asserting, until after repayment in full of the Loan, any defense, right of set-off or other claim which [Defendants] may have" against the Lender or holder of the Loan.

Defendants further agreed that the holder of the Payment Guaranty may enforce its terms "without necessity at any time of resorting to or exhausting any other security or collateral" given in connection with the Loan.

On or about July 6, 2011, the principal Mr. Frey, assigned Plaintiff Hefetz and Alis Cohen all of Lender's right, title and interest in and to the Payment Guarantee. Frey assigned the Personal Guaranty (and other Loan documents) to Hefetz because he has cancer and was getting too old to pursue Defendants. Alis Cohen subsequently assigned her rights under the Payment Guaranty in full to Hefetz.

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II.

STATEMENT OF PRIOR PROCEEDINGS

On March 1, 2013 the Court granted a directed verdict as to all the Defendants counter-claims. The Plaintiff's case went to verdict and a jury verdict in favor of the defendant was entered in the above captioned matter. On March 25, 2013 Marc Saggese, Attorney for the Defendant, withdrew from the case. On March 29, 2013, H. Stan Johnson, Esq. of Cohen Johnson LLC substituted in as Counsel for the Plaintiff. On May 21, 2013 Marc Saggese served a Notice of Entry of Judgment. This Motion for a New Trial and/or Amendment of Judgment is being timely filed within 10 days of the service of the Notice of Entry.

III.

LEGAL ARGUMENT

Motions for New Trial are governed by NRCP 59 which provides in pertinent part:

RULE 59. NEW TRIALS; AMENDMENT OF JUDGMENTS

(a) **Grounds.** A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes or grounds materially affecting the substantial rights of an aggrieved party: (1) Irregularity in the proceedings of the court, jury, master, or adverse party, or any order of the court, or master, or abuse of discretion by which either party was prevented from having a fair trial; (2) Misconduct of the jury or prevailing party; (3) Accident or surprise which ordinary prudence could not have guarded against; (4) Newly discovered evidence material for the party making the motion which the party could not, with reasonable diligence, have discovered and produced at the trial; (5) Manifest disregard by the jury of the instructions of the court; (6) Excessive damages appearing to have been given under the influence of passion or prejudice; or, (7) Error in law occurring at the trial and objected to by the party making the motion. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

[As amended; effective January 1, 2005.]

(b) **Time for Motion.** A motion for a new trial shall be filed no later than 10 days after service of written notice of the entry of the judgment.

Plaintiff seeks a new trial based on the following grounds pursuant to NRCP 59:

1 (A) *Irregularity in the proceedings of the court, jury, master, or adverse party, or any*
2 *order of the court, or master, or abuse of discretion by which either party was prevented from*
3 *having a fair trial;*

4 At the trial of this matter, the Defendant referred in his opening statement to an unsigned
5 offer of settlement negotiations which Defendant sent to non-party Frey. At the time, the
6 evidence may have been admissible for the limited purpose of supporting the Defendants'
7 counterclaim that Plaintiff fraudulently prevented Mr. Frey from accepting the offer. However,
8 once the Counterclaims were dismissed as a matter of law, the use of this evidence concerning
9 what at best could be described as a "settlement negotiation" by Plaintiff constituted plain error
10 since any testimony or evidence concerning settlement negotiations is impermissible at trial as a
11 matter of Nevada law. Plain error is defined in NRS 178.602 as "Plain errors or defects
12 affecting substantial rights may be noticed although they were not brought to the attention of the
13 court". Since when the evidence was initially introduced it might have been applicable no
14 objection would have been sustained. Unfortunately, once the Counter-claims were dismissed
15 the "bell" could not be unrung, and Defendant improperly used this inadmissible evidence for an
16 impermissible purpose. Defendant argued the implications of this settlement offer on the issue
17 of liability in his closing statement (See Transcript of Day 5 P. 63 attached hereto as Exhibit 2)
18 in clear violation of Nevada Revised Statute, 48.105 which provides:

19 1. Evidence of:

20 (a) Furnishing or offering or promising to furnish; or

21 (b) Accepting or offering or promising to accept, a valuable consideration
22 in compromising or attempting to compromise a claim which was disputed
23 as to either validity or amount, is not admissible to prove liability for or
24 invalidity of the claim or its amount. Evidence of conduct or statements
25 made in compromise negotiations is likewise not admissible.

26 Defendant's intentional violation of Nevada law prevented the Plaintiff from obtaining a
27 fair trial. Defendant argued and improperly misled the jury into thinking that the original owner
28 of the personal guaranty, Mr. Frey intended to accept the settlement offer, but was prevented
29 from doing so by the improper conduct of the Plaintiff. Defendant was unable to adduce any

1 evidence in support of this argument at trial, and his implications were refuted by the testimony
2 of both the Plaintiff and Mr. Frey. Under these circumstances evidence and argument resulted in
3 unfair prejudice to the Plaintiff, by asking the jury to use this evidence for an impermissible
4 purpose. Such prejudice was so egregious that no objection was necessary to preserve the issue
5 for reconsideration either in a motion for new trial or on appeal.

6 ***(B) Misconduct of the jury or prevailing party;***

7 Defendant's also engaged in repeated acts of misconduct which while objected to and to
8 which the objections were sustained no admonishment was given to the jury. In this case on
9 several occasions, both in argument and in testimony, Counsel for the Defendant repeatedly
10 referred to the Plaintiff as "an Israeli businessman". When admonished by the Court, Counsel's
11 attempted justification of the remarks demonstrated that his intention was clearly to inflame and
12 prejudice the jury against the Plaintiff based on Mr. Hefetz's being Jewish. In fact Counsel's
13 remarks outside the presence of the jury, reek with the offensiveness of his conduct, and are
14 replete with slanderous characterization which encouraged the jury to view the Plaintiff through
15 the historical inaccuracies concerning the business practices of Jews since Shakespeare created
16 Shylock. (See transcript of proceedings Day 2 P. 31-37 attached hereto as Exhibit 1). At that
17 point the Court *sui sponte* admonished Defense Counsel that a another instance of this egregious
18 conduct would result in a mistrial. A discussion then occurred between the Court and Plaintiff's
19 counsel concerning the effectiveness and practicality of a curative instruction. Plaintiff's counsel
20 was faced with the conundrum of having the Court admonish the jury, and thereby emphasizing
21 the offensive characterization, or letting it go unremarked upon and hope that the remark had not
22 prejudiced the jury. When the verdict was returned for the Defendant in the face of the
23 uncontroverted evidence mandating a verdict for the Plaintiff, the damage was already done, and
24 the only available relief is a new trial. Lioce v. Cohen 174 P. 3d 973, (Nev. 2008). While this
25 unprincipled attack alone constitutes grounds for a new trial, the remarks also constituted an
26 attack implying that Mr. Hefetz was not a citizen of the United States and not merely Israeli by
27 birth but was a foreign national. This was an improper appeal to Post 9/11 xenophobia, implying
28

1 that a true blue American (Defendant) should not be accountable to some foreigner (Plaintiff)
2 who doesn't belong here and is using unscrupulous business methods to take advantage of
3 American citizens.

4 *(C) Accident or surprise which ordinary prudence could not have guarded against;*

5 Just as no jury admonishment could have prevented the prejudicial effects of the
6 Defendant's egregious comments concerning Mr. Hefetz's being Jewish, no reasonably prudent
7 attorney would have anticipated that another officer of the Court would engage in such back-
8 alley tactics. In fact a reasonably prudent counsel would have considered bringing a *motion in*
9 *limine* to preclude such remarks as not only unnecessary, but demeaning to the dignity of the
10 Court, and an unprovoked attack on the integrity of opposing counsel. That such a motion turns
11 out to have been necessary, is a sad commentary on civility as well as grounds justifying a new
12 trial.

13 *(D) Manifest disregard by the jury of the instructions of the court;*

14 The uncontroverted evidence adduced at trial establishes Plaintiff's right to a verdict.
15 Whether or not the jury might have reduced the damages due on the note to less than its face
16 value of \$6,000,000.00 should not have precluded the finding of liability. In fact, it initially
17 appeared as though that was what the jury intended since the original verdict form showed a
18 judgment for Plaintiff with a zero next to his name. Upon polling the jury members stated that
19 the verdict was instead a finding of non-liability in favor of the Defendant. This finding was in
20 clear disregard of the evidence. The only possible explanations for this verdict must lie in the
21 Defendant's improper conduct during the trial. Either as the result of the slurs against the
22 Plaintiff, or the improper argument concerning the meaning of the settlement offer, the
23 Defendant effectively argued for and obtained jury nullification. Jury nullification is defined as

24 [a] jury's knowing and deliberate rejection of the evidence or refusal to apply
25 the law either because the jury wants to send a message about some social issue
26 that is larger than the case itself or because the result dictated by law is contrary to
the jury's sense of justice, morality, or fairness (*op.cit.* 174 P.3d 982-983)

27 ///

1 That Defendant was asking the jury to ignore the law, is shown in his final arguments to
2 the jury. Not only did Counsel compare his client to a homeowner who was caught in the
3 mortgage crisis, by implication comparing the Plaintiff's conduct to that of the egregious conduct
4 of some banks in foreclosure proceeding, and attempting to have the jury identify and
5 sympathize with the Defendant. (See Exhibit 2 P. 56) Without any supporting evidence,
6 Defendant's Counsel asked the jury, to ignore the rulings of the bankruptcy court and believe
7 that the Bankruptcy Court's order was the result of fraud by the Freys and Plaintiff. Defendant's
8 Counsel again without evidence argued that the unsigned documents were in fact prepared, by
9 Mr. Frey, stating that the fact that similar fonts were used evidenced that the same person drafted
10 them.(See Exhibit 2 P. 58, 65). This argument is not only improper but absent an expert who
11 testified that the documents were produced by the same computer and printer, were improper
12 testimony by Counsel. Finally, Defendant's Counsel urged the jury to go into the jury room and
13 "do justice. Whatever you determine that is." (Exhibit 2 P. 69 ll 20-21). This is a clear appeal for
14 jury nullification, asking them to substitute their personal feeling about justice and fairness for
15 the law and again constitutes grounds for the granting of a new trial.

16 IV

17 CONCLUSION

18 Plaintiff was entitled to a fair and unprejudiced jury trial where the jury was not subjected
19 to inadmissible evidence being used for an improper purpose. Scurrilous attacks on his ethnicity
20 religion, and citizenship prevented the Plaintiff from obtaining a fair trial and resulted in jury
21 nullification. The evidence supported a verdict in favor of the Plaintiff, and he should be granted
22 the opportunity to present his case to a truly impartial jury, untainted by the inflammatory and
23 improper conduct present in the first trial. Therefore Plaintiff asks this Honorable Court to:

- 24 1. Enter an order vacating the judgment;
- 25 2. Granting the Plaintiff a new trial on the merits;
- 26 3. Granting the Plaintiff a Judgment Not On the Verdict.

27 ///

COHEN-JOHNSON, LLC
6293 Dean Martin Drive, Suite G
Las Vegas, Nevada 89118
(702) 823-3500 FAX: (702) 823-3400

1 4. Such other and additional relief as this court deems equitable and just.
2

3 DATED this _____ day of June, 2013.
4

5 Respectfully submitted,
6

COHEN-JOHNSON, LLC

7 By: /s/ H. Stan Johnson
8 H. STAN JOHNSON, ESQ.
9 Nevada Bar No. 0265
10 BRIAN A. MORRIS, ESQ.
11 Nevada Bar No.: 11217
12 255 W. Warm Springs Rd., Ste. 100
13 Las Vegas, Nevada 89119
14 Attorneys for Plaintiff
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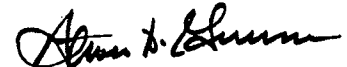
CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 10th day of June, 2013, a true and correct copy of the foregoing **MOTION FOR NEW TRIAL OR IN THE ALTERNATIVE MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT (JNOV)** was served by placing a copy thereof in the US Mail at Las Vegas, Nevada, with proper postage prepaid, addressed to the following:

Christopher Beavor
1930 Village Center Cir. #3231
Las Vegas, Nevada 89134
Defendant in Proper Person

Cc: Marc A. Saggese, Esq.
SAGGESE & ASSOCIATES, LTD.
732 s. Sixth Street, Suite 201
Las Vegas, Nevada 89101
Facsimile: 702-778-8884
marc@maxlawnv.com
Prior Counsel for Defendant, Christopher Beavor

/s/Nelson Achaval
An Employee of COHEN-JOHNSON, LLC



CLERK OF THE COURT

OPPS
HOFLAND & TOMSHECK
Joshua Tomsheck, Esq.
Nevada State Bar No. 9210
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Facsimile: (702) 731-6910
Attorney for Defendant Christopher Beavor

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

YACOV JACK HEFETZ,
Plaintiff,

vs.

CHRISTOPHER BEAVOR, an
individual
Defendant,

Case Number: A645353

Dept No: XXVIII

**DEFENDANT CHRISTOPHER BEAVOR'S OPPOSITION TO PLAINTIFF'S
MOTION FOR NEW TRIAL OR IN THE ALTERNATIVE MOTION FOR
JUDGMENT NOTWITHSTANDING VERDICT (JNOV)**

DATE OF HEARING: July 17, 2013

TIME OF HEARING: Chambers Calendar

COMES NOW, Defendant CHRISTOPHER BEAVOR, through his attorney of record, JOSHUA TOMSHECK of the Law Firm of Hofland & Tomsheck, and hereby submits the attached Points and Authorities in Opposition to PLAINTIFF'S MOTION FOR NEW TRIAL OR IN THE ALTERNATIVE MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT (JNOV).

1 This Opposition is made and based upon all the papers and pleadings on file
2 herein, the attached points and authorities in support hereof, and oral argument at
3 the time of hearing, if deemed necessary by this Honorable Court.

4
5 **POINTS AND AUTHORITIES**

6 **FACTS RELEVANT TO THE INSTANT MOTION**

7 This case went to jury trial before this honorable court. On March 1, 2013, the
8 jury in this matter entered a defense verdict. On May 17, 2013, this Court signed the
9 Judgment in this case, entering the defense verdict. On May 21, 2013, notice of entry
10 of judgment was served on the Plaintiff. Plaintiff's counsel concedes in the instant
11 Motion that they were served with the notice of entry of judgment on May 21, 2013.
12 (See Motion, pg. 4, lns 7-8).

13 **LEGAL ARGUMENT**

14 As outlined in Plaintiff's Motion, NRC 59 controls the relief Plaintiff is seeking in
15 their Motion, by stating:

16 **RULE 59. NEW TRIALS; AMENDMENT OF JUDGMENTS**

17 (a) Grounds. A new trial may be granted to all or any of the parties and
18 on all or part of the issues for any of the following causes or grounds
19 materially affecting the substantial rights of an aggrieved party: (1)
20 Irregularity in the proceedings of the court, jury, master, or adverse party,
21 or any order of the court, or master, or abuse of discretion by which either
22 party was prevented from having a fair trial; (2) Misconduct of the jury or
23 prevailing party; (3) Accident or surprise which ordinary prudence could
24 not have guarded against; (4) Newly discovered evidence material for the
25 party making the motion which the party could not, with reasonable
26 diligence, have discovered and produced at the trial; (5) Manifest disregard
27 by the jury of the instructions of the court; (6) Excessive damages
28 appearing to have been given under the influence of passion or prejudice;
or, (7) Error in law occurring at the trial and objected to by the party
making the motion. On a motion for a new trial in an action tried without a
jury, the court may open the judgment if one has been entered, take
additional testimony, amend findings of fact and conclusions of law or
make new findings and conclusions, and direct the entry of a new
judgment.

1 (b) Time for Motion. *A motion for a new trial shall be filed no later*
2 *than 10 days after service of written notice of the entry of the judgment.*
3 (emphasis added).

4 It is clear from a reading of the procedural history in this case, *as well as the*
5 *Plaintiff's own Motion*, that the notice of entry of judgment was served on Plaintiff's
6 counsel on May 21, 2013. It is equally clear that Plaintiff's Motion was not filed until June
7 10, 2013. As such, Plaintiff's motion is procedurally time barred by NRCP 59 and this court
8 has no choice but to deny same.

9 As Plaintiff's Motion is untimely filed, and thus procedurally time barred,
10 Defendant need not address Plaintiff's motion on the merits.¹

11 CONCLUSION

12
13 Based upon the foregoing, Plaintiff's Motion should be DENIED.

14
15 Dated this 20th day of June, 2013.

16
17 HOFLAND & TOMSHECK

18
19 By: 

20 Joshua Tomsheck, Esq.
21 Nevada Bar No. 9210
22 228 South Fourth Street, 1st Floor
23 Las Vegas, Nevada 89101
24 (702) 895-6760
25 Attorney for Christopher Beavor

26
27
28

¹ Should this honorable Court desire additional briefing on the merits, Defense counsel can provide same.

1
2 CERTIFICATE OF MAILING

3 The undersigned does hereby certify that on the 20th day of June, 2013, a true
4 and correct copy of the foregoing OPPOSITION TO MOTION FOR NEW TRIAL OR
5 IN THE ALTERNATIVE MOTION FOR JUDGMENT NOTWITHSTANDING
6 VERDICT (JNOV) was served by placing a copy thereof in the US MAIL at Las
7 Vegas, Nevada, with proper postage prepaid, addressed to the following:

8
9 to : H. STAN JOHNSON, and
10 BRIAN A. MORRIS
11 c/o COHEN-JOHNSON, LLC
12 6923 Dean Martin Drive, Suite G
Las Vegas, Nevada, 89118

13 And that a copy of same was sent via facsimile transmission to:

14 (702) 823-3400
15
16

17
18
19 BY:  _____

20 Employee Hofland & Tomscheck
21
22
23
24
25
26
27
28


CLERK OF THE COURT

RPLY
COHEN-JOHNSON, LLC
H. STAN JOHNSON
Nevada Bar No. 00265
sjohnson@cohenjohnson.com
BRIAN A. MORRIS, ESQ.
Nevada Bar No. 11217
bam@cohenjohnson.com
255 W. Warm Springs Rd., Ste. 100
Las Vegas, Nevada 89119
Telephone: (702) 823-3500
Facsimile: (702) 823-3400
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

YACOV JACK HEFETZ, an individual,

Plaintiff,

vs.

Case No.: A645353
Dept. No.: XXVIII

CHRISTOPHER BEAVOR, an individual;
SAMANTHA BEAVOR, an individual; DOES I
through X and ROES ENTITIES I through X,
inclusive,

Defendants.

**REPLY TO DEFENDANT CHRISTOPHER BEAVOR'S OPPOSITION TO
PLAINTIFF'S MOTION FOR NEW TRIAL OR IN THE ALTERNATIVE MOTION
FOR JUDGMENT NOTWITHSTANDING VERDICT (JNOV)**

COME NOW, Plaintiff, YACOV JACK HEFETZ, by and through his attorneys of record
H. Stan Johnson, Esq. of Cohen-Johnson, LLC, and hereby Replies to Defendant Christopher
Beavor's Opposition to Plaintiff's Motion for New Trial, or in the Alternative Motion for
Judgment Notwithstanding Verdict (JNOV).

This Reply is made and based upon the following Points and Authorities, all papers
and pleadings on file herein, and any oral argument that the Court may entertain at the

///

///

///

1 hearing on this matter.

2 DATED this 2nd day of July, 2013.

3 COHEN-JOHNSON, LLC

4
5 By: /s/ H. Stan Johnson
6 H. STAN JOHNSON, ESQ.
7 Nevada Bar No. 0265
8 BRIAN A. MORRIS, ESQ.
9 Nevada Bar No.: 11217
255 W. Warm Springs Rd., Ste. 100
Las Vegas, Nevada 89119
Attorneys for Plaintiff

10 **POINTS AND AUTHORITIES**

11 **I.**

12 **FACTS**

13 The civil case Yacov Jack Hefetz vs. Christopher Beavor (hereinafter referred to as Hefetz
14 v. Beavor was heard before a jury between February 26, 2013 through March 1, 2013. The case
15 arose out of Defendant's failure to meet his obligations as guarantor of a defaulted personal loan
16 in the amount of \$6,000,000.00. During the course of the trial, Plaintiff's attorney made several
17 comments referencing the fact that the Plaintiff was Israeli, and certain behaviors and
18 characteristics should be presumed based on his ethnicity. Objections were made and the Court
19 cautioned Counsel.

20 On March 1, 2013 the Court granted a directed verdict as to all the Defendants counter-
21 claims. The Plaintiff's case went to verdict and a jury verdict in favor of the defendant was
22 entered in the above captioned matter. Plaintiffs believe that the verdict was improperly
23 influenced by the racial slurs and imprecations made by Plaintiff's counsel.

24 On March 25, 2013 Marc Saggese, Attorney for the Defendant, withdrew from the case.
25 On March 29, 2013, H. Stan Johnson, Esq. of Cohen Johnson LLC substituted in as Counsel for
26 the Plaintiff. On May 21, 2013 Marc Saggese served a Notice of Entry of Judgment. This
27
28

1 Motion for a New Trial and/or Amendment of Judgment is being timely filed within 10 days of
2 the service of the Notice of Entry.

3 **III.**

4 **LEGAL ARGUMENT**

5
6 **A. Plaintiff's Motion was Timely Filed.**

7 Defendant's sole opposition to the motion is the claim that the Motions for New Trial
8 was untimely filed. Motions for New trials are governed by NRCP 59 which provides in
9 pertinent part:

10 **RULE 59. NEW TRIALS; AMENDMENT OF JUDGMENTS**

11 (a) **Grounds.** A new trial may be granted to all or any of the parties and on
12 all or part of the issues for any of the following causes or grounds materially
13 affecting the substantial rights of an aggrieved party: (1) Irregularity in the
14 proceedings of the court, jury, master, or adverse party, or any order of the court,
15 or master, or abuse of discretion by which either party was prevented from having
16 a fair trial; (2) Misconduct of the jury or prevailing party; (3) Accident or surprise
17 which ordinary prudence could not have guarded against; (4) Newly discovered
18 evidence material for the party making the motion which the party could not, with
19 reasonable diligence, have discovered and produced at the trial; (5) Manifest
20 disregard by the jury of the instructions of the court; (6) Excessive damages
21 appearing to have been given under the influence of passion or prejudice; or, (7)
22 Error in law occurring at the trial and objected to by the party making the motion.
23 On a motion for a new trial in an action tried without a jury, the court may open
24 the judgment if one has been entered, take additional testimony, amend findings
25 of fact and conclusions of law or make new findings and conclusions, and direct
26 the entry of a new judgment.

[As amended; effective January 1, 2005.]

21 (b) **Time for Motion.** A motion for a new trial shall be filed no later than
22 10 days after service of written notice of the entry of the judgment.

23 The Notice of Entry of Judgment was served by facsimile transmission on May 21, 2013.
24 In calculating the ten days the statute provides only judicial days are calculated. Following the
25 expiration of these ten judicial days three days are then added for purposes of mailing. NRCP
26 6 provides for the computation of time that:

27 (a) **Computation.** In computing any period of time prescribed or allowed
28 by these rules, by the local rules of any district court, by order of court, or by
any applicable statute, the day of the act, event, or default from which the

1 designated period of time begins to run shall not be included. The last day of
2 the period so computed shall be included, unless it is a Saturday, a Sunday, or
3 a nonjudicial day, in which event the period runs until the end of the next day
4 which is not a Saturday, a Sunday, or a nonjudicial day, or, when the act to be
5 done is the filing of a paper in court, a day on which weather or other
6 conditions have made the office of the clerk of the district court inaccessible,
7 in which event the period runs until the end of the next day which is not one
8 of the aforementioned days. When the period of time prescribed or allowed is
9 less than 11 days, intermediate Saturdays, Sundays, and nonjudicial days
10 shall be excluded in the computation except for those proceedings filed under
11 Titles 12 or 13 of the Nevada Revised Statutes.

12 Pursuant to Rule 6 the date of the Notice of Entry is not included in the computation.
13 This means that the ten days begins to run on May 22, 2013, The judicial days in that week were
14 May 23, and 24. The intervening Saturday and Sunday is not included. Nor is Monday, May
15 27th which was the Memorial Day holiday, and was a non-judicial day. The remaining days of
16 the week, the 28th, 29th, 30th and 31st are included. This brings the total to seven judicial days.
17 Neither Saturday June 1st or Sunday June 2nd is included. June 3rd, 4th, 5th are included. The
18 tenth judicial day from May 22, 2013 was June 5th, 2013. However NRCP 6 (e) provides:

19 **(e) Additional Time After Service by Mail or Electronic Means.**

20 Whenever a party has the right or is required to do some act or take some
21 proceedings within a prescribed period after the service of a notice or other
22 paper, other than process, upon the party and the notice or paper is served
23 upon the party by mail or by electronic means, 3 days shall be added to the
24 prescribed period.

25 Adding these three days would be June 6th, and June 7th, the third calendar day for
26 mailing would be Saturday June 8th. Pursuant to NRCP Rule 6, Saturday June 8th will not be
27 included making the last day June 10, 2013, which was the date of the timely filing by the
28 Plaintiff.

This is the method of calculation set forth by the Nevada Supreme Court in Winston
Products Company, Inc. v. DeBoer et.al. 122 Nev. 517, 134 P3d 726 (Nev 2006) under identical
circumstances and is directly on point and controlling, proving that the Plaintiff's motion was
timely filed.

**B. Defendant's Failure to Oppose the Motion on its Merits
Constitutes a Waiver**

EJDCR 2.20 provides that:

1
2 (e) Within 10 days after the service of the motion, and 5 days after
3 service of any joinder to the motion, the opposing party must serve and file
4 written notice of nonopposition or opposition thereto, together with a
5 memorandum of points and authorities and supporting affidavits, if any,
6 stating facts showing why the motion and/or joinder should be denied.
7 Failure of the opposing party to serve and file written opposition may be
8 construed as an admission that the motion and/or joinder is meritorious and a
9 consent to granting the same.

10 The rules exist so that motions may be timely heard and resolved, not allow a party to
11 continue to relitigate a matter one element at a time. Just as the Plaintiff was required to set forth
12 his arguments and grounds in a single motion, Defendant is required to address the entire motion
13 in one responsive pleading, and may not use this method to improperly enlarge the statutory time
14 allowed to file a response. Plaintiff's motion was served on the Defendant on June 10, 2013 and
15 the Plaintiff was allowed until June 27, 2013 to file an opposition. Plaintiff instead of using the
16 full time allowed to file a pleading responsive to the substantive arguments chose to file a
17 opposition limited only timeliness on June 20, 2013.

18 Nevada law does not provide that the opposing party may file piece meal oppositions but
19 allows one opportunity to oppose the entire motion. In the present case, the Defendant has
20 failed to even address a single ground relied upon by the Plaintiff in his motion. This failure to
21 address the substantive arguments amounts to a failure to provide a written opposition and
22 should be construed as an admission that those arguments are meritorious and consent to the
23 granting of the motion. By choosing to solely oppose the motion only on the grounds of
24 timeliness the Defendant has waived his right to make a further opposition. Defendant chose not
25 to file a substantive response and must accept the consequences of that decision.

26 IV

27 CONCLUSION

28 Plaintiff was entitled to a fair and unprejudiced jury trial where the jury was not subjected
to inadmissible evidence being used for an improper purpose. Scurrilous attacks on his ethnicity
religion, and citizenship prevented the Plaintiff from obtaining a fair trial and resulted in jury
nullification. The evidence supported a verdict in favor of the Plaintiff, and he should be granted

1 the opportunity to present his case to a truly impartial jury, untainted by the inflammatory and
2 improper conduct present in the first trial. The Plaintiff's Motion was timely filed, and the
3 Defendant failed to file an opposition to the grounds set forth in Plaintiff's Motion, waiving any
4 arguments opposing those grounds and admitting that the Plaintiff's Motion is meritorious and
5 consenting to the granting of the relief sought. Therefore Plaintiff asks this Honorable Court to:

- 6 1. Enter an order finding that Plaintiff's Motion was timely filed;
- 7 2. Finding that the Defendant's Opposition constitutes an admission that any
- 8 grounds not addressed in are admitted to as meritorious;;
- 9 3. Enter an Order vacating the judgment;
- 10 4. Granting the Plaintiff a new trial on the merits;
- 11 5. Granting the Plaintiff a Judgment Not On the Verdict.
- 12 6. Such other and additional relief as this court deems equitable and just.

13 **Affirmation Pursuant to NRS 239B.030**

14 The undersigned does hereby affirm that the preceding Reply to Plaintiff's Opposition to
15 Plaintiff's Motion for New Trial does not contain the social security number of any person.

16 DATED this 3rd day of July, 2013.

17 Respectfully submitted,

18
19 COHEN-JOHNSON, LLC

20
21 By: /s/ H. Stan Johnson
22 H. STAN JOHNSON, ESQ.
23 Nevada Bar No. 0265
24 TERRY KINNALLY, ESQ.
25 Nevada Bar No.: 06379
26 255 W. Warm Springs Rd., Ste. 100
27 Las Vegas, Nevada 89119
28 Attorneys for Plaintiff

COHEN-JOHNSON, LLC
6293 Dean Martin Drive, Suite G
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(702) 823-3500 FAX: (702) 823-3400

Joshua Tomsheck, Esq
Nevada State Bar No. 9210
Hofland & Tomsheck
228 South Fourth Street
First Floor
Las Vegas Nevada 89101
Facsimile (702)731-6910

/s/Nelson Achaval
An Employee of COHEN-JOHNSON, LLC

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REGISTER OF ACTIONS

CASE NO. A-11-645353-C

Yacov Hefetz, Plaintiff(s) vs. Christopher Beavor, Defendant(s)

§
§
§
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§

Case Type: **Breach of Contract**

Subtype: **Guarantee**

Date Filed: **07/21/2011**

Location: **Department 28**

Cross-Reference Case
Number: **A645353**

PARTY INFORMATION

Counter Claimant **Beavor, Christopher**

Lead Attorneys
Joshua L. Tomsheck
Retained
702-671-2640(W)

Counter Claimant **Beavor, Samantha**

Marc A. Saggese
Retained
702-788-8883(W)

Counter Defendant **Hefetz, Yacov Jack**

Harold Stanley Johnson
Retained
702-823-3500(W)

Defendant **Beavor, Christopher**

Joshua L. Tomsheck
Retained
702-671-2640(W)

Defendant **Beavor, Samantha**

Marc A. Saggese
Retained
702-788-8883(W)

Plaintiff **Hefetz, Yacov Jack**

Harold Stanley Johnson
Retained
702-823-3500(W)

EVENTS & ORDERS OF THE COURT

01/07/2014 **Motion For Stay (9:00 AM)** (Judicial Officer Israel, Ronald J.)
Defendant Christopher Beavor's Motion for Stay of Proceedings

Minutes

01/07/2014 9:00 AM

- There being no opposition, COURT ORDERED, Stay of Proceedings, GRANTED. Upon Court's inquiry, Mr. Tomsheck advised he would file the writ now. COURT FURTHER ORDERED, Trial Dates, VACATED and Matter set for a status check as to the status of the case and to reset trial. Case STAYED pending Supreme Court decision. 05/13/14 9:00 AM STATUS CHECK: STATUS OF CASE // RESETTING TRIAL

Parties Present

Return to Register of Actions


CLERK OF THE COURT

MOT
HOFLAND & TOMSHECK
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Nevada State Bar No. 9210
jtomsheck@hoflandlaw.com
228 South Fourth Street, 1st Floor
Las Vegas, Nevada 89101
Telephone: (702) 895-6760
Facsimile: (702) 731-6910
Attorney for Defendant Christopher Beavor

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

YACOV JACK HEFETZ,
Plaintiff,

vs.

CHRISTOPHER BEAVOR, an
individual
Defendant,

Case Number: A645353

Dept No: XXVIII

DEFENDANT CHRISTOPHER BEAVOR'S MOTION FOR
RECONSIDERATION

DATE OF HEARING:

TIME OF HEARING:

COMES NOW, Defendant CHRISTOPHER BEAVOR, through his attorney of
record, JOSHUA TOMSHECK of the Law Firm of Hofland & Tomsheck, and hereby
submits the MOTION TO RECONSIDER.

This MOTION is made and based upon all the papers and pleadings on file
herein, the attached points and authorities in support hereof, and oral argument at
the time of hearing, if deemed necessary by this Honorable Court.

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NOTICE OF MOTION

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that DEFENDANT CHRISTOPHER BEAVOR, will bring the foregoing MOTION TO RECONSIDER on for hearing on the 9 day of Oct. In Chambers 2013, at :- a.m./p.m., before Department XXVIII or as soon thereafter as counsel may be heard.

DATED THIS 21st DAY OF AUGUST, 2013

HOFLAND & TOMSHECK

By: 

Joshua Tomsheck, Esq.
Nevada Bar No. 9210
228 South Fourth Street, 1st Floor
Las Vegas, Nevada 89101
(702) 895-6760
Attorney for Christopher Beavor

1
2 **POINTS AND AUTHORITIES**
3 **FACTS RELEVANT TO THE INSTANT MOTION PREVIOUSLY**
4 **RAISED BEFORE THIS COURT**

5 This case went to jury trial before this honorable court. On March 1, 2013, the
6 jury in this matter entered a defense verdict. On May 17, 2013, this Court signed the
7 Judgment in this case, entering the defense verdict. On May 21, 2013, notice of entry
8 of Judgment was served on the Plaintiff. Plaintiff's counsel concedes in their
9 Motion for New Trial that they were served with the notice of entry of judgment on
10 May 21, 2013. (See Motion, pg. 4, lns 7-8).
11
12

13 **FACTS RELEVANT TO THE INSTANT MOTION FOR RECONSIDERATION**

14
15 This case was tried to a Jury before this Honorable Court in February of 2013,
16 commencing February 25, 2013 and concluding with the jury's Verdict for the
17 Defense on March 1, 2013.
18

19 After this matter proceeded to Trial, Defendant's former counsel (and Trial
20 Counsel in this matter), Marc Saggese, Esq. formally withdrew as attorney of record
21 on March 25, 2013. (See Exhibit "A").
22

23 On May 21, 2013, Judgment and Notice of Entry of Judgment was entered by
24 this Court and served on Plaintiff. (See Exhibit "B").
25

26 On June 10, 2013, Plaintiff's counsel filed their Motion for New Trial or in the
27 Alternative Motion for Judgment Notwithstanding Verdict (JNOV).
28

1 On June 19, 2013, Defendant Christopher Beavor retained the undersigned to
2 defend against Plaintiff's Motion for New Trial or in the Alternative Motion for
3 Judgment Notwithstanding Verdict (JNOV).
4

5 On June 20, 2013, the undersigned counsel contacted Plaintiff's counsel, Brian
6 Morris, Esq., whose name was attached to the aforementioned Motion for New Trial
7 or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV).
8 During that contact, the undersigned counsel inquired of Mr. Morris as to how
9 Plaintiff's Motion for New Trial or in the Alternative Motion for Judgment
10 Notwithstanding Verdict (JNOV) was not untimely filed and thus, time barred.
11 During that same conversation, Mr. Morris conceded that Plaintiff's Motion
12 appeared to be time barred and indicated Plaintiff's counsel may be forced to
13 withdraw the Motion given its untimeliness. At the conclusion of that telephone
14 conversation, Plaintiff's counsel, Mr. Morris, indicated he did not see how Plaintiff's
15 Motion was not filed late, but if he found otherwise, he would contact Defense
16 Counsel.
17
18
19
20

21 Thereafter, on June 20, 2013, the undersigned counsel filed, on behalf of
22 Defendant Beavor, Defendant's Opposition to Plaintiff's Motion for New Trial or in
23 the Alternative Motion for Judgment Notwithstanding Verdict (JNOV). In the
24 Opposition, the Defense stated "[a]s Plaintiff's Motion is untimely filed, and thus
25 procedurally time barred, Defendant need not address Plaintiff's motion on the
26 merits" but that "should this honorable Court desire additional briefing on the
27
28

1 merits, Defense counsel can provide same." (See Opposition at page 3).

2 After the undersigned had contacted Plaintiff's counsel and received the
3 above referenced information, and after filing their opposition, Plaintiff's counsel,
4 Mr. Morris, contacted Defense counsel and stated that after reviewing the calendar,
5 he now believed that his Motion had been timely filed. The undersigned counsel
6 informed Plaintiff's counsel that he had already filed his opposition based on their
7 earlier conversation, but that he had included reference to the Court that should the
8 Court requires or require additional briefing, it would be provided. Plaintiff's
9 counsel indicated he would have no objection to same. Thereafter, Plaintiff's
10 counsel, Mr. Johnson, filed their Reply, leaving out all of the pertinent procedural
11 facts relayed above.¹

12 This matter, having to do with a substantive issue which sought to invalidate
13 the Jury's determination of the facts, law and evidence, was never heard for
14 argument, but was heard on a "chambers calendar." The Matter was continued
15 until a second chambers calendar on August 7, 2013, at which time this Court ruled.

16 It is important for this Court to note that the Minute Order from the
17 Chambers decision was *never served* on the undersigned, even though he is listed as
18 "Lead Attorney" for Defendant Christopher Beavor on the Courts Odyssey system.

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¹ It should be noted that the signing attorney on the document was Mr. Johnson and not Mr. Morris, whom had conferred with Defense counsel regarding the matter. It should also be noted that this filing is not intended to convey to the Court any attempt at intended unethical conduct on behalf of Mr. Morris, who is known to the undersigned as being an extremely ethical and forthright litigator, simply that the Court made its decision without the necessary requisite facts to be fully informed on the issues.

1 (See Exhibit "C"). Instead, as the minutes from the August 7, 2013 hearing clearly
2 state, "CLERK'S NOTE: A copy of this minute order was placed in the attorney
3 folder(s) of: H: Stan Johnson, Esq. (Cohen- Johnson) and Marc Saggese, Esq.
4 (Saggese & Associates)" even though Mr. Saggese withdrew as counsel of record on
5 March 25, 2013. The undersigned only discovered the Court's decision by
6 happenstance when checking the online Court minutes after realizing he had never
7 received a decision. This Motion for Reconsideration now follows.
8
9

10 LEGAL ARGUMENT

11

12 Pursuant to E.D.C.R 2.24:

13
14 (a) No motions once heard and disposed of may be renewed in the
15 same cause, nor may the same matters therein embraced be reheard,
16 unless by leave of the court granted upon motion therefor, after
notice of such motion to the adverse parties.

17 1. (b) A party seeking reconsideration of a ruling of the court,
18 other than any order which may be addressed by motion pursuant
19 to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief
20 within 10 days after service of written notice of the order or
21 judgment unless the time is shortened or enlarged by order. A
22 motion for rehearing or reconsideration must be served, noticed,
23 filed and heard as is any other motion. A motion for reconsideration
does not toll the 30-day period for filing a notice of appeal from a
final order or judgment.

24 (c) If a motion for rehearing is granted, the court may make a final
25 disposition of the cause without reargument or may reset it for
26 reargument or resubmission or may make such other orders as are
deemed appropriate under the circumstances of the particular case.

27 To date, the only Order related to the reconsideration sought by Defense
28

1 Counsel is the Minute Order referred to above, which, of the date of this filing was
2 has never been served on the undersigned. It is only by happenstance that the
3 undersigned learned of the entry of the minute order from this Court. There is no
4 written order, nor has any Notice of Entry of Order been received. As such, this
5 Motion for Reconsideration is ripe and timely filed.
6

7 ***1) Plaintiff's Motion Must Be Heard on its Merits:***
8

9 Modern rules of procedure are intended to allow the court to reach the merits,
10 as opposed to disposition on technical niceties. Costello v. Casler, 127, Nev. Adv. Op.
11 36, 254 P. 3d 631 (2011), *See also* Schmidt v. Sadri, 95 Nev. 702, 705, 601 P.2d 713, 715
12 (1979) ("The Legislature envisioned that [the Nevada Rules of Civil Procedure] would
13 serve to simplify existing judicial procedures and promote the speedy determination
14 of litigation upon its merits.").
15

16
17 Plaintiff claims in their reply that Defendant's failure to oppose the Motion on
18 its Merits constitutes a waiver pursuant to EDCR 2.20. The record at this juncture
19 states otherwise however. As outlined above, the undersigned defense counsel
20 contacted Plaintiff's counsel and inquired about the Motion for New Trial, and had in
21 depth discussions about the timeliness of same. After that first conversation, defense
22 counsel was left with the notion that Plaintiff's counsel had, in fact, conceded the
23 lateness of their motion. Plaintiff then filed their opposition on that basis. However,
24 in that Motion, defense counsel expressly reserved the right to file additional points
25 and authorities should the Court so desire, by stating "should this honorable Court
26
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1 desire additional briefing on the merits, Defense counsel can provide same." (See
2 Opposition at page 3). Following the filing of that Opposition, Plaintiff's counsel *then*
3 contacted defense counsel and indicated that he no longer thought the Motion for
4 New Trial was time barred. In that conversation, Plaintiff's counsel conceded that he
5 would have no objection to defense counsel filing points and authorities on the merits
6 should the Court agree with Plaintiff's counsel as to the timeliness of the Motion for
7 New Trial.
8

9
10 Moreover, as this Court is aware, there is nothing within EDCR 2.20, or any
11 other rule of law, which *requires* the Court to find in Plaintiff's favor under these
12 circumstances. EDCR 2.20 simply states that "[f]ailure of the opposing party to serve
13 and file written opposition *may* be construed as an admission that the motion and/or
14 joinder is meritorious and a consent to granting the same." *Emphasis added.* This
15 "may" language, as opposed to a directive such as "shall," indicates that this Court
16 has discretion and can make a decision based on the totality of the circumstances.
17 Here, it is crystal clear that the Defendant *did not* admit that the Plaintiff's motion
18 had merit or consent to its granting. Conversely, defense counsel provided in its
19 opposition that despite its position that "Plaintiff's Motion is untimely filed, and thus
20 procedurally time barred, Defendant need not address Plaintiff's motion on the
21 merits" - something that had been conceded by the Plaintiff at the time Defendant
22 filed his opposition - but affirmatively stated that "should this honorable Court
23 desire additional briefing on the merits, Defense counsel can provide same." The
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1 "may" provision within EDCR 2.20 is designed to address a situation where a non-
2 moving party simply "fails to serve and file written opposition." That didn't happen
3 here. The non-moving party (the Defendant) *did* serve and file written opposition,
4 addressing the issue of timeliness and offering to provide additional briefing, an
5 allowance discussed, and agreed to, by Plaintiff's counsel.
6

7
8 Given this procedural history and the consistent mandate of the Nevada
9 Supreme Court, this matter must be decided on its merits.

10
11 ***2) Plaintiff's Motion was Not Timely Filed:***

12 Despite Plaintiff's clever attempt to draw out the time period to file the
13 Motion for New Trial pursuant to NRCP 59, their application of NRCP 6 to include
14 the date in which they filed their Motion is in error. In their analysis, they neglect
15 the clear application of the rules and incorrectly conclude that the three (3) day
16 addition for mailing is exclusive of weekends and non-judicial days. This is not the
17 case.
18
19

20 As this Court is aware, Motions for New Trial after the 2004 Amendment to
21 NRCP 6, must be filed within ten days from the date when notice of the final
22 judgment's entry is served. NRCP 59(b). Under NRCP 6(a), this ten-day period does
23 not include weekends and nonjudicial days, including holidays. Further, under
24 NRCP 6(e), three days are added to the ten-day period when the notice of entry is
25 served by mail or electronic means, as done in this case by former counsel, Mr.
26
27
28

1 Saggese. (See Exhibit "B"). To calculate the due date, the ten-day period is
2 determined and then the three (3) days are added to that date. However, unlike the
3 ten-day filing period, the three-day mailing period *includes* weekends and
4 nonjudicial days. Winston Products Co. v. DeBoer, 122 Nev. 517, 134 P.3d 726
5 (2006); see also Nalty v. Nalty Tree Farm, 654 F. Supp. 1315, 1318 (S.D. Ala. 1987)
6 (recognizing that the final day of the three-day mailing period could land on a
7 weekend or nonjudicial day). See also Comments on 2005 Amendments to FRCP
8 6(e), as adopted in NRCP 6(e), noting that "[i]ntermediate Saturdays, Sundays, and
9 legal holidays are included in counting these added three days." This distinction is
10 one that Plaintiff fails to recognize in their Reply.
11

12
13 Here, the ten-day period commenced the day after notice of the final
14 judgment's entry was served, May 22, 2013 and ended on Wednesday, June 5, 2013.
15
16 Thereafter, the three (3) days are added onto that date for mailing. Unfortunately
17 for the Plaintiff, they, in their reply, clearly apply the standard that is true in NRCP
18 6(a), namely that the ten (10) day period for filing under that subsection does not
19 include weekends and non-judicial days, including holidays, and Plaintiff further
20 applies that rule to the three (3) day mailing provision under Rule 6 (e). However,
21 the Nevada Supreme Court has clearly held that the three (3) day mailing period
22 under NRCP 6(e) *does* include both weekends and holidays. As such, their Motion
23 was due *before* they filed it on June 10, 2013. As the Nevada Supreme Court has
24 repeatedly held, "[u]ntimely motions for new trial . . . must be denied." Ross v.
25
26
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1 Giacomo, 97 Nev. 550, 553, 635 P.2d 298, 300 (1981) overruled on other grounds by
2 Winston Products Co. v. DeBoer, 122 Nev. 517, 134 P.3d 726.

3 As Plaintiff's Motion for a New Trial was untimely filed, a fact that was
4 acquiesced to at the time Defendant filed their opposition in this matter, this Court
5 should reconsider its previous ruling and deny Plaintiff's Motion. In the event this
6 Court agrees with Plaintiff that their NRCP 59 Motion was timely filed, this Court
7 should deny Plaintiff's Motion for the reasons set forth below.
8

9
10 3) *NRCP 59 does not warrant a new trial or a judgment notwithstanding the*
11 *verdict*

12 As this court is well aware, NRCP 59 controls the relief Plaintiff is seeking in
13 their Motion, by stating:
14

15 RULE 59. NEW TRIALS; AMENDMENT OF JUDGMENTS

16 (a) Grounds. A new trial may be granted to all or any of the
17 parties and on all or part of the issues for any of the following causes
18 or grounds materially affecting the substantial rights of an aggrieved
19 party: (1) Irregularity in the proceedings of the court, jury, master, or
20 adverse party, or any order of the court, or master, or abuse of
21 discretion by which either party was prevented from having a fair
22 trial; (2) Misconduct of the jury or prevailing party; (3) Accident or
23 surprise which ordinary prudence could not have guarded against;
24 (4) Newly discovered evidence material for the party making the
25 motion which the party could not, with reasonable diligence, have
26 discovered and produced at the trial; (5) Manifest disregard by the
27 jury of the instructions of the court; (6) Excessive damages
28 appearing to have been given under the influence of passion or
prejudice; or, (7) Error in law occurring at the trial and objected to by
the party making the motion. On a motion for a new trial in an
action tried without a jury, the court may open the judgment if one
has been entered, take additional testimony, amend findings of fact
and conclusions of law or make new findings and conclusions, and
direct the entry of a new judgment.

1 (b) Time for Motion. A motion for a new trial shall be filed no later
2 than 10 days after service of written notice of the entry of the
3 judgment. (emphasis added).

4 As outlined below, none of the provisions of NRCP 59 warrant a granting of
5 Plaintiff's Motion under the facts of this case.
6

7 I. *There was no irregularity in the proceedings of the court, jury, master,*
8 *or adverse party, or any order of the court, or master, or abuse of*
9 *discretion by which the Plaintiff was prevented from having a fair*
10 *trial, and any argument to the contrary is belied by the record;*

11 Plaintiff argues that defense counsel "intentionally violated" Nevada law in
12 making the closing arguments submitted to the jury. Specifically, Plaintiff's counsel
13 refers to arguments made at page 63 of the day 5 trial transcript. A thorough reading
14 of the record however, reveals the opposite to be true. In reviewing the record from
15 Trial, it is clear that defense counsel 1) made no objectionable argument that wasn't
16 supported by the evidence; and 2) that the arguments raised by Plaintiff's counsel in
17 their Motion for New Trial *were not objected to at Trial*. It is unfathomable how
18 Plaintiff's counsel can raise, in the venue of their instant Motion for a New Trial, that
19 these arguments were so inappropriate that a Motion for New Trial was warranted,
20 yet Trial counsel for the Plaintiff, who was present at each phase of the Trial before
21 the jury, didn't even see fit to lodge an objection. Despite Plaintiff's contention that
22 now, at this juncture, the "prejudice was so egregious that no objection was
23 necessary to preserve the issue for reconsideration either in a motion for new trial or
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1 on appeal," the clear holdings of the Nevada Supreme court say otherwise. It is a
2 well settled rule of law that "[t]he failure to object to allegedly prejudicial remarks at
3 the time an argument is made, and for a considerable time afterwards, strongly
4 indicates that the party moving for a new trial did not consider the arguments
5 objectionable at the time they were delivered, but made that claim as an
6 afterthought." Beccard v. Nevada Nat'l Bank, 99 Nev. 63, 657 P.2d 1154 (1983), *citing*
7 Curtis Publishing Company v. Butts, 351 F.2d 702, 714 (5th Cir.1965), *aff'd*, 388 U.S.
8 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967). In the case of Beccard, *supra*, the District
9 Court granted a Motion for a New Trial for Respondent Nevada National Bank
10 based on the claim that counsel for Appellant had made no less than eight (8) "highly
11 prejudicial and inflammatory statements" allegedly made during closing argument.
12 However, there, as here, no objection was made at the time of Trial. The Nevada
13 Supreme Court reversed the District Court's granting of a new Trial as they were not
14 objected to at the time of Trial. In so finding, the Court stated that "[s]pecific
15 objections must be made to allegedly improper closing arguments in order to
16 preserve the contention for appellate review. Southern Pac. Transp. Co. v.
17 Fitzgerald, 94 Nev. 241, 244, 577 P.2d 1234, 1235-36 (1978). The Court concluded that
18 the District Court committed error in granting a new trial under NRCP 59 based on
19 the allegations of improper arguments because the moving party failed to object to
20 the allegedly improper closing arguments at trial and raised the allegation for the
21 first time in a Motion for a New Trial. Beccard, *supra* at 1156, *citing* Curtis Publishing,

1 *supra*. The same holds true in this matter. There was no objection raised at the time
2 of Trial. The fact that there are dynamic changes of a case during Trial, something
3 that happens in *every* case, does not lessen the burden on the parties to raise
4 contemporaneous objections. Here, there was none and raising the issue now, on a
5 Motion for New Trial, is not sufficient. As such Plaintiff's Motion must be denied.
6

7
8 **II. *There was no misconduct of the jury or prevailing party warranting a***
9 ***new trial***

10 As this Court is also aware, when a party is given the opportunity for a
11 mistrial during litigation, or a curative instruction related to the admission of Trial
12 evidence, and therein waives the opportunity to ask for same at Trial, they are
13 thereafter barred from raising the same circumstances as a basis for a Motion for
14 New Trial following an adverse verdict. This is precisely the circumstances that
15 present themselves to the Court in this matter.
16

17
18 The Plaintiff has argued that defense Trial counsel "engaged in repeated acts
19 of misconduct which while objected to and to which objections were sustained no
20 admonishment was given to the jury." (Motion at page 6). A reading of the Trial
21 transcripts however reveals a different story. While it is true that defense Trial
22 counsel was admonished by this Court to refrain from making further reference to
23 the Plaintiff as an "Israeli Businessman," and that the Court went as far as to caution
24 defense counsel that any further such comment could result in a Mistrial, the record
25 reveals that the first broach of the subject was elicited by *Plaintiff's Counsel* during
26
27
28

1 the direct examination of Plaintiff by Mr. Iglody.

2 Q: I see you hesitating. What's - what's is your mother tongue?

3 A: Hebrew

4 Trial Transcript, Day 2, Page 4 line 23-25.

5 This discussion continued onto the next page:

6 Q: How long have you been in the United States?

7 A: I've been in and off. I came here as a young man and I left the country
8 and then I came back. Since I came back was 15 years.

9 Trial Transcript, Day 2, Page 4 line 23-25.

10 During cross examination, the Plaintiff volunteered that "English is my
11 second language. And I never went - I never went to school in America."

12 Trial Transcript, Day 2, Page 24 lines 11-12.

13 It was during further cross examination of Plaintiff that defense counsel
14 asked the following question:

15 Q: You knew as a businessman, a successful, very wealthy Israeli
16 businessman, that the fact that this project - -

17 Trial Transcript, Day 2, Page 31 line 9-11.

18 The Court then immediately asked counsel to approach and sent the jury to
19 lunch. Thereafter, there was a lengthy conversation between the Court and counsel
20 regarding the use of the word "Israeli" by defense counsel. The Court admonished
21 defense Trial counsel not to do it again and indicated that if it happened again, the

1 Court would declare a mistrial.

2 Trial Transcript, Day 2, Page 34

3 Thereafter defense Trial counsel apologized, indicated his intent was not to
4 offend of inflame the jury, and promised the Court it wouldn't happen again.
5

6 Following the lunch break, the Court again admonished defense Trial
7 counsel. Trial Transcript, Day 2, Page 37.
8

9 From that point on, the record indicates that it was *plaintiff's counsel*
10 *themselves* that asked that no curative instruction be given and never moved the
11 Court to grant a mistrial. Specifically; the following exchange took place:
12

13 Q: (by the Court): So, my question to the plaintiff's counsel is do you want a
14 curative instruction?
15

16 A: The problem with a -

17 Q: (by the Court): Or do you just want to move on?
18

19 A: The problem with a curative instruction, and this is difficult for us, is, of
20 course, when you give a curative instruction, you just draw attention to it.

21 Q: (by the Court): Highlights it, yes.
22

23 A: And that - that creates the problem. If it would please the Court I think
24 perhaps you can reserve on that issue for now, depending on how the rest of the
25 examination goes. And if necessary, that can be addressed perhaps before we issue
26 the jury instructions, depending on whether it's necessary. At some point I have to
27 rely on the jury's good discretion to see past these inflammatory statements.
28

1 Q: (by the Court): Okay. Then we'll continue.

2 Trial Transcript, Day 2, Page 37.

3 Thereafter, there was no mention of the word "Israeli" by either party and the
4 issue did not present itself again. Moreover, and more importantly, the Plaintiff
5 *never* again made an objection, Motion (for mistrial or otherwise) or request for
6 curative instruction related to the issue. The record reveals a thorough discussion
7 about all areas of the jury instructions and forms of verdict, in which the issue is
8 neither raised or mentioned by *any* party or the Court. Trial Transcript, Day 5, Pages
9 23-38.
10
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13 The Nevada Supreme Court has consistently held that one of this court's
14 "primary objectives" is to promote the "efficient administration of justice." Eberhard
15 Mfg. Co. v. Baldwin, 97 Nev. 271, 273, 628 P.2d 681, 682 (1981). The efficient
16 administration of justice requires that any doubts concerning a verdict's consistency
17 with Nevada law be addressed before the court dismisses the jury. Carlson v.
18 Locatelli, 109 Nev. 257, 262-63, 849 P.2d 313, 316 (1993). The Court has also held that
19 wherever possible, the verdict should be salvaged so that no new trial is required."
20 Id. at 263, 849 P.2d at 316-17. In furtherance of that goal, the Court has repeatedly
21 held true the policy that "failure to timely object to the filing of the verdict or to move
22 that the case be resubmitted to the jury" constitutes a waiver of the issue of an
23 inconsistent verdict. Eberhard, 97 Nev. at 273, 628 P.2d at 682. *See also* Brascia v.
24 Johnson, 105 Nev. 592, 596, 781 P.2d 765, 768 (1989); Carlson, 109 Nev. at 262-63, 849
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1 P.2d at 316-17.

2 Accordingly, in the instant case, the Plaintiff's clear decision to pass on the
3 Court's offered consideration of either a curative jury instruction or Motion for
4 Mistrial, would have allowed the issue to be addressed while the jury was still in the
5 box and in doing so, would have allowed for the Court to make a determination at
6 that time in the efficient administration of justice. When given this option, the
7 Plaintiff unequivocally decided against making a motion for same. The Plaintiff
8 even asked the Court to reserve the issue, and even given the flexibility to make the
9 same motion later, never did. The Plaintiff was given the opportunity to object,
10 move the Court for a Mistrial or ask for a curative instruction. The Plaintiff chose
11 not to do so. As such, the Plaintiff has waived his ability to argue for same at this
12 juncture following an adverse verdict. This Court should not consider this argument
13 now, after the jury has returned their verdict and should deny Plaintiff's Motion on
14 this issue.
15
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19

20 *III. There was no "manifest disregard by the jury of the instructions of the*
21 *court"*

22 In determining the propriety of the granting of a new trial under NRC
23 59(a)(5), the question is not whether the jurors correctly applied the instructions of
24 the court in their entirety, but whether one can "declare that, had the jurors properly
25 applied the instructions of the court, it would have been impossible for them to reach
26 the verdict which they reached." Weaver Bros. v. Misskelley, 98 Nev. 232 (1982),
27
28

1 citing Fox v. Cusick, 91 Nev. 218, 533 P.2d 466 (1975); see also Groomes v. Fox, 96 Nev.
2 457, 611 P.2d 208 (1980); Eikelberger v. Tolotti, 94 Nev. 58, 574 P.2d 277 (1978); Price
3 v. Sinnott, 85 Nev. 600, 460 P.2d 837 (1969).

4
5 In the instant case, while the Plaintiff makes naked allegation that "the only
6 possible explanation for this verdict must lie in the Defendant's improper conduct
7 during the trial" - - Plaintiff cannot point to a single shred of evidence in the record
8 that in any way intimates either the seeking of a nullified verdict or a verdict that is
9 based on nullification. The only explanation that Plaintiff makes to this end is that
10 the verdict was a dissatisfactory one and thus, must have been based on jury
11 nullification. Clearly, this tenuous argument cannot be stretched to meet the
12 Plaintiff's burden to show that "it would have been impossible for them to reach the
13 verdict they reached." See Weaver Bros. v. Misskelley, *supra*.

14
15
16
17 In this matter, the jury clearly, through polling, indicated their reasoned
18 decision in this case. On page 78-80 of the day 5 Trial Transcript, this honorable
19 Court polled the entire jury, member by member, and inquired of their responses
20 and verdict. There was no objection to the polling and there was no objection to the
21 ultimate verdict made contemporaneous with this process. As such, the Plaintiff
22 must now be precluded from raising this issue on a Motion for New Trial pursuant
23 to NRCP 59. Our Supreme Court has held that "[f]ailure to object to asserted errors
24 at trial will bar review of an issue on appeal." McCullough v. State, 99 Nev. 72, 74,
25 657 P.2d 1157, 1158 (1983); see also Allum v. Valley Bank of Nevada, 970 P. 2d 1062
26
27
28

1 (1998), citing Commonwealth v. Jackson, 457 Pa. 237, 324 A.2d 350, 353 (Pa. 1974)
2 (one cannot be heard to challenge unanimity of verdict where he fails to question the
3 jurors' answers or requests that jurors be further interrogated); See also Scott v.
4 Chapman, 71 Nev. 329, 331, 291 P.2d 422, 423 (1955).
5

6 **CONCLUSION**
7

8 Based upon the foregoing, Defendant's Motion for Reconsideration should be
9 GRANTED and Plaintiff's previously filed Motion for New Trial should be DENIED
10 in its entirety.
11

12 DATED this 27th day of August, 2013.
13

14 **HOFLAND & TOMSHECK**
15

16 By: 
17

18 Joshua Tomsheck, Esq.
19 Nevada Bar No. 9210
20 228 South Fourth Street, 1st Floor
21 Las Vegas, Nevada 89101
22 (702) 895-6760
23 Attorney for Christopher Beavor
24
25
26
27
28

1
2
3 CERTIFICATE OF SERVICE

4 Pursuant to NRCP 5(b) I hereby certify that I am an employee of HOFLAND &
5 TOMSHECK and that on the 28th day of August, 2013, service of a true and correct copy
6 of the foregoing MOTION FOR RECONSIDERATION was made as indicated below:

7 X By First Class Mail, postage prepaid from Las Vegas, Nevada; or

8 X By Facsimile to the numbers indicated on this certificate of service; or

9 _____ By Personal Service as indicated.

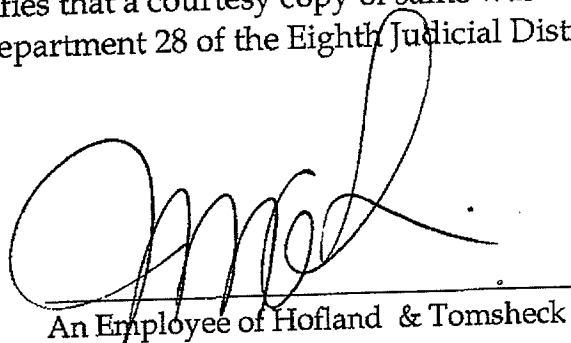
10 to : H. STAN JOHNSON, and
11 BRIAN A. MORRIS
12 c/o COHEN-JOHNSON, LLC
13 6923 Dean Martin Drive, Suite G
14 Las Vegas, Nevada, 89118

15 And that a copy of same was sent via facsimile transmission to:

16 (702) 823-3400

17 Additionally, the undersigned verifies that a courtesy copy of same was
18 delivered via facsimile transmission to Department 28 of the Eighth Judicial District
19 Court to:

20
21 (702) 366-1407

22 
23 An Employee of Hofland & Tomscheck
24
25
26
27
28

*** FAX TX REPORT ***

TRANSMISSION OK

JOB NO.	1332
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PSWD/SUBADDRESS	
DESTINATION ID	
ST. TIME	08/28 12:19
USAGE T	12' 07
PGS.	34
RESULT	OK

Hofland &
Tomscheck

ATTORNEYS AND COUNSELORS AT LAW

BRADLEY J. HOFLAND*
JOSH TOMSHECK
MATTHEW D. MANNING (1970 - 2005)

FACSIMILE TRANSMITTAL COVER LETTER

DATE: August 28, 2013
TO: Department 28
FROM: Joshua Tomscheck, Esq.
FAX NO.: (702) 366-1407
Re: *Hefetz vs. Beavor*

If there are any problems with this transmission, please contact our office at 702-895-6760

MESSAGE:

Please see the attached.

PA00055

Hofland &
Tomsheck

ATTORNEYS AND COUNSELORS AT LAW

BRADLEY J. HOFLAND*
JOSH TOMSHECK
MATTHEW D. MANNING (1970 - 2005)

FACSIMILE TRANSMITTAL COVER LETTER

DATE: August 28, 2013
TO: Department 28
FROM: Joshua Tomsheck, Esq.
FAX NO.: (702) 366-1407
Re: *Hefetz vs. Beavor*

If there are any problems with this transmission, please contact our office at 702-895-6760

MESSAGE:

Please see the attached.

*** FAX TX REPORT ***

TRANSMISSION OK

JOB NO.	1329
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PSWD/SUBADDRESS	
DESTINATION ID	
ST. TIME	08/28 12:02
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PGS.	32
RESULT	OK

Hofland &
Tomscheck

ATTORNEYS AND COUNSELORS AT LAW

BRADLEY J. HOFLAND*
JOSH TOMSHECK
MATTHEW D. MANNING (1970 - 2005)

FACSIMILE TRANSMITTAL COVER LETTER

DATE: August 28, 2013

TO: H. Stan Johnson, Esq. and Brian Morris, Esq.

FROM: Joshua Tomscheck, Esq.

FAX NO.: (702) 823-3400

Re: *Hefetz vs. Beaver*

If there are any problems with this transmission, please contact our office at 702-895-6760

MESSAGE:

Please see the attached.

PA00057

Hofland &
Tomsheck

ATTORNEYS AND COUNSELORS AT LAW

BRADLEY J. HOFLAND*
JOSH TOMSHECK
MATTHEW D. MANNING (1970 - 2005)

FACSIMILE TRANSMITTAL COVER LETTER

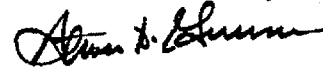
DATE: August 28, 2013
TO: H. Stan Johnson, Esq. and Brian Morris, Esq.
FROM: Joshua Tomsheck, Esq.
FAX NO.: (702) 823-3400
Re: Hefetz vs. Beavor

If there are any problems with this transmission, please contact our office at 702-895-6760

MESSAGE:

Please see the attached.

EXHIBIT A



CLERK OF THE COURT

1 WOA
2 MARC A. SAGGESE, ESQ.
3 Nevada Bar No. 7166
4 SAGGESE & ASSOCIATES, LTD.
5 732 S. Sixth Street, Suite 201
6 Las Vegas, Nevada 89101
7 Telephone 702.778.8883
8 Facsimile 702.778.8884
9 Marc@MaxLawNV.com
10 Attorney for Defendant Christopher Beavor

DISTRICT COURT
CLARK COUNTY, NEVADA

11 YACOV JACK HEFETZ, an individual,

12 Plaintiff,

Case No.: A-11-645353-C
Dept. No.: XXVIII

13 vs.

14 CHRISTOPHER BEAVOR, an individual;
15 SAMANTHA BEAVOR, an individual; DOES I
16 through X and ROE ENTITIES I through X,
17 inclusive,

18 Defendants.

NOTICE OF WITHDRAWAL OF
ATTORNEY

19 Pursuant to Supreme Court Rule 46, MARC A. SAGGESE, ESQ., hereby gives notice of
20 his withdrawal as attorney of record for Defendant, CHRISTOPHER BEAVOR, a final
21 determination having being entered in this matter.

22 DATED this 25th day of March, 2013.

23 /s/ MARC A. SAGGESE, ESQ.

24 MARC A. SAGGESE, ESQ.
25 Nevada Bar No. 7166
26 SAGGESE & ASSOCIATES, LTD.
27 732 S. Sixth Street, Suite 201
28 Las Vegas, Nevada 89101
Telephone 702.778.8883
Facsimile 702.778.8884
Marc@MaxLawNV.com

1 CERTIFICATE OF SERVICE

2 THIS IS TO CERTIFY that on the 25th day of March, 2013, a copy of the foregoing
3 NOTICE OF WITHDRAWAL OF ATTORNEY was sent via facsimile and in a sealed
4 envelope via US-Mail, with postage fully pre-paid thereon, to the following counsel of record,
5

6 H. Stan Johnson; Esq.
7 Brian A. Morris, Esq.
8 Cohen-Johnson, LLC
9 255 E. Warm Springs Road, Ste. 100
Las Vegas, NV 89119
702.823.3400

10 and that there is regular communication between the place(s) of mailing and the place(s) so
11 addressed.
12

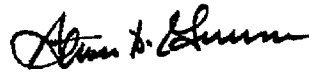
13 /s/ Alexis Vardoulis

14

An Employee of Saggese & Associates, Ltd.
15
16
17
18
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28

EXHIBIT B

PA00062



CLERK OF THE COURT

JUDG
MARC A. SAGGESE, ESQ.
Nevada Bar No. 7166
SAGGESE & ASSOCIATES, LTD.
732 S. Sixth Street, Suite 201
Las Vegas, Nevada 89101
Telephone 702.778.8883
Facsimile 702.778.8884
Marc@MaxLawNV.com
Attorney for Defendants/Counterclaimants

DISTRICT COURT
CLARK COUNTY, NEVADA

YACOV JACK HEFETZ, an individual,

Plaintiff,

vs.

**CHRISTOPHER BEAVOR, an individual;
SAMANTHA BEAVOR, an individual; DOES I
through X and ROE ENTITIES I through X,
inclusive,**

Defendants.

Case No.: A-11-645353-C
Dept. No.: XXVIII

JUDGMENT

**CHRISTOPHER BEAVOR, an individual;
SAMANTHA BEAVOR, an individual,**

Counterclaimants,

vs.

**YACOV JACK HEFETZ, an individual; DOES I
through X; and ROE CORPORATIONS 1
through 10, inclusive,**

Counter-Defendant.

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Slip Dis	<input type="checkbox"/> Sum Jdgmt	FINAL DISPOSITIONS <input type="checkbox"/> Time Limit Expired <input type="checkbox"/> Dismissed (with or without prejudice) <input type="checkbox"/> Judgment Satisfied/Paid in full
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Slip Jdgmt	<input type="checkbox"/> Non-Jury Trial	
<input type="checkbox"/> Jdgmt r- Arb Award	<input type="checkbox"/> Default Jdgmt	<input checked="" type="checkbox"/> Jury Trial	
<input type="checkbox"/> Non to Dis (by def)	<input type="checkbox"/> Transferred		

5/14/13 (28)

PA00063

1 **I. JUDGMENT ON JURY VERDICT**

2 This action came on for trial before the Court, Honorable Ronald J. Israel, District Judge,
3 presiding and a jury on February 25, 26, 27, 28, and March 1, 2013, the issues having been duly
4 tried and the jury having duly rendered its verdict on March 1, 2013, the Court enters this
5 Judgment pursuant to N.R.C.P. 54.

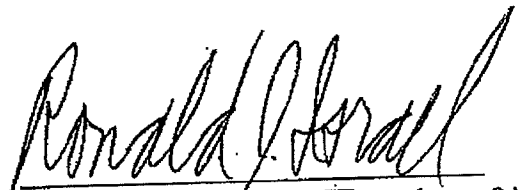
7 IT IS ORDERED AND ADJUDGED that Judgment on the jury verdict is entered in
8 favor of Defendant Christopher Beavor.

9 **II. NOTICE OF ENTRY OF JUDGMENT**

10 Within ten (10) days after entry of this Judgment, Defendant shall serve written notice of
11 such entry, together with a copy of this Judgment, upon Plaintiff and shall file notice of entry
12 with the clerk of the court.
13

14 IT IS SO ORDERED.

15 DATED this 17 day of May, 2013.

16
17
18 
19 DISTRICT COURT JUDGE

20 Respectfully Submitted,


21
22 
23 **MARC A. SAGGESE, ESQ.**
24 Nevada Bar No. 7166
25 **SAGGESE & ASSOCIATES, LTD.**
26 732 S. Sixth Street, Suite 201
27 Las Vegas, Nevada 89101
28 Telephone 702.778.8883
Facsimile 702.778.8884
Marc@MaxLawNV.com
Attorney for Defendants/Counterclaimants

EXHIBIT 1

PA00065

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAR 01 2013 4:23pm

BY Kathy Klein
KATHY KLEIN, DEPUTY

YACOV JACK HEFETZ, an individual,

Plaintiff,

vs,

CHRISTOPHER BEAVOR, an
individual,

Defendant.

CASE NO: A-11-645353-C

DEPT NO.: XXVIII

VERDICT FORM

We, the jury in the above-entitled action find:

For Plaintiff _____

For Defendant 0

If you find in favor of Plaintiff: \$ _____

DATED this 1 day of March, 2013.

Holly Howard
FOREPERSON

RECEIVED

MAR 04 2013

CLERK OF THE COURT

A-11-645353-C
VER
Verdict
2270478



EXHIBIT C

PA00067

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Location : All Courts Images Help

REGISTER OF ACTIONS**CASE NO. A-11-645353-C****Yacov Hefetz, Plaintiff(s) vs. Christopher Beavor, Defendant(s)****Case Type: Breach of Contract****Subtype: Guarantee****Date Filed: 07/21/2011****Location: Department 28****Conversion Case Number: A645353****PARTY INFORMATION**

Counter Claimant	Beavor, Christopher	Lead Attorneys Joshua L. Tomsheck <i>Retained</i> 702-671-2640(W)
Counter Claimant	Beavor, Samantha	Marc A. Saggese <i>Retained</i> 702-788-8883(W)
Counter Defendant	Hefetz, Yacov Jack	H. Stanley Johnson <i>Retained</i> 702-823-3500(W)
Defendant	Beavor, Christopher	Joshua L. Tomsheck <i>Retained</i> 702-671-2640(W)
Defendant	Beavor, Samantha	Marc A. Saggese <i>Retained</i> 702-788-8883(W)
Plaintiff	Hefetz, Yacov Jack	H. Stanley Johnson <i>Retained</i> 702-823-3500(W)

EVENTS & ORDERS OF THE COURT

DISPOSITIONS	
06/26/2012	Order of Dismissal (Judicial Officer: Israel, Ronald J.) Debtors: Christopher Beavor (Defendant), Samantha Beavor (Defendant) Creditors: Alis Cohen (Plaintiff) Judgment: 06/26/2012, Docketed: 07/05/2012
03/01/2013	Verdict (Judicial Officer: Israel, Ronald J.) Debtors: Yacov Jack Hefetz (Plaintiff) Creditors: Christopher Beavor (Defendant) Judgment: 03/01/2013, Docketed: 03/05/2013
05/21/2013	Judgment Upon the Verdict (Judicial Officer: Israel, Ronald J.) Debtors: Yacov Jack Hefetz (Plaintiff) Creditors: Christopher Beavor (Defendant) Judgment: 05/21/2013, Docketed: 05/29/2013
OTHER EVENTS AND HEARINGS	
07/21/2011	Case Opened
07/21/2011	Document Filed <i>Verified Complaint</i>
07/22/2011	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>
09/21/2011	Affidavit of Service <i>Affidavit of Service of Christopher Beavor</i>
09/27/2011	Affidavit of Service <i>Affidavit of Service of Samantha Beavor</i>
10/21/2011	Answer and Counterclaim <i>Defendants' Answer to Complaint and Counterclaim</i>
10/21/2011	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>
11/01/2011	Reply to Counterclaim <i>Reply to Counterclaim</i>
11/28/2011	Demand for Jury Trial


CLERK OF THE COURT

1 **OPP**
2 **COHEN-JOHNSON, LLC**
3 H. STAN JOHNSON
4 Nevada Bar No. 00265
5 sjohnson@cohenjohnson.com
6 TERRY KINNALLY, ESQ.
7 Nevada Bar No. 6379
8 tkinnally@cohenjohnson.com
9 255 W. Warm Springs Rd., Ste. 100
10 Las Vegas, Nevada 89119
11 Telephone: (702) 823-3500
12 Facsimile: (702) 823-3400
13 *Attorneys for Plaintiffs*

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

10 YACOV JACK HEFETZ, an individual,

11 Plaintiff,

12 vs.

Case No.: A645353

Dept. No.: XXVIII

13 CHRISTOPHER BEAVOR, an individual;
14 SAMANTHA BEAVOR, an individual; DOES I
15 through X and ROES ENTITIES I through X,
16 inclusive,

Defendants.

17 **OPPOSITION TO DEFENDANT'S MOTION FOR RECONSIDERATION**

18 Come now, plaintiff, Yacov Jack Hefetz, by and through his attorneys of record H. Stan
19 Johnson, Esq. Of Cohen-Johnson, LLC, and pursuant to Eighth Judicial District Court Rule 2.24,
20 files his Opposition to the Defendant's Motion for Reconsideration.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

COHEN-JOHNSON, LLC
6293 Dean Martin Drive, Suite G
Las Vegas, Nevada 89118
(702) 823-3500 FAX: (702) 823-3400

1 This Motion is made and based upon the following Points and Authorities, all papers
2 and pleadings on file herein, the Affidavit of Brian Morris, Esq. attached hereto, and any and
3 all oral argument as may be allowed at the time of hearing.

4 DATED this 16th day of September, 2013.

5 COHEN-JOHNSON, LLC

6
7 By: /s/ H. Stan Johnson
8 H. STAN JOHNSON, ESQ.
9 Nevada Bar No. 0265
10 TERRY KINNALLY, ESQ.
11 Nevada Bar No. 6379
12 255 W. Warm Springs Rd., Ste. 100
13 Las Vegas, Nevada 89119
14 *Attorneys for Plaintiff*

15 **POINTS AND AUTHORITIES**

16 **I.**

17 **FACTS**

18 The civil case *Yacov Jack Hefetz vs. Christopher Beavor* (hereinafter referred to as *Hefetz*
19 *v. Beavor*) was heard before a jury between February 26, 2013 through March 1, 2013. The case
20 arose out of Defendant's failure to meet his obligations as guarantor of a defaulted personal loan
21 in the amount of \$6,000,000.00. The underlying facts of the litigation are these:

22 On or about March 29, 2007, Defendant entered into a Loan Agreement whereby
23 Borrower procured a loan in the amount of \$6,000,000.00 (the "Loan") from lender the Herbert
24 Frey Revocable Family Trust ("Lender"). As part of the inducement for the loan, Defendant
25 signed an unconditional and irrevocable personal guarantee of full and prompt payment of the
26 principal and interest due and owing on the Loan.

27 On or about July 6, 2011, the principal Mr. Frey, assigned Plaintiff Hefetz and Alis
28 Cohen all of Lender's right, title and interest in and to the Payment Guarantee. Frey assigned the
Personal Guaranty (and other Loan documents) to Hefetz because he has cancer and was getting
too old to pursue Defendants. Alis Cohen subsequently assigned her rights under the Payment

1 Guaranty in full to Hefetz. A jury trial on the matter was held and a verdict entered in favor of
2 the Defendants. Notice of entry of the order was entered on May 21, 2013. A Motion for
3 Judgment not on the Verdict or in the alternative for a New Trial was timely filed on June 10,
4 2013. Plaintiff filed an opposition in which the sole argument was the untimeliness of the
5 motion. Defendant filed a Reply to the Motion which was served by facsimile on July 2, 2013
6 (See Exhibit 1) and by mail on July 10, 2013 (See Exhibit 2) and the Court granted the Motion
7 for a New Trial on August 7, 2013.

8 Defendant has now filed a Motion to Reconsider alleging that his failure to respond on
9 the merits was due to his belief that the Plaintiff was going to withdraw the motion as untimely.
10 This is refuted by the affidavit of Brian Morris, Esq. which is attached hereto as Exhibit 3 and
11 incorporated herein and the pleadings themselves. As the affidavit illustrates on June 20, 2013
12 Defendant's counsel called Mr. Morris at the office of Cohen Johnson and informed Mr. Morris
13 that the Motion for New Trial filed by the Plaintiff was untimely. Mr. Morris informed Mr.
14 Tomscheck that he had not prepared the motion but would inquire into the matter. Mr.
15 Tomscheck, did not wait for Mr. Morris to get back to him, but filed his Opposition which only
16 addressed the timeliness issue. Approximately an hour and a half later, Mr. Tomscheck, again
17 spoke with Mr. Morris who informed him that Mr. Tomscheck had miscalculated the date, that
18 Plaintiff's Motion was timely filed. Mr. Tomscheck replied that he would stand on his motion
19 and would address the merits only if the Court requested supplemental briefing. Mr. Morris
20 informed him that we would abide by the Court's ruling on the issue of supplemental briefing.
21 On July 2, 2013, Plaintiff filed his Reply to the Opposition, arguing that Defendant's failure to
22 address the merits constituted a waiver of his argument (See Exhibit 1) and again served the
23 motion by mail on July 10, 2013 (See Exhibit 2). Although Defendant had actual knowledge of
24 the Plaintiff's position, he never requested leave to file a supplemental brief arguing the merits of
25 the motion under EJDRC 2.20 (i). The Motion was originally set for the Court's Chambers
26 Calendar on July 17, 2013, but was moved by the Court to the Chambers Calendar on August 7,
27 2013 where the Court granted the Motion for a New Trial. At no time did Defendant ever
28

1 request or file a motion for additional briefing or file a request for an oral argument. On August
2 7, 2013 the Court granted the Motion for New Trial.

3
4 II.

5 LAW AND ARGUMENT

6 Defendant has brought a motion for reconsideration as to this Court's entry of an Order
7 Granting a New Trial. A Motion for Reconsideration is governed by EJDRC2.24 which provides:

8 **Rule 2.24. Rehearing of motions.**

9 (a) No motions once heard and disposed of may be renewed in the same
10 cause, nor may the same matters therein embraced be reheard, *unless by*
11 *leave of the court granted upon motion therefor, after notice of such*
12 *motion to the adverse parties.*

13 (b) A party seeking reconsideration of a ruling of the court, other than
14 any order which may be addressed by motion pursuant to N.R.C.P.
15 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after
16 service of written notice of the order or judgment unless the time is
17 shortened or enlarged by order. A motion for rehearing or reconsideration
18 must be served, noticed, filed and heard as is any other motion. A motion
19 for reconsideration does not toll the 30-day period for filing a notice of
20 appeal from a final order or judgment.

21 (c) If a motion for rehearing is granted, the court may make a final
22 disposition of the cause without reargument or may reset it for reargument
23 or resubmission or may make such other orders as are deemed appropriate
24 under the circumstances of the particular case.

25 It must be initially pointed out that once again the Defendant has ignored the Court rules and
26 failed to request leave to file the Motion from the Court with notice to the Plaintiff as required
27 under the Rule 224. Defendant filed the Motion, either presuming that the Court will grant leave
28 and a hearing on the motion despite his noncompliance, or that he is not bound by the rules. Just
as Defendant chose to not address the Plaintiff's Motion on its merits, although he had a more
than ample opportunity to do so; the Defendant has now chosen to ignore the requirements of the
very rule which he invokes for relief. Defendant's motion should be denied on its face for its
failure to comply with EJDRC 2.24 (a).

However despite the fact that the Motion is improperly filed, in the interest of judicial
economy the Plaintiff will address the arguments made, without waiving the objection to the
motion itself.

1 A. DEFENDANT'S MOTION FOR RECONSIDERATION
2 AS TO TIMELINESS SHOULD BE DENIED

3 1. Defendant has set forth no new facts or law supporting reconsideration.

4 The Supreme Court of Nevada has made it clear that a Motion for Reconsideration is not
5 a do-over and reconsideration should be granted only in "very rare circumstances" as the Court
6 noted in Moore v. Las Vegas 92 Nev. 402,405 (Nev. 1976).

7 "...only in very rare instances in which new issues of fact or law are raised
8 supporting a ruling contrary to the ruling already reached should a motion
9 for rehearing be granted." *Id.*

10 The Court also found that it is an "...abuse of discretion" for the district court to
11 entertain a motion for rehearing that lacks new issues of fact or law. *Id.*

12 The issue of timeliness was decided by this Court on August 7, 2013 and Defendant fully
13 briefed that issue, therefore any additional argument which does not provide new evidence or
14 law unavailable at the time of the initial opposition cannot support a Motion for
15 Reconsideration.. Therefore the timeliness of the Motion for New Trial is not a justiciable issue.
16 However since Defendant has chosen to address it and now argues that Plaintiff was obliged to
17 file it's Motion for New Trial on Saturday June 8 rather than June 10, the Plaintiff cannot allow
18 this statement to go unchallenged.

19 Computation of time is specifically addressed by EJDCCR 1.14 which provides:

20 **Rule 1.14. Time; judicial days; service by mail.**

21 (a) In computing any period of time prescribed or allowed by these rules,
22 by order of court, or by any applicable statute, the day of the act, event or
23 default from which the designated period of time begins to run must not be
24 included. ***The last day of the period so computed must be included, unless it***
25 ***is a Saturday, a Sunday, or a non-judicial day, in which event the period***
26 ***runs until the end of the next day which is not a Saturday, a Sunday or a***
27 ***non-judicial day,*** or, when the act to be done is the filing of a paper in court,
28 a day on which weather or other conditions have made the office of the clerk
of the district court inaccessible, in which event the period runs until the end
of the next day which is not one of the aforementioned days. The County
Clerk shall memorialize and maintain in a written log all such inaccessible
days. When the period of time prescribed or allowed is less than 11 days,
intermediate Saturdays, Sundays, and non-judicial days must be excluded in
the computation.

(b) If any day on which an act required to be done by any one of these rules falls on a Saturday, Sunday or legal holiday, the act may be performed on the next succeeding judicial day.

(c) Except as otherwise provided in paragraph (d) of this rule, whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper, other than process, a motion for a new trial, a motion to vacate judgment pursuant to NRCP 59 or a notice of appeal, and the notice or paper is served upon the party by mail, either U.S. Mail or court authorized electronic mail, or by electronic means, three (3) days must be added to the prescribed period.

(d) The three (3) calendar days provided for in paragraph (c) of this rule shall not apply to criminal proceedings due to the necessity of getting matters on the calendar as quickly as possible as provided for in EDCR 3.20.

[As amended; effective December 10, 2009.] (emphasis added)

The rules are quite specific that when the last day of a period which includes the three days for mailing, falls on a Saturday or Sunday the date is continued to the next business day. This is the rule, affirmed by the Nevada Supreme Court of Nevada in *Winston Products Company, Inc. v. DeBoer et.al.* 122 Nev. 517, 134 P3d 726 (Nev 2006.) In view of the clear Nevada law on this issue Defendant's reliance on cases from other jurisdictions and Nevada cases overruled by Winston is meaningless.

Additionally Defendant had actual knowledge from Mr. Morris, that the Plaintiff would not concede the timeliness of the motion on June 20, 2013. This was reinforced when Defendant received Plaintiff's reply by fax on July 2, 2013, and again by mail on July 10, 2013 which argued that not only was the Motion timely filed but Defendant's failure to address the merits constituted a waiver of those arguments. This put Defendant on notice that Plaintiff was seeking a decision on the merits. The Defendant made a strategic choice to not seek leave to file a supplemental brief; request additional relief from the Court or even to request that the Court transfer the matter from the chambers calendar to Court's regular motion calendar. Instead the Defendant allowed the Court to rule and only after losing the motion sought to address the merits of the Plaintiff's Motion.

2. Defendant voluntarily waived his right to address the merits of the Motion.

The fact that Defendant miscalculated the timeliness of the Plaintiff's Motion does not negate his obligation to address the Motion on its merits. Nor does the fact that his tactical decision to rely solely on a timeliness issue was unsuccessful justify his attempts now attempt to

1 reopen the issues. Defendant argues that the Courts seek to have matters heard on the merits.
2 However the simple fact is that the Defendant had a full opportunity to address the merits of the
3 Motion but chose not to do so. This is not a denial of a hearing on the merits by the Court, but a
4 voluntary waiver of that hearing by the Defendant. A Defendant may not refuse to address the
5 merits on a claim, and then after losing, seek to re-litigate the issue.

6 In support of his Motion Defendant relies on EJDRCR 2.20. However, this reliance is
7 misplaced. The rule does not permit a party to reserve arguments in opposition and file them
8 piecemeal. It is not satisfied merely by the filing of a piece of paper entitled opposition which
9 ignores the arguments raised in the Motion it is addressing. The opposition must address the
10 arguments and authorities raised in the motion and the failure to do so may result in the Court
11 choosing to ignore the opposition. As EJDRCR 2.20 e) provides:

12
13 (e) Within 10 days after the service of the motion, and 5 days after
14 service of any joinder to the motion, the opposing party must serve and file
15 written notice of nonopposition or opposition thereto, together with a
16 memorandum of points and authorities and supporting affidavits, if
17 any, stating facts showing why the motion and/or joinder should be
18 denied. Failure of the opposing party to serve and file written
19 opposition may be construed as an admission that the motion and/or
20 joinder is meritorious and a consent to granting the same. (emphasis
21 added)

22 The rule does not allow the Opposition to address some issues while reserving the right to
23 address other issues should they not prevail. Additionally EJDRCR 2.20(i) provides:

24 "...supplemental briefs will only be permitted if filed within the original time limitations of
25 paragraph (a) (b) or (d) or by order of the Court." This language does not explicitly or implicitly
26 allow, encourage or condone, a party who, for whatever reason, fails to address the full merits of
27 a Motion and then attempts to first address the merits on a motion for reconsideration.
28 Defendant had both the opportunity and the obligation to seek relief from the Court prior to the
decision on the Motion for New Trial on August 7, 2013. Defendant under EJDRCR 2.20(i) had
the right to file a supplemental brief up until June 27th, 2013, but chose not to do so. Defendant
also had the opportunity to ask the Court to permit supplemental briefing prior to the August 7,
2013 chambers hearing but again chose not to act. Defendant had a more than ample opportunity

1 to address the merits of the Plaintiff's Motion, but made a deliberate and intentional decision not
2 to do so and must now accept the consequences of that decision.

3 **B. PLAINTIFF IS ENTITLED TO A NEW TRIAL**

4 While Plaintiff objects to Defendant's attempt to re-litigate the merits of the original
5 Motion for New Trial, without waiving the objections previously raised cannot allow the
6 Defendant's arguments, however improper to go unchallenged.

7 Plaintiff sought and was granted a new trial based on the following grounds pursuant to
8 NRCP 59:

9 *(A) Irregularity in the proceedings of the court, jury, master, or adverse party, or any*
10 *order of the court, or master, or abuse of discretion by which either party was prevented from*
11 *having a fair trial;*

12 At the trial of this matter, the Defendant referred in his opening statement to an unsigned
13 offer of settlement negotiations which Defendant sent to non-party Frey. At the time, the
14 evidence may have been admissible for the limited purpose of supporting the Defendants'
15 counterclaim that Plaintiff fraudulently prevented Mr. Frey from accepting the offer. However,
16 once the Counterclaims were dismissed as a matter of law, the use of this evidence concerning
17 what at best could be described as a "settlement negotiation" by Plaintiff constituted plain error
18 since any testimony or evidence concerning settlement negotiations is impermissible at trial as a
19 matter of Nevada law. Plain error is defined in NRS 178.602 as "Plain errors or defects
20 affecting substantial rights may be noticed although they were not brought to the attention of the
21 court". Since when the evidence was initially introduced it might have been applicable no
22 objection would have been sustained. Unfortunately, once the Counter-claims were dismissed
23 the "bell" could not be unrung, and Defendant improperly used this inadmissible evidence for an
24 impermissible purpose. Defendant argued the implications of this settlement offer on the issue
25 of liability in his closing statement (See Transcript of Day 5 P. 63 attached hereto as Exhibit 2)
26 in clear violation of Nevada Revised Statute, 48.105 which provides:

- 27 1. Evidence of:
28 (a) Furnishing or offering or promising to furnish; or

1 (b) Accepting or offering or promising to accept, a valuable consideration
2 in compromising or attempting to compromise a claim which was disputed
3 as to either validity or amount, is not admissible to prove liability for or
4 invalidity of the claim or its amount. Evidence of conduct or statements
5 made in compromise negotiations is likewise not admissible.

6 Defendant's intentional violation of Nevada law prevented the Plaintiff from obtaining a
7 fair trial. Defendant argued and improperly misled the jury into thinking that the original owner
8 of the personal guaranty, Mr. Frey intended to accept the settlement offer, but was prevented
9 from doing so by the improper conduct of the Plaintiff. Defendant was unable to adduce any
10 evidence in support of this argument at trial, and his implications were refuted by the testimony
11 of both the Plaintiff and Mr. Frey. Under these circumstances evidence and argument resulted in
12 unfair prejudice to the Plaintiff, by asking the jury to use this evidence for an impermissible
13 purpose. Such prejudice was so egregious that no objection was necessary to preserve the issue
14 for reconsideration either in a motion for new trial or on appeal.

15 ***(B) Misconduct of the jury or prevailing party;***

16 Defendant's also engaged in repeated acts of misconduct which while objected to and to
17 which the objections were sustained no admonishment was given to the jury. In this case on
18 several occasions, both in argument and in testimony, Counsel for the Defendant repeatedly
19 referred to the Plaintiff as "an Israeli businessman". When admonished by the Court, Counsel's
20 attempted justification of the remarks demonstrated that his intention was clearly to inflame and
21 prejudice the jury against the Plaintiff based on Mr. Hefetz's being Jewish. In fact Counsel's
22 remarks outside the presence of the jury, reek with the offensiveness of his conduct, and are
23 replete with slanderous characterization which encouraged the jury to view the Plaintiff through
24 the historical inaccuracies concerning the business practices of Jews since Shakespeare created
25 Shylock. (See transcript of proceedings Day 2 P. 31-37 attached hereto as Exhibit 4). At that
26 point the Court *sui sponte* admonished Defense Counsel that a another instance of this egregious
27 conduct would result in a mistrial. A discussion then occurred between the Court and Plaintiff's
28 counsel concerning the effectiveness and practicality of a curative instruction. Plaintiff's counsel
was faced with the conundrum of having the Court admonish the jury, and thereby emphasizing

1 the offensive characterization, or letting it go unremarked upon and hope that the remark had not
2 prejudiced the jury. When the verdict was returned for the Defendant in the face of the
3 uncontroverted evidence mandating a verdict for the Plaintiff, the damage was already done, and
4 the only available relief is a new trial. Lioce v. Cohen 174 P. 3d 973, (Nev. 2008). While this
5 unprincipled attack alone constitutes grounds for a new trial, the remarks also constituted an
6 attack implying that Mr. Hefetz was not a citizen of the United States and not merely Israeli by
7 birth but was a foreign national. This was an improper appeal to Post 9/11 xenophobia, implying
8 that a true blue American (Defendant) should not be accountable to some foreigner (Plaintiff)
9 who doesn't belong here and is using unscrupulous business methods to take advantage of
10 American citizens.

11 It should be noted that the Defendant does not deny the comments made at trial, but
12 instead seeks to justify the racist and jingoistic tenor of its arguments by claiming that the
13 Plaintiff invited these comments. Merely having the Plaintiff testify where he was born and
14 how long he lived in the United States does not "open the door" to a racist attack on Plaintiff's
15 character. In fact, Mr. Sagease admitted to the Court that his purpose in referring to Plaintiff as
16 an Israeli business man was to encourage the jury to assume that if Mr. Hefetz was Jewish, then
17 he was by nature a smart and shrewd businessman. This is nothing less than an appeal to view
18 the Plaintiff through the prejudicial and jaundiced eye of anti-Semitism implying that we all
19 know all about "Jewish businessmen—wink wink" This is no different or more egregious than
20 attempts to portray a black businessman as being shiftless and lazy by nature and cannot be
21 countenanced or condoned by the judicial system. This blatant appeal to prejudice was
22 unconscionable and rang a bell so piercing that no jury instruction could unring it, or undue the
23 ultimate damage.

24 ***(C) Accident or surprise which ordinary prudence could not have guarded against;***

25 Just as no jury admonishment could have prevented the prejudicial effects of the
26 Defendant's egregious comments concerning Mr. Hefetz's being Jewish, no reasonably prudent
27 attorney would have anticipated that another officer of the Court would engage in such back-
28

1 alley tactics. In fact a reasonably prudent counsel would have considered bringing a *motion in*
2 *limine* to preclude such remarks as not only unnecessary, but demeaning to the dignity of the
3 Court, and an unprovoked attack on the integrity of opposing counsel. That such a motion turns
4 out to have been necessary, is a sad commentary on civility as well as grounds justifying a new
5 trial.

6 ***(D) Manifest disregard by the jury of the instructions of the court;***

7 The uncontroverted evidence adduced at trial establishes Plaintiff's right to a verdict.
8 Whether or not the jury might have reduced the damages due on the note to less than its face
9 value of \$6,000,000.00 should not have precluded the finding of liability. In fact, it initially
10 appeared as though that was what the jury intended since the original verdict form showed a
11 judgment for Plaintiff with a zero next to his name. Upon polling the jury members stated that
12 the verdict was instead a finding of non-liability in favor of the Defendant. This finding was in
13 clear disregard of the evidence. The only possible explanations for this verdict must lie in the
14 Defendant's improper conduct during the trial. Either as the result of the slurs against the
15 Plaintiff, or the improper argument concerning the meaning of the settlement offer, the
16 Defendant effectively argued for and obtained jury nullification. Jury nullification is defined as

17 [a] jury's knowing and deliberate rejection of the evidence or refusal to apply
18 the law either because the jury wants to send a message about some social issue
19 that is larger than the case itself or because the result dictated by law is contrary to
20 the jury's sense of justice, morality, or fairness (*op.cit.* 174 P.3d 982-983)

21 That Defendant was asking the jury to ignore the law, is shown in his final arguments to
22 the jury. Not only did Counsel compare his client to a homeowner who was caught in the
23 mortgage crisis, by implication comparing the Plaintiff's conduct to that of the egregious conduct
24 of some banks in foreclosure proceeding, and attempting to have the jury identify and
25 sympathize with the Defendant. (See Exhibit 4 P. 56) Without any supporting evidence,
26 Defendant's Counsel asked the jury, to ignore the rulings of the bankruptcy court and believe
27 that the Bankruptcy Court's order was the result of fraud by the Freys and Plaintiff. Defendant's
28 Counsel again without evidence argued that the unsigned documents were in fact prepared, by

1 Mr. Frey, stating that the fact that similar fonts were used evidenced that the same person drafted
2 them.(See Exhibit 4 P. 58, 65). This argument is not only improper but absent an expert who
3 testified that the documents were produced by the same computer and printer, were improper
4 testimony by Counsel

5 Counsel then invited and solicited jury nullification by informing the jury that "...you're
6 expected to go in the deliberation room and do justice. Whatever you determine that is. Come
7 out of there, you give your verdict, and that, by law, is justice." This is an appeal for jury
8 nullification which created an atmosphere that the basically amounted to the unspoken argument
9 that the law didn't matter, and that you could teach this "Israeli businessman" a lesson, not to
10 mess with good American guys and is anathema to both the code and the spirit of the American
11 system of jurisprudence.

12 IV

13 CONCLUSION

14 Defendant's Motion for Reconsideration was filed in violation EJDRCR 2.24. The Motion
15 for New Trial was timely filed under Nevada law, and Defendant must accept the consequences
16 of his decision not to seek to supplement his opposition under EJUDCR 2.20 (i). By failing to
17 do so the Defendant waived any arguments not set forth in his opposition to the Motion for New
18 Trial. Despite this Plaintiff has been forced to readdress the issues upon which this Court has
19 already ruled. Plaintiff was entitled to a fair and unprejudiced jury trial where the jury was not
20 subjected to inadmissible evidence being used for an improper purpose. Scurrilous attacks on his
21 ethnicity religion, and citizenship prevented the Plaintiff from obtaining a fair trial and resulted
22 in jury nullification. The evidence supported a verdict in favor of the Plaintiff, and he should be
23 granted the opportunity to present his case to a truly impartial jury, untainted by the
24 inflammatory and improper conduct present in the first trial. Therefore Plaintiff asks this
25 Honorable Court to:

26 1. Enter an order dismissing, striking, or denying the Defendant's Motion for
27 Reconsideration;
28

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2. Affirming the prior order granting the Plaintiff a new trial on the merits;

3. Granting the Plaintiff's attorneys fees for the time spent in preparing the
opposition to this motion for Reconsideration;

4. Such other and additional relief as this court deems equitable and just.

DATED this 16th day of September, 2013.

COHEN-JOHNSON, LLC

By: /s/ H. Stan Johnson
H. STAN JOHNSON, ESQ.
Nevada Bar No. 0265
TERRYKINNALLY, ESQ.
Nevada Bar No.: 6379
255 W. Warm Springs Rd., Ste. 100
Las Vegas, Nevada 89119
Attorneys for Plaintiff

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 17th day of September, 2013, a true and correct copy of the foregoing **OPPOSITION TO DEFENDANT'S MOTION FOR RECONSIDERATION** was served by placing a copy thereof in the US Mail at Las Vegas, Nevada, with proper postage prepaid, addressed to the following:

Joshua Tomsheck, Esq.
HOFLAND & TOMSHECK
228 South Fourth Street, 1st Floor
Las Vegas, Nevada 89101
Facsimile: 702-731-6910
jtomsheck@hoflandlaw.com
Attorney for Defendant Christopher Beavor

Cc: Marc A. Saggese, Esq.
SAGGESE & ASSOCIATES, LTD.
732 s. Sixth Street, Suite 201
Las Vegas, Nevada 89101
Facsimile: 702-778-8884
marc@maxlawnv.com
Prior Counsel for Defendant, Christopher Beavor

/s/Nelson Achaval
An Employee of COHEN-JOHNSON, LLC

Exhibit “1”

MEMORY TRANSMISSION REPORT

TIME : 07-02-'13 15:19
FAX NO.1 : 702-823-3400
NAME : CJD LAW GROUP

FILE NO. : 106
DATE : 07.02 15:18
TO : 87316910
DOCUMENT PAGES : 7
START TIME : 07.02 15:19
END TIME : 07.02 15:19
PAGES SENT : 7
STATUS : OK

*** SUGGESTED BY NOTICE ***

RPLY
COHEN-JOHNSON, LLC
H. STAN JOHNSON
Nevada Bar No. 00265
sjohnson@cohenjohnson.com
BRIAN A. MORRIS, ESQ.
Nevada Bar No. 11217
bam@cohenjohnson.com
255 W. Warm Springs Rd., Ste. 100
Las Vegas, Nevada 89119
Telephone: (702) 823-3500
Facsimile: (702) 823-3400
Attorneys for Plaintiffs

DISTRICT COURT CLARK COUNTY, NEVADA

YACOV JACK HEFETZ, an individual,

Plaintiff,

vs.

CHRISTOPHER BEAVOR, an individual;
SAMANTHA BEAVOR, an individual; DOES I
through X and ROES ENTITIES I through X,
inclusive,

Defendants.

Case No.: A645353
Dept. No.: XXVIII

REPLY TO DEFENDANT CHRISTOPHER BEAVOR'S OPPOSITION TO PLAINTIFF'S MOTION FOR NEW TRIAL OR IN THE ALTERNATIVE MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT (JNOV)

COME NOW, Plaintiff, YACOV JACK HEFETZ, by and through his attorneys of record
H. Stan Johnson, Esq. of Cohen-Johnson, LLC, and hereby Replies to Defendant Christopher
Beavor's Opposition to Plaintiff's Motion for New Trial, or in the Alternative Motion for
Judgment Notwithstanding Verdict (JNOV).

This Reply is made and based upon the following Points and Authorities, all papers
and pleadings on file herein, and any oral argument that the Court may entertain at the

///
///
///

Exhibit “2”


CLERK OF THE COURT

RPLY
COHEN-JOHNSON, LLC
H. STAN JOHNSON
Nevada Bar No. 00265
sjohnson@cohenjohnson.com
BRIAN A. MORRIS, ESQ.
Nevada Bar No. 11217
bam@cohenjohnson.com
255 W. Warm Springs Rd., Ste. 100
Las Vegas, Nevada 89119
Telephone: (702) 823-3500
Facsimile: (702) 823-3400
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

YACOV JACK HEFETZ, an individual,

Plaintiff,

vs.

Case No.: A645353

Dept. No.: XXVIII

CHRISTOPHER BEAVOR, an individual;
SAMANTHA BEAVOR, an individual; DOES I
through X and ROES ENTITIES I through X,
inclusive,

Defendants.

**REPLY TO DEFENDANT CHRISTOPHER BEAVOR'S OPPOSITION TO
PLAINTIFF'S MOTION FOR NEW TRIAL OR IN THE ALTERNATIVE MOTION
FOR JUDGMENT NOTWITHSTANDING VERDICT (JNOV)**

COME NOW, Plaintiff, YACOV JACK HEFETZ, by and through his attorneys of record
H. Stan Johnson, Esq. of Cohen-Johnson, LLC, and hereby Replies to Defendant Christopher
Beavor's Opposition to Plaintiff's Motion for New Trial, or in the Alternative Motion for
Judgment Notwithstanding Verdict (JNOV).

This Reply is made and based upon the following Points and Authorities, all papers
and pleadings on file herein, and any oral argument that the Court may entertain at the

///

///

///

1 hearing on this matter.

2 DATED this 2nd day of July, 2013.

3 COHEN-JOHNSON, LLC

4
5 By: /s/ H. Stan Johnson
6 H. STAN JOHNSON, ESQ.
7 Nevada Bar No. 0265
8 BRIAN A. MORRIS, ESQ.
9 Nevada Bar No.: 11217
10 255 W. Warm Springs Rd., Ste. 100
11 Las Vegas, Nevada 89119
12 Attorneys for Plaintiff

13 **POINTS AND AUTHORITIES**

14 **I.**

15 **FACTS**

16 The civil case Yacov Jack Hefetz vs. Christopher Beavor (hereinafter referred to as Hefetz
17 v. Beavor was heard before a jury between February 26, 2013 through March 1, 2013. The case
18 arose out of Defendant's failure to meet his obligations as guarantor of a defaulted personal loan
19 in the amount of \$6,000,000.00. During the course of the trial, Plaintiff's attorney made several
20 comments referencing the fact that the Plaintiff was Israeli, and certain behaviors and
21 characteristics should be presumed based on his ethnicity. Objections were made and the Court
22 cautioned Counsel.

23 On March 1, 2013 the Court granted a directed verdict as to all the Defendants counter-
24 claims. The Plaintiff's case went to verdict and a jury verdict in favor of the defendant was
25 entered in the above captioned matter. Plaintiffs believe that the verdict was improperly
26 influenced by the racial slurs and imprecations made by Plaintiff's counsel.

27 On March 25, 2013 Marc Saggese, Attorney for the Defendant, withdrew from the case.
28 On March 29, 2013, H. Stan Johnson, Esq. of Cohen Johnson LLC substituted in as Counsel for
the Plaintiff. On May 21, 2013 Marc Saggese served a Notice of Entry of Judgment. This

1 Motion for a New Trial and/or Amendment of Judgment is being timely filed within 10 days of
2 the service of the Notice of Entry.

3 **III.**

4 **LEGAL ARGUMENT**

5 **A. Plaintiff's Motion was Timely Filed.**

6 Defendant's sole opposition to the motion is the claim that the Motions for New Trial
7 was untimely filed. Motions for New trials are governed by NRCP 59 which provides in
8 pertinent part:
9

10 **RULE 59. NEW TRIALS; AMENDMENT OF JUDGMENTS**

11 (a) **Grounds.** A new trial may be granted to all or any of the parties and on
12 all or part of the issues for any of the following causes or grounds materially
13 affecting the substantial rights of an aggrieved party: (1) Irregularity in the
14 proceedings of the court, jury, master, or adverse party, or any order of the court,
15 or master, or abuse of discretion by which either party was prevented from having
16 a fair trial; (2) Misconduct of the jury or prevailing party; (3) Accident or surprise
17 which ordinary prudence could not have guarded against; (4) Newly discovered
18 evidence material for the party making the motion which the party could not, with
19 reasonable diligence, have discovered and produced at the trial; (5) Manifest
20 disregard by the jury of the instructions of the court; (6) Excessive damages
21 appearing to have been given under the influence of passion or prejudice; or, (7)
22 Error in law occurring at the trial and objected to by the party making the motion.
23 On a motion for a new trial in an action tried without a jury, the court may open
24 the judgment if one has been entered, take additional testimony, amend findings
25 of fact and conclusions of law or make new findings and conclusions, and direct
26 the entry of a new judgment.

[As amended; effective January 1, 2005.]

21 (b) **Time for Motion.** A motion for a new trial shall be filed no later than
22 10 days after service of written notice of the entry of the judgment.

23 The Notice of Entry of Judgment was served by facsimile transmission on May 21, 2013.
24 In calculating the ten days the statute provides only judicial days are calculated. Following the
25 expiration of these ten judicial days three days are then added for purposes of mailing. NRCP
26 6 provides for the computation of time that:

27 (a) **Computation.** In computing any period of time prescribed or allowed
28 by these rules, by the local rules of any district court, by order of court, or by
any applicable statute, the day of the act, event, or default from which the

designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a nonjudicial day, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a nonjudicial day, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and nonjudicial days shall be excluded in the computation except for those proceedings filed under Titles 12 or 13 of the Nevada Revised Statutes.

Pursuant to Rule 6 the date of the Notice of Entry is not included in the computation. This means that the ten days begins to run on May 22, 2013, The judicial days in that week were May 23, and 24. The intervening Saturday and Sunday is not included. Nor is Monday, May 27th which was the Memorial Day holiday, and was a non-judicial day. The remaining days of the week, the 28th, 29th, 30th and 31st are included. This brings the total to seven judicial days. Neither Saturday June 1st or Sunday June 2nd is included. June 3rd, 4th, 5th are included. The tenth judicial day from May 22, 2013 was June 5th, 2013. However NRCP 6 (e) provides:

(e) Additional Time After Service by Mail or Electronic Means.

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper, other than process, upon the party and the notice or paper is served upon the party by mail or by electronic means, 3 days shall be added to the prescribed period.

Adding these three days would be June 6th, and June 7th, the third calendar day for mailing would be Saturday June 8th. Pursuant to NRCP Rule 6, Saturday June 8th will not be included making the last day June 10, 2013, which was the date of the timely filing by the Plaintiff.

This is the method of calculation set forth by the Nevada Supreme Court in Winston Products Company, Inc. v. DeBoer et.al. 122 Nev. 517, 134 P3d 726 (Nev 2006) under identical circumstances and is directly on point and controlling, proving that the Plaintiff's motion was timely filed.

**B. Defendant's Failure to Oppose the Motion on its Merits
Constitutes a Waiver**

EJDCR 2.20 provides that:

1 (e) Within 10 days after the service of the motion, and 5 days after
2 service of any joinder to the motion, the opposing party must serve and file
3 written notice of nonopposition or opposition thereto, together with a
4 memorandum of points and authorities and supporting affidavits, if any,
5 stating facts showing why the motion and/or joinder should be denied.
6 Failure of the opposing party to serve and file written opposition may be
7 construed as an admission that the motion and/or joinder is meritorious and a
8 consent to granting the same.

9 The rules exist so that motions may be timely heard and resolved, not allow a party to
10 continue to relitigate a matter one element at a time. Just as the Plaintiff was required to set forth
11 his arguments and grounds in a single motion, Defendant is required to address the entire motion
12 in one responsive pleading, and may not use this method to improperly enlarge the statutory time
13 allowed to file a response. Plaintiff's motion was served on the Defendant on June 10, 2013 and
14 the Plaintiff was allowed until June 27, 2013 to file an opposition. Plaintiff instead of using the
15 full time allowed to file a pleading responsive to the substantive arguments chose to file a
16 opposition limited only timeliness on June 20, 2013.

17 Nevada law does not provide that the opposing party may file piece meal oppositions but
18 allows one opportunity to oppose the entire motion. In the present case, the Defendant has
19 failed to even address a single ground relied upon by the Plaintiff in his motion. This failure to
20 address the substantive arguments amounts to a failure to provide a written opposition and
21 should be construed as an admission that those arguments are meritorious and consent to the
22 granting of the motion. By choosing to solely oppose the motion only on the grounds of
23 timeliness the Defendant has waived his right to make a further opposition. Defendant chose not
24 to file a substantive response and must accept the consequences of that decision.

25 IV

26 CONCLUSION

27 Plaintiff was entitled to a fair and unprejudiced jury trial where the jury was not subjected
28 to inadmissible evidence being used for an improper purpose. Scurrilous attacks on his ethnicity
religion, and citizenship prevented the Plaintiff from obtaining a fair trial and resulted in jury
nullification. The evidence supported a verdict in favor of the Plaintiff, and he should be granted

1 the opportunity to present his case to a truly impartial jury, untainted by the inflammatory and
2 improper conduct present in the first trial. The Plaintiff's Motion was timely filed, and the
3 Defendant failed to file an opposition to the grounds set forth in Plaintiff's Motion, waiving any
4 arguments opposing those grounds and admitting that the Plaintiff's Motion is meritorious and
5 consenting to the granting of the relief sought. Therefore Plaintiff asks this Honorable Court to:

- 6 1. Enter an order finding that Plaintiff's Motion was timely filed;
- 7 2. Finding that the Defendant's Opposition constitutes an admission that any
- 8 grounds not addressed in are admitted to as meritorious,;
- 9 3. Enter an Order vacating the judgment;
- 10 4. Granting the Plaintiff a new trial on the merits;
- 11 5. Granting the Plaintiff a Judgment Not On the Verdict.
- 12 6. Such other and additional relief as this court deems equitable and just.

13 **Affirmation Pursuant to NRS 239B.030**

14 The undersigned does hereby affirm that the preceding Reply to Plaintiff's Opposition to
15 Plaintiff's Motion for New Trial does not contain the social security number of any person.

16 DATED this 3rd day of July, 2013.

17 Respectfully submitted,

18
19 COHEN-JOHNSON, LLC

20
21 By: /s/ H. Stan Johnson
22 H. STAN JOHNSON, ESQ.
23 Nevada Bar No. 0265
24 TERRY KINNALLY, ESQ.
25 Nevada Bar No.: 06379
26 255 W. Warm Springs Rd., Ste. 100
27 Las Vegas, Nevada 89119
28 Attorneys for Plaintiff

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 10th day of July, 2013, a true and correct copy of the foregoing **MOTION FOR NEW TRIAL OR IN THE ALTERNATIVE MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT (JNOV)** was served by facsimile Transmission and by placing a copy thereof in the US Mail at Las Vegas, Nevada, with proper postage prepaid, addressed to the following:

Joshua Tomsheck, Esq
Nevada State Bar No. 9210
Hofland & Tomsheck
228 South Fourth Street
First Floor
Las Vegas Nevada 89101
Facsimile (702)731-6910

/s/Nelson Achaval
An Employee of COHEN-JOHNSON, LLC

Exhibit “3”

1 **AFFIDAVIT OF BRIAN A. MORRIS, ESQ. IN SUPPORT OF OPPOSITION TO**
2 **MOTION FOR RECONSIDERATION**

3 STATE OF NEVADA)
4 COUNTY OF CLARK) ss:

5 Brian A. Morris, Esq., being fully sworn, deposes and says:

6 1. That affiant is a duly licensed and practicing attorney in the State of Nevada, is a
7 member of the law firm of Cohen-Johnson, LLC, and maintains an office at 255 E. Warm
8 Springs Road, Suite 100, Las Vegas, Nevada 89119.

9 2. That Cohen-Johnson, LLC is the law firm of record for Plaintiff, Yacov Jack
10 Hefetz.

11 3. That the facts in this affidavit are true, and if called upon I will testify to the same.

12 4. That Mr. Tomsheck called me at 1:52pm on 6/20/13 to discuss the timeliness of
13 the Motion filed by Cohen-Johnson, LLC. *See 8x8 phone records which reflect the exact*
14 *time and duration of the call attached to this affidavit as Exhibit 3- A.*

15 5. This initial call lasted 10 minutes and 54 seconds. *Id.*

16 6. During the phone call, Mr. Tomsheck explained his position and method of
17 calendaring the due date for the Motion at issue.

18 7. That I informed Mr. Tomsheck that I did not calendar the date or file the Motion,
19 but it sounded like we might have a problem.

20 8. That I thanked Mr. Tomsheck for bringing this to my attention, and told him that I
21 would investigate and call him back right away.

22 9. That Mr. Tomsheck filed the Opposition to our Motion a little over an hour later
23 at 3:21pm on 6/20/13. *See filed stamped Motion on file herein.*

24 10. That I discussed this matter with Mr. Johnson from our office as soon as he was
25 available, around 3:30pm.

26 11. That Mr. Johnson immediately recognized the error in Mr. Tomsheck's
27 calculations, which was that he failed to exclude the intermediate holiday of Memorial
28 Day on 5/27/13 from his calculations.

COHEN-JOHNSON, LLC
6293 Dean Martin Drive, Suite G
Las Vegas, Nevada 89118
(702) 823-3500 FAX: (702) 823-3400

12. That were it not for Memorial Day, Mr. Tomscheck would have been correct, and the Motion would have been time barred.

13. That I returned Mr. Tomscheck's call at 3:34pm on 6/20/13, as reflected by the attached phone records. *See Exhibit 3-B to this Affidavit.*

14. That I left a voicemail requesting a call back at that time.

15. That shortly thereafter, Mr. Tomscheck returned my call at 3:48pm wherein we discussed the calendar issues for 12 minutes and 13 seconds. *See Exhibit A.*

16. That during our conversation I insisted to Mr. Tomscheck that "the Motion is absolutely timely" and pointed out to Mr. Tomscheck that he did not account for Memorial Day in his calculations.

17. That Mr. Tomscheck responded that he was going to stick with his position, and that if the court requested supplemental briefing then he would address the merits at that time.

18. That I agreed that we would follow the court's guidance should additional briefing be requested by the Honorable Judge, but that the motion was most definitely filed on time.

Further, affiant sayeth naught.

BAM

BRIAN A. MORRIS, ESQ.

Subscribed and sworn to before
me this 17 day of September, 2013.

Notary Public in and for said
County and State

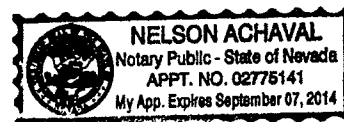


Exhibit “3-A”

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17024744220	17028233500	6/20/2013 15:09	6/20/2013 15:10	0:00:50 IN
17025334047	17028233500	6/20/2013 15:10	6/20/2013 15:12	0:02:21 IN
17027157783	17028233500	6/20/2013 15:36	6/20/2013 15:36	0:00:05 IN
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17025211321	17028233500	6/20/2013 16:23	6/20/2013 16:24	0:00:43 IN
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17025211321	17028233500	6/20/2013 17:23	6/20/2013 17:23	0:00:17 IN
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restricted	17028233500	6/20/2013 17:59	6/20/2013 17:59	0:00:06 IN
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From	To	First Name	Last Name	Start Date and Time	End Date and Time	Duration	Direction
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restricted	17028233500			6/20/2013 13:39	6/20/2013 13:39	0:00:05	IN
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* 17028956760	17028233500			6/20/2013 13:52	6/20/2013 14:03	0:10:54	IN *
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Exhibit “3-B”

From 17028233500 To 17028956760
First Name Brian
Last Name Morris
Start Date and Time 6/20/2013 15:34
End Date and Time 6/20/2013 15:36
Duration 0:02:35
Direction OUT

Exhibit “4”

1 based on the success of the project. You knew Chris --

2 A No.

3 Q -- Beavor didn't have the money --

4 A No. It doesn't say like that.

5 Q -- you knew he did not have the money to pay you
6 back and it was based on the --

7 A The guaranty doesn't -- the guaranty does not
8 say what you're telling me.

9 Q You knew as a businessman, a successful, very
10 wealthy Israeli businessman, that the fact that this
11 project --

12 THE COURT: Counsel, approach. Approach. As a
13 matter of fact, this is a good time to take a break and do our
14 -- our lunch. So, ladies and gentlemen, I'm going to give you
15 the admonishment. We'll be back at 12:15. During this recess
16 you're admonished not to talk or converse amongst yourselves
17 or with anyone else on any subject connected with this trial
18 or read, watch, or listen to any report or other commentary on
19 the trial or any person connected with this trial by any
20 medium of information including without limitation newspapers,
21 television, radio, or Internet, or form or express any opinion
22 on any subject connected with the trial until the case is
23 finally submitted to you.

24 We're in recess till 1:15.

25 (Jury recesses at 12:13 p.m.)

1 THE COURT: Now, counsel, I allowed you to ask him or
2 you discussed the fact that he was Israeli one time. What was
3 the relevance, other than to prejudice the jury, as your
4 statement that he's an Israeli businessman?

5 MR. SAGGESE: Because he's --

6 THE COURT: Because I'm offended.

7 MR. SAGGESE: He's -- he's --

8 THE COURT: If he was black, are you going to say
9 he's a black businessman?

10 MR. SAGGESE: No. But if there was a certain area of
11 expertise that he had and -- and by virtue of him -- I mean,
12 he's an intelligent -- I -- I feel comfortable saying he's an
13 intelligent Israeli businessman. . Because I think the -- the
14 implication --

15 THE COURT: I think that's highly offensive.

16 MR. SAGGESE: You think so?

17 THE COURT: It's offensive to me. What's your
18 ethnicity?

19 MR. SAGGESE: Italian.

20 THE COURT: So, if I said, Well, he's a very fine
21 Italian attorney, would that be appropriate? I don't think
22 so.

23 MR. SAGGESE: Well, Italians are not necessarily good
24 lawyers.

25 THE COURT: Counsel, your argument is absolutely --

1 MR. SAGGESE: Do you know what I mean?

2 THE COURT: -- without merit. I think your -- your
3 intent is to prejudice the jury, and I'm very close to
4 declaring a mistrial.

5 MR. SAGGESE: I disagree, Your Honor. Let me -- let
6 me put it in perspective. If this was --

7 THE COURT: Go ahead, make a record. Because you're
8 really on thin ice.

9 MR. SAGGESE: If this was a -- a chef and I said,
10 You're a successful Italian chef, absolutely, I believe that
11 that would be consistent and it would point out the fact that
12 he is not -- this is not his first foray. He's a successful
13 Israeli businessman.

14 THE COURT: If you had said he's a successful
15 businessman, that would have been absolutely appropriate.
16 What's the relevance of the fact that he -- first of all, I
17 think he's an American citizen.

18 Aren't you?

19 THE PLAINTIFF: Yes, sir.

20 THE COURT: And second of all, the fact that he's
21 Israeli -- what possible relevance does that have other than
22 to try to prejudice the jury in some manner?

23 MR. SAGGESE: Absolutely, I don't see how that would
24 prejudice the jury. It would show that he has a significant
25 or superior level of business acumen. I think that's a

1 compliment, if anything. It's an absolute --

2 THE COURT: I find that offensive, too, that all
3 Israelis are -- are good businessman, all Jews are --

4 MR. SAGGESE: That's --

5 THE COURT: -- good at business? Counsel, there's no
6 way you can justify that. Except that you are trying to
7 prejudice the jury.

8 MR. SAGGESE: I would never do that. And it's so
9 significant and valuable that I wouldn't even try that.

10 THE COURT: You know how many --- I -- I don't
11 understand why you haven't objected to the relevance of this
12 whole thing several times, but that's your -- that's --

13 MR. IGLODY: Well, I stood up to make my objection,
14 and then you called it. Because I was --

15 MR. SAGGESE: It's -- it --

16 MR. IGLODY: -- I -- I let it go a little bit. I was
17 like, all right, if he really wants to go there. But then
18 finally I stood up --

19 THE COURT: This is the second time.

20 MR. IGLODY: -- to object.

21 THE COURT: I'm admonishing you.

22 MR. SAGGESE: I won't reference it again.

23 THE COURT: If you do it a third time --

24 MR. SAGGESE: I won't.

25 THE COURT: -- I'm declaring a mistrial.

1 MR. SAGGESE: I won't reference it again. To me it
2 doesn't, you know, it doesn't strike -- I didn't mean to make
3 it cause such a response. But I'm just stating a fact of the
4 case and it is, in fact, true. He's born and raised and he --
5 that those are -- that's his basis of knowledge.

6 THE COURT: Well, you know, it's --

7 MR. SAGGESE: It's certainly not done to inflame --

8 THE COURT: -- just as offensive at the Academy
9 Awards when they made jokes about the fact that Jews control
10 the cinema. And if you think that's appropriate, well, okay,
11 you can do that. But not in my courtroom.

12 MR. SAGGESE: Fair enough.

13 THE COURT: And --

14 MR. SAGGESE: I apologize. I -- honest to God, I'm,
15 you know, I'm speaking the way I'm laying the facts as they
16 are. This is, you know, you're not -- in other words you're
17 not -- I'm laying it out and I just spoke it with -- honest,
18 Your Honor, you know me better than that to try and --

19 THE COURT: I -- I understand --

20 MR. SAGGESE: -- you said inflame the jury.

21 THE COURT: -- I -- the first time, fine. You know,
22 you were trying to explain where he's from. The second time
23 under this particular circumstance, directly, yes. It's not
24 relevant and it is offensive. And what he -- his ethnicity, I
25 would no longer -- I would no more allow you to say, Well,

1 you're a black American and whatever. Or an Italian American,
2 or what exactly. I wouldn't -- ethnicity has no place and
3 justice is supposed to be blind. So we're not going to
4 discuss that any further.

5 All right. We're in recess.

6 MR. IGLODY: What time do we come back?

7 THE MARSHAL: 1:15.

8 THE COURT: 1:15.

9 MR. SAGGESE: Again, my apologies, Your Honor.

10 THE COURT: Fine. Don't do it again.

11 MR. SAGGESE: I don't want you viewing me differently
12 than you may have 10 minutes ago.

13 THE COURT: All right.

14 MR. SAGGESE: I apologize. Won't happen again.

15 (Court recesses at 12:18 p.m., until 1:33 p.m.)

16 (Outside the presence of the jury.)

17 THE COURT: We're on the record. So I thought a lot
18 about declaring a mistrial over the break. And I reviewed the
19 tape again. And once again, just so you understand, Mr. --
20 and I, you know, we've never -- it's Saggese?

21 MR. SAGGESE: Uh-huh.

22 THE COURT: Saggese. Mr. Saggese, your comments that
23 you thought you were giving him a compliment that he was an
24 Israeli -- good -- a good Israeli businessman totally ignores
25 or something the -- I mean, that -- that's just stereotyping

1 him as a -- a good Jewish businessman. And as I said, so I
2 understand that apparently you don't see it as offensive, but
3 I can tell you it is.

4 So my question to the plaintiff's counsel is do you
5 want a curative instruction?

6 MR. IGLODY: The problem with a --

7 THE COURT: Or do you just want to move on?

8 MR. IGLODY: The problem with a curative instruction,
9 and this is difficult for us, is, of course, when you give a
10 curative instruction, you just draw attention to it.

11 THE COURT: Highlights it, yes.

12 MR. IGLODY: And that -- and that creates the
13 problem. If it would please the Court I think perhaps you can
14 reserve on that issue for now, depending on how the rest of
15 the examination goes. And if necessary, that can be addressed
16 perhaps before we issue the jury instructions, depending on
17 whether it's necessary. At some point I have to rely on the
18 jury's good discretion to see past these inflammatory
19 statements.

20 THE COURT: Okay. Then we'll continue.

21 MR. HULET: Your Honor, I have one thing before we
22 bring in the jury. Wayne Krygier is here from North Dakota.
23 We discussed him earlier. And we'd like to bring him in now
24 if possible, to be out of order, to make sure we can get his
25 testimony done before [indiscernible].

1 to take over this project and correct all the mistakes and
2 make it viable. And it never substantiated to anything. More
3 than welcome, that was the purpose of my -- my tender, was to
4 get Mr. Frey and anybody else as a byproduct off their
5 personal guaranties, and if somebody would step up to the
6 plate and do that, I wouldn't have to go through what I was
7 doing. So.

8 Q So you were willing to listen to anybody who
9 could potentially buy the loan?

10 A The goal was to get the personal guaranties back
11 from -- from the bank. And if somebody had money and that
12 facilitated, yes, that's correct.

13 Q Did Mr. Beavor ever produce anybody with money?

14 A No, he did not.

15 Q Now, did you attend the Toluca Lake bankruptcy
16 hearings?

17 A Yes, I did.

18 Q Was Mr. Beavor at the bankruptcy hearings?

19 A He was at some.

20 Q Did he -- was he ever to -- able to speak to the
21 judge at the hearings?

22 A Yes, he did.

23 Q Did he have any complaints that he voiced to the
24 judge?

25 A Yes. We were in front of the bankruptcy judge

1 THE COURT: Otherwise it's hearsay.

2 BY MR. HULET:

3 Q But Mr. Beavor was able to voice all of his
4 complaints to the bankruptcy judge, correct?

5 A Yes, he was.

6 Q And the bankruptcy plan was confirmed?

7 A No, it was not. At Chris Beavor's request, he
8 asked to delay it so he could bring legal counsel to represent
9 him in this matter. And I think it was rescheduled two weeks
10 out and we had another hearing two weeks later.

11 Q And was -- after listening to those complaints
12 was the bankruptcy confirmed, the plan?

13 A Yes, it was.

14 Q Did you communicate with Mr. Hefetz during this
15 time period?

16 A I don't recall. Perhaps I very briefly might
17 have.

18 Q Did he give you any directives on how to handle
19 the bankruptcy?

20 A None whatsoever.

21 Q Did he give you any directives prior to the
22 bankruptcy?

23 A No.

24 Q Now, did you ever receive directions from
25 anybody to negotiate with Mr. Beavor, Mrs. Beavor, with

1 "is." Is he the owner --

2 Q Is --

3 A -- is he a manager --

4 Q -- the word --

5 A -- is he -- I'm not sure, please...

6 Q Well, the company is, meaning it's comprised of

7 the people who own it or the managers, people who started it.

8 A I don't believe Gary Frey is an owner, if that's
9 the question.

10 Q Okay.

11 A If he's an officer, I believe he's an officer.

12 Q Or a --

13 A That was with clarification --

14 Q -- or a manager --

15 A -- I didn't quite understand the question.

16 Sorry to interrupt.

17 Q Okay. Star Development was created by whom?

18 A I don't know.

19 Q Would you have any reason to disagree that Star
20 Development was created by Mr. Hefetz?

21 A I don't know.

22 Q But yet you were behind replacing my client with
23 Star Development, you don't know who Star Development is?

24 A Earlier on I said Star Development was a company
25 that existed prior to my involvement. And because of the

REGISTER OF ACTIONS

CASE NO. A-11-645353-C

Yacov Hefetz, Plaintiff(s) vs. Christopher Beavor, Defendant(s)

~~~~~

**Case Type: Breach of Contract**

Subtype: **Guarantee**

Date Filed: 07/21/2011

Location: Department 28

Cross-Reference Case Number: **A645353**

## PARTY INFORMATION

|                  |                     |
|------------------|---------------------|
| Counter Claimant | Beavor, Christopher |
|------------------|---------------------|

**Lead Attorneys**  
**Joshua L. Tomsheck**  
*Retained*  
702-671-2640(W)

**Counter Claimant**      **Beavor, Samantha**

**Marc A. Saggese**  
Retained  
702-788-8883(W)

**Counter Defendant**      **Hefetz, Yacov Jack**

**Harold Stanley Johnson**  
*Retained*  
702-823-3500(W)

Defendant Beavor, Christopher

**Joshua L. Tomsheck**  
*Retained*  
702-671-2640(W)

**Defendant**     **Beavor, Samantha**

**Marc A. Saggese**  
*Retained*  
702-788-8883(W)

**Plaintiff**      **Hefetz, Yacov Jack**

**Harold Stanley Johnson**  
*Retained*  
702-823-3500(W)

## EVENTS & ORDERS OF THE COURT

|            |                                                                                                                    |
|------------|--------------------------------------------------------------------------------------------------------------------|
| 09/26/2013 | <b>All Pending Motions (9:00 AM)</b> (Judicial Officer Israel, Ronald J.)<br><i>All Pending Motions (09/26/13)</i> |
|------------|--------------------------------------------------------------------------------------------------------------------|

## Minutes

09/26/2013 9:00 AM

- DEFENDANT CHRISTOPHER BEAVOR'S MOTION FOR RECONSIDERATION...DEFENDANT'S MOTION FOR ATTORNEY FEES Colloquy regarding the dismissal of Ms. Samantha Beavor. Mr. Saggese noted it was in the process, they were fine tuning the language. COURT ORDERED, Matter CONTINUED and FURTHER CONTINUED Mr. Saggese's Motion for Attorney Fees. Court noted if the settlement documents are submitted, Counsel may notify chambers to have the matter taken off calendar. Arguments by Counsel regarding the Motion to Reconsider Plaintiffs Motion for a new trial. Mr. Tomscheck argued the time of service of the notice of judgment. Colloquy regarding rule 6A and rule 6E and holidays and weekends excluded from the time of service. Further arguments. COURT stated its finding and noted under 2.24 there were no grounds for reconsideration and ORDERED, Motion to Reconsider, DENIED. Mr. Tomscheck requested matter be stayed to take it up on a writ. COURT ORDERED, Oral Motion to Stay, DENIED.

PA00112



10/24/13 9:00 AM STATUS CHECK: DISMISSAL/S.  
BEAVOR...DEFT'S MOTION FOR ATTORNEY FEES  
CLERK'S NOTE: Following Court, Court noted Mr.  
Tomsheck may file a written motion for a stay for both  
sides to brief. A copy of this minute order was placed in  
the attorney folder(s) of: Joshua Tomsheck, Esq. (Hofland  
& Tomsheck) and H. Stanley Johnson, Esq. (Cohen-  
Johnson) and Marc Saggese, Esq.

Parties Present

Return to Register of Actions

PA00113

  
CLERK OF THE COURT

1 **ORDR**  
2 **COHEN-JOHNSON, LLC**  
3 **H. STAN JOHNSON**  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 **BRIAN A. MORRIS, ESQ.**  
7 Nevada Bar No. 11217  
8 bam@cohenjohnson.com  
9 255 W. Warm Springs Rd., Ste. 100  
10 Las Vegas, Nevada 89119  
11 Telephone: (702) 823-3500  
12 Facsimile: (702) 823-3400  
13 *Attorneys for Plaintiffs*

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

10 YACOV JACK HEFETZ, an individual,  
11  
12 Plaintiff,  
13 vs.  
14 CHRISTOPHER BEAVOR, an individual;  
15 SAMANTHA BEAVOR, an individual; DOES I  
16 through X and ROES ENTITIES I through X,  
17 inclusive,  
18 Defendants.

Case No.: A645353  
Dept. No.: XXVIII

Hearing Date: September 26, 2013  
Hearing Time: 9:00 am

17 **FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER**

18 THIS MATTER having come before this Court on September 26, 2013 on Defendant  
19 Christopher Beavor's Motion for Reconsideration, Plaintiff Yacov Hefetz, having been  
20 represented by H. Stan Johnson, Esq. of Cohen-Johnson, LLC; Defendant Christopher Beavor,  
21 having been represented by Joshua Tomsheck, Esq. of Hofland & Tomsheck; and Defendant  
22 Samantha Beavor having been represented by Marc A. Saggese, Esq. of Saggese and Associates,  
23 Ltd.; the Court having heard the representations and arguments set forth in open Court on the  
24 date of the hearing; the Court having carefully considered the pleadings and papers on file  
25 herein; being fully advised regarding the same; and good cause appearing:

26 **FINDINGS OF FACT**

27 The Court heard arguments by Counsel regarding Defendant's Motion for  
28 Reconsideration; the parties argued the timeliness of the Motion filed by Plaintiff for a New

1 Trial.

2 THE COURT FINDS that Plaintiff's Motion for New Trial was timely filed;

3 THE COURT FURTHER FINDS: there were no grounds for reconsideration of the  
4 Court's prior order.

5 **CONCLUSION OF LAW**

6 THE COURT CONCLUDES that pursuant to NRCP 6(a) and (e), that the underlying  
7 Motion for New Trial or in the Alternative Motion for Judgment notwithstanding the Verdict  
8 (JNOV) was timely filed.

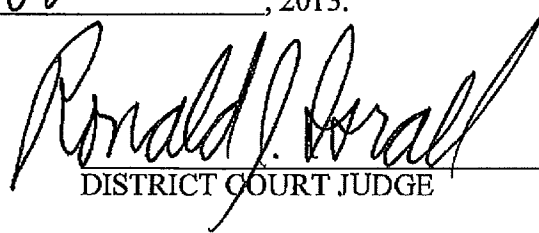
9 THE COURT FURTHER CONCLUDES that pursuant to EDCR 2.24 there are no  
10 grounds for reconsideration of the Court's order granting Plaintiff's Motion for New Trial.

11 **ORDER**

12 **IT IS HEREBY ORDERED** that the Motion for Reconsideration is DENIED.

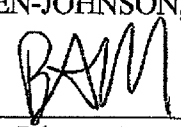
13 **IT IS FURTHER ORDERED** that Mr. Tomshek's Oral Motion for a Stay is DENIED.

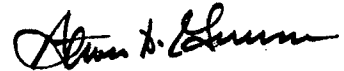
14 Dated this 12 day of Nov, 2013.

15   
16 DISTRICT COURT JUDGE  
17  
18

19 Submitted by:

20 COHEN-JOHNSON, LLC

21   
22 \_\_\_\_\_  
23 H. Stan Johnson, Esq.  
24 Nevada Bar No.: 00265  
25 Brian A. Morris, Esq.  
26 Nevada Bar No.: 11217  
27 255 E. Warm Springs Road, Ste. 100  
28 Las Vegas, NV 89119  
*Attorneys for Plaintiffs*



CLERK OF THE COURT

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13 Attorneys for Plaintiffs

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **YACOV JACK HEFETZ, an individual,**

11 **Plaintiff,**

12 **vs.**

Case No.: A645353

Dept. No.: XXVIII

13 **CHRISTOPHER BEAVOR, an individual;**  
14 **SAMANTHA BEAVOR, an individual; DOES I**  
15 **through X and ROES ENTITIES I through X,**  
16 **inclusive,**

17 **Defendants.**

18 **NOTICE OF ENTRY OF ORDER**

19 NOTICE IS HEREBY GIVEN that a Findings of Fact, Conclusion of Law and Order  
20 regarding Defendant Christopher Beavor's Motion for Reconsideration was entered in the above-  
21 captioned case on the 14<sup>th</sup> day of November, 2013, a copy of which is attached hereto.

22 Dated this 15<sup>th</sup> day of November, 2013.

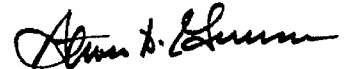
23 **COHEN-JOHNSON, LLC**

24 By: /s/ H. Stan Johnson  
25 **H. STAN JOHNSON, ESQ.**  
26 Nevada Bar No. 0265  
27 **BRIAN A. MORRIS, ESQ.**  
28 Nevada Bar No.: 11217  
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Attorneys for Plaintiff

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6293 Dean Martin Drive, Suite G  
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Joshua Tomsheck, Esq  
Nevada State Bar No. 9210  
Hofland & Tomsheck  
228 South Fourth Street, First Floor  
Las Vegas Nevada 89101  
**Facsimile (702)731-6910**  
Attorney for Defendant

/s/Nelson Achaval  
An Employee of COHEN-JOHNSON, LLC



CLERK OF THE COURT

1 **ORDR**  
2 **COHEN-JOHNSON, LLC**  
3 H. STAN JOHNSON  
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6 BRIAN A. MORRIS, ESQ.  
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11 Telephone: (702) 823-3500  
12 Facsimile: (702) 823-3400  
13 *Attorneys for Plaintiffs*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 YACOV JACK HEFETZ, an individual,

11 Plaintiff,

12 vs.

13 CHRISTOPHER BEAVOR, an individual;  
14 SAMANTHA BEAVOR, an individual; DOES I  
15 through X and ROES ENTITIES I through X,  
16 inclusive,

17 Defendants.

Case No.: A645353

Dept. No.: XXVIII

Hearing Date: September 26, 2013

Hearing Time: 9:00 am

17 **FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER**

18 THIS MATTER having come before this Court on September 26, 2013 on Defendant  
19 Christopher Beavor's Motion for Reconsideration, Plaintiff Yacov Hefetz, having been  
20 represented by H. Stan Johnson, Esq. of Cohen-Johnson, LLC; Defendant Christopher Beavor,  
21 having been represented by Joshua Tomscheck, Esq. of Hofland & Tomscheck; and Defendant  
22 Samantha Beavor having been represented by Marc A. Saggese, Esq. of Saggese and Associates,  
23 Ltd.; the Court having heard the representations and arguments set forth in open Court on the  
24 date of the hearing; the Court having carefully considered the pleadings and papers on file  
25 herein; being fully advised regarding the same; and good cause appearing:

26 **FINDINGS OF FACT**

27 The Court heard arguments by Counsel regarding Defendant's Motion for  
28 Reconsideration; the parties argued the timeliness of the Motion filed by Plaintiff for a New

PA00118 28

1 Trial.

2 THE COURT FINDS that Plaintiff's Motion for New Trial was timely filed;

3 THE COURT FURTHER FINDS: there were no grounds for reconsideration of the  
4 Court's prior order.

5 **CONCLUSION OF LAW**

6 THE COURT CONCLUDES that pursuant to NRCP 6(a) and (e), that the underlying  
7 Motion for New Trial or in the Alternative Motion for Judgment notwithstanding the Verdict  
8 (JNOV) was timely filed.

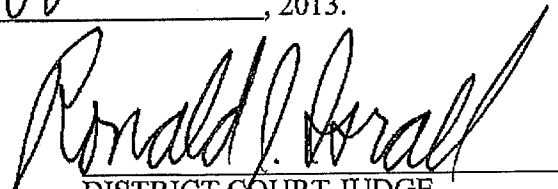

9 THE COURT FURTHER CONCLUDES that pursuant to EDCR 2.24 there are no  
10 grounds for reconsideration of the Court's order granting Plaintiff's Motion for New Trial.

11 **ORDER**

12 **IT IS HEREBY ORDERED** that the Motion for Reconsideration is DENIED.


13 **IT IS FURTHER ORDERED** that Mr. Tomshek's Oral Motion for a Stay is DENIED.

14 Dated this 12 day of Nov, 2013.

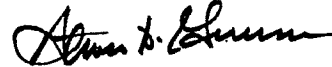
15   
16  
17 DISTRICT COURT JUDGE  
18 

19 Submitted by:

20 COHEN-JOHNSON, LLC

21   
22  
23 H. Stan Johnson, Esq.  
24 Nevada Bar No.: 00265  
25 Brian A. Morris, Esq.  
26 Nevada Bar No.: 11217  
27 255 E. Warm Springs Road, Ste. 100  
28 Las Vegas, NV 89119  
*Attorneys for Plaintiffs*

ORIGINAL



CLERK OF THE COURT

MOT  
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Joshua Tomsheck, Esq.  
Nevada State Bar No. 9210  
jtomsheck@hoflandlaw.com  
228 South Fourth Street, 1<sup>st</sup> Floor  
Las Vegas, Nevada 89101  
Telephone: (702) 895-6760  
Facsimile: (702) 731-6910  
Attorney for Defendant Christopher Beavor

EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

YACOV JACK HEFETZ,  
Plaintiff,

vs.

CHRISTOPHER BEAVOR, an  
individual  
Defendant,

Case Number: A645353

Dept No: XXVIII

DEFENDANT CHRISTOPHER BEAVOR'S MOTION FOR STAY OF  
PROCEEDINGS

COMES NOW, Defendant CHRISTOPHER BEAVOR, through his attorney of  
record, JOSHUA TOMSHECK of the Law Firm of Hofland & Tomsheck, and hereby  
files this Motion for Stay of Proceedings to enable Defendant to file and Application  
for Writ of Mandamus.

This MOTION is based upon the attached Points and Authorities and any  
argument permitted by counsel at the time of hearing of this Motion.



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9 DATED this 25<sup>th</sup> day of November, 2013

By: /s/ J. Tomsheck  
Joshua Tomsheck, Esq.  
Nevada Bar No. 9210  
228 South Fourth Street, 1<sup>st</sup> Floor  
Las Vegas, Nevada 89101  
(702) 895-6760  
Attorney for Christopher Beavor

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1 Counsel in this matter), Marc Saggese, Esq. formally withdrew as attorney of record  
2 on March 25, 2013.

3 On May 21, 2013, Judgment and Notice of Entry of Judgment was entered by  
4 this Court and served on Plaintiff.

6 On June 10, 2013, Plaintiff's counsel filed their Motion for New Trial or in the  
7 Alternative Motion for Judgment Notwithstanding Verdict (JNOV).

9 On June 19, 2013, Defendant Christopher Beavor retained the undersigned to  
10 defend against Plaintiff's Motion for New Trial or in the Alternative Motion for  
11 Judgment Notwithstanding Verdict (JNOV).

13 On June 20, 2013, the undersigned counsel filed, on behalf of Defendant  
14 Beavor, Defendant's Opposition to Plaintiff's Motion for New Trial or in the  
15 Alternative Motion for Judgment Notwithstanding Verdict (JNOV). In the  
16 Opposition, the Defense stated "[a]s Plaintiff's Motion is untimely filed, and thus  
17 procedurally time barred, Defendant need not address Plaintiff's motion on the  
18 merits" but that "should this honorable Court desire additional briefing on the  
19 merits, Defense counsel can provide same."

22 This matter, having to do with a substantive issue which sought to invalidate  
23 the Jury's determination of the facts, law and evidence, was never heard for  
24 argument, but was heard on a "chambers calendar." The Matter was continued  
25 until a second chambers calendar on August 7, 2013, at which time this Court ruled.

28 The minute order from the Court's August 7, 2013 chambers calendar

1 decision were never served on the undersigned, even though he is listed as "Lead  
2 Attorney" for Defendant Christopher Beavor on the Courts Odyssey system.  
3 Instead, as the minutes from the August 7, 2013 hearing clearly state, "CLERK'S  
4 NOTE: A copy of this minute order was placed in the attorney folder(s) of: H. Stan  
5 Johnson, Esq. (Cohen- Johnson) and Marc Saggese, Esq. (Saggese & Associates)"  
6 even though Mr. Saggese withdrew as counsel of record on March 25, 2013. The  
7 undersigned only discovered the Court's decision by happenstance when checking  
8 the online Court minutes after realizing he had never received a decision.  
9

10  
11 On September 26, 2013, this Court heard Defendant's Motion for  
12 Reconsideration of the previous granting of Plaintiff's Motion for New Trial. After  
13 argument, this Court denied Defendant's Motion for reconsideration. After the  
14 Court's ruling, Defense counsel orally moved, pursuant to the authority cited  
15 herein, for a stay of these proceedings in order to address the Court's decision by  
16 way of Petition for Writ with the Nevada Supreme Court. This was denied.  
17 Therafter, a clerks note was entered into the Court minutes wherein the Court  
18 invited Defense counsel to file a written Motion for Stay.  
19

20 The Notice of Entry of Order for the September 26, 2013, hearing was not  
21 mailed to Defense counsel until November 15, 2013. This Motion now follows.  
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DATED this 25<sup>th</sup> day of November, 2013

By: /s/ J. Tomsheck  
Joshua Tomsheck, Esq.  
Nevada Bar No. 9210  
228 South Fourth Street, 1<sup>st</sup> Floor  
Las Vegas, Nevada 89101  
(702) 895-6760  
Attorney for Christopher Beavor

1  
2  
3  
4 **CERTIFICATE OF SERVICE**

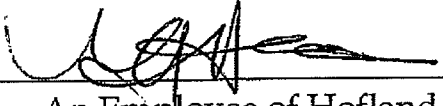
5 I hereby certify that I am an employee of HOFLAND & TOMSHECK  
6 and that on the 25 day of November, 2013, I caused a true and correct copy  
7 of the foregoing **MOTION FOR STAY** in the following manner:  
8

9  
10   X   By First Class Mail, postage prepaid from Las Vegas, Nevada;  
11 or

12   X   By Facsimile to the numbers indicated on this certificate of  
13 service to the attorneys listed below; or

14        By Personal Service as indicated.  
15

16 H. STAN JOHNSON, and  
17 BRIAN A. MORRIS  
18 c/o COHEN-JOHNSON, LLC  
19 255 E. Warm Springs Road, Suite 100  
20 Las Vegas, Nevada 89119  
21 *Courtesy copy via facsimile: (702) 823-3400*

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24 An Employee of Hofland & Tomscheck  
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**SUPREME COURT OF THE STATE OF NEVADA**

CHRISTOPHER BEAVOR, an individual

Petitioner,

vs.

THE EIGHT JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
CLARK COUNTY, and THE  
HONORABLE RONAL ISREAL,  
DISTRICT JUDGE

Respondents,

and

YACOV JACK HEFETZ,

Real Party in Interest.

Electronically Filed  
May 13 2014 02:31 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

S.C. CASE NO.:

**PETITIONERS APPENDIX**

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<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE NO.</u>
1] Jury's Verdict (Filed 3/01/2013)	PA00001-
1	Judgement (Filed 05/21/2013)	PA00002- PA00003
1	Notice of Entry of Judgment (Filed 05/21/2013)	PA00004- PA00009

1	1	Notice of Withdrawal of Attorney (Filed 03/25/2013)	PA00010- PA00011
2			
3	1	Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (Filed 1/09/2014)	PA00012- PA00021
4			
5			
6	1] Defendant's Opposition to Plaintiff's Motion for New Trial or in the Alternative Motion for Judgement Notwithstanding Verdict	PA00022- PA00025
7			
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9	1	Reply to Defendant Christopher Beavor's Opposition to Paintiff's Motion for New Trial or in The Alternative Motion for Judgement Notwithstanding Verdict (Filed 05/21/2013)	PA00026- PA00032
10			
11			
12			
13		Minute Order	PA00033
14			
15	1	Defendant Christopher Beavor's Motion for Reconsideration (Filed 08/28/2013)	PA00034- PA00068
16			
17	1	Opposition to Motion for Reconsideration	PA00069- PA00111
18			
19	1	Court Minutes from September 26, 2013	PA00112- PA00113
20			
21	1	Findings of Fact Conclusion of Law and Order	PA00114- PA00115
22			
23	1	Notice of Entry of Order	PA00116- PA00119
24			
25	1	Motion for Stay	PA00120- PA00126
26			
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