

obligations? If Defendants' inane claim were true, the implied covenant of good faith and fair dealing would be violated any time a party to a contract held the other party to the terms of the agreement. There is no basis in law for Defendants' position.

The bottom line is Defendants agreed under the Payment Guaranty to personally repay the Loan upon Borrower's default – regardless of any defenses they have. Instead of meeting those terms, however, they have thrown up a myriad of baseless counterclaims in an attempt to muddy the waters. The Court should see through Defendants' ruse and focus on the main point: Defendants refuse to meet their obligations under the Payment Guaranty.

In sum, Defendants cannot prove Hefetz breached the implied covenant of good faith and fair dealing. There is no evidence of wrongdoing during the Bankruptcy, and Hefetz's enforcement of the Payment Guaranty is proper. Therefore, Defendants' counterclaim for breach of the implied covenant of good faith and fair dealing must be dismissed.

**D. Defendants' Bread of Fiduciary Duty Claim Fails As A Matter Of Law**

Defendants allege Hefetz breached his fiduciary duty to Defendants. Namely, Defendants allege that Hefetz – as Manager of Star Development – which acted as Manager of Borrower – owed a fiduciary duty to Defendants as the owner of Borrower. See Amended Counterclaim, ¶ 56. Defendants then repeat the tired and baseless allegation the Hefetz breached his supposed fiduciary duty to Borrowers by making untrue statements to the Bankruptcy court and by refusing to release Defendants from their obligations under the Payment Guaranty. See Amended Counterclaim, ¶¶ 57-58. Defendants cannot prevail on this claim as a matter of law.<sup>5</sup>

To begin with, there was no fiduciary duty owed from Hefetz – individually – to Defendants – individually (all parties are named in their individual capacities in this case). If any fiduciary duty were owed at all – which is debatable – it would have been owed from Star

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<sup>5</sup> Defendants have a substantial burden of proof to prevail on their breach of fiduciary duty claim, which is a burden they cannot meet under the undisputed facts before the Court. To prevail on their breach of fiduciary duty claim, Defendants must prove: (1) Hefetz owed a fiduciary duty to Defendants; (2) Hefetz breached that duty; and (3) Defendants sustained damages as a proximate result of the breach. See Stalk v. Mushkin, 125 Nev. 21, 28, 199 P.3d 838, 843 (2009).

1 Development as manager of Borrower to Borrower.<sup>6</sup> Defendants improperly refuse to respect  
2 and recognize the corporate fiction. Notably, there was no individual fiduciary duty owed from  
3 Hefetz to Defendants; they were merely parties to the Payment Guaranty. Without a fiduciary  
4 duty owed from Hefetz, individually, to Defendants, individually, Defendants' breach of  
5 fiduciary duty claim fails as a matter of law.

6 Another critical failing of Defendants' breach of fiduciary duty claim is that Defendants  
7 have not suffered damages, a required element of their claim. As discussed previously, there was  
8 no finding of wrongdoing in the Bankruptcy as to Star Development. Also, Defendants'  
9 obligations under the Payment Guaranty were not released and were not required to be released,  
10 such that Defendants cannot argue they have been damaged by virtue of the fact they are being  
11 held to their agreed-to obligations under the Payment Guaranty. Therefore, Defendants' breach  
12 of fiduciary duty counterclaim must be dismissed.

13  
14 **E. Defendants' Negligence Per Se (Violation of NRS 645 B) Claim Fails As A Matter Of  
Law**

15 Defendants allege Hefetz is negligent per se by supposedly violating NRS 645B through  
16 his acquisition of the Payment Guaranty from Lender by virtue of being an unlicensed mortgage  
17 broker. See Amended Counterclaim, ¶¶ 71-72. Defendants allege they have suffered an  
18 unlawful lien as a result of Hefetz's supposed violation of NRS 645B. See Amended  
19 Counterclaim, ¶ 75. As discussed below, Defendants' counterclaim cannot stand as a matter of  
20 law because Hefetz did not violate NRS 645B, and, even if there were a per se violation,  
21 Defendants have suffered no injury, which is an additional requirement of negligence per se  
22 claims.<sup>7</sup>

23  
24  
25 <sup>6</sup> The following factors are considered in determining whether there is a fiduciary duty: (1) The reliant party has a  
26 right to reasonably trust or have confidence in the integrity and fidelity of the other; (2) the reliant party does in fact  
27 reasonably trust or have confidence in the integrity and fidelity of the other; (3) the fiduciary is in a position to have  
28 and exercise influence over the reliant party, and (4) the fiduciary does in fact have and exercise influence over the  
reliant party See Powers v. United Services. Auto. Ass'n., 114 Nev. 690, 962 P.2d 596 (1988); Perry v. Jordan, 111  
Nev. 943, 900 P.2d 335 (1995); Lind v. Webber, 36 Nev. 623, 134 P. 461 (1913).

<sup>7</sup> "A negligence per se claim arises when a duty is created by statute. A civil statute's violation establishes the duty  
and breach elements of negligence when the injured party is in the class of persons whom the statute is intended to

Hefetz did not violate NRS 645B for several reasons. First and foremost, Hefetz was not required to be licensed. Under NRS 645B.900, it is “unlawful for any person to provide any of the services of a mortgage broker or mortgage agent . . . without first obtaining the applicable license” unless the person is both exempt from the licensing requirement and has complied with the requirements for the exemption. Thus, to be liable under NRS 645B.900, Hefetz must (1) meet the definition of a “mortgage broker” and (2) not qualify for any exemptions from licensing.

Hefetz is not a “mortgage broker.” Under NRS 645B.0127, a “mortgage broker” includes anyone who:

- (a) Holds himself or herself out for hire to serve as an agent for any person in an attempt to obtain a loan which will be secured by a lien on real property;
- (b) Holds himself or herself out for hire to serve as an agent for any person who has money to lend, if the loan is or will be secured by a lien on real property;
- (c) Holds himself or herself out as being able to make loans secured by liens on real property;
- (d) Holds himself or herself out as being able to buy or sell notes secured by liens on real property; or
- (e) Offers for sale in this State any security which is exempt from registration under state or federal law and purports to make investments on promissory notes secured by liens on real property.

Hefetz does not meet NRS 645B.0127’s definition of a “mortgage broker” because there is no evidence he “held himself out” for any of the qualifying acts. Under Nevada law, “holding oneself out” is accomplished by “advertising or soliciting by agents, or may result from a course of business or conduct, but essentially must be a public offering of the service that communicates that it is available to those who wish to use it.” Fathers & Sons & A Daughter

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protect and the injury is of the type against which the statute is intended to protect.” Sanchez v. Wal-Mart Stores, Inc., 221 P.3d 1276, 1283 (Nev. 2009) (internal citations omitted). The violation of the statute must be the *proximate* cause of the other party’s injury. Barnes v. Delta Lines, 99 Nev. 688, 689-91, 669 P.2d 709, 710 (1983).

1 Too v. Transp. Services Auth. of Nevada, 124 Nev. 254, 261, n. 16, 182 P.3d 100, 105 (2008)  
2 (quoting Cook Tractor Co. v. Director of Revenue, 187 S.W.3d 870, 874 (Mo.2006)) (emphasis  
3 added). Defendants have no evidence Hefetz did any “holding himself out.” On the contrary,  
4 the only evidence before the Court is that Hefetz was assigned the Personal Guaranty from his  
5 co-investor, Lender, in a closed transaction. The reason the principal of the Lender assigned the  
6 Personal Guaranty to Hefetz was that he has cancer and is getting too old to pursue Defendants.  
7 Ex. 4, 50:20-25. Given that this was a very closed and personal assignment, there is no evidence  
8 of “advertising or soliciting” or making a “public offering” by Hefetz, without which Hefetz  
9 does not qualify as a “mortgage broker” under NRS 645B.0127. Therefore, Hefetz was not a  
10 “mortgage broker.”

11       Second, even if, *arguendo*, Hefetz met the definition of a “mortgage broker,” he was still  
12 exempt from licensure under NRS 645B.016(7), which exempts from licensure any “one nature  
13 person . . . who provides money for investment in commercial loans secured by a lien on real  
14 property . . . unless such a person makes a loan secured by a lien on real property using his . . .  
15 own money and assigns all or part of his . . . interest in the loan to another person.” Here, Hefetz  
16 invested in the Loan – which was benefitted by the Personal Guaranty – with his own funds.  
17 That interest was never assigned to another person. On the contrary, Hefetz was assigned more  
18 of an interest in the Personal Guaranty. Thus, even if Hefetz is deemed to be a “mortgage  
19 broker” under the statute (which he should not be), Hefetz is still exempt from licensure under  
20 NRS 645B.015(7).<sup>8</sup>

21  
22       Third, the contract at issue in this action, the Personal Guaranty, does not appear to even  
23 be contemplated or governed by NRS 645B. NRS 645B pertains to “mortgage transactions”  
24 only. A “mortgage” is defined as “an interest in land created by a written instrument providing  
25 security for the performance of a duty or the payment of a debt.” Black’s Law Dictionary, 1009  
26

27  
28 <sup>8</sup> NRS 645B.016(3) provides the Commissioner “may require” a person who is exempted from licensure under NRS  
645B.015(7) to file for a written exemption. However, there does not appear to be a mandatory written exemption  
filing requirement.



1 (6th ed. 1990). A personal guarantee is separate from a mortgage. See Bank of Nevada v.  
2 Friedman, 82 Nev. 417, 423-24, 420 P.2d 1, 5 (1966) (“A contract of guaranty is a separate  
3 contract, and is to be separately considered. It may be written on the back of a promissory note,  
4 but its effect must be judged as a simple contract, just as if it were on a separate paper.”). The  
5 Personal Guaranty is the only agreement at issue in this action. Hefetz has not pursued his rights  
6 under the Loan or in the property securing the Loan. Accordingly, there is no “mortgage  
7 transaction” at issue in this case to implicate NRS 645B, which is another reason Hefetz is not  
8 liable under NRS 645B.

9 Fourth, again *arguendo*, even if Hefetz were deemed a mortgage broker, even if Hefetz  
10 did not meet the licensing exemption, and even if the Personal Guaranty were governed by NRS  
11 645B (none of which is true), Hefetz was not negligent per se because NRS 645B.930 only  
12 provides for civil liability to the client of an unlicensed mortgage broker, not to a mortgagor on a  
13 mortgage held by an unlicensed person. Defendants are not Hefetz’s “clients.” Defendants have  
14 not claimed to be Hefetz’s clients, and there is certainly no evidence to support any claim should  
15 Defendants attempt to make such a claim.  
16

17 Moreover, Defendants’ injury is not the type the statute exists to prevent. The statute is  
18 concerned with the buying and selling of notes and securities, and the harm that could result  
19 from unscrupulous brokers’ practices in buying and selling notes and securities. Defendants do  
20 not even allege any of that occurred here. Defendants simply owe obligations under the Payment  
21 Guaranty, which are obligations they chose to take on as guarantors. Thus, there is no remedy  
22 for Defendants under NRS 645B even if they could get to the impossible point of even being  
23 able to bring a claim under NRS 645B.

24 In recognition of their inability to bring a claim against Hefetz under NRS 645B,  
25 Defendants instead assert a broad-based negligence per se claim. The broad-based claim also  
26 fails as a matter of law, however, because Hefetz has not violated any statute, which is the crux  
27 of a negligence per se claim.  
28

Furthermore, Defendants also cannot avoid Hefetz is not liable for negligence per se because, as touched on above, Defendants are not the party sought to be protected by statute. NRS 645B protects “clients” – not persons liable under loans. For example, in Anderson v. Baltrusaitis, 113 Nev. 963, 965, 944 P.2d 797, 799 (1997), a pedestrian in an unmarked crosswalk failed to yield to a car and was struck. The Nevada Supreme Court determined the pedestrian’s violation of the statute requiring him to yield did not constitute negligence per se because the statute exists to protect pedestrians, not to protect drivers; the driver was not in the class the statute was intended to protect. Likewise, in Paso Builders v. Hebard, 83 Nev. 165, 172, 426 P.2d 731, 736 (1967), a company prepared a trust deed and thus allegedly violated the prohibition against the unauthorized practice of law. The company was deemed not liable, however, because its preparation of the deed “did not proximately cause damage”; rather, the plaintiff’s damages resulted from the debtor’s defaulting on the deed.

The bottom line is any failure by Hefetz to comply with NRS 645B did not proximately cause any harm to Defendants. Defendants are still liable under the Personal Guaranty regardless of any licensing structure. This is akin to Paso Builders where a company’s arguable unauthorized practice of law in preparing a trust deed was deemed to not have caused any injury since the trust deed was properly prepared according to the instructions the company received. The company’s alleged unauthorized practice of law had nothing to do with the harm suffered when debtors defaulted on the deed. That is, if the trust deed had not been prepared *at all* then the debt might not exist, but given that it was prepared, the question of *who* prepared it was irrelevant. The same is true here: The Defendants’ guaranty obligations existed and would continue to exist regardless of whether Hefetz was a licensed mortgage broker.

In sum, NRS 645B does not appear to be applicable as regards the Payment Guaranty. But, even if it is, Hefetz was not required to be licensed. Moreover, Defendants have suffered no loss. Therefore, Hefetz is not liable under Defendants’ negligence per se claim.

VI.

CONCLUSION

For the reasons stated above, Plaintiff respectfully requests this Court grant summary judgment as to guarantor liability on Plaintiff's sole claim in this matter. In addition, Plaintiff/Counterdefendant is entitled to summary judgment as to Defendants/Counterclaimants' first, second, third, fourth and sixth counterclaims as a matter of law.

Dated this 11<sup>th</sup> day of September, 2012.



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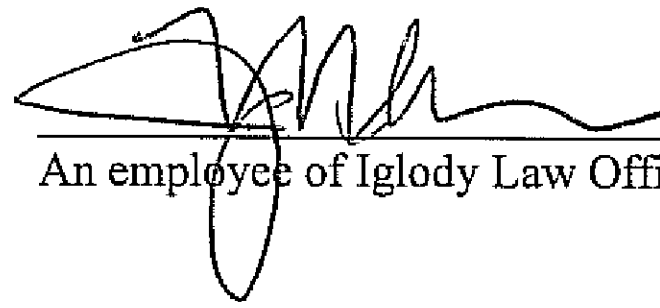
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 11<sup>th</sup> day of September, 2012, I served a copy of the foregoing  
**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT** upon each of the  
parties via hand delivery to:

**SAGGESE & ASSOCIATES, LTD.**

Marc A. Saggese, Esq.  
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Tel: (702) 778-8883  
Attorney for Defendants/Counterclaimants



An employee of Iglody Law Offices

# **EXHIBIT 1**

## LOAN AGREEMENT

THIS LOAN AGREEMENT ("Agreement"), is made and entered into as of March 29, 2007 by and between Toluca Lake Vintage, LLC, a California limited liability company ("Borrower"), and Herbert Frey, Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982 ("Lender").

### SECTION 1. DEFINITIONS AND ACCOUNTING TERMS.

1.1 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth respectively after each:

"Acquisition Financing" shall have the meaning set forth in Section 6.7.

"Agreement" means this Loan Agreement.

"Beavor" shall mean Christopher Beavor and Samantha Beavor, each an individual.

"Borrower" means Toluca Lake Vintage, LLC, a California limited liability company.

"Brian Head Deed of Trust" shall have the meaning set forth in Section 4.1(b).

"Brian Head Property" shall have the meaning as described in Exhibit A attached hereto.

"Business Day" means any day on which banks in the State of Nevada are open for business.

"C&S" shall mean C&S Holdings, LLC, a Nevada limited liability company.

"Deeds of Trust" mean (a) the Brian Head Deed of Trust, (b) the Nevada Deed of Trust, and (c) the Toluca Lake Deed of Trust.

"Event of Default" shall have the meaning set forth in Section 7.1.

"Financing Notice" shall have the meaning set forth in Section 6.7.

"Governmental Agency" means any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, court, administrative tribunal or public utility.

"Guarantors" mean, collectively, Beavor; C&S; and Brian Head Lofts, LLC, a Utah limited liability company.

"Guaranty" means, collectively, the Payment Guaranty executed by each Guarantor in favor of Lender, either as originally executed or as it may from time to time be supplemented, modified or amended.

"Improvements" means any and all improvements now existing or hereafter constructed on the Toluca Lake Property.

"Interest Reserve" means that portion of the Loan funds allocated to interest reserve pursuant to Section 3.2 below.

"Laws" means, collectively, all federal, state and local laws, rules, regulations, ordinances and codes.

"Lender" means Herbert Frey, Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982.

"Loan" means the loan to be made by Lender to Borrower pursuant to Section 3 hereof.

"Loan Documents" means, collectively, this Agreement, the Notes, the Deeds of Trust, the Guaranty and the Security Agreement, in each case either as originally executed or as the same may from time to time be supplemented, modified or amended, together with any other documents or instruments which may at any time be executed by Borrower in connection with the Loan.

"Nevada Deed of Trust" shall have the meaning set forth in Section 4.1(c).

"Nevada Property" shall have the meaning as described in Exhibit A attached hereto.

"Notes" mean the Phase I Note and the Phase II Note, executed by Borrower in favor of Lender to evidence the Loan, either as originally executed or as it may from time to time be supplemented, modified or amended.

"NRS" means the Nevada Revised Statutes, as amended from time to time.

"Person" means any entity, whether an individual, trustee, corporation, partnership, trust, unincorporated organization or otherwise.

"Personal Property" means all present and future personal property of Borrower of every kind and nature, whether tangible or intangible, now or hereafter located at, upon or about the Toluca Lake Property, or used or to be used in connection with or relating to or arising with respect to the Toluca Lake Property, including but not limited to the property described in the Toluca Lake Deed of Trust.

"Phase I Loan Amount" shall have the meaning set forth in Section 3.1(a).

"Phase I Note" shall have the meaning set forth in Section 4.1(a).

"Phase II Note" shall have the meaning set forth in Section 4.1(b).

"Preferred Return" shall have the meaning set forth in Section 4.2(a).

"Property" means, collectively, the Real Property, the Personal Property and any buildings, structures, or improvements now or hereafter located on all or any portion of the Real Property.

"Real Property" means, collectively, (a) the Brian Head Property, (b) the Nevada Property, and (c) the Toluca Lake Property, all as more particularly described in Exhibit A attached hereto.

"Security Agreement" shall have the meaning set forth in Section 4.1(e).

"Security Documents" means the Deeds of Trust, the Guaranty and the Security Agreement.

"Toluca Lake Deed of Trust" shall have the meaning set forth in Section 4.2(b).

"Toluca Lake Property" shall have the meaning as described in Exhibit A attached hereto.

"Unit" means each residential condominium unit created by Borrower on the Toluca Lake Property.

1.2 Use of Defined Terms. Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of the members of the relevant class. Any reference to the Loan Documents and other instruments, documents and agreements shall include such Loan Documents and other instruments, documents and agreements as originally executed or as the same may be supplemented, modified or amended.

1.3 Accounting Terms. All accounting terms not specifically defined in this Agreement shall be construed in conformity with, and all financial data required to be submitted by this Agreement shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis.

1.4 Exhibits. All exhibits to this Agreement, either as now existing or as the same may from time to time be supplemented, modified or amended, are incorporated herein by this reference.

## SECTION 2. RECITALS.

Borrower has applied to Lender for a Loan to complete the acquisition and development of the Toluca Lake Property. Lender is willing to make the Loan to Borrower on the terms and conditions contained in this Agreement and the other Loan Documents.

## SECTION 3. THE LOAN.

3.1 Amount of the Loan. Subject to the terms and conditions set forth in this Agreement, Lender agrees to make a loan ("Loan") to Borrower in the aggregate principal amount of Six Million Dollars (\$6,000,000) (the "Loan Amount"), the disbursement of which by Lender is subject to the terms and conditions of the Loan Documents. The Loan Amount shall be disbursed to Borrower as follows:

(a) *Phase I.* Concurrently with the execution of this Agreement, Lender shall disburse to Borrower the sum of Two Million Two Hundred Ninety One Thousand Four Hundred Ninety Dollars (\$2,291,490) (the "Phase I Loan Amount") in the amounts and according to the disbursement schedule attached hereto as Exhibit B. Of this amount, Borrower and Lender acknowledge and agree that One Hundred Sixty Four Thousand Dollars (\$164,000) shall be withheld by Lender as a loan fee, which shall be deemed nonrefundable and fully earned upon disbursement of the Phase II Loan proceeds as set forth in Section 3.1(b) below, and Seventy Seven Thousand Four Hundred Ninety Dollars (\$77,490) shall be withheld by Lender as a portion of the Interest Reserve to be utilized as set forth in Section 3.2 below. The Phase I Loan shall be evidenced by the Phase I Note.

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(b) Phase II. On June 20, 2007, Lender shall disburse to Borrower the sum of Six Million Dollars (\$6,000,000). Of this amount, Borrower and Lender acknowledge and agree that Two Million Two Hundred Ninety One Thousand Four Hundred Ninety Dollars (\$2,291,490) shall be withheld by Lender and applied to pay and satisfy in full the Phase I Note, and One Million Three Hundred Fifty Thousand Dollars (\$1,350,000) shall be withheld by Lender as a portion of the Interest Reserve to be utilized as set forth in Section 3.2 below. The Phase II Loan shall be evidenced by the Phase II Note.

3.2 Interest Reserve. A portion of the Loan Amount, in the amounts set forth in Section 3.1 above, shall withheld by Lender and applied as interest reserve for its benefit (the "Interest Reserve"). Interest accrued on the then outstanding Loan Amount shall be paid from a portion of the Interest Reserve upon presentation of a monthly interest statement by Lender to Borrower, without the necessity of any instruction or request from Borrower. Except as provided in this paragraph, the funds in the Interest Reserve shall never be used for any other purpose. Depletion of the Interest Reserve shall not release Borrower from any of Borrower's obligations under the Loan Documents, including, but not limited to, the obligation to pay interest accruing under the Note.

3.3 Prepayment. Borrower may prepay the Loan, in full or in part, at any time.

3.4 Security. The indebtedness evidenced by the Notes, and all other indebtedness and obligations of Borrower under the Loan Documents, shall be secured as set forth in Section 4. The Guaranty and the obligations of any Guarantor thereunder shall be unsecured.

#### SECTION 4. LOAN DOCUMENTS AND SECURITY.

4.1 Phase I Loan. Upon disbursement of the Phase I Loan, Borrower shall deliver to Lender the following:

(a) A promissory note in the principal amount of the Phase I Loan Amount bearing interest at the rate of twelve percent (12%) per annum (the "Phase I Note"), unless said rate is reduced to eight percent (8%) per annum by reason of a failure by Lender to timely fund the Phase II Loan Amount as set forth in Section 7.2(b);

(b) A Deed of Trust executed by C&S, as grantor, encumbering the Brian Head Property as a first priority lien (the "Brian Head Deed of Trust");

(c) A Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by Beavor, as grantor, encumbering the Nevada Property as a second priority lien (the "Nevada Deed of Trust");

(d) A Payment Guaranty executed by each Guarantor in favor of Lender; and

(e) A Security Agreement and Assignment of Membership Interest by and between C&S; Rocket Construction, Inc., a California corporation; and Essential Investments, LLC, a Nevada limited liability company, collectively, as assignor, and Lender, as assignee (the "Security Agreement").

4.2 Phase II Loan. Upon disbursement of the Phase II Loan, Borrower shall deliver to Lender the following:

*CM HF*

(a) A promissory note in the principal amount of the Phase II Loan bearing interest at the rate of fifteen percent (15%) per annum plus a preferred return ("Preferred Return") in the amount of One Million Eight Hundred Thousand Dollars (\$1,800,000), in the form attached hereto as Exhibit C (the "Phase II Note"). Upon delivery of the Phase II Note, the Phase I Note shall be deemed paid and satisfied in full and Lender shall return the Phase I Note to Borrower marked "Paid in Full"; and

(b) A Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing encumbering the Toluca Lake Property as a second priority lien (the "Toluca Lake Deed of Trust"), in the form attached hereto as Exhibit D. Borrower and Lender acknowledge and agree that the Phase II Loan proceeds will be used by Borrower to acquire the Toluca Lake Property and that the Toluca Lake Deed of Trust will be delivered to Lender concurrently with close of escrow by Borrower for the Toluca Lake Property.

## **SECTION 5. REPRESENTATIONS AND WARRANTIES BY BORROWER.**

5.1 Formation, Qualification and Powers of Borrower. Borrower is a limited liability company duly formed and validly existing under the laws of the State of California and has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver and perform all of its obligations under the Loan Documents.

5.2 Authority and Compliance with Instruments and Government Regulations. The execution, delivery and performance by Borrower of all of its obligations under each Loan Document have been duly authorized by all necessary action and do not and will not:

(a) require any consent or approval not heretofore obtained of any Person holding any security or interest or entitled to receive any security or interest in Borrower;

(b) violate any provision of any organizational document or certificate of Borrower;

(c) result in or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, claim, charge, right of others or other encumbrance of any nature, other than under the Loan Documents, upon or with respect to any property now owned or leased or hereafter acquired by Borrower;

(d) violate any provision of any Law, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Borrower or the Property, which violation would have a material, adverse impact thereon; or

(e) result in a breach of or constitute a default under, cause or permit the acceleration of any obligation owed under, or require any consent under, any indenture or loan or credit agreement or any other agreement, lease or instrument to which Borrower is a party or by which Borrower or any property of Borrower, is bound or affected; and Borrower is not in default in any respect that is materially adverse to the interest of Lender or that would have any material adverse effect on the financial condition of Borrower or the conduct of its business under any Law, order, writ, judgment, injunction, decree, determination, award, indenture, agreement, lease or instrument described in Sections 5.2(d) and 5.2(e).

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5.3 Execution of the Guaranty by the Guarantors. The execution and delivery of the Guaranty:

- (a) have been duly authorized by all necessary action;
- (b) do not require the consent, authorization or approval of any Governmental Agency or Person;
- (c) will not result in the creation of any lien or other claim of any nature upon or with respect to the property of the Guarantors, other than as may be set forth in the Guaranty; and
- (d) will not violate any provision of any Law having applicability to the Guarantors, in a manner which would have a material, adverse impact on any Guarantors; and, when executed and delivered, the Guaranty will constitute the legal, valid and binding obligation of the Guarantors enforceable against the Guarantors in accordance with its terms.

5.4 No Governmental Approvals Required. No authorization, consent, approval, order, license, exemption from, or filing, registration or qualification with, any Governmental Agency is or will be required to authorize, or is otherwise required in connection with:

- (a) the execution, delivery and performance by Borrower and the Guarantors of the Loan Documents; or
- (b) the creation of the liens, security interests or other charges or encumbrances described in the Security Documents; except that filing and/or recording may be required to perfect Lender's interest under the Security Documents.

5.5 Binding Obligations. The Loan Documents, when executed and delivered, will constitute the legal, valid and binding obligations of Borrower and the Guarantors, as the case may be, enforceable against them in accordance with their respective terms.

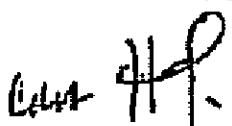
## SECTION 6. AFFIRMATIVE AND NEGATIVE COVENANTS.

Until payment of the Notes in full and performance of all obligations of Borrower under the Loan Documents, unless Lender otherwise consents in writing:

6.1 Compliance with Requirements. Borrower shall comply with all conditions, covenants, restrictions, leases, easements, reservations, rights and rights-of-way and all applicable Laws and other requirements relating to the Property, and obtain all necessary approvals, consents, licenses and permits of any Governmental Agency.

6.2 Sale or Other Encumbrances. Borrower specifically agrees that:

- (a) In order to induce Lender to make the Loan, Borrower agrees that if the Property or any part thereof or any interest therein, shall be sold, assigned, transferred, or conveyed, except as shall be specifically hereinafter permitted or without the prior written consent of Lender, then Lender, at its option, may declare the Notes, and all other obligations hereunder, to be forthwith due and payable. Except as shall be otherwise specifically provided herein, (a) a change in the legal or equitable ownership of the Property whether or not of record, or (b) a change in the form of entity or ownership (including the hypothecation or encumbrance

  
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thereof) of the stock or any other ownership interest in Borrower shall be deemed a transfer of an interest in the Property; provided, however, that any transfer of the Property or any interest therein to an entity which controls, is controlled by or is under common control with Borrower shall not be considered a transfer hereunder.

(b) Borrower may request Lender to approve a sale or transfer of the Property to a party who would become the legal and equitable owner of the Property and would assume any and all obligations of Borrower under the Loan Documents. Lender shall not be obligated to consider or approve any such sale, transfer or assumption or request for the same. However, upon such request, Lender may impose limiting conditions and requirements to its consent to an assumption.

(c) In the event ownership of the Property, or any part thereof, becomes vested in a person or persons other than Borrower, the Lender may deal with such successor or successors in interest with reference to the Notes or the Deeds of Trust in the same manner as with Borrower, without in any way releasing, discharging or otherwise affecting the liability of Borrower under the Notes, the Deeds of Trust or the other Loan Documents.

6.3 Payment of Taxes, Assessments and Charges. Borrower shall pay, prior to delinquency, all taxes, assessments, charges and levies imposed by any Governmental Agency which are or may become a lien affecting the Property or any part thereof, including, without limitation, assessments on any appurtenant water stock; except that Borrower shall not be required to pay and discharge any tax, assessment, charge or levy that is being actively contested in good faith by appropriate proceedings, as long as Borrower has established and maintains reserves adequate to pay any liabilities contested pursuant to this Section in accordance with generally accepted accounting principles and, by reason of nonpayment, none of the property covered by the Security Documents or the lien or security interest of Lender is in danger of being lost or forfeited.

6.4 Insurance. Borrower shall at all times maintain the following policies of insurance:

(a) prior to completion of the Improvements, builder's "all risk" insurance ("completed value" form), including "course of construction" coverage, covering the Improvements and any Personal Property;

(b) from and after completion of the Improvements, property "all risk" Insurance covering the Improvements and any Personal Property;

(c) commercial general liability insurance in favor of the Borrower (and naming Lender as an additional insured) in an aggregate amount not less than \$2,000,000 (or such greater amount as may be specified by Lender from time to time) combined single limit; and

(d) such other insurance as may be required by applicable Laws (including worker's compensation and employer's liability insurance) or as Lender may reasonably require from time to time (including "all risk" insurance with respect to any other improvements now or in the future located on the Toluca Lake Property and comprehensive form boiler and machinery insurance, if applicable, rental loss insurance and business interruption insurance).

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6.5 Physical Security of Property. Borrower shall take appropriate measures to protect the physical security of the Property.

6.6 Reporting and Requirements. Borrower shall cause to be delivered to Lender, in form and detail satisfactory to Lender promptly upon Borrower's learning thereof, notice of:

- (a) any litigation affecting or relating to Borrower, and/or the Guarantors, and the Property;
- (b) any dispute between Borrower and any Governmental Agency relating to the Property, the adverse determination of which would adversely affect the Property;
- (c) any threat or commencement of proceedings in condemnation or eminent domain relating to the Property;
- (d) any Event of Default or event which, with the giving of notice and/or the passage of time, could become an Event of Default; and
- (e) any change in the Manager of Borrower, as defined in Borrower's Operating Agreement.

6.7 Approval of Toluca Lake Property Financing. Borrower and Lender acknowledge and agree that Borrower intends to obtain a loan for the acquisition of the Toluca Lake Property and construction of a condominium project thereon (the "Acquisition Financing"). The Acquisition Financing shall be secured by a deed of trust encumbering the Toluca Lake Property as a lien superior in priority to the Toluca Lake Deed of Trust. Except as set forth herein, the terms of the Acquisition Financing shall be subject to the written approval of the Lender within its commercially reasonable discretion. Borrower shall deliver written notice (the "Financing Notice") to Lender describing the terms of the Acquisition Financing no later than fifteen (15) days prior to the scheduled close of escrow. In the event Borrower does not receive written notice from Lender within five (5) days after delivery of the Financing Notice to Lender disapproving the proposed terms of the Acquisition Financing, the Acquisition Financing shall be deemed approved by Lender. Notwithstanding the foregoing, Borrower shall not be required to obtain Lender's consent to the Acquisition Financing if the interest rate therefor does not exceed three percent (3%) over the prime rate then charged by major money center banks in the United States and the loan origination fee does not exceed one percent (1%) of the principal loan amount. Borrower and Lender acknowledge and agree that during the term of the Loan, the aggregate principal amount of all indebtedness secured by the Toluca Lake Property, including the Acquisition Financing and the Loan, shall not exceed Twenty Six Million Dollars (\$26,000,000).

## **SECTION 7. EVENTS OF DEFAULT AND REMEDIES UPON DEFAULT.**

7.1 Events of Default. The occurrence of any one or more of the following, whatever the reason therefor, shall constitute an Event of Default hereunder:

- (a) Borrower shall fail to pay when due any installment of principal or interest on the Notes or any other amount owing under this Agreement or the other Loan Documents, and such failure shall continue uncured as of ten (10) calendar days after Borrower receives written notice of such failure; or
- (b) Borrower or any Guarantor shall fail to perform or observe any term, covenant or agreement contained in any of the Loan Documents on its part to be performed or

observed, other than the failure to make a payment covered by Section 7.1(a), and such failure shall continue uncured as of thirty (30) calendar days after Borrower receives written notice of such failure; provided, however, that if Borrower has commenced to cure the default within said thirty (30) day period and is diligently pursuing such cure, but the default is of such a nature that it cannot be cured within thirty (30) days, then the cure period shall be extended for the number of days necessary to complete the cure, but in no event shall the total cure period be longer than sixty (60) days (the cure period set forth in this Section 7.1(b) shall not apply to any other Events of Default); or

(c) any representation or warranty in any of the Loan Documents or in any certificate, agreement, instrument or other document made or delivered pursuant to or in connection with any of the Loan Documents proves to have been incorrect in any material respect when made; or

(d) Borrower (which term shall include any entity comprising Borrower) is dissolved or liquidated, or otherwise ceases to exist, or all or substantially all of the assets of Borrower or any Guarantor are sold or otherwise transferred without Lender's written consent; or


(e) Borrower or any Guarantor is the subject of an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or Borrower or any Guarantor applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer (the "Receiver"); or a Receiver is appointed without the application or consent of Borrower or any Guarantor, as the case may be, and the appointment continues undischarged or unstayed for sixty (60) calendar days; or Borrower or any Guarantor institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceedings relating to it or to all or any part of its property under the laws of any jurisdiction; or any similar proceeding is instituted without the consent of Borrower or any Guarantor, as the case may be, and continues undismissed or unstayed for sixty (60) calendar days; or any judgment, writ, attachment, execution or similar process is issued or levied against all or any part of the Property of Borrower or any Guarantor, and is not released, vacated or fully bonded within sixty (60) calendar days after such issue or levy.

## **7.2 Remedies Upon Default.**

(a) Upon the occurrence of any Event of Default, Lender may, at its option, do any or all of the following:

(i) declare the principal of all amounts owing under a Note, this Agreement and the other Loan Documents and other obligations secured by the Security Documents, together with interest thereon, and any other obligations of Borrower to Lender, to be forthwith due and payable, regardless of any other specified maturity or due date, without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character, and without the necessity of prior recourse to any security;

(ii) terminate any right of Borrower to receive any additional advance;

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(iii) terminate all rights of Borrower and obligations of Lender under the Loan Documents;

(iv) exercise its right and power to sell, or otherwise dispose of, the Personal Property, or any part thereof, and for that purpose may take immediate and exclusive possession of the Personal Property, or any part thereof, and with or without judicial process to the extent permitted by law, enter upon any premises on which the Personal Property or any part thereof may be situated and remove the same therefrom without being deemed guilty of trespass and without liability for damages thereby occasioned, or at Lender's option Borrower shall assemble the Personal Property and make it available to the Lender at the place and the time designated in the demand; and

(v) exercise any and all of its rights under the Loan Documents, including but not limited to the right to take possession of and foreclose on any security, and exercise any other rights with respect to any security, whether under the Security Documents or any other agreement or as provided by Law, all in such order and in such manner as Lender in its sole discretion may determine.

(b) If Lender shall fail to perform any obligation under this Agreement, including, without limitation, timely disbursement of the funds as set forth in Section 3.1, Borrower shall be entitled to all or any of the following remedies:

(i) in the event Lender fails to timely disburse funds as set forth in Section 3.1, the interest rate under the Phase I Note shall be reduced from twelve percent (12%) to eight percent (8%) per annum effective as of the date of Lender's failure to so fund; and

(ii) pursue an action to specifically enforce the performance of any and all provisions of this Agreement, including, without limitation, Section 7.2(b)(i).

## SECTION 8. MISCELLANEOUS.

8.1 Performance by Lender. In the event that Borrower shall default in or fail to perform any of its obligations under the Loan Documents, Lender shall have the right, but not the duty, without limitation upon any of Lender's rights pursuant thereto, upon no less than fifteen (15) calendar days prior written notice, to perform the same, and Borrower agrees to pay to Lender, within seventy-two (72) hours after demand therefor, all costs and expenses incurred by Lender in connection therewith, including without limitation actual attorneys' fees reasonably incurred.

8.2 Actions. Provided Borrower has not promptly so acted, Lender shall have the right to commence, appear in, and defend any action or proceeding purporting to affect the rights or duties of the parties hereunder or the payment of any funds, and in connection therewith Lender may pay necessary expenses, employ counsel, and pay reasonable attorneys' fees. Borrower agrees to pay to Lender within seventy-two (72) hours after demand therefor, all costs and expenses incurred by Lender in connection therewith, including without limitation actual attorneys' fees reasonably incurred.

8.3 Advances Obligatory. Anything herein to the contrary notwithstanding, it is specifically understood and agreed that any advances made by Lender pursuant to this Agreement,

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including, but not limited to, all funds advanced by Lender, shall be deemed advanced by Lender under an obligation to do so.

8.4 Binding Effect: Assignment. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns, except that, as provided herein, Borrower may not assign its rights or interest or delegate any of its duties under this Agreement or any of the other Loan Documents without prior written consent of Lender.

8.5 Amendments: Consents. No amendment, modification, supplement, termination or waiver of any provision of this Agreement or any of the other Loan Documents, and no consent to any departure by Borrower therefrom, may in any event be effective unless in writing signed by Lender, and then only in the specific instance and for the specific purpose given.

8.6 Notices. All notices to be given pursuant to this Agreement shall be sufficient if given by personal service, by guaranteed overnight delivery service, by telex, telecopy or telegram or by being mailed postage prepaid, certified or registered mail, return receipt requested, to the described addresses of the parties hereto as set forth below, or to such other address as a party may request in writing. Any time period provided in the giving of any notice hereunder shall commence upon the date of personal service, the day after delivery to the guaranteed overnight delivery service, the date of sending the telex, telecopy or telegram or two (2) days after mailing certified or registered mail.

**BORROWER'S ADDRESS:**

Toluca Lake Vintage, LLC  
1930 Village Center Circle, Suite 3-231  
Las Vegas, Nevada 89134  
Attention: Christopher Beavor  
Telephone: (702) 853-7900  
Facsimile: (702) 947-6111

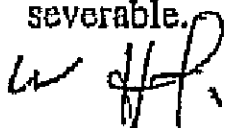
**LENDER'S ADDRESS:**

Herbert Frey, Trustee of the  
Herbert Frey Revocable Family Trust  
157 E. Warm Springs Road  
Telephone: (702) \_\_\_\_\_  
Facsimile: (702) \_\_\_\_\_

8.7 Governing Law. The laws of the State of Nevada, without regard to its choice of law provisions, shall govern enforcement of the Loan Documents.

8.8 Jurisdiction. Borrower and Lender, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, (i) submit to personal jurisdiction in the State of Nevada over any suit, action or proceeding by any person arising from or relating to the Notes, this instrument or any other of the Loan Documents, (ii) agree that any such action, suit or proceeding shall be brought in a state or federal court of competent jurisdiction sitting in Clark County, Nevada, (iii) submit to the jurisdiction of such courts, and (iv) to the fullest extent permitted by law, agrees that they will not bring any action, suit or proceeding in any forum other than Clark County, Nevada.

8.9 Severability of Provisions. Any provision in any Loan Document that is held to be inoperative, unenforceable or invalid shall be inoperative, unenforceable or invalid without affecting the remaining provisions, and to this end the provisions of all Loan Documents are declared to be severable.





8.10 Headings. Section headings in this Agreement are included for convenience of reference only and are not part of this Agreement for any other purpose.


8.11 Attorney's Fees. If any legal action or proceeding is initiated by a party to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover the reasonable fees of attorneys and any other costs incurred in connection therewith.

8.12 Time of the Essence. Time is of the essence as to any and all provisions of this Agreement.

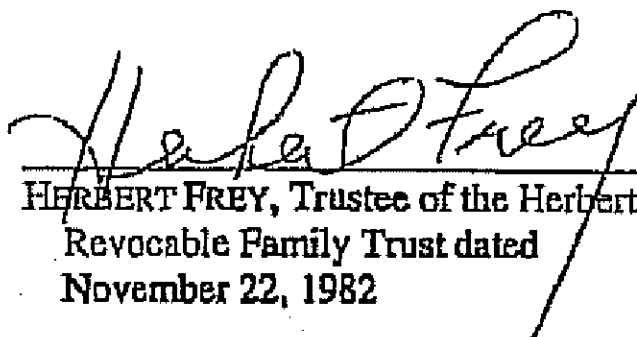
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**BORROWER:**

TOLUCA LAKE VINTAGE, LLC  
A California limited liability company

By:  3/29/07  
Christopher Beavor  
Manager

**LENDER:**

 3/29/07  
HERBERT FREY, Trustee of the Herbert Frey  
Revocable Family Trust dated  
November 22, 1982

# **EXHIBIT 2**

**PROMISSORY NOTE**

U.S. \$6,000,000.00

As of 8/23/07

FOR VALUE RECEIVED, Toluca Lake Vintage, LLC, a California limited liability company, having an address at 1930 Village Center Circle, Suite 3-231, Las Vegas, Nevada 89134 ("Maker"), hereby promises to pay to the order of Herbert Frey, Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982 ("Payee"), having an address at 157 E. Warm Springs Road, Las Vegas, Nevada 89119, the principal sum of Six Million Dollars (\$6,000,000.00) or so much thereof as may be advanced from time to time, and interest from the date hereof on the balance of principal from time to time outstanding, in United States currency, at the rates and at the times hereinafter described.

This Note is issued by Maker pursuant to that certain Loan Agreement dated as of March 29, 2007, as amended, (the "Loan Agreement") entered into between Payee and Maker. This Note evidences the Phase II Loan (as defined in the Loan Agreement). Payment of this Note is governed by the Loan Agreement, the terms of which are incorporated herein by express reference as if fully set forth herein. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

1. **Interest.** The principal amount hereof outstanding from time to time shall bear interest until paid in full at the rate of fifteen percent (15%) per annum.

2. **Monthly Payments.** Interest only shall be payable in arrears on the first (1st) Business Day of each calendar month after the date hereof up to and including the Maturity Date in the amount of all interest accrued during the immediately preceding calendar month. All payments on account of the indebtedness evidenced by this Note shall be made to Payee not later than 11:00 a.m. Las Vegas, Nevada time on the day when due in lawful money of the United States and shall be first applied to late charges, costs of collection or enforcement and other similar amounts due, if any, under this Note and any of the other Loan Documents, then to interest due and payable hereunder and the remainder to principal due and payable hereunder.

3. **Maturity Date.** The indebtedness evidenced hereby shall mature on February 21, 2009, as such date may be extended by Maker as set forth herein ("Maturity Date"). Provided that an Event of Default does not exist under the Loan Documents, Maker shall have the right to extend the Maturity Date to 5/21/09 by delivering written notice to Payee of such extension at the address set forth above on or before 1/21/09. Moreover, provided that Maker has so extended the Maturity Date and an Event of Default does not exist under the Loan Documents, Maker shall have the right to further extend the Maturity Date to 8/21/09 by delivering written notice to Payee of such further extension at the address set forth above on or before 4/21/09. On the Maturity Date, the entire outstanding principal balance hereof, together with accrued and unpaid interest and all other sums evidenced by this Note, shall, if not sooner paid, become due and payable.

4. **Preferred Return.** In consideration for the Loan, Payee shall be entitled to receive a preferred return (the "Preferred Return") in the amount of One Million Eight Hundred Thousand Dollars (\$1,800,000.00). The Preferred Return shall not bear interest hereunder and shall be payable upon the sale, transfer or conveyance of each Unit by Maker to any Person as follows: (a) to Payee, the

amount of Thirty Five Thousand Dollars (\$35,000.00); and (b) to The Gilmore Company, a Nevada corporation, at its offices located at \_\_\_\_\_, the amount of Five Thousand Dollars (\$5,000.00).

5. General Provisions.

(a) The parties hereto intend and believe that each provision in this Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Maker and the holder or holders hereof under the remainder of this Note shall continue in full force and effect. All agreements herein are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance hereof, or otherwise, shall the amount paid or agreed to be paid to the holders hereof for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, the fulfillment of any provision hereof, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the holder hereof shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest.

(b) This Note and all provisions hereof shall be binding upon Maker and all persons claiming under or through Maker, and shall inure to the benefit of Payee, together with its successors and assigns, including each owner and holder from time to time of this Note.

(c) Time is of the essence as to all dates set forth herein.

(d) Maker agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Payee; and Maker consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Payee with respect to the payment or other provisions of this Note, and to any substitution, exchange or release of the collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any makers, endorsers, guarantors, or sureties, all whether primarily or secondarily liable, without notice to Maker and without affecting its liability hereunder.

(e) If this Note is placed in the hands of attorneys for collection or is collected through any legal proceedings, Maker promises and agrees to pay, in addition to the principal, interest and other sums due and payable hereon, all costs of collecting or attempting to collect this Note, including all reasonable attorneys' fees and disbursements.

(f) All parties now or hereafter liable with respect to this Note, whether Maker, principal, surety, guarantor, endorsee or otherwise hereby severally waive presentment for payment, demand, notice of nonpayment or dishonor, protest and notice of protest, except as Lender

agrees to provide in the Loan Documents. No failure to accelerate the indebtedness evidenced hereby, acceptance of a past due installment following the expiration of any cure period provided by this Note, any Loan Document or applicable law, or indulgences granted from time to time shall be construed (i) as a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of Payee thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by the laws of the State. Maker hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(g) THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEVADA AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

Maker has delivered this Note as of the date first set forth above.

MAKER:

TOLUCA LAKE VINTAGE, LLC  
A California limited liability company

By: 

Christopher Beavor  
Manager

# **EXHIBIT 3**

1 **RESP**  
2 **MARC A. SAGGESE, ESQ.**  
Nevada Bar No. 7166  
3 **SAGGESE & ASSOCIATES, LTD.**  
732 S. Sixth Street, Suite 201  
4 Las Vegas, Nevada 89101  
Telephone 702.778.8883  
5 Facsimile 702.778.8884  
6 Marc@MaxLawNV.com  
*Attorney for Defendants/Counterclaimants*

7  
8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 YACOV JACK HEFETZ, an individual; and  
ALIS COHEN, an individual,

11 Plaintiffs,

12 vs.

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

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

16 Defendants.

**DEFENDANTS' RESPONSES TO  
PLAINTIFFS' FIRST SET OF  
REQUESTS FOR ADMISSIONS**

17  
18 CHRISTOPHER BEAVOR, an individual;  
19 SAMANTHA BEAVOR, an individual,

20 Counterclaimants,

21 vs.

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

25 Counter-Defendant.

26 COMES NOW, DEFENDANTS, by and through their undersigned counsel, and respond  
27 to Plaintiffs' First Set of Requests for Admissions to Defendants.  
28

1 **REQUEST NO. 1:**

2 Admit that Toluca Lake Vintage, LLC entered into a loan with the Herbert Frey  
3 Revocable Family Trust ("Lender") on or about March 29, 2007, pursuant to which Toluca Lake  
4 Vintage, LLC procured loan funds in the amount of \$6,000,000.00 ("Loan").

5 **RESPONSE TO REQUEST NO. 1:**

6 Deny. Toluca Lake Vintage, LLC, entered into a loan with the Herbert Frey Revocable  
7 Family Trust dated November 22, 1982. The actual amount of the loan was approximately \$4.3  
8 million and there was approximately \$1.7 million in deferred interest payments.  
9

10 **REQUEST NO. 2:**

11 Admit that Exhibit 1 to the Complaint is a true and correct copy of the Loan Agreement  
12 between Toluca Lake Vintage, LLC and Lender.

13 **RESPONSE TO REQUEST NO. 2:**

14 Admit.

15 **REQUEST NO. 3:**

16 Admit that Exhibit 2 to the Complaint is a true and correct copy of the Promissory Note  
17 evidencing the loan between Toluca Lake Vintage, LLC and the Lender.  
18

19 **RESPONSE TO REQUEST NO. 3:**

20 Admit.

21 **REQUEST NO. 4:**

22 Admit that Exhibit 3 to the Complaint is a true and correct copy of the Payment  
23 Guarantees executed by You.  
24

25 **RESPONSE TO REQUEST NO. 4:**

26 Admit.

27 **REQUEST NO. 5:**

28 Admit that You jointly and severally, absolutely, unconditionally, and irrevocably  
guaranteed the full and prompt payment of the principal and interest due and owing on the Loan.



1 **RESPONSE TO REQUEST NO. 5:**

2 Admit.

3 **REQUEST NO. 6:**

4 Admit Toluca Lake Vintage, LLC defaulted on the Loan.

5 **RESPONSE TO REQUEST NO. 6:**

6 Deny. The Lender took control of Toluca Lake Vintage, LLC, via a verbal and action-  
7 based agreement. A new agreement was in place at the time of the default.

8 **REQUEST NO. 7:**

9 Admit that the Loan has not been repaid.

10 **RESPONSE TO REQUEST NO. 7:**

11 Deny. A payment to the Herbert Frey Revocable Family Trust dated November 22, 1982,  
12 in the amount of \$38,751.50 was paid on June 28, 2010, non-voluntary. When a property was  
13 sold, they collected the HUD-1 Steam Engine Meadow Lot property. Per the bankruptcy of  
14 Toluca Lake, 25% of the profits from the sale of condo units would be paid to the Herbert Frey  
15 Revocable Family Trust dated November 22, 1982. The Chinatrust Bank loan, which was owed  
16 approximately \$14,600,000.00, was reduced to \$8,300,000.00, which was a reduction of  
17 \$6,300,000.00. This was considered to be part of the repayment per the agreement between  
18 Borrower, Guarantors, and Lender. There were subsequent agreements, all of which had been  
19 satisfied by Guarantors in consideration of repayment.

20 **REQUEST NO. 8:**

21 Admit that Lender never executed the settlement agreement alleged in Paragraph 29 of  
22 the Counterclaim.

23 **RESPONSE TO REQUEST NO. 8:**

24 This answering party does not have sufficient information to either admit or deny this  
25 request.

26 ...  
27  
28

1 **REQUEST NO. 9:**

2 Admit that the bankruptcy court did not release your guarantee obligations under the  
3 Loan.

4 **RESPONSE TO REQUEST NO. 9:**

5 Deny. The bankruptcy court believed there was a global settlement which released all  
6 parties, and was not aware until the last minute that there was fraud that was committed by and  
7 through Jacob Hefetz via Star Development and their counsel. The Court specifically carved out  
8 language in their final order to allow me rights to pursue the Lender if proper documents were  
9 not signed and agreed to, which is the subject of the Counterclaim in this matter.  
10

11 **REQUEST NO. 10:**

12 Admit that you have not repaid Lender the \$6,000,000.00 that was borrowed under the  
13 Loan.

14 **RESPONSE TO REQUEST NO. 10:**

15 Deny. This answering party has paid the obligations via numerous actions that were  
16 agreed to.  
17

18 **REQUEST NO. 11:**

19 Admit that the allegation in the Counterclaim after May 13, 2009 relates to Hefetz in his  
20 capacity of Manger of Star Management, LLC.

21 **RESPONSE TO REQUEST NO. 11:**

22 Deny. It relates to Hefetz in his personal capacity, and as Manager.  
23

24 **REQUEST NO. 12:**

25 Admit that You only made one attempt to obtain a signature on the settlement agreement  
26 alleged in Paragraph 29 of the Counterclaim.

27 ...

28 ...

1 **RESPONSE TO REQUEST NO. 12:**

2 Deny. There were multiple communications with all parties regarding this settlement  
3 agreement and its execution.

4 **REQUEST NO. 13:**

5  
6 Admit that the only attempt You made to obtain a signature on the settlement agreement  
7 is the alleged attempt set forth in Paragraph 29 of the Counterclaim.

8 **RESPONSE TO REQUEST NO. 13:**

9 Deny.

10  
11 DATED this 9<sup>th</sup> day of March, 2012.

12 /s/ MARC A. SAGGESE, ESQ.

13 **MARC A. SAGGESE, ESQ.**  
14 Nevada Bar No. 7166  
15 **SAGGESE & ASSOCIATES, LTD.**  
16 732 S. Sixth Street, Suite 201  
17 Las Vegas, Nevada 89101  
18 Telephone 702.778.8883  
19 Facsimile 702.778.8884  
20 Marc@MaxLawNV.com  
21 *Attorney for Defendants/Counterclaimants*  
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An employee of SAGGESE & ASSOCIATES, LTD.

# EXHIBIT 4

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3  
4 YAKOV JACK HEFETZ, an individual,  
5 and ALIS COHEN, an individual,  
Plaintiffs,

Case No.:

6 vs. A-10-645353-C  
7 CHRISTOPHER BEAVOR, an individual;  
8 SAMANTHA BEAVOR, an individual;  
9 DOES I through X, and ROE ENTITIES  
I through X, inclusive,

Defendants.

10  
11 CHRISTOPHER BEAVOR, an individual;  
12 SAMANTHA BEAVOR, an individual,  
13 Counterclaimants,

14 vs.  
15 YAKOV JACK HEFETZ, an individual;  
16 DOES I through X, and ROE  
CORPORATIONS I through 10,  
inclusive,

Counterdefendants.

17  
18  
19 DEPOSITION OF YAKOV JACK HEFETZ  
20 Taken on Tuesday, July 10, 2012  
10:50 a.m.

21 At Saggese & Associates, Ltd.  
22 732 South Sixth Street  
23 Suite 201  
24 Las Vegas, Nevada

25 Reported by: Michelle C. Johnson, RPR-CRR  
NV CCR 771, CA CSR 5962

1 INDEX  
2 WITNESS  
3 YAKOV JACK HEFETZ  
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Examination by Saggese

PAGE

## EXHIBITS

NUMBER	PAGE
1	105
2	105
3	(None marked)
4	105
5	105
6	105
7	2/2 and 3/11 e-mail stream, with attachment

INFORMATION TO BE SUPPLIED  
(None)

INSTRUCTIONS NOT TO ANSWER  
(None)

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Also Present: CHRISTOPHER BEAVOR

1 (With inclusion of the preceding pages,  
2 the court reporter requirements under  
3 Rule 30(b)(4) of the Nevada Rules of Civil  
4 Procedure have been complied with.)

Whereupon --

6 YAKOV JACK HEFETZ,  
7 being first duly sworn to tell the truth, the whole  
8 truth, and nothing but the truth, was examined and  
9 testified as follows:

## EXAMINATION

BY MR. SAGGESE:

Q. Okay, good morning, Mr. Hefetz.

A. Morning.

Q. I am Attorney Mark Saggese. I represent  
Chris Beavor, whom you know. We are currently in my  
office, located at 732 South Sixth Street, Las Vegas,  
Nevada, 89101.

You are aware of the lawsuit; you brought the  
lawsuit. You are in fact the plaintiff. Is that  
correct?

A. Yes.

Q. And is there any language barrier?

A. Yes.

Q. You have some difficulty understanding  
English?

1 A. Yes.  
 2 Q. Okay. In relation to the potential language  
 3 barrier, if you don't understand what I'm asking, just  
 4 say, I don't know what you mean, and ask me to  
 5 rephrase it.  
 6 Is there any ability of you to interpret or  
 7 explain?  
 8 MR. IGLODY: No. To clarify for the record.  
 9 He speaks English, but it's not his primary language.  
 10 And as I like to put it in these depositions, he  
 11 dreams in Hebrew, he thinks in Hebrew, and Hebrew is  
 12 his primary language. But he can communicate on a  
 13 basic level, but may need help here and there.  
 14 BY MR. SAGGESE:  
 15 Q. Your primary language is Hebrew?  
 16 A. Yes.  
 17 Q. But you understand English?  
 18 A. Yes.  
 19 Q. And you can read English?  
 20 A. Not very well.  
 21 Q. Do you anticipate any problems understanding  
 22 my questions?  
 23 A. So far, no.  
 24 Q. Okay. Do you have any health or physical  
 25 barriers to your ability to give deposition testimony?

1 can laugh at it. I did three sleep apnea tests; they  
 2 told me I wake up 40 time a minute, but I don't  
 3 know -- I don't know that.  
 4 Q. You woke up 40 times in a minute?  
 5 A. Yeah. That's the result of the sleep apnea  
 6 that -- I did the sleep study.  
 7 Q. Do you have a recollection of last night's  
 8 rest or lack thereof?  
 9 A. I don't know how I sleep.  
 10 Q. But you seem -- Are you comfortable giving  
 11 deposition?  
 12 A. Right now, I feel okay.  
 13 Q. If you get tired, you can just tell us you  
 14 need a break or you want to continue it next week. I  
 15 have no problem with that.  
 16 A. Okay.  
 17 Q. We want you to be alert and clear.  
 18 And also, in regard to being alert and clear,  
 19 is this your first deposition?  
 20 A. First time.  
 21 Q. Okay. Now, during a deposition, we have a  
 22 court reporter, or transcriptionist, whatever she  
 23 likes to be called. She's taking down every word we  
 24 say. If we both speak at a time -- I have a tendency  
 25 to do that; I'll jump in -- she can't get what both of

1 A. Nothing that I know.  
 2 Q. Are you under any medication right now?  
 3 A. No. Actually, I'm taking Lipitor, couple  
 4 medication that I take on a daily basis.  
 5 Q. But nothing that would affect your ability  
 6 to --  
 7 A. No, not at all.  
 8 Q. -- think or be alert? Okay.  
 9 And there's no issue with a lack of sleep or  
 10 any other reason that you can't answer questions  
 11 clearly?  
 12 A. I have problems sleeping, but that's been for  
 13 long time already. I have a sleep apnea.  
 14 Q. Do you think that could affect your ability  
 15 to give clear deposition testimony today?  
 16 A. Depends how long it's going to take.  
 17 Q. Okay. What are your limitations?  
 18 A. It's various.  
 19 Q. Are we talking in the range of one- to  
 20 two-hour deposition, you'll be fine, but four or five  
 21 hours, you might have a problem?  
 22 A. It's various. Depends how I sleep the night  
 23 before.  
 24 Q. How'd you sleep the night before?  
 25 A. Usually, I don't know how I sleep. Yes, you

1 us are saying at the same time. So I need to make  
 2 sure that you are finished answering the question  
 3 before I ask the next question.  
 4 A. Are you capable to do it?  
 5 Q. Am I capable of doing it? I'll have some  
 6 errors; I'll make some mistakes, and she'll give me a  
 7 dirty look. But I think we'll be able to get through  
 8 it.  
 9 A. Okay, so we get through it.  
 10 Q. What is important is that before you answer  
 11 the question that I'm asking, even though you know  
 12 what it is, that you wait until I'm finished asking  
 13 the whole question before you give your answer. And  
 14 that, again, will help her so we're not both talking  
 15 at the same time.  
 16 And also, please don't answer questions with  
 17 an uh-huh or uh-uh or shake your head, because when  
 18 she types uh-huh, it could be uh-huh or a yes or a  
 19 no --  
 20 A. You let me know when I make mistakes.  
 21 MR. SAGGESE: You're pretty good at that,  
 22 aren't you?  
 23 THE REPORTER: No. I will not interrupt for  
 24 that, no.  
 25 MR. SAGGESE: I'll remind you by saying, Is

1 that a yes or no?  
 2 THE WITNESS: That's good.  
 3 BY MR. SAGGESE:  
 4 Q. The literacy problem that you have is that  
 5 you cannot write the English language? Can you write  
 6 English?  
 7 A. Very little. Minimal.  
 8 Q. Let me explain to you, the deposition is my  
 9 opportunity to ask you questions, all kinds of  
 10 questions that can help me and my client better  
 11 understand your case against him. And the purpose is  
 12 not to fight or to argue or to trip you up or confuse  
 13 you; it is just to get as much information under oath,  
 14 just like you're in a court of law, as possible.  
 15 And again, you are under oath, and you are  
 16 obligated to tell the truth. There are the same  
 17 penalties of perjury that would occur in front of a  
 18 judge in a courtroom. It's identical. So that oath  
 19 you took at the beginning obligates you to tell the  
 20 truth. Sometimes it may not be something that you  
 21 want to answer or give a straight answer to, but you  
 22 are obligated to tell the truth. Okay?  
 23 Later on, this deposition may be used at  
 24 trial. We can introduce the deposition. By way of  
 25 example, this is -- I'm showing the witness

1 other people refer to you?  
 2 A. People call me Jackie, Jacob. I don't mind  
 3 how they call me as long as they call me.  
 4 Q. But you don't have any other name that is  
 5 unique, that is different?  
 6 A. No. People call me Jacob, could be Jackie.  
 7 Nobody call me Yakov; call me Jacob.  
 8 Q. How would you prefer me to refer to you?  
 9 A. As you like.  
 10 Q. Okay. Jack?  
 11 A. As you like.  
 12 Q. How old are you?  
 13 A. 61.  
 14 Q. What is your current address?  
 15 A. 3575 Shelome, S-h-e-l-o-m-e, Court, Las  
 16 Vegas, Nevada, 89121.  
 17 Q. And your telephone number?  
 18 A. (702) 286-2650.  
 19 Q. Are you married?  
 20 A. Yes.  
 21 Q. How long have you been married?  
 22 A. Since 1978.  
 23 Q. And how many children, if any, do you have?  
 24 A. Two boys.  
 25 Q. And their names?

1 Christopher Beaver's deposition. This is a copy of  
 2 the deposition you were at when he gave his testimony.  
 3 It's all typed. And at trial, I may use the  
 4 deposition of you that you give today while you're on  
 5 the stand and ask you questions in relation to what  
 6 you testified here to today.  
 7 You're going to be given an opportunity to  
 8 read your own deposition, or perhaps with the help of  
 9 a translator, to make sure it's accurate and  
 10 everything in there is what you said and what you  
 11 meant word for word. At the last page, you are going  
 12 to be required to sign under oath that this is the  
 13 truth and this is what you said. And that's the  
 14 opportunity you're going to have to review and sign  
 15 the transcript.  
 16 Do you understand the process?  
 17 A. Yes.  
 18 Q. I would like to start with some personal  
 19 information related to you specifically. Can I have  
 20 your full name?  
 21 A. Yakov Jack Hefetz.  
 22 Q. Can you spell that?  
 23 A. Y-a-k-o-v, Yakov, Jack, J-a-c-k, Hefetz,  
 24 H-e-f-e-t-z.  
 25 Q. Do you have any aliases or other names that

1 A. Shan, S-h-a-n, and Shlomi, S-h-l-o-m-i.  
 2 Q. Do they live in Las Vegas?  
 3 A. One. Shan live in Vegas.  
 4 Q. And where does the other one live?  
 5 A. San Diego.  
 6 Q. And how old are they?  
 7 A. 34 -- 35 and 28.  
 8 Q. Shan is 35?  
 9 A. Yes.  
 10 Q. And his brother is 28.  
 11 Where are you currently employed?  
 12 A. I have several companies.  
 13 Q. Let's start with the first one or the biggest  
 14 one.  
 15 A. HF&M.  
 16 Q. What is that?  
 17 A. It's a company that we do retails.  
 18 Q. You do what?  
 19 A. Retails.  
 20 Q. Retail.  
 21 What do the initials stand for?  
 22 A. HF&M. We just picked up.  
 23 Q. HF&M. H is Hefetz, F is Frey, M is?  
 24 A. My wife is Mia. Nickname.  
 25 Q. I didn't ask that, your wife's name.



1 A. Her name is Maria. Officially name.  
 2 Q. So your spouse's name is Mia, and you have  
 3 been married since 1978. Or Maria.  
 4 A. Maria, official name is Maria.  
 5 Q. You call her Mia for short?  
 6 A. I call her Mia.  
 7 Q. What exactly in regard to retail does HF&M  
 8 do?  
 9 A. We buy merchandise and retail it, sell it.  
 10 Q. Like what type of merchandise?  
 11 A. All kind of thing: clothing, shoes,  
 12 accessories, everything.  
 13 Q. Is it an importing business?  
 14 A. No. Sometime we do import, but lately not.  
 15 Q. How long has this business been up and  
 16 running?  
 17 A. 40 years.  
 18 Q. 40?  
 19 A. About.  
 20 Q. And the middle initial there, F, is Frey. Is  
 21 that Herbert Frey?  
 22 A. Yes, sir.  
 23 Q. Are any of the other Freys involved in that  
 24 business?  
 25 A. No. Mr. Frey is not involved in the business

1 A. Beside the Bar.  
 2 MR. IGLODY: It is, if I'm understanding,  
 3 Beside the Bar.  
 4 MR. SAGGESE: Got you. Beside the Bar.  
 5 Q. And who are you, if anyone, in partners with  
 6 in Beside the Bar?  
 7 A. I have one partner now, his name is Moshe  
 8 Rosenblum.  
 9 (Reporter clarification.)  
 10 THE WITNESS: I don't know how to spell it.  
 11 Moshe Rosenblum.  
 12 MR. IGLODY: Moshe, I believe, is M-o-s-h-e,  
 13 Rosenblum standard spelling, b-l-u-m.  
 14 BY MR. SAGGESE:  
 15 Q. What kind of business is Beside the Bar?  
 16 A. It's a bar.  
 17 Q. Is it Las Vegas?  
 18 A. Yes, sir.  
 19 Q. What is the address of that bar?  
 20 A. 3550 Las Vegas Boulevard South.  
 21 Q. And how long has that been in business?  
 22 A. This bar is in business for, I believe, ten  
 23 years.  
 24 Q. Have you been involved in it since the  
 25 beginning?

1 anymore.  
 2 Q. Just by name?  
 3 A. Used to be.  
 4 Q. So his only involvement now is the name?  
 5 A. It's not his name, is F.  
 6 Q. But it stands for Frey.  
 7 A. Call it as you like.  
 8 Q. You testified earlier that it's Hefetz Frey  
 9 and Mia, or Maria.  
 10 A. Could be.  
 11 Q. Could be, but is it?  
 12 A. Could be.  
 13 Q. Was it historically?  
 14 A. Historically.  
 15 Q. Yes. Is that accurate?  
 16 A. I don't remember why we pick those. Mr. Frey  
 17 created those -- It was created by Mr. Frey, the  
 18 company.  
 19 Q. Now, the next company? You have HF&M, what's  
 20 the next one you are involved with?  
 21 A. Beside the (unintelligible).  
 22 (Reporter clarification.  
 23 THE WITNESS: Beside the Bar LLC.  
 24 BY MR. SAGGESE:  
 25 Q. Beside the?

1 A. No.  
 2 Q. How many years ago did you acquire an  
 3 interest in the property?  
 4 A. Excuse me?  
 5 Q. How many years ago did you become involved in  
 6 Beside the Bar, the company?  
 7 A. I believe five years.  
 8 Q. And that would lead me to my next question.  
 9 Does the bar -- Do you own the property, or just the  
 10 bar? In other words --  
 11 A. The property is the Forum Shops; it's  
 12 re-leased.  
 13 Q. Understood. So you own the bar, and it's a  
 14 leased property inside the Forum Shops?  
 15 A. Everything, all my company, it's leased.  
 16 Q. And the next company?  
 17 A. We have few -- We have one bar that we have  
 18 few companies that we start to build up the company  
 19 called Bar Biz.  
 20 Q. Bar Biz LLC?  
 21 A. Yeah, LLC. Bar Biz own two LLCs, Bar One and  
 22 Bar Two.  
 23 Q. Other than you, who are the principals or  
 24 other partners in Bar Biz LLC?  
 25 A. Moshe Rosenblum and Gary Frey.

1 Q. How long has that company been in business?  
 2 A. Two years.  
 3 Q. And Bar Biz LLC, is its primary purpose to  
 4 open new bars?  
 5 A. Bar Biz own a bar.  
 6 Q. What's the name of the bar -- So Bar Biz is a  
 7 bar?  
 8 A. No, Bar Biz is -- it own another company  
 9 that's own a bar: Bar One.  
 10 Q. Bar One --  
 11 A. No, Bar Two; I'm sorry.  
 12 Q. Is Bar One the name of the company that owns  
 13 the bar or the company that --  
 14 A. No, that's the company that own the bar.  
 15 Q. So Bar Two actually has a bar that is  
 16 running?  
 17 A. Yes.  
 18 Q. That bar is?  
 19 A. Fat Tuesdays. It's the same thing with  
 20 Beside the Bar; you didn't ask me the question.  
 21 Q. So what is the location of this Fat Tuesdays?  
 22 A. 3535 Las Vegas Boulevard.  
 23 Q. Like 3550 --  
 24 A. 3535 Las Vegas Boulevard.  
 25 Q. Right. I understand. I was going back to

1 Q. What is the newest LLC's purpose?  
 2 A. A retail business.  
 3 Q. And when you say your son, are you talking  
 4 about Shan?  
 5 A. Yes, sir.  
 6 Q. How long ago did you open that business?  
 7 A. I believe a month and a half or something  
 8 like this. I'm not sure exactly when. He did it, and  
 9 he went out of the country and is coming in a few  
 10 days, and we're going to sit down and work on it.  
 11 Q. Okay. Are you a US citizen?  
 12 A. Yes, sir.  
 13 Q. Do you have dual citizenship?  
 14 A. Yes, sir.  
 15 Q. With what other country do you have  
 16 citizenship?  
 17 A. Israel.  
 18 Q. Where were you born?  
 19 A. Israel.  
 20 Q. How long did you live in Israel before you  
 21 came to America?  
 22 A. 21 years.  
 23 Q. Have you been in America as a citizen of  
 24 America since you were 21 years old to now?  
 25 A. No. When you come to America, you don't get

1 Beside the Bar, which 3550 Las Vegas Boulevard South  
 2 represents what major retail space?  
 3 A. The bar.  
 4 Q. I know, but is it the Fashion Show Mall or --  
 5 A. It's the Forum Shops.  
 6 Q. So 3550 Las Vegas Boulevard South is the  
 7 Forum Shops?  
 8 A. Yes, that's the Caesars Palace Hotel.  
 9 Q. And Fat Tuesdays is 3535 Las Vegas Boulevard.  
 10 What entity is that?  
 11 A. It's Imperial Palace, Imperial Palace Hotel  
 12 and Casino.  
 13 Q. And like you said, you lease that space?  
 14 A. Yes, sir.  
 15 Q. What other company is there?  
 16 A. What other company?  
 17 Q. You listed three, and you said there were a  
 18 few. Are there others that you are involved in  
 19 currently?  
 20 A. No, Bar Biz, there are three companies.  
 21 Q. Bar One, Bar Two?  
 22 A. Bar Biz, Bar One, Bar Two. That's three.  
 23 Q. Any other companies?  
 24 A. I just opened another LLC; I don't remember  
 25 the name even. My son is in charge of it.

1 the citizenship on the spot.  
 2 Q. How long did it take you to get dual  
 3 citizenship?  
 4 A. I believe I got it in 1990. I don't know  
 5 exactly when I got it.  
 6 Q. Do you remember approximately how old you  
 7 were when you got dual citizenship?  
 8 A. No.  
 9 Q. But it took you a while?  
 10 A. Yeah. Usually it take four, five years --  
 11 No, five, six years, usually. But I was very busy  
 12 working.  
 13 Q. Did your wife, at the time, have dual  
 14 citizenship too?  
 15 A. No.  
 16 Q. Does she have dual citizenship now?  
 17 A. Yes.  
 18 Q. It took her longer?  
 19 A. She was lazy also to go and apply for it.  
 20 Q. And your children, are they American  
 21 citizens, or do they have dual citizenship?  
 22 A. They are three citizens.  
 23 Q. They are what citizens?  
 24 A. Three. They have three citizenships.  
 25 Q. Israel?

1 A. Israeli, American, and Sweden.  
 2 Q. What do you consider right now to be your  
 3 major source of income?  
 4 A. Every company, they bring me income.  
 5 Q. Well, which of them is the most profitable  
 6 for you?  
 7 A. I never did the -- I never did accounting  
 8 which one is more profitable for me.  
 9 Q. I want to talk about your education briefly.  
 10 Did you attend grade school in Israel?  
 11 A. What's grade school, the first year of your  
 12 life?  
 13 Q. Yeah, first few years.  
 14 A. Yeah.  
 15 Q. And then did you go to middle school when you  
 16 were 12, 13, 14?  
 17 A. I went for professional middle school.  
 18 Q. Did you attend high school or college in  
 19 Israel?  
 20 A. No, only professional school.  
 21 Q. And how old were you when you started  
 22 professional school?  
 23 A. 14.  
 24 Q. Did you ever attend the equivalent in Israel  
 25 of a college or a university?

1 A. No.  
 2 Q. Have you ever been arrested?  
 3 A. One time, I think. I believe one time, yeah.  
 4 I was speeding.  
 5 Q. Okay. Do you remember where that arrest  
 6 occurred?  
 7 A. In Los Angeles.  
 8 Q. Was there a conviction, or were you just  
 9 arrested and --  
 10 A. I bail myself, and I pay the ticket.  
 11 Q. But never arrested and the case dismissed, or  
 12 arrested and the charges were never filed, other than  
 13 that?  
 14 A. I had a fight one time. I don't know if I  
 15 was arrested. I don't remember.  
 16 Q. How old were you?  
 17 A. 20-something.  
 18 Q. Was that in the US?  
 19 A. Excuse me?  
 20 Q. Was that in the US?  
 21 A. Yes.  
 22 Q. You don't remember if you were arrested?  
 23 A. I don't remember.  
 24 Q. Then do you remember if you were convicted of  
 25 a crime?

1 A. No.  
 2 Q. Do you have the equivalent of a high school  
 3 degree?  
 4 A. No.  
 5 Q. Were you ever in the military in Israel?  
 6 A. Yes.  
 7 Q. Is it mandatory in Israel?  
 8 A. Yes.  
 9 Q. How many years did you spend in the  
 10 Israeli --  
 11 A. Two and a half years.  
 12 Q. Excuse me?  
 13 A. Two and a half years.  
 14 Q. What were you discharged for?  
 15 A. Excuse me?  
 16 Q. For what reason were you discharged, or what  
 17 reasons?  
 18 A. You have option to discharge or to continue.  
 19 Q. And you chose to --  
 20 A. I didn't chose to stay in the Army.  
 21 Q. Is the minimum -- What is the minimum amount  
 22 of time?  
 23 A. Two and a half years. At that time. Now  
 24 it's three years.  
 25 Q. Do you have a criminal history?

1 A. No, never.  
 2 Q. What state did that occur in?  
 3 A. California.  
 4 Q. So you have no felony arrests or felony  
 5 convictions?  
 6 A. Conviction, that's you'll be guilty?  
 7 Q. Yeah, they find you guilty, yes.  
 8 A. No.  
 9 Q. And no misdemeanor arrests or convictions,  
 10 other than the speeding in a car?  
 11 A. I don't know what's misdemeanor mean.  
 12 Q. It's less than a felony.  
 13 A. I don't know what's felony either.  
 14 Q. Felony is you can go to jail for a year or  
 15 more, and misdemeanor is punishable of a maximum of  
 16 six months in jail.  
 17 A. I never been in jail, and I never been  
 18 convicted -- I never been . . .  
 19 Q. Convicted, you were right.  
 20 A. Convicted, yes.  
 21 Q. So we're clear, the only arrest would be the  
 22 one where you were driving?  
 23 A. I said I don't remember. I was involved in a  
 24 fight; I don't remember if I was arrested or not.  
 25 Q. And that was in California?

1 A. Yes, sir.  
 2 Q. What other types of lawsuits have you been  
 3 involved in? Let's start by saying how many --  
 4 A. Lawsuits?  
 5 Q. -- lawsuits.  
 6 A. I sue somebody?  
 7 Q. Let's start with, yes, where you sued  
 8 someone.  
 9 A. I never sue anybody in my life.  
 10 Q. How about lawsuits where you were sued?  
 11 A. Nobody sue me. That's as much as I remember.  
 12 I never been sued.  
 13 Q. Okay.  
 14 A. Excuse me. I fell one time in a counter, and  
 15 my lawyer told me, What is that case you have on your  
 16 foot? He said, Let me represent you, and then he gave  
 17 up with some -- gave me some, I don't know, few  
 18 thousand dollars. I don't know if that's a suit.  
 19 Q. Yeah, personal injury. So you were injured  
 20 as the result of a fall?  
 21 A. Yeah, I was at a counter, somebody push me,  
 22 and I broke my leg.  
 23 Q. How long ago was this?  
 24 A. I was like 23-24. I don't remember. It's a  
 25 long time ago. And I went for my lawyer for different

1 A. Accused by who?  
 2 Q. I don't know by whom. I'm asking you. It  
 3 may be uncomfortable or you don't -- You are obligated  
 4 to answer.  
 5 Have you ever -- Generically, have you ever  
 6 been accused of sexual harassment?  
 7 A. By a female. Yes.  
 8 Q. How long ago was that?  
 9 A. Few years ago.  
 10 Q. Did that lead to a lawsuit?  
 11 A. No.  
 12 Q. Did that lead to payment of this female some  
 13 monies?  
 14 A. Yes.  
 15 Q. What was the amount that was paid to this  
 16 female?  
 17 A. I think it's confidential. It's supposed to  
 18 be confidentially from both sides.  
 19 Q. It was part of a confidential settlement  
 20 agreement?  
 21 A. Yes.  
 22 Q. Fair enough. When you say a few years  
 23 ago: three, five, seven?  
 24 A. I think four, five.  
 25 Q. Was this made public; do you know?

1 issue. He saw me with a cast, case -- What do you  
 2 call it?  
 3 MR. IGLODY: Cast.  
 4 THE WITNESS: Cast.  
 5 -- and he said, what do you do about it? I  
 6 said, I don't do nothing. He said, Would you let me  
 7 represent you? I said, Go ahead.  
 8 BY MR. SAGGESE:  
 9 Q. Has there ever been allegations against you  
 10 that did not turn into a lawsuit?  
 11 MR. IGLODY: That's a little bit vague.  
 12 Objection.  
 13 Go ahead and answer.  
 14 BY MR. SAGGESE:  
 15 Q. Have you ever been accused of anything, but  
 16 it did not lead to a court filing?  
 17 MR. IGLODY: Same objection.  
 18 THE WITNESS: I don't know what you say.  
 19 BY MR. SAGGESE:  
 20 Q. Have you ever been accused of, say, sexual  
 21 harassment that didn't lead to a lawsuit against you;  
 22 it was resolved otherwise?  
 23 A. Sexual harassment?  
 24 Q. Yeah, by way of example. Have you ever been  
 25 accused of sexual harassment?

1 A. No.  
 2 Q. Was this an employee of yours?  
 3 A. She was a girl that I used to see, and she  
 4 lost the job, and I -- You know, the moment I give her  
 5 a job, she accuse me.  
 6 Q. What company was that with?  
 7 MR. IGLODY: My only problem is that we're  
 8 dealing with something which I don't even know about  
 9 that's subject to a confidentiality agreement. And  
 10 assuming it's the broad-scale confidentiality  
 11 language, we're getting awfully close to identifying  
 12 features that would allow you to determine who the  
 13 parties are.  
 14 So at this point, I'm going to interpose an  
 15 objection. I'll let my client decide if he wants to  
 16 go any further. But I do want to note that if it's  
 17 bound by confidentiality agreement not relevant to  
 18 this case, I am at some point going to instruct him to  
 19 stop answering.  
 20 Go ahead, Jacob.  
 21 THE WITNESS: Yeah, we did confidentiality  
 22 agreement, and I don't think I should talk about it.  
 23 I don't think I should even mention it. That's me  
 24 breaking the law by mentioning it.  
 25 BY MR. SAGGESE:

1 Q. And if the confidentiality agreement went  
2 further than saying the terms of the agreement -- how  
3 much you're going to pay and who's going to stay away  
4 from who -- generally, it's just the amount and who  
5 admitted liability and went their separate ways. But  
6 if it says the identity of the parties are to be kept  
7 secret too --  
8 A. Everything is confidentiality.  
9 Q. If that's the case, then I won't ask --  
10 A. You ask me to break the law.  
11 Q. I would never do that.  
12 A. Okay.  
13 Q. I wouldn't.  
14 I have some sets of exhibits that I'll give  
15 you. You can share that.  
16 A. I don't need one.  
17 MR. IGLODY: You will. You're the one  
18 answering questions.  
19 MR. SAGGESE: I may want to go, Let's read  
20 this line, so you may have to see it.  
21 Q. I just want to go through some of the  
22 discovery. You had an opportunity to read the  
23 questions we had asked you in the form of  
24 interrogatories. Do you remember that?  
25 A. Very roughly. I don't read very good. As

1 BY MR. SAGGESE:  
2 Q. Interrogatory No. 4 asks: Please state with  
3 specificity all facts related to your damages as a  
4 result of the subject of this instant litigation, and  
5 provide a detailed accounting of your damages suffered  
6 due to defendants' alleged actions. That was the  
7 question.  
8 And your response was that you are seeking 6  
9 million in total damages, plus interest and fees and  
10 costs, as memorialized in the subject loan agreement  
11 and as specifically set forth in the Verified  
12 Complaint in this matter.  
13 Do you remember giving that response?  
14 A. Yes.  
15 Q. Now, the question specifically asks what your  
16 individual damages are, what your personal loss is in  
17 relation to this lawsuit.  
18 What is your actual personal loss?  
19 A. You mean how much money I put into it?  
20 Q. Yes.  
21 A. I put little bit over \$2.3 million.  
22 Q. So the \$6 million you are requesting in the  
23 loan -- or in the lawsuit -- is not your actual  
24 damage?  
25 A. Is the damage of my damage and my partner

1 much as I understood.  
2 Q. Okay. Did you prepare these answers with  
3 your lawyer?  
4 A. No, I didn't prepare any answers.  
5 Q. I'm referring to the Plaintiffs' Response to  
6 Defendants/Counterclaimants' First Set of  
7 Interrogatories to Plaintiff/Counterdefendant Yakov  
8 Jack Hefetz.  
9 MR. IGLODY: Why don't you show it to him so  
10 he knows what we're talking about.  
11 THE WITNESS: This is what we did already?  
12 MR. IGLODY: These are the written questions,  
13 yes.  
14 THE WITNESS: We went over this?  
15 MR. IGLODY: He's not asking you for  
16 attorney-client communications. He's basically just  
17 asking do you remember answering those questions.  
18 BY MR. SAGGESE:  
19 Q. That is the question. Do you remember  
20 answering those questions?  
21 A. Yes.  
22 Q. Okay.  
23 MR. IGLODY: Remember. Follow his  
24 instructions. He's just talking about the  
25 interrogatories.

1 damage.  
2 Q. But you can only sue -- You understand you  
3 can only sue on your own behalf; you can't sue for  
4 someone else's damages?  
5 A. I took over the notes from my partner, and I  
6 am suing the total of the amount of the note.  
7 Q. Okay. Interrogatory No. 5 asked, Fully  
8 explain any and all business plans you created or  
9 assisted in creating, whether directly or indirectly,  
10 for Toluca Lake Vintage LLC, which involved the filing  
11 of bankruptcy in order to force Chinatrust Bank to  
12 renegotiate the debt for the development project which  
13 is the subject of this instant litigation.  
14 Your answer was, Plaintiff did not create or  
15 assist in creating business plans, as that term is  
16 commonly used, for or on behalf of Toluca Lake.  
17 Let me ask you, what is your role with Toluca  
18 Lake?  
19 A. My only thing in Toluca Lake is I invest my  
20 money with my partner.  
21 Q. Were you ever listed with the Secretary of  
22 State as a managing member?  
23 A. Of Toluca Lake?  
24 Q. Yes.  
25 A. Of what company?

1 Q. Toluca Lake.  
2 A. Not that I remember.  
3 Q. Who, at the time of bankruptcy, or what  
4 entity, was the manager of Toluca Lake?  
5 A. Star Development.  
6 Q. Now Star Development, what is your  
7 relationship with Star Development?  
8 A. I was manager, I think. Mr. Frey and myself  
9 were the owner or the manager.  
10 MR. IGLODY: You have to answer the question.  
11 BY MR. SAGGESE:  
12 Q. So Mr. Frey and you were what in relation to  
13 Star Development, the owners?  
14 A. The owner.  
15 Q. And Star Development was the manager of  
16 Toluca Lake?  
17 A. Yes.  
18 Q. And the manager of Toluca Lake, which was you  
19 and Mr. Frey, filed a bankruptcy pleading on Toluca  
20 Lake in relation to the loan from Chinatrust Bank?  
21 A. I was not involved directly with all the  
22 action, so I cannot respond to those question. If you  
23 want those question, you have to ask Mr. Frey.  
24 Q. Are you listed as a manager?  
25 A. Yes, sir.

1 A. Yes, sir.  
2 Q. Now, the \$6 million note that's in question  
3 that we're here on, that you're trying to collect on,  
4 that became payable if the Toluca Lake project went in  
5 default; does that sound right?  
6 A. I was not involved in all the documents and  
7 all the agreement and all the paperwork. I was busy  
8 with other things, so Mr. Frey was in charge of  
9 everything.  
10 Q. Well, I'm asking you your understanding of  
11 the \$6 million guaranty signed by Mr. Beavor. That \$6  
12 million guaranty signed by Mr. Beavor became due and  
13 owing if and when Toluca Lake defaulted or went  
14 bankrupt?  
15 A. I guess so. I don't know. I don't know the  
16 answer exactly. I don't know the action and what's  
17 going on. I know that Mr. Frey loaned the money that  
18 I was invest with Mr. Frey, and there was a contract  
19 which I never read. And Mr. Frey was handling  
20 everything.  
21 Q. A contract you didn't read?  
22 A. No, I never saw it.  
23 Q. A promissory note?  
24 A. Never saw it. I had a copy of it, and I  
25 never — I never read it.

1 Q. So if Star Development took an action, they  
2 can only take an action through its manager.  
3 MR. IGLODY: Objection to the extent that it  
4 calls for a legal conclusion, and assumes facts that  
5 are not in evidence in this case.  
6 You can answer the question.  
7 BY MR. SAGGESE:  
8 Q. In other words, a corporation can only act  
9 through human beings.  
10 A. Yes, sir.  
11 Q. And you are listed as a manager, with  
12 Mr. Frey, of Star Development, Star Development's  
13 role is management, or manager, of Toluca Lake. So  
14 actions taken by Star Development in regard to Toluca  
15 Lake had to be through the management, correct?  
16 A. Well, appoint two persons to taking charge  
17 and do all the actions.  
18 Q. Okay. Who was that?  
19 A. Wayne Krygier and Gary Frey was appointed by  
20 Mr. Frey.  
21 Q. Appointed?  
22 A. Yes, I agree with everything he decide.  
23 Q. Wayne Krygier and who else?  
24 A. And Gary Frey.  
25 Q. Gary Frey is the son of Herbert Frey?

1 Q. How much — Can you read the promissory note  
2 today for \$6 million?  
3 A. If I can read it?  
4 Q. Yeah.  
5 A. Maybe a little bit. Maybe I will understand  
6 some of it.  
7 Q. So the basis of your lawsuit is referenced in  
8 a promissory — or a guaranty. Right, it's a  
9 guaranty?  
10 A. I did the promises note with Mr. Frey against  
11 my investments, against the note that he had with  
12 Chris.  
13 Q. So the question is if the \$6 million — is  
14 it; I'm asking you — a promissory note or guaranty  
15 that you believe you have possession of and can  
16 collect on? Promissory note or guaranty?  
17 A. I don't know is promises note or guaranty.  
18 Me and Mr. Frey, we do business on a shake hand.  
19 Q. So you said when the loan funded, the 6  
20 million loan funded, 2.3 million of it was contributed  
21 by you?  
22 A. 2.3 plus.  
23 Q. Okay. What agreements did you have with  
24 Mr. Frey in relation to that \$2.3 million contribution  
25 to \$6 million loan?

1 A. We had promises notes -- promissory notes.  
 2 Q. Did you have a promissory note with him that  
 3 he would pay you back 2.3?  
 4 A. That I will invest the money with them, and  
 5 that I was supposed to get equally the profit.  
 6 Q. If you only contributed 2.3 million, why are  
 7 you pursuing 6 million?  
 8 A. Because --  
 9 MR. IGLODY: Objection to the extent that it  
 10 calls for a legal conclusion.  
 11 Go ahead and answer.  
 12 THE WITNESS: I object answer even.  
 13 BY MR. SAGGESE:  
 14 Q. You can't.  
 15 MR. IGLODY: You can answer the question. I  
 16 just interposed my objection. Please answer his  
 17 question to the best of your ability.  
 18 THE WITNESS: I am trying to collect the  
 19 money for me and Mr. Frey.  
 20 BY MR. SAGGESE:  
 21 Q. Do you understand that you have to have legal  
 22 standing in order to collect on damages for someone  
 23 else?  
 24 MR. IGLODY: Same objection.  
 25 BY MR. SAGGESE:

1 into bankruptcy, triggering the default?  
 2 A. The default start with Chris.  
 3 Q. Okay. Tell me about that.  
 4 A. As much as I understood and I heard, that he  
 5 was in default and the bank tried to took over the  
 6 project.  
 7 Q. Who'd you hear that from?  
 8 A. From Gary and Wayne, Mr. Frey.  
 9 Q. So to clarify, when you refer to "Mr. Frey,"  
 10 you're referring to Herbert Frey?  
 11 A. Herb Frey.  
 12 Q. So "Mr. Frey," in the future, will always be  
 13 Herb Frey.  
 14 A. Mr. Frey. And Gary. Gary will be Gary Frey,  
 15 and Mr. Frey will be Mr. Frey.  
 16 Q. Mr. Frey is Herbert, got you.  
 17 A. Let's give him the honor.  
 18 Q. Fair enough.  
 19 So these three individuals had communicated  
 20 to you generically that Chris Beavor defaulted on the  
 21 Toluca Lake project or loan?  
 22 A. On the whole thing, on the whole project.  
 23 Q. Do you have any specifics related to what  
 24 they told you?  
 25 A. I don't remember exactly how they put it

1 Q. In other words, you can't bring a lawsuit to  
 2 recover for someone else's loss.  
 3 MR. IGLODY: Same objection.  
 4 BY MR. SAGGESE:  
 5 Q. You can recover for your own loss. Do you  
 6 understand that differentiation?  
 7 A. No, I don't understand that.  
 8 Q. Your actual damages are 2.3 million, and you  
 9 are admittedly seeking the additional amounts, the  
 10 difference between 2.3 million and 6 million, for  
 11 Mr. Frey and his loss. Is that right?  
 12 A. I took over the note, and I am trying to get  
 13 all the money of the note.  
 14 Q. Are you going to give the difference, what is  
 15 the \$3.7 million difference, would you give that to  
 16 Mr. Frey --  
 17 A. Yes, sir.  
 18 Q. -- should you get it all?  
 19 A. Yes, sir.  
 20 Q. So should you acquire 6 million out of this  
 21 lawsuit, 3.7 goes to Mr. Frey, and 2.3 million goes to  
 22 you?  
 23 A. Yes, sir.  
 24 Q. Do you have any personal knowledge as to  
 25 whether or not Star Development itself put Toluca Lake

1 together, but I remember that he was in default. He  
 2 was accused by the bank for default.  
 3 Q. Do you have any documentation related to  
 4 that?  
 5 A. I don't have any document at all about this  
 6 issue. Not Toluca Lake, not the bankruptcy, nothing.  
 7 Q. What is the extent of your understanding in  
 8 relationship to Mr. Frey and the Chinatrust Bank? Do  
 9 you have any understanding of their relationship or  
 10 their interactions --  
 11 A. What do you mean "relationship," Mr. Frey  
 12 relationship with China Bank?  
 13 Q. Yes.  
 14 A. I don't know what you mean by "relationship."  
 15 Q. The question is, do you have any  
 16 understanding or any information relating to Mr. Frey  
 17 and his relationship with the bank at all?  
 18 A. The only thing I know that Mr. Frey had  
 19 signed guaranty.  
 20 Q. From?  
 21 A. The loan or something -- I'm not sure. I  
 22 didn't even know about it.  
 23 Q. A signed guaranty from whom?  
 24 A. From Mr. Frey to China Bank.  
 25 Q. Did you or your lawyer provide that to us in

1 discovery?  
 2 A. I don't know.  
 3 Q. Did you give it to your lawyer?  
 4 A. I told you, I don't have any documents at  
 5 all.  
 6 Q. But you produced a lot of stuff to us.  
 7 A. We got -- We got most of the stuff from  
 8 Mr. Gary.  
 9 Q. Let me ask you this: Do you know that at one  
 10 point the manager of Toluca Lake was C&S Holdings, or  
 11 Chris Beavor, at one point?  
 12 A. I don't know what C&S Holdings.  
 13 Q. That's Chris's. Mr. Beavor's company is C&S  
 14 Holdings. Let me ask you this:  
 15 Do you know at this point that Chris Beavor,  
 16 the defendant, was the manager, at some point, of  
 17 Toluca Lake?  
 18 A. Yeah, I believe so.  
 19 Q. Do you have an understanding that Chris  
 20 Beavor was in fact removed as the manager of Toluca  
 21 Lake?  
 22 A. I know from Mr. Frey that he was removed  
 23 because he did the default. He didn't run the  
 24 business proper, and that's where all the problems  
 25 start.

1 Mr. Frey was the reason the loan was defaulted on, and  
 2 not Mr. Beavor, by way of Mr. Frey's refusal to sign  
 3 an extension with Chinatrust Bank, would that surprise  
 4 you?  
 5 A. I am not surprised. Everything that Mr. Frey  
 6 does and everything I know as I learn from him is done  
 7 correctly. So most likely what he did, that's the  
 8 best way to do it.  
 9 Q. So if you discover that Mr. Beavor did not in  
 10 fact -- Through the course of this litigation, if you  
 11 discover as clear as day that Mr. Beavor did not in  
 12 fact cause or trigger any default on the loans, would  
 13 that change your perspective in your lawsuit?  
 14 A. I believe Mr. Beavor was in default and  
 15 create all the problems. If he did the job the way it  
 16 is supposed to be, everything would be going good, and  
 17 we will get what we promised. He promised us the  
 18 mountain.  
 19 Q. The question is more specific. Would your  
 20 attitude or perception towards your own lawsuit  
 21 against Chris change, would you view your lawsuit  
 22 differently, if you were to discover that Chris had  
 23 nothing to do with the default?  
 24 A. I believe Chris was in default.  
 25 Q. Now, if you find out differently during the

1 Q. Okay. Now, are you aware -- and you can say  
 2 you're not aware; you can say that it's not true. The  
 3 question is, are you aware that the default on the  
 4 Chinatrust Bank loan was triggered by Mr. Frey's  
 5 failure to sign an extension of the loan and repayment  
 6 terms to Chinatrust Bank?  
 7 MR. IGLODY: Objection to the extent it calls  
 8 for facts that are not in evidence, contradicts facts  
 9 that were earlier introduced, and is an incomplete  
 10 hypothetical.  
 11 But go ahead and answer the question to the  
 12 best of your ability.  
 13 THE WITNESS: I am not aware of all the  
 14 process with China Bank or any of those.  
 15 BY MR. SAGGESE:  
 16 Q. So you don't know if Mr. Frey refused to sign  
 17 an extension with the bank?  
 18 A. I never heard that before.  
 19 Q. And if you were to discover during the course  
 20 of this litigation that the default occurred only  
 21 because Mr. Frey refused to file or sign an extension,  
 22 would that surprise you?  
 23 A. That he didn't want to do it? I don't  
 24 understand the question.  
 25 Q. That he refused. If you discover that

1 course of this discovery and this case, and you  
 2 realize that Chris had nothing to do with the default  
 3 at all, and that the bank asked for an extension from  
 4 Mr. Frey and he refused to sign the extension, and  
 5 that and only that triggered the default --  
 6 A. Mr. Frey was not part of the loan. The loan  
 7 was made by Chris, and Chris was running the project.  
 8 We loaned the money to Chris to start the project, and  
 9 he promised us to make -- it's a good investment and  
 10 we make so much profit. And that's the only thing I  
 11 know. I don't know anything else.  
 12 Q. At some point, though, there was a  
 13 replacement of Chris as the manager -- right -- of  
 14 Toluca Lake? You testified to that earlier; Chris was  
 15 replaced as the manager.  
 16 A. It seemed like it, yeah. That's the way it  
 17 was.  
 18 Q. And the next -- Well, the new manager, as we  
 19 were discussing earlier, was Star Development.  
 20 A. Yes, sir.  
 21 Q. And Star Development, the only two names that  
 22 are involved in that that we know so far, are you and  
 23 Mr. Frey.  
 24 A. Yes, sir.  
 25 Q. And Star Development, as manager of Toluca



1 Lake, filed the bankruptcy?  
 2 A. Yes, sir. I believe so.  
 3 Q. So that bankruptcy, that would be a default,  
 4 would it not?  
 5 MR. IGLODY: Objection.  
 6 THE WITNESS: I don't understand. How is  
 7 that default?  
 8 BY MR. SAGGESE:  
 9 Q. Certainly, you defaulted on a loan with  
 10 Chinatrust. I think it was \$22 million.  
 11 A. We didn't default on Chinatrust, Chris  
 12 default for Chinatrust.  
 13 Q. Correct me if I'm wrong: Doesn't filing of a  
 14 bankruptcy trigger a default on the loan from  
 15 Chinatrust Bank?  
 16 MR. IGLODY: Objection: calls for a legal  
 17 conclusion, and assumes facts not in evidence.  
 18 Go ahead an answer.  
 19 THE WITNESS: I believe default was the time  
 20 when Chris was running the -- you know, the show.  
 21 BY MR. SAGGESE:  
 22 Q. Who is Mr. Gilmore?  
 23 A. Mr. Gilmore?  
 24 A. Mr. Gilmore was brought by Mr. Frey to  
 25 supervise, look over the action of Chris.

1 A. The project was in default, the bank stop the  
 2 financing, that destroyed the whole building.  
 3 Q. The question is why.  
 4 A. I don't know why. Chris should know why.  
 5 Q. I mean, he was deposed, and he was asked a  
 6 series of questions. I don't recall hearing a purpose  
 7 or a gain that he would achieve by defaulting on the  
 8 project.  
 9 A. Many people do default without purpose, by  
 10 running business not correctly.  
 11 Q. Was the project insured?  
 12 A. I don't know. I mean, Chris was supposed to  
 13 insure it.  
 14 Q. Were the loans insured?  
 15 A. Our loan?  
 16 Q. Yes.  
 17 A. I don't think -- I mean, they was insured  
 18 by -- you know, guarantied by Mr. Chris and his, you  
 19 know, properties in town.  
 20 Q. Was there any insurance, though, on those  
 21 loans or the projects?  
 22 A. What kind insurance you can get for a loan?  
 23 Q. On the project.  
 24 A. On the project, I'm not recall that it have  
 25 any insurance.

1 Q. Was it Mr. Gilmore that actually controlled  
 2 the management of the company?  
 3 A. What do you mean, control the management?  
 4 Q. I don't know. I'm asking you.  
 5 A. He was employee by Chris, was getting paid by  
 6 Chris.  
 7 Q. Chris employed Mr. Gilmore?  
 8 A. I believe Chris was paying Mr. Gilmore.  
 9 Q. Was Mr. Gilmore appointed by Mr. Frey,  
 10 though?  
 11 A. I believe so.  
 12 Q. If the project went into bankruptcy, if the  
 13 Toluca Lake project went into bankruptcy while it was  
 14 being managed by Star Development, which is you and  
 15 Mr. Frey, isn't that the cause of the project's  
 16 default?  
 17 MR. IGLODY: Same objections as before as to  
 18 legal conclusion and as to facts not in evidence.  
 19 BY MR. SAGGESE:  
 20 Q. I mean, the project went into default when  
 21 you filed bankruptcy?  
 22 A. The project went into default when everything  
 23 was in the hand of Chris.  
 24 Q. Why do you believe Chris is responsible for  
 25 the project's default?

1 Q. In other words --  
 2 A. I believe we had insurance.  
 3 Q. Was there an insurance payout that you know  
 4 of that Mr. Frey may have received or you received?  
 5 A. I did not receive any insurance.  
 6 Q. Did Mr. Frey receive any insurance?  
 7 A. Nothing that I know.  
 8 Q. Are you aware of any title insurance --  
 9 A. No.  
 10 Q. -- North American Title insurance?  
 11 A. No, I'm not aware of.  
 12 Q. So if North American Title Insurance paid  
 13 money out in relation to this project, you weren't  
 14 aware of it?  
 15 A. No.  
 16 Q. And you didn't receive any of it?  
 17 A. No.  
 18 Q. But if Mr. Frey received some of it, would  
 19 that surprise you?  
 20 A. Mr. Frey receive?  
 21 Q. Insurance from North American Title.  
 22 A. What are you talking about?  
 23 Q. I don't know. I'm asking you.  
 24 A. I don't believe he receive.  
 25 Q. But if he did receive money, would that

1 surprise you?  
 2 A. It's nothing that I know that he receive.  
 3 Q. I'm asking you how you would respond to  
 4 finding out that Mr. Frey received money from North  
 5 American Title Insurance on the Toluca Lake project.  
 6 A. When you talk about money, you talk about  
 7 millions, you talk about what?  
 8 Q. I'm just asking you generically.  
 9 Generically.  
 10 A. I don't understand what you saying.  
 11 Q. I'm asking you, how would you respond -- In  
 12 other words, it would upset you if it was \$4 million,  
 13 but you wouldn't be too upset if it was \$100,000?  
 14 MR. IGLODY: I'd object briefly, because to  
 15 some extent, the term "insurance" is completely  
 16 undefined. And so I'm not sure if you're talking  
 17 about completion insurance, construction insurance, or  
 18 something else.  
 19 With that in mind, I would ask counsel to  
 20 perhaps clarify, because I'm sure as heck not  
 21 following what you're saying.  
 22 MR. SAGGESE: I said North American Title  
 23 insurance was the first thing I said, so there is no  
 24 confusion over the issue of what type of insurance.  
 25 THE WITNESS: I think about it.

1 hear about it. I'll let you have the note, and you  
 2 work on it.  
 3 Q. Did you pay for it?  
 4 A. Pay for it. I will pay for it when I get  
 5 money.  
 6 Q. No, no, no, did you purchase the note from  
 7 Mr. Frey?  
 8 A. No, I didn't purchase the note.  
 9 Q. He just gave it to you for no consideration?  
 10 MR. IGLODY: Objection: misstates facts in  
 11 evidence.  
 12 Go ahead and answer.  
 13 MR. SAGGESE: It's a question; I'm not  
 14 stating a fact.  
 15 Q. The question is --  
 16 A. I collect the money for both of us.  
 17 Q. Let me ask the question.  
 18 Did you pay any amount of money --  
 19 A. Beside the 3.2 --  
 20 MR. IGLODY: Let him finish his question.  
 21 I'm sorry. Please finish your question  
 22 BY MR. SAGGESE:  
 23 Q. Did you pay -- in the law it's called  
 24 consideration; it just means money or giving up  
 25 something of value. Did you pay and give any

1 BY MR. SAGGESE:  
 2 Q. And then the question is, and I don't mean to  
 3 re-ask it, but I'm saying, how would you respond if  
 4 you were to discover that North American Title  
 5 Insurance paid out a claim to Mr. Frey in relation to  
 6 this project?  
 7 A. I believe, if he got paid, he probably put it  
 8 on his account, on the accounting, because Mr. Frey  
 9 put a lot of money. Since was the default, he invest  
 10 a lot of money. If any money back little bit, it  
 11 wouldn't cover what he invest to end up with the  
 12 project.  
 13 Q. So you don't have any personal knowledge as  
 14 to whether or not the Frey Family Trust received any  
 15 insurance money?  
 16 A. No, sir.  
 17 Q. Okay. How did you acquire the \$6 million  
 18 note from Mr. Frey?  
 19 A. How I acquired it?  
 20 Q. How did you get it? How did it get assigned  
 21 to you?  
 22 A. I ask Mr. Frey that I want to go -- After the  
 23 money that Chris owe us, Mr. Frey say, I got sick of  
 24 it. He has cancer, he had -- he is getting very old.  
 25 He said, Jacob, I cannot handle it; I don't want to

1 consideration for the assignment of this note for \$6  
 2 million from Mr. Frey to you?  
 3 A. Are you talking about beside the 2.3 million?  
 4 Q. Yes. Other than the 2.3 million, because  
 5 that may be your actual damages, but your ability to  
 6 acquire the additional 3.7 million --  
 7 A. I did not pay anything yet to Mr. Frey.  
 8 Q. Okay. Now, Mr. Frey had assigned how many  
 9 promissory notes to you?  
 10 A. Excuse me?  
 11 Q. How many different promissory notes were  
 12 assigned to you?  
 13 A. By who?  
 14 Q. Frey, Mr. Frey.  
 15 A. Note about what? I mean note in my life you  
 16 talking about?  
 17 Q. In relation to this project.  
 18 A. Toluca Lake.  
 19 Q. Yes.  
 20 A. One note.  
 21 Q. We were provided documents, which will be  
 22 Exhibit 1.  
 23 MR. IGLODY: Do you want him to look at  
 24 Exhibit 1?  
 25 MR. SAGGESE: Yes.

1 MR. IGLODY: Look at Exhibit 1.  
 2 THE WITNESS: What page?  
 3 MR. IGLODY: He'll let you know. It's his  
 4 deposition.  
 5 Give him some guidance as to where you want  
 6 him to go.  
 7 BY MR. SAGGESE:  
 8 Q. First page, 6 million; next page, 500,000;  
 9 next page, 500,000; next page, 2,291,490, from Herbert  
 10 Frey to you; is that accurate? You and Alis Cohen,  
 11 but I understand she's --  
 12 A. I'm talking about one note the day we start  
 13 the project that we did.  
 14 Q. Let me ask some questions, though.  
 15 A. Maybe you don't ask the question in a way  
 16 that I understand what you're saying.  
 17 Q. Apparently I did not, so I will ask it  
 18 better.  
 19 How many promissory notes in relation to this  
 20 project did you receive from Mr. Frey?  
 21 A. As many as I show you over here.  
 22 Q. And how many is that?  
 23 A. One -- Only one I see -- I see there's one,  
 24 two, three, four.  
 25 Q. Are you -- So there are four is your

1 of these notes; yes or no?  
 2 A. I don't recall.  
 3 I'd like to take a break, if possible.  
 4 MR. IGLODY: He'd like to take a break, if  
 5 that's okay.  
 6 MR. SAGGESE: Okay. Let's go off the record.  
 7 (Recess taken.)  
 8 MR. IGLODY: Counsel, before we continue, I  
 9 just wanted to note for the record, just for future  
 10 scheduling purposes, my client's going to be out of  
 11 the country October 15 through November 3rd --  
 12 THE WITNESS: No, no, November 10.  
 13 MR. IGLODY: All right, November 10. Just  
 14 wanted to clarify. And then again from November 27 to  
 15 December 24.  
 16 I don't think these foreign travels are going  
 17 to interfere with anything in the case, but I just did  
 18 want to note them on the record. I know we had a  
 19 little confusion last time about his overseas travels.  
 20 That's it.  
 21 THE WITNESS: I have to spend those \$10,  
 22 that's why I'm traveling.  
 23 BY MR. SAGGESE:  
 24 Q. \$10, you didn't like the \$10 questions?  
 25 A. All the questions, they are good with me.

1 testimony?  
 2 A. I need help to read all this. I cannot read  
 3 all of those notes. At the time when I got them, I  
 4 was explained probably, and I don't remember exactly  
 5 what is those representing.  
 6 Q. So if in this document it said that you paid  
 7 \$10 for these notes, that was the consideration you  
 8 gave, that you paid \$10 for these, that would not be  
 9 accurate?  
 10 A. Excuse me?  
 11 Q. If it said in these documents that you paid  
 12 \$10 for those notes -- just asking the question. If  
 13 it says you paid \$10 as the consideration to acquire  
 14 these notes from Mr. Frey to you so that you had  
 15 possession of them and could pursue them, that would  
 16 be inaccurate?  
 17 A. If I can read the note and understand the  
 18 note, I will give you the answer.  
 19 Q. I'm asking you your own independent  
 20 recollection just based on what you can recall.  
 21 Paying \$10, does that ring a bell? Did you hand over  
 22 a \$10 bill or write a check for \$10?  
 23 A. If I got the check for \$10 or \$10 bill. I  
 24 got many \$10 bills in my life.  
 25 Q. Did you give Mr. Frey \$10 for the assignment

1 Q. All right, fair enough.  
 2 Let me ask a couple more questions about a  
 3 name that came up: Gilmore. Mr. Gilmore, what is your  
 4 relationship with him?  
 5 A. My relationship with him?  
 6 Q. Yeah.  
 7 A. I just know him as a friend of Mr. Frey, as a  
 8 partner of Mr. Frey. And I saw him in my life, you  
 9 know, few occasion.  
 10 Q. How many years have you known him total?  
 11 A. Gilmore, probably between 10 to 20 years; I  
 12 don't know exactly.  
 13 Q. Is he still with us, or did he pass away?  
 14 A. He passed away.  
 15 Q. Do you know how long ago he passed away?  
 16 A. I believe -- I believe two years or year and  
 17 a half, something like this.  
 18 Q. And Mr. Gilmore, do you know what he passed  
 19 away off?  
 20 A. Sorry. He felt that -- he felt -- he felt to  
 21 Mr. Frey, I think. That's the way I see it.  
 22 Q. He died of being sorry?  
 23 A. Sorry, like he got from . . .  
 24 Q. The stress?  
 25 A. The stress.

1 Q. Now, Mr. Gilmore was appointed by Mr. Hefetz?  
 2 A. Excuse me?  
 3 Q. Mr. Gilmore was appointed by Mr. Hefetz --  
 4 I'm sorry --  
 5 A. You're talking to Mr. Hefetz.  
 6 Q. I'm sorry.  
 7 Mr. Gilmore was appointed by Mr. Frey?  
 8 A. Yes. And I know this after the fact.  
 9 Q. After which fact?  
 10 A. That he was appointed.  
 11 Q. You mean you discovered later --  
 12 A. Yes.  
 13 Q. -- that he was appointed?  
 14 And he was appointed to what position by  
 15 Mr. Frey?  
 16 A. I don't know. You can ask Mr. Chris.  
 17 Q. In this deposition, I can only get what you  
 18 know.  
 19 A. I don't know what position.  
 20 Q. But it had to do with Star Development?  
 21 A. No. He was appointed before Star  
 22 Development.  
 23 Q. Okay. So Chris --  
 24 A. Much as I know. I believe he was appointed  
 25 from the beginning or something. I don't know

1 of Mr. Frey.  
 2 Q. Okay. Now was it during that period when  
 3 Mr. Gilmore was collecting a salary from Mr. Beavor  
 4 that Toluca Lake, you believe, went into default?  
 5 A. I don't know for sure if it was before or  
 6 after. I don't know for sure.  
 7 Q. And at some point, Mr. Beavor was replaced as  
 8 manager of Toluca Lake, along with Mr. Gilmore,  
 9 replaced by Star Development. Does that sound right?  
 10 A. I know that Mr. Frey decide to took over  
 11 because of the default and bad management from Chris  
 12 and all the mistake that he did. And he point -- he  
 13 appoint Gary Frey and Wayne Krygier to take over and  
 14 to try to resolve as much as they can with their big  
 15 experience they have.  
 16 Q. Do you know specifically any of the mistakes?  
 17 A. No.  
 18 Q. Somebody just told you that Chris made  
 19 mistakes?  
 20 A. I understood that there was a -- I heard that  
 21 there was a default.  
 22 Q. That Chris defaulted?  
 23 A. Yeah. To the bank. Reporting timing-wise,  
 24 I don't know exactly. And the bank decide to stop the  
 25 financing, and then the bank request to take over, to

1 exactly.  
 2 Q. Okay. So he was appointed manager of Toluca  
 3 Lake, like Chris Beavor was listed as the manager of  
 4 Toluca Lake?  
 5 A. I don't know. I don't know those facts.  
 6 Q. Okay. Do you know if Chris Beavor and  
 7 Mr. Gilmore were simultaneously involved with Toluca  
 8 Lake?  
 9 A. I know that they had few meetings; I don't  
 10 know if they are on a daily basis.  
 11 Q. Because you referenced earlier in your  
 12 testimony that Mr. Gilmore worked for Chris. Do you  
 13 remember that?  
 14 A. Yeah, Chris told me that he is paying -- once  
 15 I talked to Chris, he said that -- I believe that he  
 16 said that he's paying him monthly fee.  
 17 Q. And that was to manage Toluca Lake, or you  
 18 don't know?  
 19 A. For advice or something. Advice or -- I  
 20 don't know at what position. I told you I don't know  
 21 what position.  
 22 Q. But we do know that Mr. Gilmore was put in  
 23 place by Mr. Frey?  
 24 A. I believe so. I don't know for fact. I  
 25 believe so. Because Mr. Gilmore is a very good friend

1 take over, I believe.  
 2 Q. Right, the project.  
 3 A. The project. I don't know what you call it.  
 4 MR. IGLODY: Receivership.  
 5 BY MR. SAGGESE:  
 6 Q. Put it in a receivership, right?  
 7 A. I remember the name receiver.  
 8 Q. I asked you a question earlier; I'm going to  
 9 ask it again.  
 10 Would it change your perspective on the  
 11 promissory note that you possess if you were to  
 12 discover that Chris actually had nothing to do with  
 13 the default?  
 14 A. The promises note from Chris, it was like  
 15 we're giving him the money, and we want the money  
 16 back. Regardless what he did, how it did, if I don't  
 17 get the money back, that's his fault. It's not your  
 18 fault, not my fault, not anybody fault, only his  
 19 fault. When I give you a loan, give you a loan and  
 20 you don't pay me back, it's not your wife fault  
 21 because she went shopping, because you don't pay me  
 22 back the money regardless for what reason. That's the  
 23 way I see it.  
 24 Q. Understood.  
 25 A. Okay. I hope I made myself clear.

1 Q. Very clear.  
 2 Exhibit 2. Exhibit 2, page 3. At the  
 3 bottom, in Section 3, 3.1(a), it says, "Phase I."  
 4 Do you see that?  
 5 A. Phase I?  
 6 Q. 3.1(a), the last full paragraph. Your  
 7 finger's on it.  
 8 A. Yeah.  
 9 Q. That says there that the lender, which is  
 10 Mr. Frey, is to disburse to the borrower, which is  
 11 Toluca Lake, 2,291,490 -- \$2,291,490 -- correct?  
 12 A. I see that number. I don't know what is  
 13 that. I see the number. I see few numbers.  
 14 Q. Now we're going to flip the page to page 4,  
 15 paragraph (b) at the top.  
 16 Do you see that?  
 17 A. Yes.  
 18 Q. Now, here's where it says -- and this is the  
 19 promissory note you're referencing -- that the lender  
 20 shall disburse to borrower the sum of \$6 million.  
 21 Do you see that? First sentence.  
 22 A. The lender -- What is that, "s-b-a-l-l"?  
 23 Q. Disburse?  
 24 A. Disburse. Ah, should disburse the borrower  
 25 the \$6 million, yes.

1 A. Yes.  
 2 Q. It says in the next sentence that \$2,291,490  
 3 shall be withheld by the lender. Meaning Mr. Frey, of  
 4 the 6 million, is going to withhold \$2,291,490 and  
 5 utilize that for Phase I. That's the \$2,291,490  
 6 referenced --  
 7 A. So where the first money went to?  
 8 Q. The first money is the 6 million.  
 9 A. You know, the 3 million 7, where the 3  
 10 million 7 went to?  
 11 Q. And the 3 million 7?  
 12 A. You're saying from 6 million -- bless you.  
 13 Q. Go ahead. Bless you.  
 14 A. Let me see I understood this right. Now I'm  
 15 doing the question.  
 16 Q. All right, we'll work through this.  
 17 A. From the 6 million, you said that Mr. Frey is  
 18 holding 2.91.  
 19 Q. 2.291.  
 20 A. 2.291, he is holding it.  
 21 Q. He's going to apply it to --  
 22 A. And he already gave the first money. That's  
 23 what you're saying?  
 24 Q. He's going to withhold 2.291 from the 6  
 25 million and apply it to the Phase I loan, which is the

1 Q. You see that, okay.  
 2 Now, is it your understanding that that loan  
 3 for \$6 million to the project is the basis for the  
 4 promissory note?  
 5 A. I believe so. I'm not a lawyer. I'm a  
 6 businessman; I'm not a lawyer. I don't know nothing  
 7 about documents; don't test me. I'm telling you from  
 8 now I'm going to fail. Documents, I pay lawyers. I  
 9 make good money; I pay lawyer good money. I prepare  
 10 the deal, and I trust my lawyers to do all the  
 11 documents. I never read any documents --  
 12 Q. You should.  
 13 A. -- my lawyer told me to sign, I sign.  
 14 Q. You should read.  
 15 A. I wish I know how to read. Maybe I should go  
 16 to school.  
 17 Q. I'm a lawyer, and I'll go through this with  
 18 you like a lawyer.  
 19 A. Please.  
 20 Q. Fair enough? Slow. And it's not a long  
 21 series of questions.  
 22 A. Okay.  
 23 Q. The \$6 million that we just talked about in  
 24 that first sentence, okay? You see that; we're past  
 25 that.

1 exact amount: 2.291.  
 2 A. Okay, I think I understand what you're  
 3 saying.  
 4 Q. So I would like --  
 5 A. Go to your points, I know for sure if I  
 6 understood.  
 7 Q. Okay. So the whole loan for the whole  
 8 project from Mr. Frey was 6 million. He took 2.291  
 9 million of it and applied it to Phase I.  
 10 Now, you have, in Exhibit 1, a promissory  
 11 note for that exact amount: 2,291,490. That is the  
 12 fourth page of Exhibit 1.  
 13 A. Okay.  
 14 Q. You see it, see the promissory note?  
 15 A. I see it. But I don't understand what I see,  
 16 but I see the number. I know how to read numbers very  
 17 good.  
 18 Q. I'll walk you through it.  
 19 You acquired a promissory note from Mr. Frey  
 20 evidenced in part by that document -- correct -- for  
 21 2,291,490. Do you see that?  
 22 A. I see it. I see the number that you're  
 23 talking about.  
 24 Q. It's the exact number --  
 25 A. Yes.

1 Q. -- that would represent the money withheld on  
2 the \$6 million that was applied to Phase I.  
3 A. Okay.  
4 Q. However, would you disagree with me that  
5 these two promissory notes total 8.2 million, when  
6 actually the original contribution was only 6 million  
7 by Mr. Frey?  
8 A. You're asking me now to be a counter. I'm  
9 not a counter.  
10 Q. In other words --  
11 A. If I had add 6 million plus 2.2, it will show  
12 8, yes.  
13 Q. But 8 million was never provided --  
14 A. No, I don't think so.  
15 Q. -- only 6.  
16 So are you suing or pursuing any of those  
17 other promissory notes above and beyond the 6 million?  
18 A. No, I am suing the 6 million.  
19 Q. But you do possess a note for 2.2 right here.  
20 Exhibit 1, page 4.  
21 A. From my knowledge, we are suing 6 million.  
22 Q. But the question is, in front of you, you  
23 have a promissory note which you could take action on  
24 for 2.2 -- approximately 2.2 million.  
25 A. This promises note from Mr. Frey to me?

1 Q. Back to Exhibit 2, page 3. That same bottom  
2 paragraph, it says, "Of this amount, borrower and  
3 lender acknowledge and agree that \$164,000 shall be  
4 withheld by lender as a loan fee, which shall be  
5 deemed nonrefundable and fully earned upon  
6 disbursement of the Phase II loan proceeds as set  
7 forth in Section 3.1(b) below, and \$77,490 shall be  
8 withheld by lender as a portion of the interest  
9 reserve to be utilized as set forth in Section 3.2  
10 below."  
11 Do you see that, what I just read?  
12 A. I see what you read.  
13 Q. So of the \$6 million that was disbursed,  
14 164,000 of it was kept by Mr. Frey, so he's not out  
15 that on the 6 million, and 77,490 was also withheld on  
16 the 6 million.  
17 A. I was not involved in this transaction, and I  
18 didn't get any of this money.  
19 Q. But you're suing for the whole amount: 6  
20 million.  
21 A. Yes. Why not?  
22 Q. Next page. Same exhibit, Exhibit 2, page 4,  
23 top paragraph, (b), lower case (b). It says, after  
24 the section about out of 6 million 2,291,490 will be  
25 withheld to fund Phase I, it says, "\$1,350,000 shall

1 Q. Yes.  
2 A. Or to Toluca Lake? No, it's to Toluca Lake,  
3 no? I don't know. I don't know what -- I'm not a  
4 lawyer.  
5 Q. It says pay to the order of you, Yakov Jack  
6 Hefetz.  
7 A. That Mr. Frey pay to the order of -- Maybe  
8 I'll go and collect from Mr. Frey. I didn't know that  
9 I can collect that.  
10 Q. But you understand that you have promissory  
11 notes that far exceed the original \$6 million?  
12 A. I didn't know that.  
13 Q. I am asking you to look at the evidence in  
14 front of you, which is Exhibit 1, page 4.  
15 A. And I'm keep saying that I am suing for 6  
16 million.  
17 Q. But you have promissory notes for almost 9  
18 million; is that accurate?  
19 A. No, 6 plus 2.2, it's 8.2, 8.3.  
20 Q. There's two others at the beginning of this  
21 for 500,000 each that you have acquired, for another  
22 million.  
23 Do you know what those promissory notes are  
24 or represent?  
25 A. I'm not recall; I have to check my books.

1 be withheld by lender as a portion of the interest  
2 reserve to be utilized as set forth in Section 3.2  
3 below."  
4 Do you see that?  
5 A. Yeah, I see it on page No. 4, right.  
6 Q. Page 4, paragraph lower case (b).  
7 What that says is, out of 6 million, 1.35  
8 million of it was withheld and kept by Mr. Frey. So  
9 he didn't actually provide a \$6 million loan to the  
10 project to the extent that amounts were withheld: 1.35  
11 million, 77,490, and 164,000. Are you aware of that?  
12 A. No, I was not aware of it.  
13 Q. So it was your understanding that \$6 million  
14 was provided to the Toluca Lake project, and \$6  
15 million was spent by the Toluca Lake project? Was  
16 that your understanding previous to this deposition?  
17 Go ahead.  
18 A. Do you have any accounting how much money in  
19 total you guys received?  
20 Q. You're asking me? I'm just a lawyer. I'm  
21 just a lawyer; I don't know.  
22 A. I don't understand. He kept 1.35?  
23 Q. Yes.  
24 A. Plus 2.2?  
25 Q. No, the 2.2 funded Phase I, so that was spent

1 on Phase I.  
 2 A. The 2.2 was funded already.  
 3 Q. Right, on Phase I. And then Phase II, he  
 4 kept 1.35 million out of 6 million.  
 5 A. So how much money out of the 6 the money was  
 6 funded?  
 7 Q. I actually have that on a different notepad  
 8 here. Total disbursements for Phase I and II was  
 9 \$3,708,510.  
 10 A. 3 million?  
 11 Q. 708,510.  
 12 That is the money that was actually expended  
 13 by Mr. Frey evidenced by the \$6 million promissory  
 14 note. Are you aware of that?  
 15 A. No, I was not aware of it. I was not aware  
 16 in any of the paper.  
 17 Q. Okay. Now, when you provided your  
 18 contribution to the project -- and I think you  
 19 referenced it was 2.3 million; it may actually have  
 20 been 2.4 million -- how did you provide those funds to  
 21 Mr. Frey?  
 22 A. I did it through banks, checks or transfers,  
 23 couple of action.  
 24 Q. It was a wire transfer?  
 25 A. Bank of the West. It was a check and some

1 Q. The next sentence says that the Frey Trust --  
 2 A. Look like it's half of the 4 million 429,  
 3 right?  
 4 Q. 4.429, that's the amount that was disbursed  
 5 in total up until the signing of this document.  
 6 A. Uh-huh.  
 7 Q. And it says it will provide you 50 percent  
 8 interest in the August 23rd, 2007 Note and Deed of  
 9 Trust.  
 10 But whether it be the 6 million or the  
 11 4,429,000, the next sentence says that Frey Trust  
 12 agrees to equally share in \$1,350,000 accrued interest  
 13 reserve by paying Hefetz and Cohen an interest rate of  
 14 12 percent, less \$146,723, which represents the  
 15 accrued interest to Frey -- to the Frey Trust -- for  
 16 the original funding date of the Note and Deed of  
 17 Trust and the date Hefetz/Cohen acquired from Frey  
 18 Trust their 50 percent interest in the Frey Trust note  
 19 and deed.  
 20 Did you receive any interest on that \$1.35  
 21 million that Mr. Frey withheld?  
 22 A. No, I didn't receive any money at all.  
 23 Q. Do you understand the contents of that  
 24 paragraph, what I just read to you?  
 25 A. No.

1 transfer.  
 2 Q. Did you ever provide your attorney with a  
 3 copy of the check or the wire transfer?  
 4 A. I request the bank, and they're still looking  
 5 for it.  
 6 Q. Because what we need is some evidence that  
 7 monies were actually paid.  
 8 A. Sure.  
 9 Q. When that does come up, can you provide that  
 10 to your attorney, and he'll get it to me?  
 11 A. Definitely.  
 12 Q. Exhibit 5. Do you recognize -- Oh, sorry.  
 13 Is that your signature on the bottom?  
 14 A. Yes, sir.  
 15 Q. And do you recognize this document?  
 16 A. I think that's the note that Mr. Frey give me  
 17 when I give him the money for the project.  
 18 Q. Okay. The last paragraph references your  
 19 contribution, along with Alis Cohen. Is Alis Cohen a  
 20 sister or --  
 21 A. Sister.  
 22 Q. That last paragraph references \$2,214,875  
 23 that you contributed to acquire a 50 percent interest  
 24 in the Deed of Trust.  
 25 A. Yes, that what it say.

1 Q. Well, it reads that Mr. Frey withheld \$1.35  
 2 million for interest in advance of the interest being  
 3 due, and you were to get 12 percent of that.  
 4 A. But it says I am 50 percent partner.  
 5 Q. 50 percent of the total amount, which is  
 6 either 6 million or 4.429. But I'm asking about  
 7 the --  
 8 A. If I am a partner 50 percent, I should get  
 9 half of the interest.  
 10 Q. Ideally --  
 11 A. I didn't receive any money.  
 12 Q. Are you able to read that and understand that  
 13 you and Alice Cohen were expected to get 12 percent  
 14 interest on the 1.35 million?  
 15 A. I tell you honestly, I sign it, I didn't read  
 16 it. I didn't know I'm expecting money.  
 17 Q. Who was your lawyer at the time that you  
 18 signed this?  
 19 A. There was no lawyer. Mr. Frey came with the  
 20 document in my office. I signed it, my sister signed  
 21 it, and that was it.  
 22 Q. Because this is dated January 14th, 2008;  
 23 that would be approximately -- more than four years of  
 24 interest at 12 percent on 1.35 million, and that's  
 25 money he actually withheld; it's there. It's not

1 money that he could not recover; it was withheld for  
 2 the purpose of paying you and himself.  
 3 Do you understand that?  
 4 A. That's the first time I hear about it.  
 5 Q. Now, Exhibit 4, the Payment Guaranty, is  
 6 Bates stamped 1.  
 7 A. Yeah.  
 8 Q. Do you recognize this document?  
 9 A. No. (Reading.)  
 10 Q. So let me know when you're finished.  
 11 A. (Reading.)  
 12 Q. Do you recognize it?  
 13 A. No.  
 14 Q. Well, it's the Payment Guaranty secured by  
 15 real estate that Chris Beavor and his wife --  
 16 ex-wife -- Samantha Beavor -- signed.  
 17 Have you ever seen this before?  
 18 A. I know it exist; I never saw it.  
 19 Q. Do you possess any special licenses related  
 20 to transfers of loans and notes secured by real  
 21 property?  
 22 A. Excuse me?  
 23 Q. Do you have any license that authorizes you  
 24 to transfer loans or notes that are secured by real  
 25 estate?

1 in relation to Chinatrust Bank and Toluca Lake?  
 2 A. No.  
 3 Q. Do you have any independent recollection of  
 4 any attorneys involved in that bankruptcy proceeding?  
 5 A. I heard that there was two lawyers involved  
 6 in it.  
 7 Q. If you know, were the interests of my client,  
 8 Mr. Beavor, supposed to be represented by any of those  
 9 two lawyers that you referenced?  
 10 A. I don't know.  
 11 Q. Does the name Mr. Haberbusch, David Haberbusch,  
 12 ring a bell?  
 13 A. No.  
 14 Q. Do you have the name of any of the attorneys  
 15 that you are recalling?  
 16 A. No.  
 17 Q. There was a Victor Salons (sic), or something  
 18 like that. Do you remember that name?  
 19 A. I heard one time name of the bankruptcy  
 20 lawyer.  
 21 Q. What was your role in the Toluca Lake  
 22 bankruptcy?  
 23 A. Excuse me?  
 24 Q. What was your role in the Toluca Lake  
 25 bankruptcy proceeding?

1 A. I don't know what license you talking about.  
 2 Q. Well, I suppose if you had it, you'd know.  
 3 A. I guess so.  
 4 Q. So you don't have any special license for  
 5 transferring property, or promissory notes?  
 6 A. Transfers being made by -- by title company,  
 7 no?  
 8 Q. This is a hypothetical. Hypothetically  
 9 speaking, in order to transfer the value of a  
 10 promissory note or a guaranty to another individual,  
 11 if that note is secured by real estate, there is a  
 12 requirement that a special license be held by the  
 13 person transferring the property.  
 14 Do you possess that special license to  
 15 transfer --  
 16 A. I don't have this kind of license.  
 17 Q. Do you know if Mr. Frey possesses that type  
 18 of license?  
 19 A. I don't know.  
 20 Q. Are you aware of the requirement to -- if one  
 21 exists -- to possess a need to possess a license to  
 22 transfer notes that are secured by real estate?  
 23 A. I'm not aware of it.  
 24 Q. Were you involved in the bankruptcy  
 25 proceedings that took place in San Bernardino County

1 A. I was not involved in any of it.  
 2 Q. Not a --  
 3 A. Nothing.  
 4 Q. Did you sign a document? Nothing?  
 5 A. I don't remember. Maybe Gary came with  
 6 document for me to sign. I don't remember it. But I  
 7 was not involved in any of it.  
 8 Q. Do you remember the lawyer Victor Sahn,  
 9 S-a-h-n?  
 10 A. Victor -- I'm assuming maybe I heard that  
 11 name Victor. Bankruptcy lawyer, it might be.  
 12 Q. Yeah. There were a series of e-mails going  
 13 around in relation to the Chapter 11 bankruptcy of  
 14 Toluca Lake.  
 15 Do you remember being part of the e-mail  
 16 string where everyone would get an e-mail in any way,  
 17 shape or form related to the bankruptcy?  
 18 A. E-mail. I get many e-mails, I don't even  
 19 read them. I'm not e-mail guy at all. Not even --  
 20 hardly texting.  
 21 Q. Do you have a recollection of receiving  
 22 e-mails about the bankruptcy?  
 23 A. I don't remember. It's possible, but I was  
 24 not -- I didn't put any -- any input into any of those  
 25 action.



1 Q. Did you pay for any of the attorneys who  
2 handled the bankruptcy?  
3 A. No.  
4 Q. You never went to San Bernardino County and  
5 were at the bankruptcy court?  
6 A. No, never.  
7 Q. Did you ever sign an affidavit?  
8 A. I might sign some documents, maybe. I don't  
9 recall. And I never been in the court; I never was in  
10 meeting with the lawyers.  
11 Q. So all of the information that you had in  
12 relation to why the project went bankrupt or  
13 defaulted, the Toluca Lake project, was just from what  
14 people told you?  
15 A. Yes.  
16 Q. You're a very trusting man.  
17 A. Very much. Only with few people.  
18 Q. Did you ever look into it yourself,  
19 independently, to verify what they were saying was  
20 true?  
21 A. No. I trust Chris with all my money.  
22 Q. Did you ever reacquire the project or -- just  
23 answer that. Did you ever reacquire the Toluca Lake  
24 project after the fact?  
25 A. Excuse me?

1 A. From the beginning, nothing.  
2 Q. When did he come into the picture?  
3 A. He come in when the problem start. He come  
4 in as experienced man.  
5 Q. And he went to work for --  
6 A. He was employed by Mr. Frey to save as much  
7 as we can.  
8 Q. All right. And do you have any reason to  
9 believe that he, in conjunction with Mr. Frey,  
10 purposely drove it and defaulted it into bankruptcy?  
11 A. Went to bankruptcy because there was no  
12 choice. You know, the bank will take over the  
13 project.  
14 Q. And Wayne Krygier brought people to the table  
15 that purchased the project out of bankruptcy for a  
16 significant --  
17 A. That's what I understood. That's what I  
18 understood.  
19 Q. -- for a significantly reduced amount, or  
20 don't you know?  
21 A. I believe they bought it for less than what  
22 Chris owed the bank.  
23 Q. And who received the money from the sale of  
24 that Toluca Lake from Wayne Krieger's people?  
25 A. The bank, I think.

1 Q. Did you ever reacquire the Toluca Lake  
2 project after the fact, after bankruptcy?  
3 A. What do you mean, "require" (sic)?  
4 Q. Repurchase it with different money.  
5 A. No.  
6 Q. Did Mr. Frey ever purchase it in bankruptcy  
7 for, you know, a reduced amount after the fact?  
8 A. Not that I know.  
9 Q. Did anybody involved in the original business  
10 dealings, that you know of, purchase Toluca Lake and  
11 finish the project?  
12 A. I know that Wayne Krygier brought some  
13 clients to the bank.  
14 Q. And some clients bought it in --  
15 A. Different group of people. That's what I  
16 heard.  
17 Q. That was that Star company?  
18 A. What do you mean, "Star"?  
19 MR. SAGGESE: What was it called?  
20 MR. BEAVOR: Star Development, Wayne Krygier.  
21 THE WITNESS: Star Development never bought  
22 any -- never bought the project.  
23 BY MR. SAGGESE:  
24 Q. What was Wayne Krieger's involvement in the  
25 project originally?

1 Q. Which bank?  
2 A. The China bank.  
3 Q. Did you receive any of the proceeds of the  
4 sale of Toluca Lake?  
5 A. Not a dollar.  
6 Q. Did Mr. Frey, do you know?  
7 A. Nothing that I know.  
8 Q. Did the project get completed by  
9 Mr. Krygier's purchasers?  
10 A. I think the project is still going.  
11 Q. Do you know what the value of that project is  
12 right now?  
13 A. No. I don't want to know.  
14 Q. Do they stand to make a substantial amount of  
15 money, or is it a break even, or you have no idea?  
16 A. I have no idea.  
17 Q. But you're not going to profit in any way,  
18 shape or form from that bankruptcy?  
19 A. No.  
20 Q. Or from the Krygier purchasers?  
21 A. No.  
22 Q. And definitely not Mr. Herbert Frey?  
23 A. No.  
24 Q. Is Gary Frey set to profit from --  
25 A. I don't think so, no. I'm just telling you

1 what I know.  
 2 Q. That's all I can ask.  
 3 A. Yes.  
 4 Q. Some of the -- In Exhibit 6, this is the  
 5 bankruptcy motion for the Settlement Agreement. Did  
 6 you ever have a chance to look at the Settlement  
 7 Agreement that was being circulated amongst the  
 8 guarantors?  
 9 A. No.  
 10 Q. It's marked as "Exhibit 1" that's attached to  
 11 Exhibit 6. It's an exhibit within an exhibit.  
 12 So what is your understanding of this  
 13 Settlement Agreement? Have you ever seen it before?  
 14 A. No, I never see it, I never read it. And if  
 15 I read it slowly, slowly, I won't understand what is  
 16 mean. That's why I have a lawyer.  
 17 Q. Let me ask you this: In relation to  
 18 settlement agreements, do you have a recollection of  
 19 the settlement agreement that Chris was hoping to  
 20 execute with Mr. Frey absolving him of the \$6 million  
 21 promissory note?  
 22 A. Nothing that I heard and nothing -- I asked  
 23 Mr. Frey several times, and he didn't say anything  
 24 about it.  
 25 Q. Do you have a recollection of Mr. Beavor

1 Q. But the agreement that Chris handed you was  
 2 an agreement between Chris and Mr. Herbert Frey,  
 3 correct?  
 4 A. Yes, because the original note --  
 5 Q. Was Chris --  
 6 A. -- was Chris and Mr. Frey. But I'm part of  
 7 the note.  
 8 Q. So the original promissory note, or guaranty,  
 9 of Chris and Samantha Beavor, \$6 million, was between  
 10 Mr. and Mrs. Beavor and Mr. Herbert Frey exclusively,  
 11 correct?  
 12 A. I believe so, yes.  
 13 Q. And you remember the event when Mr. Beavor  
 14 came into the office with a settlement agreement to be  
 15 presented to Mr. Frey. You remember this?  
 16 A. Yes.  
 17 Q. And then you had a conversation with Mr. Frey  
 18 saying you don't want to do this. Or correct me if  
 19 I'm wrong, you told him, you shouldn't do this. You  
 20 tell me, what did you say?  
 21 A. I show it Mr. Frey, and I said, What is this?  
 22 What is all this about, you know. And then I told  
 23 him, Do you plan to give up the notes? Because I'm  
 24 not. And he said, No, I'm not going to sign it. And  
 25 I said, What shall I do with it? He said, Give it

1 trying to physically walk into Mr. Frey's office and  
 2 give him a document? You were present.  
 3 A. I was there; Mr. Frey was not there.  
 4 Q. You were there?  
 5 A. Yes, sir.  
 6 Q. So you remember the time I'm talking about?  
 7 A. That Mr. Chris came with some documents, some  
 8 checks.  
 9 Q. Right.  
 10 A. Yeah.  
 11 Q. You were there. Mr. Frey was not there?  
 12 A. No.  
 13 Q. And were you instructed to give that  
 14 settlement agreement to Mr. Frey?  
 15 A. Yeah, I show it to Mr. Frey.  
 16 Q. And what did Mr. Frey say?  
 17 A. He tell me -- He ask me what I think. I say  
 18 I'm still -- I want my money back; I want my 2.3  
 19 million regardless who's going to pay for it.  
 20 Q. And you told him not to sign it?  
 21 A. No, I told him I don't accept it.  
 22 Q. But the agreement was --  
 23 A. And he say doesn't accept it either. So I  
 24 say, okay, let's give him back the document. I called  
 25 Chris to pick up the documents.

1 back to Chris. So I called Chris to come and pick it  
 2 up.  
 3 Q. If Mr. Beavor had given deposition testimony  
 4 that he and Mr. Frey had already agreed that that's  
 5 what it would take, those series of checks and that  
 6 agreement, Chris Beavor testified that Mr. Herbert  
 7 Frey said, Okay, that's fair --  
 8 A. That, you have to ask Mr. Frey, not me. Why  
 9 are you asking me?  
 10 Q. I'm asking you because you were present.  
 11 A. I was not present in any of this kind of  
 12 testimony.  
 13 Q. Let me ask you this way: If in fact Mr. Frey  
 14 would, or wanted, to give Chris a release, and you  
 15 interfered with that agreement, would you not admit  
 16 that, but for you being there, Mr. Frey may have  
 17 signed those documents?  
 18 A. I was not with Mr. Frey and Chris at the same  
 19 time.  
 20 Q. Right.  
 21 A. I was not.  
 22 Q. But let me say hypothetically, if you were  
 23 not there and Mr. Beavor walked in, and Mr. Frey,  
 24 Herbert, was sitting there, do you believe that there  
 25 was a chance hypothetically --

1 A. No.  
 2 Q. — Mr. Frey would have signed those  
 3 documents?  
 4 A. Not at all.  
 5 Q. Would it surprise you to find out if there  
 6 were e-mails between the two in relation to making  
 7 this agreement?  
 8 A. Mr. Frey doesn't do e-mails.  
 9 Q. Through a — I believe it was a Wayne — was  
 10 it Wayne Krygier?  
 11 MR. BEAVOR: Star Development. Wayne  
 12 Krygier's and Jacob's company.  
 13 BY MR. SAGGESE:  
 14 Q. What is your understanding of Mr. Frey's  
 15 desire — Aside from your input, what is your  
 16 understanding of Mr. Frey's desire to release Chris  
 17 and Samantha and their two houses from this note?  
 18 A. There was no desire.  
 19 Q. Did you instill that in him?  
 20 A. Excuse me?  
 21 Q. Did you convince him not to agree?  
 22 A. Nobody can convince Mr. Frey anything. When  
 23 you get to know Mr. Frey, you will understand.  
 24 Q. Did you subsequently produce your own release  
 25 with Chris?

1 lawyer.  
 2 Q. Okay. Just take a look at this. It's my  
 3 version, so it's going to have some highlights in it.  
 4 But just scan down and flip the page to what's  
 5 attached to that e-mail string.  
 6 A. (Witness complies.)  
 7 How is that first page connect to this?  
 8 Q. All I'm asking you is, in the Subject line of  
 9 that where you responded —  
 10 A. What I respond?  
 11 Q. I don't know. Call me at 10:30.  
 12 MR. IGLODY: If I may, I'm going to point to  
 13 what I think he's asking you. What he seems to be  
 14 asking is why it says, "From: Jack Hefetz," the first  
 15 page.  
 16 THE WITNESS: From Jack to what?  
 17 MR. IGLODY: You might have to guide him,  
 18 Counsel.  
 19 MR. SAGGESE: Let me take a look at that. I  
 20 don't have a duplicate.  
 21 THE WITNESS: Describe to me what I see.  
 22 BY MR. SAGGESE:  
 23 Q. It says, "From: Jack Hefetz." And that's  
 24 you, right?  
 25 A. Yes.

1 A. What do you mean? What kind of release?  
 2 Q. A release that would have released the two  
 3 houses, the 60 Chapman Heights and the —  
 4 A. I never produce any document to release  
 5 anything, and I never promise him to release anything.  
 6 Q. Do you remember receiving an e-mail from  
 7 Mr. Beavor in relation to a release on this promissory  
 8 note?  
 9 A. I don't remember e-mail because I don't read  
 10 it.  
 11 Q. Do you ever respond in e-mails?  
 12 A. If I ever respond e-mail, maybe my secretary.  
 13 I don't know how to — how to read good English, how  
 14 to write good English.  
 15 MR. SAGGESE: We can mark this as an exhibit.  
 16 It is a numbered exhibit. Do you know what is next?  
 17 (Discussion off the record.)  
 18 (Defendants' Exhibit 7 was marked for  
 19 identification.)  
 20 BY MR. SAGGESE:  
 21 Q. What I'm going to be showing the witness is  
 22 an e-mail string to Mr. Hefetz, the deponent, from  
 23 Ofir Ventura.  
 24 Do you know who that is?  
 25 A. Ofir Ventura is one of my friend, and he is a

1 Q. Your friends call you Jack?  
 2 A. Yes.  
 3 Q. "Sent: Thursday, February 3, 2011."  
 4 Do you see that?  
 5 A. Yes.  
 6 Q. And you sent it to Chris Beavor?  
 7 A. What did I send?  
 8 Q. We're going to go line by line.  
 9 A. Okay.  
 10 Q. It says, "To: Chris Beavor," and the Subject  
 11 is "Forward: Edited Partial Release Beavor."  
 12 That's you —  
 13 A. Okay.  
 14 Q. And you wrote — correct me if I'm wrong —  
 15 this is how it reads: "Please call me. I will be at  
 16 my lawyer's office at 10:30 if you have any questions.  
 17 Yankov J. Hefetz."  
 18 A. All right.  
 19 Q. Now, "edited partial release," and this is  
 20 the edited partial release. Do you ever remember  
 21 seeing this before, or this e-mail or writing that?  
 22 A. I don't remember, but if you say that it came  
 23 from my e-mail . . .  
 24 Q. I have to confirm with you that that's where  
 25 it came from.

1 A. I cannot confirm it.  
 2 Q. Do you ever remember negotiating with  
 3 Mr. Beavor in exchange for \$24,000 that you would  
 4 release his ex-wife's house and --  
 5 A. No, he offer me to do it, but I didn't accept  
 6 it.  
 7 Q. Okay. So he sent you this, and did you ever  
 8 read it, or did you have a lawyer read it?  
 9 A. I didn't read it; I didn't have a lawyer do  
 10 with it. He just explain it to me, and I did not  
 11 accept it.  
 12 Q. Why did you reject it?  
 13 A. Why? Why should I? Why should I agree with  
 14 it?  
 15 Q. It's only a partial release. It only  
 16 released the lien on the titles to the properties, not  
 17 anything else. It didn't release him of the \$6  
 18 million, just the title release.  
 19 A. Title of what, of his house?  
 20 Q. Yes, of 60 Chapman Heights, his house and his  
 21 ex-wife's house.  
 22 A. I didn't want to release it. It was part of  
 23 the guaranty.  
 24 Q. It's part of the guaranty?  
 25 A. And beside the point, how can I release it?

1 A. A little bit.  
 2 Q. You'd say you're fluent in what?  
 3 A. Fluently only in Hebrew.  
 4 Q. A little German, a little French?  
 5 A. Fluently only in Hebrew.  
 6 Q. Spanish, Italian?  
 7 A. Little bit.  
 8 Q. So you were aware of Chris's efforts to have  
 9 a release?  
 10 A. I understand his effort.  
 11 Q. And you remember the instance where Chris  
 12 physically brought the release and checks to Mr. Frey?  
 13 A. Not to Mr. Frey, to Jacob Hefetz.  
 14 Q. Not in the e-mail sting, but when he brought  
 15 it --  
 16 A. Document.  
 17 Q. Yes.  
 18 A. To my office.  
 19 Q. Right. And you were there. You took the  
 20 documents, you provided them to Mr. Frey, and then you  
 21 had a discussion about whether or not you should sign  
 22 them?  
 23 A. We did not discuss. We did not agree with it  
 24 from the beginning. There was no discussing.  
 25 Q. Would it surprise you to know that Mr. Frey

1 Q. Because you own the promissory note now,  
 2 supposedly.  
 3 A. Now. Not at the time. So how can you ask me  
 4 to release something that is not my things?  
 5 Q. Well, this is February 3rd of 2011, and these  
 6 notes were assigned to you July 6th, 2011.  
 7 A. So July, in my book, it's after February.  
 8 Maybe in your book it's different.  
 9 Q. You're right. I think we use the same book.  
 10 A. Same calendar. I use two calendar; I have  
 11 Hebrew calendar also.  
 12 Q. You are pretty well versed in other  
 13 languages, are you not?  
 14 A. Pardon me?  
 15 Q. How many languages do you speak?  
 16 A. How many language I can hear?  
 17 Q. And understand, yeah.  
 18 A. Few language.  
 19 Q. How many languages specifically?  
 20 A. Perfect? Hebrew and English, pretty well. I  
 21 understand Arabic; I understand French; I understand  
 22 German.  
 23 Q. Can you speak --  
 24 A. Little bit.  
 25 Q. Of all those languages?

1 sent the release to Mr. Beavor?  
 2 A. What do you mean, he sent the release?  
 3 Q. He sent the release to Mr. Beavor.  
 4 A. He create the release?  
 5 Q. I don't know if he created it.  
 6 A. Well, me and Mr. Frey, we are very close, and  
 7 I don't think Mr. Frey created. Not Mr. Frey, and  
 8 nobody from our side.  
 9 Q. But if he did, and there was an original  
 10 intention with Mr. Frey to release Mr. Beavor, could  
 11 it be that you interfered with that document being  
 12 signed?  
 13 A. Mr. Frey was 50/50 percent on the note with  
 14 me, so I don't believe that Mr. Frey will do anything  
 15 without share with me.  
 16 Q. So if your testimony is that you didn't have  
 17 the promissory notes until July 2011 --  
 18 A. No, no. He brought me the --  
 19 Q. In February of 2011.  
 20 A. You talk about the 6 million. But I had the  
 21 promises note that's --  
 22 Q. July of 2011.  
 23 A. No, I had the promises note from the  
 24 beginning with Mr. Frey.  
 25 Q. Let me ask you the question.

1 A. What promises note you talking about?  
 2 Q. This one for 6 million was assigned to you --  
 3 A. Oh, yeah, yeah.  
 4 Q. Was it July 2011?  
 5 A. Yes.  
 6 Q. And your testimony is that in February, you  
 7 did not have the right to even agree to Chris, with  
 8 Chris, to give him a release?  
 9 A. Yes.  
 10 Q. You did not have the right in February --  
 11 A. No.  
 12 Q. -- of 2011?  
 13 So if Chris was e-mailing you a release, you  
 14 couldn't have given it to him?  
 15 A. That's right.  
 16 Q. Because you didn't own the note until July of  
 17 2011?  
 18 A. I'm not a lawyer, but I assume so.  
 19 Q. Okay. Of the contribution you made on the 6  
 20 million, is it accurate to say Alis Cohen contributed  
 21 450,000 of your 2.2 million?  
 22 A. Yes.  
 23 Q. So your actual contribution out of your own  
 24 pocket was approximately 1.7 million?  
 25 A. Yes. But today it's 1.3 million (sic).

1 going to supplement.  
 2 MR. SAGGESE: No hurry, just supplement.  
 3 MR. IGLODY: I'll supplement.  
 4 BY MR. SAGGESE:  
 5 Q. So now you provided your sister back her  
 6 450,000, which ups your loss from 1.7 to approximately  
 7 2.2 million?  
 8 A. You are very good with numbers.  
 9 Q. Does that sound right?  
 10 A. Yeah.  
 11 Q. And other than the proof that you repaid Alis  
 12 Cohen the 450-, you are going to provide us, when you  
 13 get it, proof of the original --  
 14 A. Total amount. Yes.  
 15 Q. Even if you did it in five different  
 16 installments to Mr. Frey or three or two, some proof.  
 17 A. Yes, sir.  
 18 MR. SAGGESE: And you'll supplement that,  
 19 obviously, when you get it.  
 20 MR. IGLODY: Uh-huh.  
 21 MR. SAGGESE: Let me see what I have here.  
 22 Just a little more.  
 23 Q. So if you were to receive what you  
 24 compensated your sister, 450,000, plus your original  
 25 contribution, which is approximately \$2,214,875, would

1 Q. How do you arrive at that?  
 2 A. Because I transfer the money to my sister.  
 3 Q. You mean you gave your sister some money  
 4 back?  
 5 A. \$450,000.  
 6 Q. So you gave her the money back that she  
 7 invested?  
 8 A. Yes, sir. Was her life savings.  
 9 Q. Okay. Originally when the promissory note  
 10 references your initial contribution of 2.2 million,  
 11 approximately 2.2 million --  
 12 A. Yeah, me and my sister on the promises note.  
 13 Q. You contributed 1.764, and she contributed  
 14 450,000. Is that's accurate?  
 15 A. Yes, sir.  
 16 Q. Do you have any evidence that you paid her  
 17 back?  
 18 A. Yes, sir.  
 19 Q. Can you provide that to your lawyer and get  
 20 it to us?  
 21 MR. IGLODY: Yes.  
 22 THE WITNESS: Give it to you right now.  
 23 MR. IGLODY: He gave me a copy.  
 24 MR. SAGGESE: That's fast.  
 25 MR. IGLODY: If you want to do it now, I was

1 that satisfy you in this litigation?  
 2 A. I am suing now for 6 million.  
 3 Q. So you need 6 million to be satisfied?  
 4 A. I am suing for 6 million.  
 5 Q. Do you believe \$6 million was actually ever  
 6 disbursed?  
 7 A. I believe 6 million is owe by Chris to me.  
 8 Q. The question is, do you believe 6 million was  
 9 disbursed by Mr. Frey in relation to the loan to the  
 10 Toluca Lake project?  
 11 A. I don't have to believe, I have to verify. I  
 12 don't go by beliefs.  
 13 Q. I'm just asking you what you know to be true.  
 14 Do you --  
 15 A. I know that we invest \$6 million.  
 16 Q. That's the question. Do you believe that \$6  
 17 million was actually provided?  
 18 A. I believe so.  
 19 Q. In total?  
 20 A. Yes.  
 21 Q. We went over earlier reference to 1.35  
 22 million being withheld for future interest. Do you  
 23 still consider that as part of the 6 million?  
 24 A. I consider, if I give you \$6 million, you pay  
 25 me -- In my past business when I owe people -- I loan

1 people million dollar and they give me 100,000  
 2 interest, and note is million dollar, they still owe  
 3 me million dollars. That's what I do business in the  
 4 past.  
 5 Q. If I was, hypothetically, to give you a \$6  
 6 million loan, but withhold 1.35 million of it, you  
 7 would only be getting 4.65 --  
 8 A. No, sir. If I loan you \$5 million for three  
 9 years, and it's a million dollar interest, and you pay  
 10 me back the million dollar in advance --  
 11 Q. I understand that.  
 12 A. -- you still owe me 5 million.  
 13 Q. Correct.  
 14 A. You signed for 5 million, after three years,  
 15 you owe me 5 million. And if you don't pay me after  
 16 three years, I have the right to sue for more  
 17 interest. You know that.  
 18 Q. Yes. More specifically, though, do you  
 19 believe that \$6 million was disbursed on the initial  
 20 loan?  
 21 A. I don't know how is the million dollar was  
 22 invest. You said that there was paid interest in  
 23 advance, and it's very common in the market.  
 24 Q. So in other words --  
 25 A. I don't want belief; I want facts.

1 A. No. I don't know who out there; I don't know  
 2 the name of the company; I don't know anything. I  
 3 don't want to know. I try not to think about it.  
 4 Q. What is your relationship -- We know what  
 5 your relationship with Herbert Frey is. What is your  
 6 relationship with Gary Frey?  
 7 A. Gary Frey I know since he was a kid, and we  
 8 are friends and we are partners.  
 9 Q. Is Gary Frey your age?  
 10 A. He is little bit younger than me.  
 11 Q. And Herbert Frey is older?  
 12 A. Yes, sir.  
 13 Q. Significantly older?  
 14 A. 20 years older than me.  
 15 Q. Can you give us some description of your role  
 16 as the manager of Star Development? What did you do  
 17 for Star Development?  
 18 A. I do nothing.  
 19 Q. Nothing?  
 20 A. Nothing. We create this company for one  
 21 purpose, you know, to finish the deal.  
 22 Q. Wasn't Star Development in control of the  
 23 Toluca Lake project when it went bankrupt?  
 24 A. We talked about it.  
 25 Q. Someone had to steer that ship.

1 Q. I'm just asking what you know.  
 2 A. I got a note from Mr. Frey for 6 million, and  
 3 that's what I'm suing for is 6 million.  
 4 Q. The question is actually very narrow, very  
 5 small. Was \$6 million provided, or was less provided,  
 6 for whatever reason? Do you know?  
 7 A. I don't know.  
 8 Q. Okay. Do you know if the amount of the sale  
 9 of the Toluca Lake project exceeded any debts to  
 10 Chinatrust Bank?  
 11 A. What do you mean, "exceeded"?  
 12 Q. In other words, was there extra funds or  
 13 surplus funds --  
 14 A. As much as I know, they lost money.  
 15 Q. The Chinatrust Bank?  
 16 A. Yes, lost money.  
 17 Q. Do you have an idea of how much they lost?  
 18 A. From what I heard, you know, they sold the  
 19 note for 8-plus, and the note was, I don't know how  
 20 many millions.  
 21 Q. 22 million, I think.  
 22 A. But I don't know how much money they give  
 23 Chris.  
 24 Q. Do you know any of the parties that purchased  
 25 the note?

1 A. Mr. Frey appoint two people to steer it.  
 2 Q. And what were those names?  
 3 A. Gary Frey and Wayne Krygier.  
 4 Q. Okay.  
 5 A. Can you make a note?  
 6 Q. I'm trying to understand why Chris Beavor is  
 7 responsible for the company going into bankruptcy if  
 8 he is not --  
 9 A. Because he caused it.  
 10 Q. I have to finish the question.  
 11 A. Okay. I'm sorry.  
 12 Q. -- if he was not the one who was in fact  
 13 managing the property when it went under, so to speak,  
 14 when it went bankrupt. You know what I mean? Herbert  
 15 Frey's son was steering that ship, for lack of a  
 16 better way to say it, when it went into bankruptcy,  
 17 right?  
 18 A. He was running the ship, he went into a rock.  
 19 Mr. Gary Frey tried to fix it, and the ship sink.  
 20 Q. Was another --  
 21 A. He was the captain of the ship, and he run  
 22 the ship to the mountain.  
 23 Q. Was another captain of the ship Gilmore?  
 24 A. No. It was only one captain. Is not two  
 25 captain in one ship.

1 Q. Maybe that was part of the problem. Mr. Frey  
2 put Mr. Gilmore in there, and then there was some --  
3 A. No, he was only -- I believe he was  
4 supervise. There was not two captains.  
5 Q. Only one captain?  
6 A. This captain pay Mr. Gilmore.  
7 Q. So Mr. Frey had appointed Mr. Gilmore to act  
8 as a manager with Mr. Beavor. And then after that,  
9 Mr. Herbert Frey's son was the manager, and Wayne  
10 Krygier was assisting in running the show?  
11 A. Yeah, they try to fix the problem.  
12 Q. So Mr. Frey had some active involvement the  
13 entire time, whether it be through Gilmore or his son?  
14 A. Mr. Frey never involved in those business; he  
15 only put monies.  
16 Q. But if Mr. Frey was in part responsible for  
17 triggering the default, which would have been the  
18 bankruptcy, which would have triggered Chris's  
19 guaranty to be due, should he benefit from his own --  
20 A. Well, you have to ask Mr. Frey. I'm not  
21 capable to make this kind of judgment.  
22 Q. Okay.  
23 A. I wish I was.  
24 Q. So you have no, zero, involvement, with the  
25 bankruptcy?

1 proceeds of that loan for himself?  
2 A. I told you that I was not involve, and I  
3 don't -- I was not up to date with anything.  
4 Q. Do you have any reason to believe that Chris  
5 has 2 million of that 6 million in a checking account  
6 somewhere, or you know it was spent all on the  
7 project?  
8 A. I have no idea, not this, not that.  
9 Q. You don't know either way?  
10 A. No.  
11 Q. Who was your attorney during the time of the  
12 bankruptcy to China -- with Chinatrust?  
13 A. Attorney of what?  
14 Q. Who was your lawyer?  
15 A. I have few lawyers. I have business lawyer;  
16 I have different lawyers for different things.  
17 Q. Who was the lawyer that you had during this  
18 time period for --  
19 A. I didn't have any lawyer.  
20 Q. You had no lawyer --  
21 A. No.  
22 Q. -- in relation to this contribution to the \$6  
23 million loan?  
24 A. No, never.  
25 Q. You didn't have a lawyer review any of the

1 A. Yes, sir.  
2 Q. Zero?  
3 A. Zero.  
4 Q. Did you ever talk to Mr. Herbert Frey about  
5 your \$2.2-million-plus involvement in relationship to  
6 the bankruptcy? In other words, you had money  
7 involved in this project. He didn't consult with you?  
8 A. I know what's going on, little bit  
9 information. I know that the project went down when  
10 Chris was running it, and Mr. Frey tried to save  
11 himself. Because he was guaranty to the bank, he was  
12 expose.  
13 Q. Do you have an independent understanding of  
14 how much of that alleged \$6 million contribution or  
15 loan to Toluca Lake that Chris Beavor himself profited  
16 or kept or took or had?  
17 A. I didn't check his book, and I don't know  
18 what he did.  
19 Q. You have no reason to believe he put a  
20 million of it in a checking account or 2 million --  
21 A. I don't know. If you tell me yes, I believe  
22 you.  
23 Q. I'm not telling you anything. What I'm  
24 saying is, there is no reason for you to believe that  
25 Chris profited from that loan or took any of the

1 notes or anything?  
2 A. No.  
3 Q. Why not?  
4 A. Because I don't -- I trust Mr. Frey.  
5 Q. You said you have a lawyer for all kinds of  
6 different things.  
7 A. Yes, sir.  
8 Q. Just not this one?  
9 A. Yes. I did with Mr. Frey; with Mr. Frey,  
10 anything I do, I don't take a lawyer.  
11 Q. Okay. Now in relation briefly to your  
12 citizenship, you pay taxes, US taxes, or you pay  
13 Israeli or both?  
14 A. I pay US tax.  
15 Q. Only, or do you pay Israeli?  
16 A. Only US tax.  
17 Q. And you file taxes every year?  
18 A. Yes, sir. I'm a good citizen.  
19 MR. SAGGESE: I just want to take one  
20 bathroom break, couple questions, and we're done.  
21 MR. IGLODY: Cool.  
22 (Recess taken.)  
23 MR. SAGGESE: We'll wrap it up; we'll all go  
24 to lunch. And Lee, I'll give you a call in a couple  
25 of weeks and talk about sitting down.

1 MR. IGLODY: Yeah.  
 2 (Thereupon, the taking of the  
 3 deposition was concluded  
 4 at 1:41 p.m.)  
 5 (Defendants' Exhibits 1, 2, 4, 5, and 6 were  
 6 marked for identification.)  
 7  
 8 \* \* \* \* \*  
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1 REPORTER'S DECLARATION  
 2 STATE OF NEVADA )  
 ) ss:  
 3 COUNTY OF CLARK )  
 4 I, Michelle C. Johnson, CCR 771, declare as  
 5 follows:  
 6 That I reported the taking of the deposition  
 7 of the witness, YAKOV JACK HEFETZ, commencing on  
 8 Tuesday, July 10, 2012 at 10:50 a.m.  
 9 That prior to being examined, the witness was  
 10 by me duly sworn to testify to the truth, the whole  
 11 truth, and nothing but the truth.  
 12 That I simultaneously transcribed my said  
 13 shorthand notes into typewriting via computer-aided  
 14 transcription, and that the typewritten transcript of  
 15 said deposition is a complete, true, and accurate  
 16 transcription of said shorthand notes taken down at  
 17 said time. That the witness did request transcript  
 18 review pursuant to NRCP 30(e).  
 19 I further declare that I am not a relative or  
 20 employee of any party involved in said action, nor a  
 21 person financially interested in the action.  
 22 Dated at Las Vegas, Nevada this 24th day of  
 23 July, 2012.  
 24  
 25 Michelle C. Johnson, RPR-CRR, CCR No. 771

1 CERTIFICATE OF DEPONENT  
 2 PAGE LINE CHANGE REASON  
 3  
 4  
 5  
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 7  
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 9  
 10  
 11  
 12  
 13  
 14 \* \* \* \* \*  
 15 I, YAKOV JACK HEFETZ, deponent herein, do  
 16 hereby certify and declare the within and foregoing  
 17 transcription to be my deposition in said action; that  
 18 I have read, corrected, and do hereby affix my  
 19 signature to said deposition this \_\_\_\_ day of  
 20 \_\_\_\_\_, 2012.  
 21  
 22 YAKOV JACK HEFETZ  
 23  
 24 STATE OF NEVADA  
 25 COUNTY OF \_\_\_\_\_  
 Subscribed and sworn to before me this  
 day of \_\_\_\_\_, 2012.  
 Notary Public



# **EXHIBIT 5**

DISTRICT COURT  
CLARK COUNTY, NEVADA

YACOV JACK HEFETZ,  
an individual, and  
ALIS COHEN, an individual,  
Plaintiffs,

**COPY**

vs.

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

CHRISTOPHER BEAVOR, an  
individual, and SAMANTHA  
BEAVOR, an individual;  
DOES I-X and ROE ENTITIES I-X,  
inclusive,  
Defendants.

CHRISTOPHER BEAVOR, an  
individual, and SAMANTHA  
BEAVOR, an individual,  
DOES I-X and ROE ENTITIES I-X,  
inclusive,  
Counterclaimants,

vs.

Time: 10:30 a.m.

YACOV JACK HEFETZ,  
an individual, and  
ALIS COHEN, an individual,  
Counter-Defendants.

**DEPOSITION OF CHRISTOPHER L. BEAVOR**

Taken on Thursday, April 26, 2012

At 3960 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada

Reported by: Melinda J. Songstad RPR, CCR No. 919

Melinda Songstad, RPR - Certified Court Reporter  
(702) 558-6773

**A P P E A R A N C E S**

**FOR THE PLAINTIFFS/COUNTER-DEFENDANTS:**

LEE I. IGLODY, ESQ.  
Attorney at Law  
3960 Howard Hughes Parkway  
Suite 600  
Las Vegas, NV 89169

**FOR THE DEFENDANTS/COUNTERCLAIMANTS:**

MARC A. SAGGESE, ESQ.  
Saggese & Associates  
732 South Sixth Street  
Suite 201  
Las Vegas, NV 89101

**ALSO PRESENT:**

YACOV HEFETZ

**I N D E X**

WITNESS	EXAMINATION
CHRISTOPHER L. BEAVOR:	
(BY MR. IGLODY)	4,135
(BY MR. SAGGESE)	126

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**E X H I B I T S**

Number	Description	Page
1	Payment Guaranty	4
2	Promissory Note	4
3	Loan Agreement dated 11-22-92	4
4	Deed of Trust dated 7-1-07	4
5	Payment Guaranty	4
6	Deed of Trust	4
7	First Amendment to Operating Agreement for Toluca Lake Vintage, LLC	4
8	First Amended Counterclaim	4
9	Debtor's Second Amended Liquidating Chapter 11 Plan of Reorganization	4
10	Defendants'/Counterclaimants' Initial List of Witnesses and Documents Pursuant to NRCR Rule 16.1 and attachments	4
11	Defendants' Responses to Plaintiffs' First Set of Interrogatories	4
12	Notification of Replacement of Manager	4
13	Resolution of Board of Directors of Toluca Lake Vintage, LLC	4
14	Letter from Sulmeyer Kupetz to Christopher Beavor dated 4-23-09	4

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(Upon inquiry by the reporter prior to the commencement of the proceedings, Counsel present agreed to waive the reporter requirements as set forth in NRCR 30(b)(4).)

(Exhibits 1 through 14 were marked by the reporter before the deposition.)

**CHRISTOPHER L. BEAVOR,**

having been first duly sworn, was  
examined and testified as follows:

**EXAMINATION**

**BY MR. IGLODY:**

Q. Good morning. Go ahead and state and spell your name for the record.

A. Christopher L. Beavor, C-h-r-i-s-t-o-p-h-e-r, middle initial L. Last name is B, like boy, e-a-v, like Victor, o-r.

Q. Have you ever been known under a different last name?

A. Not that I'm aware of.

Q. Have you ever had your deposition taken before?

A. Yes.

Q. How many times?

A. In my lifetime or in the last five years?

Q. The last five years would be fine.

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**APP00181**

1 A. Six times, approximately.

2 Q. When was the most recent deposition?

3 A. It was about 18 months ago.

4 Q. What was the general subject matter of that  
5 case?

6 A. It was in regards to another -- well, I  
7 wasn't a party to the case other than just a witness.

8 Q. What kind of case was it? Construction?  
9 Contracts?

10 A. Yeah. It was a development -- it was  
11 validating and verifying construction deals. Somebody  
12 had signed a personal guarantee on some other  
13 developments -- or not developments, but they signed  
14 personal guarantees, and I think they were going to  
15 validate or verify the note applications, if the  
16 person was telling the truth, to see if these projects  
17 were, in fact, in place. So I was called in to be  
18 deposed to validate the project's validity.

19 Q. Do you know what the name of the case was,  
20 the parties?

21 A. Floyd, Alan Floyd, and I forget who the  
22 plaintiff was.

23 Q. Was that here in Clark County?

24 A. Yes. I think it was right here in this  
25 building, maybe downstairs on a different floor.

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1 Q. Let me briefly review what we're doing here.  
2 Under the Nevada Rules of Civil Procedure, the parties  
3 to a lawsuit can obtain discovery from witnesses.  
4 This proceeding is called a deposition, where I'm  
5 allowed to ask you questions about facts and  
6 circumstances relating to the litigation involving  
7 Yacov Hefetz, specifically the loan guaranty. I'm  
8 going to refer to the loan guaranty as the loan  
9 throughout the deposition. Do you understand?

10 A. Yes.

11 Q. The oath you took here is the same oath you  
12 would take in a court of law and carries with it the  
13 same obligation to tell the truth as you would in a  
14 courtroom, even though we're in a relatively informal  
15 setting here today. Do you understand that?

16 A. Yes.

17 Q. In answer to my questions, you should answer  
18 to the best of your knowledge. If you do not  
19 understand a question or it is unclear in any way to  
20 you, please tell me that you do not understand the  
21 question, and I will rephrase or explain the question.  
22 If you do not speak up or make such a request, I will  
23 assume that you understand the question and are  
24 attempting to answer it. Do you understand?

25 A. Yes.

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1 Q. Now, during this deposition I'm going to be  
2 asking you to recall some events that are pretty  
3 distant, and from time to time I may ask you to  
4 estimate as to a particular time or event. I'm  
5 entitled to your best estimate, but I do not want you  
6 to guess.

7 The way I explain the difference between a  
8 guess and an estimate is that an estimate is an  
9 assumption or conclusion based upon information that  
10 you have, whereas a guess is based upon no information  
11 at all. And the example that I always give is if I  
12 were to ask you how much money do you have in your  
13 wallet right now, you could estimate based upon the  
14 amount of money you last put in and last took out.  
15 That would be an estimate. However, if I would ask  
16 you how much money I have in my wallet, you could only  
17 guess. Do you understand the difference between  
18 guessing and estimating?

19 A. Yes.

20 Q. Let me just go over a couple ground rules to  
21 be sure that we have a clean transcript. One of the  
22 rules is that only one of us can talk at a time.  
23 Please let me finish my questions, and I in turn will  
24 let you finish your answers before I ask another one.  
25 And please be sure to answer the questions audibly,

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1 verbally, since the court reporter can't take down  
2 nods of the head. Do you understand?

3 A. Yes.

4 Q. Once the deposition is complete, the court  
5 reporter will transcribe all of my questions and your  
6 answers, as well as any comments from counsel, and it  
7 will be prepared in a booklet form and provided to  
8 your attorney, and your attorney will then provide it  
9 to you for your review. You will have an opportunity  
10 at that point to make changes as you see necessary;  
11 however, I will note that if you make changes, I would  
12 then have the opportunity to point out the basis for  
13 the change at trial. Do you understand?

14 A. Yes.

15 Q. So, if you have any questions or you want to  
16 stop the deposition at any point for a break, just let  
17 me know. Other than that, are you ready to proceed  
18 with the deposition?

19 A. Yes.

20 Let me shut off my phone.

21 Q. Sure. (Pause.)

22 Are you taking any drugs or medications that  
23 might affect your ability to answer my questions?

24 A. No.

25 Q. Have you reviewed any documents in

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APP00182

1 preparation for the deposition today?

2 A. I was wanting to read this this morning, but

3 I got caught in a business meeting call, so I didn't

4 have time to review anything, but I brought it here

5 for reference.

6 Q. We have quite a few documents for you, so

7 you'll have a chance to look at some documents.

8 A. Okay.

9 Q. Have you ever been convicted of a felony?

10 A. No.

11 Q. Now, do you recall the Toluca Lake project?

12 A. Yes.

13 Q. Briefly, in your own words, what was the

14 Toluca Lake project?

15 A. The Toluca Lake project was a 45-unit

16 condominium project being constructed to look like

17 California, commencing in 2007, the year of 2007.

18 Q. And who was in charge of that project?

19 A. In which aspect of who was in charge? Could

20 you clarify that?

21 Q. For purposes of managing the actual

22 construction of the project, who was the person in

23 charge at that time?

24 A. Well, at the time, in referencing some of

25 the loan agreements, the Gilmore Company was a

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1 representative of the Frey Family Trust, which was put

2 in place to govern and oversee decisions, overseeing

3 basically all major decisions of the project.

4 Although I was listed as a manager of the company at

5 any give time, the membership of the company was in

6 control of the lender.

7 Q. And who was the lender?

8 A. The lender -- and I don't know the exact

9 name, but it's the Frey Family Trust.

10 Q. Good enough.

11 In your own words, what was your

12 responsibility at first before the financial troubles

13 began for the Toluca Lake project?

14 A. What was -- could you repeat the question?

15 Q. What were your responsibilities at the

16 Toluca Lake project before the financial problems

17 began?

18 A. Well, it was my vision and idea for the

19 project design, market analysis with my background in

20 real estate, coming up with the rooftop design. I

21 have a background in lending for -- not commercial

22 lending, but I have a background in residential

23 consumer lending for residential loans. So making

24 sure the projects had an exit strategy to the

25 consumers at the time lending was drying up; getting

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1 the project FHA compliant, which no other projects

2 were at the time; and overseeing the development and

3 the draws and doing preliminary performance budgeting.

4 Q. When you say draws, what do you mean?

5 A. Receiving budgets from contractors and

6 providing staff and submitting those draws for

7 lenders' reviews and to pay.

8 Q. Did you supervise the contractors?

9 A. No, I did not.

10 Q. Who was in charge of supervising the

11 contractors?

12 A. Alan Floyd was my general contractor, and he

13 hired the subcontractors under his general contracting

14 license.

15 Q. Let's shift gears and talk briefly about

16 your background. You said that you have a background

17 in real estate; is that correct?

18 A. Yes.

19 Q. Briefly, what is your background in real

20 estate?

21 A. My background in real estate. I bought my

22 first house in Las Vegas when I was 19, bought some

23 rental properties at the time I was 20 and went to

24 real estate school, obtained my real estate license in

25 1997, approximate date. I worked for Preferred

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1 Equities Corporation. And then I worked in property

2 management until I opened my own company in 2002,

3 which was Silver State Realty Investments. At the

4 time -- my birthday was yesterday. I turned 38. So

5 at the time that Toluca Lake started, I was probably

6 32 years of age. So I had very limited experience in

7 development at 32, coming from no background in

8 development or real estate in my family.

9 Q. Did you work on a project called the

10 Brianhead Lofts before that?

11 A. Simultaneously. It was at the same time.

12 Q. Was that around 2007?

13 A. We started the project in -- the end of '05

14 was the conception and started construction in 2006.

15 Q. And briefly, what was the Brianhead Lofts

16 project?

17 A. It was a 72-unit condominium project located

18 in Brianhead, Utah, with a nightly rental zoning.

19 Q. What was the final outcome on that project?

20 A. We completed half of the project. And the

21 latter half, the lenders, because of the financial --

22 I would assume because of the financial crisis, the

23 lenders did everything and anything they could to quit

24 funding the project. So they stopped the funding,

25 which caused the second half of the project not to be

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1 completed.

2 Q. Do you remember, the Brianhead project, was

3 Herbert Frey or his trust involved in that one?

4 A. Yes. He had some involvement in that

5 property. That's how we came to actually engage in a

6 relationship.

7 Q. And what about my client, Yacov Hefetz? Was

8 he involved in the Brianhead project?

9 A. Not that I'm aware of.

10 Q. Let's start looking at some of these

11 exhibits. I'm going to hand you what's been

12 previously marked as Exhibit 1. If you can take a

13 look at that, please.

14 A. What's the question?

15 Q. Have you seen this document before?

16 A. Yes.

17 Q. Do you know what it is?

18 A. It appears to be the payment guaranty. I

19 have not read every word on this document you've

20 presented to me, but it appears to be the payment

21 guaranty.

22 Q. Let's look at the last page, which is

23 Bates-stamped 05. There's two signatures. Do you

24 recognize those two signatures?

25 A. Yes.

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1 Q. One of them purports to be your signature;

2 is that correct?

3 A. Yes. It appears to be.

4 Q. Do you know the signature of Samantha

5 Beavor? Does that look like her signature?

6 A. It appears to me.

7 Q. Let me have you put that down for a moment.

8 A. The last name is Beavor.

9 Q. Beavor. I apologize.

10 Let's look at Exhibit 2. I'm handing you

11 what's been marked as Exhibit 2. Take a moment to

12 look at it.

13 A. I reviewed it.

14 Q. Do you recognize this document?

15 A. Yes.

16 Q. What is this document?

17 A. It appears to be the promissory note signed

18 on behalf of Toluca Lake Vintage to borrow.

19 Q. Looking at the last page of the document,

20 Bates-stamped 08, is that your signature?

21 A. It appears to be.

22 Q. Well, is it or isn't it?

23 A. Yes.

24 Q. So here I notice --

25 A. It's a copy of the signature, if you want to

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1 be specific.

2 Q. The document states that you're signing on

3 behalf of Toluca Lake Vintage, LLC, which for our

4 terms and purposes would be the Toluca Lake project.

5 Correct?

6 A. Can you repeat the question?

7 Q. You're signing as a manager in this

8 document; is that right?

9 A. I'm signing as the manager of Toluca Lake

10 Vintage, that's correct.

11 Q. And you remember signing it at the time in

12 2007; correct?

13 A. I remember the period. It's been a while,

14 about five years. But yes, I do recall signing a note

15 as the manager.

16 Q. Now, in Exhibit 1 we had a payment guaranty

17 that was signed by you as an individual. You can look

18 at Exhibit 1 again, if you like.

19 A. Can I get a tissue?

20 Q. Sure.

21 (Discussion off the record.)

22 MR. IGLODY: Can you read the question back

23 again?

24 (The requested portion of the record

25 was read by the reporter.)

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1 Q. (BY MR. IGLODY) So you agree that Exhibit 1

2 was a guaranty that was executed by you as an

3 individual; is that right?

4 A. Yes.

5 Q. Whereas Exhibit 2 was a promissory note

6 where you signed as manager of Toluca Lake; correct?

7 A. Correct.

8 Q. Let's look at what I've had previously

9 marked as Exhibit 3. If you would look at that for

10 me, please. Do you recognize this document?

11 A. Yes.

12 Q. What is this document?

13 A. The loan agreement between Toluca Lake

14 Vintage, LLC, and the Herbert Frey Revocable Family

15 Trust, dated November 22, 1992.

16 Q. For purposes of this deposition, we'll just

17 refer to it as the Frey Trust. Looking at what's been

18 Bates-stamped as 032, once again there's a signature

19 by you as manager. Is that your signature?

20 A. Yes. It appears to be a copy of my

21 signature.

22 Q. Do you remember signing this document back

23 then?

24 A. Yes.

25 Q. Once again, the Toluca Lake project was your

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1 brainchild, and Mr. Frey and his trust were there  
2 principally to provide the loan. Is that roughly  
3 correct?

4 A. Well, it's confusing because the guaranty on  
5 this document, the payment guaranty, was signed the  
6 day before the loan agreement was signed. So I'll  
7 have to research those dates, but I guaranteed the  
8 agreement the day before I saw the agreement. But in  
9 general, the conceptual point, yes.

10 Q. Okay. And remember, there's no right or  
11 wrong answers in this deposition. I'm just looking  
12 for your recollection, the best you can, what  
13 transpired at that time.

14 Now, are you maintaining at all in this  
15 lawsuit that the Frey Trust failed to fund the loan at  
16 any point, the \$6 million loan?

17 A. Well, when the financial meltdown -- when  
18 these documents were signed, the financial crisis  
19 started to take place rather quickly, shortly. We  
20 were in the midst of funding the deal before Toluca  
21 Lake Vintage even took title to the property. And  
22 there was other issues that weren't addressed in here,  
23 like Mr. Frey personally signing as a guarantor, some  
24 of the materials in the deal changing that aren't  
25 documented in any of these documents. You know, it

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1 doesn't say that he is going to be a personal  
2 guaranty, which was required by the lender; and thus  
3 the changes in the financial environments and the  
4 changing of the deal happened. And a lot of those  
5 aren't documented. So at the time these documents  
6 were signed and from when the final funding happened,  
7 a lot of the terms of the deal had changed. So to  
8 state that this was an agreement --

9 This wasn't a Wells Fargo, I'm-a-borrower  
10 transaction. You know, it was always like more of a  
11 partnership where together there was an appointed  
12 Steve Gilmore. It says in the documents that he's an  
13 appointee. I have multiple e-mails that I e-mailed  
14 Steve Gilmore. He rewrote my e-mails to send to the  
15 lenders. I mean, I was postured. I was being  
16 postured by the lender. And in terms of -- go on and  
17 ask the questions.

18 Q. We'll have plenty of opportunity to go  
19 through some additional documents, but let me just go  
20 ahead and restate the question. For purposes of this  
21 litigation, are you maintaining at any point that the  
22 Frey Trust failed to fund the initial project pursuant  
23 to the loan agreement for the \$6 million?

24 A. I am not disagreeing that they did not fund  
25 the -- not 6 million but the 4.2 million, approximate

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1 amount.

2 Q. When you said "lender" before, were you  
3 referring to the Chinatrust Bank or someone else?

4 A. When I say "lender," in reference to the  
5 Chinatrust -- I mean the Toluca Lake project, I would  
6 be referring to the Chinatrust Bank and Bank of the  
7 West and other lenders, depending on what part of the  
8 project on the time line. There was multiple lenders  
9 approving this project from the beginning stages to  
10 the bankruptcy stages. So there was a lot of  
11 different lenders involved in this case from the  
12 inception to currently where we stand today.

13 Q. The personal guaranty that you mentioned  
14 earlier involving Herbert Frey, are you saying that  
15 Herbert Frey had to personally guaranty the Toluca  
16 Lake project at some point?

17 A. They meaning the Chinatrust Bank required  
18 Herbert Frey as an individual, I believe, to sign as a  
19 personal guarantor on the project, and they viewed it  
20 more as a partnership.

21 Q. And they required you to sign a personal  
22 guaranty as well?

23 A. Yes.

24 Q. I'm handing you what's been previously  
25 marked as Exhibit 4, if you'd take a moment to look at

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1 that, please.

2 A. Question?

3 Q. Do you recognize this document?

4 A. Yeah. It appears to be a deed of trust.  
5 The dates don't make sense, though, from when I  
6 signed. It says made July 1st, 2007, but I have a  
7 date here of March 29th, 2007. So it would be like  
8 four months prior --

9 Q. Let's discuss that. So on what's been  
10 Bates-stamped as 052, there's a signature there.  
11 Is it correct to say that's your signature?

12 A. It appears to be a copy of my signature,  
13 yes.

14 Q. And you're signing as a manager for C&S  
15 Holdings; is that right?

16 A. That's correct.

17 Q. What was C&S Holdings?

18 A. C&S was a Nevada limited liability company.

19 Q. Who owned it?

20 A. The members?

21 Q. Mm-hmm.

22 A. The members were myself and my ex-wife,  
23 Samantha Beavor.

24 Q. So is it fair to say that C&S was basically  
25 Chris and Samantha?

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1 A. C&S was its own separate entity with tax ID,  
2 but yeah. I was a 50 percent owner.

3 Q. The document speaks for itself, but you said  
4 you remember signing it but there's an issue regarding  
5 the date; is that right?

6 A. Yes. And I'd have to look into it more, but  
7 it appears that it says -- on the first page, it says  
8 July 1st, 2007, and my signature dates March 29th,  
9 2007.

10 Q. And this deed of trust was signed as part of  
11 the Toluca Lake project guaranty process; is that  
12 right?

13 A. Yes.

14 Q. Let's look at Exhibit 5. I'll hand you  
15 Exhibit 5. Take a look at it.

16 A. Question?

17 Q. Do you recognize this document?

18 A. Yes.

19 Q. What is this document?

20 A. It appears to be a payment guaranty between  
21 C&S Holdings and Frey Family Trust.

22 Q. Once again, looking at the last page of the  
23 document, Bates-stamped 067, there's a signature. Is  
24 it fair to say that's your signature?

25 A. Yes. It appears to be a copy of it.

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1 Q. Let's look at what's been marked as  
2 Exhibit 6.

3 A. And the question?

4 Q. Do you recognize Exhibit 6?

5 A. Yes.

6 Q. Is it fair to say that it's a deed of trust  
7 executed by you and your ex-wife, as individuals, for  
8 the benefit of the Frey Family Trust?

9 A. Yes.

10 Q. Once again, looking at the last page,  
11 Bates-stamped 0100, there's two signatures for  
12 Samantha Beavor and Christopher Beavor. Do you  
13 remember signing this document?

14 A. Yes.

15 Q. On the first page of the deed of trust in  
16 the upper left corner, there's a host of APN numbers,  
17 Assessor's Parcel Numbers. Do you see those?

18 A. Yes.

19 Q. Were those properties that you owned at the  
20 time?

21 A. I don't have the parcel numbers memorized,  
22 but it appears that I owned some properties and they  
23 had parcel numbers, and I, to the best of my  
24 guesstimation, would assume that those would be  
25 accurate parcel numbers.

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1 Q. Let's pause for a second here. We just  
2 completed review of Exhibit 6. For purposes of  
3 clarification, the Toluca Lake project required  
4 somewhat significant financing; is that correct?

5 A. Yes.

6 Q. The project was estimated at about -- what  
7 was it? -- 22 million to complete, roughly?

8 A. The project was estimated to cost around  
9 26 million.

10 Q. A lot of money. Fair enough to say?  
11 Correct?

12 A. Correct.

13 Q. We saw with Exhibits 1 through 6 that there  
14 was a host of payment guaranties, and I'll represent  
15 to you that based on your disclosures and my  
16 disclosures, there's a heck of a lot more of them, but  
17 I selected these for illustrative purposes. We saw  
18 that there was a payment guaranty by the Beavors to  
19 the Frey Family Trust at some point; is that right?

20 A. That's correct.

21 Q. There was also a guaranty by the C&S  
22 Holdings and a deed of trust in favor of the Frey  
23 Family Trust; is that right?

24 A. That's correct.

25 Q. During the funding of the project, at the

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1 request of the principal lender, which I believe was  
2 Chinatrust, there were additional guaranties that were  
3 executed by you and your ex-wife Samantha Beavor at  
4 some point too; correct?

5 A. That's correct.

6 Q. There were also additional guaranties  
7 executed by Herbert Frey in favor of that lender as  
8 well; correct?

9 A. Correct, and other members of Toluca Lake.

10 Q. In fact, that's right. There were a couple  
11 of members, and the lender, as part of the lender's  
12 policies, presumably, basically demanded everybody  
13 guarantee the project at some point; is that right?

14 A. That's correct.

15 Q. Let's look at Exhibit 7.

16 A. Question?

17 Q. Do you recognize this document?

18 A. Yes.

19 Q. What is it?

20 A. A copy of the First Amendment to the  
21 Operating Agreement for Toluca Lake Vintage, LLC.

22 Q. On the second page of the document, there's  
23 a host of signatures, one of which appears to be your  
24 signature; is that right?

25 A. Yes. It appears to be, yes.

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1 Q. Do you remember signing the document at the  
2 time?  
3 A. Yes. I would have signed this document.  
4 Q. And you remember Toluca Lake Vintage, LLC,  
5 at the time; is that right?  
6 A. C&S Holdings was the member.  
7 Q. Thank you for correcting me. C&S Holdings  
8 was the member, and you were the manager of C&S  
9 Holdings; is that right?  
10 A. That's correct.  
11 Q. There is somebody else listed here, Alan  
12 Floyd. Is that the Alan Floyd you mentioned earlier?  
13 A. That's correct.  
14 Q. And then there was another individual.  
15 "Finks"?  
16 A. Well, they were signing in the capacity of  
17 their entities here, yeah.  
18 Q. And then who was the third gentleman?  
19 Robert --  
20 A. Robert Allan Rink.  
21 Q. The document speaks for itself. It's, yet  
22 again, another piece of paper supporting the  
23 indebtedness of the \$6 million, this time for Toluca  
24 Lake Vintage, LLC, in favor of the Frey Family Trust.  
25 Did I summarize that roughly correctly?

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1 A. Well, in the document it states in the event  
2 of default, and then it outlines the default as being  
3 a bankruptcy. And when their own lender put the  
4 property in bankruptcy, this document would --  
5 basically, the lender caused its own default,  
6 technically, under the language of these documents.  
7 But we can discuss that later. I know you're asking  
8 the questions. Sorry.  
9 Q. And you know we will be transitioning into  
10 the bankruptcy in just a minute, but what I'd like to  
11 do in the meantime is for you to look at Exhibit 8.  
12 A. And your question is?  
13 Q. You recognize this document; right?  
14 A. Yes.  
15 Q. It's your First Amended Counterclaim in this  
16 matter; is that right?  
17 A. That's correct.  
18 Q. What I'm going to do is go through this  
19 counterclaim with you briefly and discuss your claims  
20 as made in them. Before we start with that, since we  
21 were talking about the bankruptcy a minute ago, I'll  
22 just jump ahead and ask you briefly: At some point  
23 the Toluca Lake project entered into bankruptcy; is  
24 that right?  
25 A. Yes.

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1 Q. The bankruptcy was a Chapter 11; is that  
2 right?  
3 A. That's correct.  
4 Q. At some point, the bankruptcy came to a  
5 close; is that right?  
6 A. I believe I had just received some documents  
7 stating a request --  
8 Do we have any of those documents?  
9 MR. SAGGESE: Not with me.  
10 Q. (BY MR. IGLODY) We can talk off the record  
11 about that in a minute.  
12 Do you remember, as part of the bankruptcy,  
13 that a plan was submitted to the court for its  
14 approval?  
15 A. If there was a plan for reorganization?  
16 Q. The Chapter 11 plan. I'll leave it at that.  
17 A. A plan that I had no knowledge of.  
18 Q. Did you attend court hearings regarding the  
19 submission of the plan?  
20 A. I attended one court hearing where I had  
21 to fire counsel and put forth obviously some  
22 fraudulent claims on behalf of the counsel that was  
23 given to me by the lender.  
24 Q. Do you remember filing an objection in the  
25 bankruptcy court?

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1 A. Yes.  
2 Q. Do you remember if the bankruptcy court  
3 approved the plan notwithstanding your objection?  
4 A. The judge, from my recollection -- and we  
5 can get the records. It was such short notice, and  
6 the plan was in the best interests of the community  
7 and the project, but she stated and carved out  
8 specific language based on the affidavits and the  
9 evidence provided. There's some types of rulings --  
10 and I'm not an attorney, nor am I a bankruptcy pro,  
11 but she carved out specific language, specifically  
12 that stated that normally when they approve a plan,  
13 it's done; you can't come back and sue and countersue.  
14 That's the plan. But she carved out language to  
15 preserve claims that I had against the Frey Family  
16 Trust as the lender. And she specifically sat out for  
17 two hours in a specific chamber to carve that final  
18 motion out to protect my claims against the lender.  
19 Q. Are the claims that you brought in this case  
20 the claims that you're talking about?  
21 A. In some cases, that's correct.  
22 Q. Do you remember, as part of the final  
23 Chapter 11 plan, if your personal guaranty to  
24 Chinatrust was wiped out?  
25 A. I believe it was.

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1 Q. Do you know if any other personal guaranties  
2 by you, except for the one that's the subject matter  
3 of this lawsuit, of course, remained in existence  
4 after the bankruptcy was closed?

5 A. At the time -- I mean, I was financially  
6 crippled and ruined and had no money. And I'm  
7 still -- there was so many documents, and it went on  
8 for so long, and there was so much corruption with  
9 those documents that I don't know the trickery of the  
10 language, you know, what was approved sometimes and  
11 what was not, what was the truth and what wasn't the  
12 truth of those documents. I do know specific stuff  
13 that was not truthful that we submitted to the  
14 bankruptcy judge for her to save those rulings,  
15 although I believe it's a 363(b) rule that I know she  
16 specifically carved out stating that there was  
17 wrongdoing. And I had the head of the State Bar of  
18 California as my counsel at that time.

19 But anyways, I don't know specifically what  
20 was a release and what was not a release. I know the  
21 meeting of the minds and the agreements that we had  
22 based on my actions, what I've done.

23 Q. For purposes of this deposition, I just want  
24 to clarify what, to your understanding, because I'm  
25 not administering a law exam here, what your

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1 obligations were remaining after the bankruptcy.  
2 Along those lines, it's my understanding that whatever  
3 personal obligation you may have had to Chinatrust was  
4 discharged in the bankruptcy. Is that correct?

5 A. I believe it was.

6 Q. And as far as you know, any obligation --

7 A. I have still not received a signed copy back  
8 from Chinatrust's legal counsel that I requested eight  
9 times over a year and a half period. So I personally  
10 do not have the document signed from the bank that I  
11 have requested. So, again, it's a meeting of the  
12 minds. Were we supposed to? Yes. Was this loan  
13 agreement submitted by the lenders? That was  
14 falsely said that negotiated in Phoenix. And I  
15 have all the e-mails to document it. Was there sworn  
16 affidavits from their legal counsel that was false?  
17 Yes. I don't know what was right and what was wrong.

18 It appears at this time that my personal  
19 guaranty is released. I don't have the final  
20 documentation, and that's where I leave it. I guess  
21 we'll find a lot of this out when we go to trial and  
22 move forward with this case.

23 Q. As far as you know, aside from the Frey  
24 Family Trust guaranty that's the subject matter of  
25 this lawsuit, do you have any other creditors from the

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1 Toluca Lake project pursuing you at this time?

2 A. Do I have any other creditors?

3 Q. Mm-hmm.

4 A. Besides this particular case?

5 Q. That is correct, yes.

6 A. Not that I'm aware of.

7 Q. Let's look at Exhibit 8. What I'm going  
8 to do is I'm just going to direct you to certain  
9 paragraphs, because I want to ask you some questions  
10 about that. So what we'll do is we'll start out with  
11 the paragraph 32, which appears on page 6 under the  
12 First Claim For Relief of Fraud. I want you to read  
13 paragraph 32. As a matter of fact, go ahead and read  
14 32, 33, 34, and 35, and then we can chat about that.

15 A. "Can the Defendant Hefetz --"

16 Q. You don't have to read it out loud.

17 A. Oh, I thought you said to read it out loud.

18 Q. I'm sorry. Just read it to yourself, and  
19 then look up when you're ready, and we'll talk.

20 A. It was 32 through 34 or 35?

21 Q. Thirty-five.

22 A. Okay. Question?

23 Q. This is the counterclaim that you brought in  
24 this case. I'm not, by the way, at any time, during  
25 this deposition asking for any conversations you had

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1 with counsel. Do you understand?

2 A. Yes.

3 Q. What I'm instead asking is what your  
4 personal understanding is of these claims based on  
5 your own understanding, knowledge, and recollection.  
6 Do you understand?

7 A. Yes.

8 Q. So in this counterclaim for fraud, you state  
9 that my client through Star Development did certain  
10 things. Let's talk about Star Development. Who is  
11 Star Development?

12 A. Star Development was at the time an entity  
13 controlled and managed by Yacov Hefetz. And earlier  
14 you mentioned C&S is me; I assume that Yacov, same  
15 thing, was Star Development, not itself one person.

16 Q. So your understanding is that Star  
17 Development is run by my client, Yacov Hefetz?

18 A. Per the secretary of state, he was listed as  
19 manager.

20 Q. Now, what role does Star Development play in  
21 the Toluca Lake bankruptcy?

22 A. Well, they were controlling the -- they were  
23 the manager of Toluca Lake Vintage, LLC.

24 Q. When Star Development became manager of  
25 Toluca Lake, did you remain as a manager or were you

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1 replaced as a manager at that time?

2 A. I was replaced as a manager at that time.

3 Q. Is it fair to say that at that time Star  
4 Development then had the power and the right to make  
5 decisions on behalf of Toluca Lake?

6 A. I don't believe so.

7 Q. Did you have any --

8 A. Part of the loan documents, the default  
9 would be the filing of a bankruptcy. And keep this in  
10 mind. The only reason why the loan didn't continue to  
11 go through is we had a right to extend that loan, and  
12 Mr. Frey, who was, again, not only a lender, but he  
13 was a personal guaranty that elected not to sign off  
14 waiver of claims and commence with the funding of  
15 Chinatrust Bank, which caused the default of the loan,  
16 which caused them to go into receivership, which then  
17 caused the lender, Frey, to come in as a partnership,  
18 coming to me, making -- hey, sign here, hey, let us  
19 take it over, let's beat up the bank, let's work  
20 together as a team. I had my own counsel. I had  
21 Toluca Lake counsel. I relinquished all rights and  
22 defenses for myself, trusting them to work on their  
23 best interests, because they had the majority of  
24 capital to lose, and handed everything over to them.

25 I fired Ballard Spahr & Ingersoll, got rid

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1 of them, got rid of the strategy. I even had a lender  
2 with the project, which I gave to the bankruptcy  
3 court, who showed up at the bankruptcy court and  
4 attended every meeting that was ready to fund. And  
5 everybody would have got paid back on the deal,  
6 including Chinatrust Bank.

7 I still, to this day, don't have any  
8 knowledge of how much money they received back for the  
9 agreement of the 25 percent of funds on my IRR. I  
10 don't know if they got loans, if they only put  
11 2 million down and borrowed money on a credit line for  
12 3 percent, filed a note at 8, finished it for 5 at 14.  
13 Today they're selling at 26. There's \$10 million in  
14 profit there. There's supposed to be 25 percent of  
15 profits to Toluca Lake. That's controlled and managed  
16 by Hefetz. I didn't know at the time, but obviously  
17 that's him. That's 25 percent of 10 million. I mean,  
18 there's a lot of stuff that I can't wait to get into  
19 further, but anyway. I'm sorry.

20 Q. Let's continue exploring it step by step.  
21 Let's back up a little bit further. At some point,  
22 something caused Star Development to be appointed as  
23 manager of Toluca Lake. What was that event?

24 A. Chinatrust Bank -- we had already in our  
25 two hundred and some -- 400-approximate-page loan

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1 agreement. We had the right, Toluca Lake -- when I  
2 say we, Toluca Lake Vintage had the right to extend  
3 the loan to finish the project. The project was --  
4 one building was 85 percent complete, going for the  
5 finishes; the other building was about 55 percent  
6 complete. We had the right to two extensions already  
7 pre-negotiated.

8 At that time we went to Frey Family Trust  
9 via Steve Gilmore, whose address is on every document  
10 as the lender's address, and we elected to do our  
11 extension. There was some issues, obviously, with the  
12 case. There was documents with lender liability  
13 issues. The lender came back and gave us the  
14 extension to finish the project, and they needed all  
15 guarantors to sign off on that document. Mr. Frey was  
16 the only individual that did not sign off on the  
17 extension document.

18 They came to me at that time, and I said,  
19 listen, we've got a plan via Mr. Gilmore, who was an  
20 agent, direct agent and representative of the lender,  
21 who came to me and said we're going to work together  
22 as a team, and there's a plan, you're going to do what  
23 we say in every aspect, and we're going to come out  
24 and beat up the bank.

25 Q. You keep saying extension. Why was it

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1 necessary to get an extension on the loan?

2 A. Well, we didn't need the extension. It was  
3 already agreed to in the loan agreement. And the  
4 inherent problems of construction -- we were doing a  
5 rooftop pool in California on a fault line, which  
6 everybody in construction development knew was new.  
7 There's no rooftop pools currently in Toluca Lake,  
8 which cost some engineering. And because of that and  
9 construction permits, planning, there's a little  
10 wiggle room for unexplained events that come up, which  
11 was already also agreed. So we had two extension  
12 rights already given in the loan agreement, which was  
13 two automatic three-month extensions.

14 When we went to elect to get that  
15 three-month extension, the bank came back with the  
16 documents, and again Mr. Frey was the only one that  
17 didn't sign off on that document. And then they came  
18 to us with a plan and told us what to do, what to say,  
19 what e-mails for me to write on behalf of Toluca Lake  
20 to the lenders, which caused the lender to get upset  
21 based on the e-mails dictated by Mr. Gilmore and  
22 proof-read. That pissed them off, and they filed a  
23 receivership.

24 Q. Let's --

25 A. So the bank filed an emergency ex parte

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1 motion. They knew I hadn't been on vacation with my  
2 family in five years. I told the lender. I said, I'm  
3 going down for five days to Mexico, I need a little  
4 break. I haven't spent any time. I have a new baby,  
5 you know, almost three years old. We haven't spent  
6 any time. I said, I'm going to take some time off. I  
7 told the lender in good faith that I'm leaving on a  
8 Thursday to Mexico. They filed an ex parte motion on  
9 Friday, knowing I'm out of the country, for a hearing  
10 on Tuesday. They were taking information, because of  
11 e-mails dictated by Mr. Gilmore that pissed them off,  
12 and filed an ex parte motion to take the project back  
13 while I'm out of the country.

14 Then these guys, the lenders, the Freys  
15 came, and said this is what we're going to do, the  
16 Frey parties, and we're going to stick together, just  
17 do what we say. Out of trust, I said okay. They  
18 hired counsel. They appointed -- all of my counsel  
19 that was supposedly representing me, I never paid them  
20 a penny, the document never signed, never viewed any  
21 of these documents. And then, when the outcome came,  
22 and it's very clear on these documents with global  
23 settlement that they had already filed documents with  
24 the court. E-mails were sent to me, asking -- after  
25 they had already been filed, sent to me as it was a

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1 copy for discussion. I even sent e-mails for  
2 discussion purposes to give comments, thinking it  
3 was a draft discussion. Unbeknownst to me, their  
4 attorneys they hired that were supposed to be  
5 representing me had filed these for approval. And  
6 then they filed ex parte motions, and we're like, hey,  
7 there's fraud going on. This wasn't an agreement.  
8 Anyway, I'm jumping around.

9 Q. Let's go back to the extension.  
10 A. I'm sorry. Let's go back to the extension.  
11 Q. Is it fair to say the project was running  
12 behind at the time?  
13 A. Behind on what scale?  
14 Q. The schedule.  
15 A. One building -- from the ideal schedule? We  
16 had two six-month extensions, so we knew that there  
17 could be some -- there's always a contingency in  
18 construction. So we knew those contingencies were  
19 there, and we were looking to use those contingencies.  
20 Q. Once again, at the time -- obviously,  
21 Chinatrust wanted something. And all I'm trying to do  
22 is figure out, for purposes of this deposition, to the  
23 best of your recollection at the time, was the issue  
24 that the project was running behind basically.  
25 A. Yes. It was running three months behind on

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1 a perfect schedule.

2 Q. And is it fair to say that because  
3 Chinatrust did your typical bank lender contract,  
4 pretty much anything you did was going to end up in  
5 default and certainly falling behind and any amount of  
6 time whatsoever in their mind could constitute default  
7 notwithstanding extensions and other representations?

8 A. No. No. It wasn't in default.

9 Q. So when Chinatrust submitted documents as  
10 part of the extension and Herbert Frey refused to  
11 sign, do you know why he refused to sign?

12 A. I don't know specifically. Mr. Gilmore and  
13 Frey, they came -- Mr. Gilmore came to the office with  
14 Mr. Krygier, I believe. You know, there's a couple  
15 people. I know Steve Gilmore was there at my office.  
16 And when I presented it, they just stated that they  
17 refused to sign. "We have a plan, and this is what  
18 we're going to do."

19 Q. Do you know if Chinatrust had been asking  
20 Mr. Frey or his trust for additional collateral or  
21 other guaranties?

22 A. I believe they were asking for -- well, they  
23 were asking us for a waiver of claims, which is a  
24 separate issue. The original claim, when we got  
25 the -- when we first did the note, we were at a prime

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1 plus one, and prime at the time was about eight and a  
2 half. And they had a floor rate, meaning at the time  
3 we got the loan that it wouldn't fluctuate below that  
4 floor rate, which was nine and a half. We were  
5 building into a down economy. We knew rates were  
6 going to start drastically going down, and we had a  
7 backup loan with the Bank of the West, which I believe  
8 Mr. Hefetz and Mr. Frey banked with at the time. And  
9 we had a loan approved that couldn't meet the  
10 deadlines though. They needed three more weeks. And  
11 if we didn't close on a certain date, we were going to  
12 default on our deposits. The original part, phase one  
13 of the loan agreement, was going to be retained by the  
14 owner we bought the property from. So we elected to  
15 go with Chinatrust Bank.

16 The loan officer at the time was pregnant,  
17 and I made it very clear to her that we needed the  
18 floor rate removed or we're going to close on this  
19 deal and refinance it out within 60 days. She said,  
20 "I absolutely understand." We were the last loan  
21 in the state of California. We were the last  
22 construction loan in the state of California for a  
23 development loan through that bank. She said, "You're  
24 absolutely right, Chris. I will remove the floor  
25 rate." Hence, we have litigation against Chinatrust

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APP00190

1 Bank. We pursued it afterwards. They removed the  
2 floor rate, so we then did not move with Bank of the  
3 West who we had another loan with. They just couldn't  
4 meet the deadlines. They were a few weeks behind.

5 So every month when the Federal Reserve was  
6 lowering rates, because we were tied to prime plus  
7 one, we were getting statements every month showing  
8 our rate was being lowered every month to eventually 3  
9 to 4 percent interest rate from 9 and a half. This  
10 went on for the full term of the loan.

11 Melodia, our officer with Chinatrust Bank,  
12 quit. She went on maternity leave. And when they  
13 came back and the project was almost completed --  
14 right before these issues came about, they came back,  
15 and they said, "Oh, we had a mistake." And I said,  
16 "What do you mean you had a mistake?" "We shouldn't  
17 have had the floor removed." Well, now you can't get  
18 a loan, you can't refinance, and in our loan  
19 documents -- there are specific documents called prima  
20 facie proof that say that any statement provided, if  
21 not argued or disputed within 30 days, is fact. So  
22 they were giving a statement.

23 Well, this interest reserve issue ended up  
24 being approximately, off my recollection, \$400,000,  
25 and so they were asking -- all of a sudden here's a

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1 bank now asking -- somebody had to remove the floor  
2 rate. Somebody was giving a statement. All of a  
3 sudden, now, the economy is going bad, the banks are  
4 in trouble, and now they're trying to get 400,000.

5 But one of the issues in the extension was  
6 for us to relieve claims against Chinatrust Bank.  
7 They tried to throw that in there on the extension.  
8 So they were holding our project hostage. We were  
9 just trying to finish it. So that was one of the  
10 requests that they had was to release those claims.  
11 But that was one of the issues. You asked was there  
12 other issues. So there was additional guaranties, and  
13 they did ask to release the claims.

14 We spoke to our legal counsel. They stated  
15 that, you know, under these hostile conditions, in the  
16 best interests we could have continued funding and  
17 completed the project, that we could have brought  
18 these claims up later and said, look, we're in a down  
19 economy, we're months away from finishing the project  
20 to pay everybody back. They forced us, basically, to  
21 sign this or we're not moving forward in already a  
22 prearranged document. And my counsel advised us to  
23 move forward and just finish the project to pay  
24 everybody back at the time and then that any claims  
25 for those interest rates, that we would come back

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1 after the project was complete.

2 At that time, though, the Frey lender  
3 through Steve Gilmore had a better claim that they  
4 were going to beat the bank up, which they did. They  
5 were going to buy their own note back for 8 million,  
6 half the cost, finish it, and everybody was going to  
7 profit and everybody was going to get paid back.  
8 That's what was told to me.

9 Q. Do you know why that didn't work out?

10 A. Well, probably when you manipulate and you  
11 lie and you sign false documents and you don't keep  
12 people in the loop, bad things happen to people and  
13 bad things happen to projects. We had lenders -- I've  
14 had lenders the whole time and proper attorneys to  
15 handle this project. But other than that, I know when  
16 you manipulate and change things, bad things happen.

17 Q. Is it your testimony that Star Development  
18 essentially caused the project to fail?

19 A. Please define what you -- what aspect of the  
20 project to fail. They completed the project.

21 Q. So let's clarify that.

22 A. We still have to find out where that money  
23 and project and agreements, all of those documents and  
24 depositions.

25 Q. Once again, I'm not probing your knowledge

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1 as an attorney; I'm just asking your understanding as  
2 best you can recollect. Okay?

3 To your knowledge, did Toluca Lake complete  
4 the condominium project?

5 A. Toluca Lake, the entity, did not complete  
6 the project.

7 Q. To your understanding, did any of the  
8 investors in the project, whether it be my client or  
9 Frey or anyone else, receive any distribution of  
10 profits from that Toluca Lake project?

11 A. I don't know at this time. They were  
12 supposed to. Until we get a full accounting of  
13 that -- they did receive money based on negotiations.  
14 I know a lot of the subs received 30 percent. Wayne  
15 Krygier, with Star Development, that's managed and  
16 controlled by Mr. Hefetz, received income for beating  
17 up the subcontractors that were owed debt. I know a  
18 lot of the subcontractors received -- they were owed a  
19 million, got paid 300,000, and based on the plan,  
20 received compensation through Star Development.

21 Q. Aside from Wayne Krygier getting paid for  
22 whatever he did during that time --

23 A. No, Star Development. That's what it states  
24 in the documents.

25 Q. Aside from Star Development getting paid

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APP00191

1 whatever it got paid for doing whatever it did during  
2 the bankruptcy, do you know of anybody who invested in  
3 this project getting paid any monies?

4 A. That I'm personally aware of?

5 Q. That's right.

6 A. I don't know if title claims were made,  
7 other lawsuits against the title company. I don't  
8 know what the payouts were for this personally, but I  
9 do know that there was compensation made to Star  
10 Development, and they capitalized on the bankruptcy  
11 aspect of it, which was approved by the bankruptcy  
12 court.

13 Q. Would it be fair to say that the Toluca Lake  
14 project ended up being a failure?

15 A. The only failure, I believe, is my trust  
16 in the lenders and my partners. But as far as I'm  
17 concerned, the project is complete. There was a deal  
18 made, and people profited from the bankruptcy.

19 Q. Who completed the project?

20 A. Star Development elected to choose a  
21 partnership. I don't know where the funds came from.  
22 Family, relatives could go through these funds. I  
23 don't know who bought -- the dealings, that's yet to  
24 be determined, but a fund that was hired by Star  
25 Development was brought to the table by Star

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1 Development and finished the project together. They  
2 also received a management fee, a monthly management  
3 fee.

4 And at the time, if I didn't interrupt these  
5 fraudulent statements from their legal counsel, that  
6 25 percent profits were supposed to go to Star  
7 Development. But when I introduced the evidence, the  
8 judge was appalled by it and reappointed those funds  
9 to Toluca Lake, and so now that it is finishing, they  
10 filed a motion to remove it out of bankruptcy so it  
11 won't be under the trustee's eye. Right now I would  
12 assume where that distribution is going to go. I,  
13 again, was trusting that the federal bankruptcy was  
14 going to monitor those 25 percent of funds that were  
15 supposed to be distributed, but now they've put forth  
16 a motion to remove it prior to those funds being  
17 distributed.

18 Q. To your knowledge, were condominiums that  
19 were built in the Toluca Lake project sold to  
20 consumers?

21 A. Yes.

22 Q. And how do you know that?

23 A. I've been to the project. I've talked to  
24 real estate agents.

25 Q. When was the last time you visited the

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1 project?

2 A. Approximately October -- maybe November  
3 2011. I toured it with a real estate agent there.

4 Q. And they're done?

5 A. I don't think they're completely finished at  
6 this time, but I can get that information.

7 Q. But to your knowledge, have units been sold  
8 at the project?

9 A. Yes.

10 Q. For clarification, is it your testimony that  
11 Star Development somehow is still involved in that  
12 project, Toluca Lake?

13 A. Well, they just filed the tax returns for  
14 Toluca Lake.

15 Q. Is it your position in this case, and this  
16 goes back to your fraud claim, that Star's management  
17 made misrepresentations to you during the bankruptcy?

18 A. Yes, absolutely.

19 Q. Is it --

20 A. I filed those oppositions in federal court  
21 and appeared in federal court.

22 Q. Is it your testimony that Yacov Hefetz, my  
23 client, made misrepresentations to you during the  
24 bankruptcy?

25 A. Yes. And I have some recorded messages I'll

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1 hand over to you guys from voice messages.

2 Q. Is it your testimony that Wayne Krygier made  
3 misrepresentations to you?

4 A. Yes. Yes.

5 Q. Is it your testimony that Herbert Frey made  
6 misrepresentations to you?

7 A. For the current outcome, I believe  
8 Steven Gilmore and -- if he is using those as  
9 representatives, made misrepresentations through  
10 but not directly. I didn't directly receive  
11 misrepresentations from Frey in person but through  
12 his assigned agents.

13 Q. Let's go back to Exhibit B. In here we left  
14 off with Star Development. It says here that they had  
15 misrepresented regarding the terms of a global  
16 settlement agreement that would have released all  
17 parties of the 6 million loan. It's paragraph 32.

18 A. Which page?

19 Q. Page 6 of your fraud claim.

20 A. Exhibit B or --

21 Q. Yeah, Exhibit B, your claim against  
22 Mr. Hefetz, page 6, F-32, 32, 33, 34, 35.

23 A. Well, to be frank with you, on your guys'  
24 original complaint, obviously Yacov Hefetz is in the  
25 backfield giving money as a front person through Frey

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1 to loan money in documents. So that's a proven fact.  
 2 They sit in an office together funneling cash through  
 3 an individual named Herbert Frey Trust, undocumented.  
 4 And I don't know where the interest write-offs went  
 5 through, where any of that went for the years it was  
 6 earning interest, who claimed that or who did that,  
 7 but that money was being filtered through Frey via  
 8 Yacov. So to state that he is not controlling or  
 9 making decisions, I think we should be able to move  
 10 past that, and based on your original complaint that  
 11 he gave the \$2 million through Frey, that he would be  
 12 making these decisions. Star Development hired the  
 13 counsel.

14 The reason Mr. Hefetz was the manager of  
 15 Star Development and was put as the manager of the  
 16 project, because it was really his money he was using  
 17 as a front to loan the money. Star Development hired  
 18 the attorneys. They were the managers of Toluca Lake.  
 19 They were the ones that retained those counsel. They  
 20 retained all of my counsel. So to say that -- you're  
 21 asking me, am I denying or accepting that or trying  
 22 to -- or what's the question?

23 Q. Actually, what I was trying to do is go down  
 24 a little bit on your fraud claim, your first claim for  
 25 relief. Let me see what I can do to go ahead and

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1 clarify on that. In here, you --

2 A. Was I borrowing the money from Hefetz or  
 3 Frey Family Trust when he gave them the 2 million?  
 4 Was that fraudulent, those documents?

5 Q. Well, what I --

6 A. When I originally signed those documents?

7 Q. What I'd like to do is stick to the fraud  
 8 claim as pled here, and then there's more claims that  
 9 we're going to go through. I just wanted to start  
 10 with this one in particular. This one complains about  
 11 the global settlement agreement in the bankruptcy  
 12 that, according to you, Hefetz and others had  
 13 deliberately excluded you from essentially getting a  
 14 release for the guaranty that's at issue in this  
 15 lawsuit. Is that roughly correct? And you can look  
 16 at the fraud claim.

17 A. Which item?

18 Q. It's 32 through 35, paragraphs 32 through  
 19 35. And I know you have other claims. I just wanted  
 20 to go one by one here.

21 A. So what is your question again? I'm sorry.  
 22 I got a little emotional. Sorry. I'm human.

23 Q. This is a deposition. There's no right or  
 24 wrong answers. I'm just here to obtain whatever  
 25 information you have for me in regards to the claims.

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1 Let me try this a little differently. You  
 2 have various claims against Mr. Hefetz, and I'm not  
 3 here to adjudicate the claims or to argue the claims;  
 4 I'm here to clarify what the claims are.

5 So, starting with that premise, what I  
 6 wanted to do was clarify that. In this fraud claim  
 7 you are stating that pursuant to the settlement  
 8 agreement you were under the impression, and you were  
 9 told by Frey and Hefetz and others, that the global  
 10 settlement agreement would include a release for you  
 11 on everything including the guaranty that's at issue  
 12 in this lawsuit. Is that correct?

13 A. That is correct.

14 Q. And because they lied to you about that, you  
 15 brought this first claim for relief of fraud; is that  
 16 right?

17 A. That's correct, I believe. I don't know the  
 18 legal, but that's exactly what this is.

19 Q. Again, it's not a law exam, but what you're  
 20 saying essentially is what I'm trying to get down to.

21 To your knowledge -- and once again, this is  
 22 not a law exam. To your knowledge, did Star  
 23 Development, as manager of Toluca Lake, in the  
 24 bankruptcy in California, need your approval for the  
 25 final plan submission to the bankruptcy court?

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1 A. Did they need for the final plan -- this  
 2 final release or the final --

3 MR. SAGGESE: If you know. You may not  
 4 know. You don't have to have an answer it if you  
 5 don't know.

6 THE WITNESS: Yeah. When you're saying, did  
 7 they need my information --

8 MR. SAGGESE: Do you know if they needed?

9 THE WITNESS: I don't know. I don't know if  
 10 they needed it.

11 Q. (BY MR. IGLODY) You're not a manager or  
 12 member of Star Development; is that right?

13 A. That's right.

14 Q. And then once Star Development took over as  
 15 manager for Toluca Lake, you no longer had decision-  
 16 making authority for Toluca Lake after that; is that  
 17 right?

18 A. That's correct.

19 Q. At the time of the bankruptcy, as we  
 20 salvaged earlier in the deposition, there were a host  
 21 of guaranties and loan agreements in this project, not  
 22 the least of which personal guaranties by both you and  
 23 your ex-wife, as well as the C&S entity that we  
 24 discussed earlier; is that right?

25 A. That's correct.

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1 Q. So even though you weren't the subject  
2 matter of the Chapter 11 petition, which obviously was  
3 Toluca Lake, not you, you were, in effect, a potential  
4 debtor guarantor in the action, and that's why you  
5 were involved in it at all. Is that right?

6 A. Well, C&S Holdings was out of money as a  
7 creditor.

8 Q. So in addition to being a potential debtor,  
9 you were also a creditor on some levels; is that  
10 right?

11 A. Creditor on some levels, guarantor on some  
12 levels and still -- I still retain -- I'm unclear, but  
13 I still retain the membership in Toluca Lake, and they  
14 sort of played that as a fine line for our agreement.  
15 And I don't know if for tax purposes or why they're  
16 doing it. But technically, like you said on one of  
17 those exhibits, you said that we assign or pledge our  
18 membership, but every year they've been giving me tax  
19 returns stating that I'm still a member of the  
20 project.

21 Q. You're still a member of Toluca Lake. Is  
22 that what you're saying?

23 A. Yes. I'm supposed to be sixty-some percent.

24 Q. Do you remember why you got 60 percent of  
25 Toluca Lake?

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1 A. Do I remember why? Well, I brought the  
2 original project to the table. I put forth the  
3 original capital to secure the land site location,  
4 location, location on the site for real estate, and  
5 that was the deal that we struck.

6 Q. When you say we, who's we?

7 A. Essential Investment, Rocket Construction,  
8 C&S Holdings, and the Frey Family Trust via also Steve  
9 Gilmore as the representative.

10 Q. Let me see if I can get through the next two  
11 claims a little bit more quickly.

12 A. I believe this entity was all formed at the  
13 same time the loan docs and the discussion of the  
14 financing was coming together.

15 Q. We're talking about Toluca Lake?

16 A. Yes. You asked how this structure was, and  
17 you said, "Who's we?"

18 Q. There were a host of loan agreements,  
19 guaranties, pledges, deed of trusts, entities, and  
20 whatnot. My key question here for your first claim  
21 for relief, as well as your second and third claim for  
22 relief, frankly, okay, is who you communicated with as  
23 an individual. All right? So what I'd like to  
24 introduce now is another individual named Wayne  
25 Krygier. Is it K-r-i-e-g-e-r?

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1 A. I don't know the spelling.

2 Q. But you recognize that name; right? Wayne  
3 Krygier?

4 A. Yeah. He was a borrower from the Freys.  
5 And I think they owed Star Development, or Yacov and  
6 Mr. Frey, \$5 million, and he defaulted and owed them  
7 some favors back or something like that.

8 Q. So your testimony is Wayne Krygier was  
9 another debtor of either Star or Frey or something  
10 like that?

11 A. Yeah, something like that, and had some  
12 experience with bankruptcy and had a maneuver.

13 Q. What was Wayne Krygier's involvement in Star  
14 Development?

15 A. Well, on a sworn affidavit to the federal  
16 bankruptcy court, it says he was the manager, although  
17 he was never listed with the secretary of state at the  
18 time of the sworn affidavits, but the sworn affidavits  
19 to the federal court states that he was a manager of  
20 Star Development also.

21 Q. Are you disputing that?

22 A. I believe, in my opposition at the time, I  
23 brought that to the bankruptcy's attention.

24 Q. Is it your position that Wayne Krygier was  
25 not a manager for Star Development?

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1 A. He wasn't listed with the secretary of state  
2 at the time that the motion or the documents or  
3 affidavits was -- it wasn't listed with the secretary  
4 of state at that time. I don't know if he was or  
5 wasn't in documents, but at the time it was not listed  
6 with the secretary of state.

7 Q. And here it's your practical knowledge based  
8 on your own experience that matters to me. What sort  
9 of discussions did you have with Wayne Krygier that  
10 would lead you to believe that he wasn't a manager for  
11 Star Development?

12 A. Oh, I believe at some point he later became  
13 or was a manager. I'm saying at that specific date,  
14 you know, they -- I'm not privy to all of the  
15 amendments and changes that they did with Star  
16 Development, but he was a representative acting on  
17 behalf. I have the e-mails. Everything negotiated  
18 was with Wayne, talked to Wayne, e-mails, that Wayne  
19 was a representative of Star Development, an agent.

20 Q. And the reason that's important and why I'm  
21 inquiring on that right now is that, once again, I'd  
22 like to know who, individuals, made representations  
23 to you that are the subject matter of these  
24 counterclaims. So to try to condense things a little  
25 bit, but by all means don't let me box you in. Just

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1 tell me if it's true or not. Is it fair to say that  
2 Wayne Krygier was the principal representative that  
3 made the false representations to you that you relied  
4 on, that you detail in your fraud claims here?

5 A. No. The other principal would be Steven  
6 Gilmore.

7 Q. We'll get to Steven Gilmore.

8 Going back to Wayne Krygier, if we had  
9 to assign a percentage, what percentage of the  
10 representations made to you came from Wayne Krygier  
11 as an individual in whatever capacity?

12 A. Throwing out a number, not analyzing it or  
13 thinking back or looking over notes, off the cuff  
14 right now, 20 -- 15 percent.

15 Q. Keeping up with the percentage analogy,  
16 what percentage would you attribute to Gilmore?

17 A. Fifty-five percent.

18 Q. What percentage to Mr. Frey as an  
19 individual?

20 A. Speaking with him directly?

21 Q. That's correct. Once again, I'm just  
22 talking individuals in whatever capacity they're  
23 acting.

24 A. And I'm only -- my percentages, or my  
25 perspective of percentages, is the direct contact.

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1 Q. Of course. Of course.

2 A. Individually being in front of them, hearing  
3 them over the phone specifically. I would say -- you  
4 know, it could be more. I would say maybe, if we  
5 don't have the percentages -- 10 percent directly  
6 from -- 5 percent from Mr. Frey. I had one meeting  
7 with him at Mr. Gilmore's office where we spoke  
8 outside, and he said let's just get through it, get  
9 everything released, and just do what these guys say,  
10 outside. He said he was specifically out of the  
11 transaction, to trust Gary Frey, his son, and just do  
12 what we say and we'll just get out of this mess. And  
13 then there's Gary Frey, and then I have voice messages  
14 from Yacov. I still have that. I'll turn that over  
15 to you guys.

16 Q. Since we're going down the list, what  
17 percentage to Gary Frey?

18 A. Frey. Is this -- this is specifically for  
19 the acts of Star Development, which like you'd  
20 mentioned before, is basically Mr. Hefetz or his son  
21 or whoever he elects to put in front, and these  
22 percentages -- now that I'm going through it, I'd say  
23 10 percent, if we're going to add them up, the  
24 percentages.

25 Q. It's not a law quiz.

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1 A. Off the cuff, let's just say 10 percent.

2 Q. Finally, Yacov Hefetz, my client, what  
3 percentage for him?

4 A. Direct conversation? Ten percent.

5 Q. Who was it that first indicated to you  
6 personally that you would be released from your  
7 personal guaranties to the Frey Family Trust as part  
8 of this global settlement?

9 A. Steven Gilmore.

10 Q. Did Wayne Krygier ever make that  
11 representation to you?

12 A. Yes.

13 Q. Do you remember how he made it to you?

14 A. And other legal counsel even -- I have  
15 e-mails specifically from their counsel stating that  
16 we do have an agreement. This was from Sulmeyer  
17 Kupetz, Mark Fields, saying we have an agreement, we  
18 just have one minor revision of the Brianhead Lofts  
19 when they were posturing -- they've all said it at  
20 some point, including their legal counsel, and I even  
21 have e-mailed documentation, language from their legal  
22 representation.

23 MR. SAGGESE: Can I -- just a point for  
24 clarification: Are you saying with these percentages  
25 that he has you answering, are you saying that they

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1 collectively provided these different percentages  
2 worth of information related to the fraud and that  
3 they were acting together, or completely separate  
4 units, 10 percent, 20 percent, 50 percent, separate  
5 units, nobody knowing what the other entity was doing  
6 or, are you breaking it down into percentages, as a  
7 collective whole, engaging in fraud? Are they  
8 individual units, or this 100 percent that you've  
9 arrived at, that they're acting in concert with each  
10 other?

11 THE WITNESS: Well, I think they're acting  
12 together. I think based off -- they're getting this  
13 information -- they're acting as agents, individuals.

14 MR. SAGGESE: In other words, when Gilmore  
15 provides X percentage of the fraud, is he acting  
16 independently on this fraud cause of action or that's  
17 his portion of the total act and they're acting  
18 together, or are they acting independently?

19 THE WITNESS: I don't think that's a  
20 percentage on the whole act of the fraud, 55 percent.  
21 I'm just going by the amount of face time, that I see.  
22 I'm confused. If I said there was five hours of face  
23 time that I saw visually, face to face or direct talk,  
24 that I would be in front of that representative  
25 55 percent of the time.

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1 MR. SAGGESE: But to clarify Lee's series  
2 of questions, are you saying that, by way of example,  
3 us in this room, communication from each of us, are  
4 you saying that they as a percentage together acted  
5 collectively to commit fraud against you, or are you  
6 saying that they individually had fraudulent  
7 representations to make separate from one another, or  
8 was it a collective purpose of defrauding you?

9 THE WITNESS: I believe it was a collective  
10 purpose.

11 MR. SAGGESE: So these percentages are  
12 everybody's contribution to the ultimate singular goal  
13 of defrauding you?

14 THE WITNESS: Correct.

15 MR. SAGGESE: All right. I've been hearing  
16 the percentages, and I'm like -- for my purposes, I  
17 think that that answers the question.

18 And also, Mr. Beaver reserves the right to  
19 amend the claim to name Robert Frey, individually, and  
20 bring him on the fraud if that's.

21 THE WITNESS: Gary Frey.

22 MR. SAGGESE: Gary Frey, excuse me, and  
23 Gilmore and the other names that are coming up. But I  
24 think for purposes of clarification, as a collective  
25 unit perpetrating the fraud, I understand.

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1 Q. (BY MR. IGLODY) My purpose here is to try  
2 to get some clarity about who said what and when,  
3 basically, and that's why the percentages were  
4 somewhat helpful, so I know who had more face time,  
5 which is where we were going with this.

6 Getting back to the counterclaims here, you  
7 had pledged in the deed of trust, the security, these  
8 property units, including Domnus Lane and Chapman  
9 Heights and whatnot. Am I correct in saying that at  
10 some point these properties were all lost?

11 A. All the properties were lost to foreclosure  
12 besides Domnus Lane and 60 Chapman Heights.

13 Q. And what's the status with those two?

14 A. My ex-wife lives in Domnus, which is a  
15 condominium, and I live in 60 Chapman Heights.

16 Q. And in your complaint you state that Frey  
17 did not release or agree to subordinate the deeds of  
18 trust, and so you were not able to refinance on some  
19 of the properties; is that right?

20 A. That's correct.

21 Q. Is it your position that Frey had an  
22 obligation to you to modify the deeds of trust at any  
23 point?

24 A. I believe that under our agreement, going  
25 through what the facts of this particular situation in

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1 this case at hand that we're here speaking about, that  
2 in the best interest and understanding, that I have  
3 done everything that they ever asked me to do,  
4 anything, out of faith and trust, going through the  
5 situation, that they had an obligation to release that  
6 deed of trust. Now I have lost the foreclosures.  
7 I've lost a mortgage company now because I have  
8 foreclosures on my record, which rendered me -- I  
9 can't -- as a mortgage broker, Samantha -- and I was  
10 an owner Pinnacle Lending Group, because we had  
11 foreclosures on our record, all of the banks that we  
12 brokered loans to canceled our contracts, would not  
13 renew; so we could no longer broker loans.

14 So if you're a lender and you're a partner  
15 and you're working hand in hand with everybody for the  
16 best interest and partners, for the ability of  
17 repayment, you have a project, an unfinished project,  
18 that needs to be finished so anyone can get paid. But  
19 somehow the lenders in the transactions manipulated  
20 out of greed, bought it up and played their games to  
21 bankruptcy, and bought the notes back and beat up  
22 these subcontractors, negotiated them down, and took a  
23 fee from that, and then said, hey, now we want you now  
24 to pay us back, but we're going to destroy your life  
25 even further to give you an inability to even pay us

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1 back. I mean, nothing makes sense of what these guys  
2 had done.

3 Q. Let's look at page 11 of Exhibit 8, and the  
4 paragraph in particular that I'm looking at is  
5 paragraph 64.

6 A. Okay. Question? So paragraph 64, page 11  
7 of Exhibit 8?

8 Q. Right. And what I'd like to do is just  
9 follow up with some more detail on the physically  
10 intercepted statement in paragraph 64 of your amended  
11 counterclaim. Let's talk about that. What do you  
12 mean by physically intercepted?

13 A. I went down to their office. I believe  
14 Mr. Hefetz and Frey share a one-room office together  
15 with offices and have been business partners for  
16 decades. And I received a call via Wayne Krygier, a  
17 phone call around the holidays -- what? The 2009  
18 period? I don't know the dates. I don't have them in  
19 front of me right now -- stating that per our  
20 agreements that you're going to be finally released.  
21 And he said, what can you pay me? Again, this is  
22 Wayne Krygier, supposed to be getting part of Star  
23 Development, get paid on every dollar. Whether it's  
24 five grand or two grand, if anybody was owed money,  
25 whether it was for wood, for doors, and they were owed

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1 \$10,000, if Wayne could get them to settle for 2,000,  
2 the difference of 8,000 -- if it was owed ten, he got  
3 them settled for two, and he would get a percentage of  
4 it.

5 So Wayne came to me and said, "All right.  
6 What are you going to pay me?" And I said, "I'm  
7 broke. I don't have any money. I don't have any  
8 companies, any houses. I don't have anything. I'm  
9 trying to start my life over." I lost my wife, my  
10 kids, this, that. I go, I have nothing, just bad  
11 credit. And I said, you know, out of good faith, I  
12 said that I could pay twenty-some thousand dollars.

13 MR. SAGGESE: The question, Chris, to keep  
14 you on track, is in relation to the physical  
15 interception of the allegation here in paragraph 64.  
16 Specifically, how did this individual physically  
17 intercept?

18 THE WITNESS: So after Mr. Frey, the lender  
19 gave me the document, sent me the document, I brought  
20 the document down to their office to drop it off with  
21 the checks. Mr. Hefetz was in the office, grabbed the  
22 document, looked at it. And he says, "No way.  
23 There's no way in hell I'm going to allow Mr. Frey to  
24 sign this document."

25 MR. SAGGESE: What was the document,

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1 specifically?

2 THE WITNESS: The release of guaranty from  
3 the lender that they had sent me.

4 Q. (BY MR. IGLODY) Release of guaranty from  
5 Frey?

6 A. Yes.

7 Q. And it's correct to say that the agreement  
8 was never signed?

9 A. I signed it.

10 Q. But Mr. Frey didn't?

11 A. Well, at that time it was intercepted by  
12 Mr. Hefetz in the office, and he made a threat to me  
13 stating that he would not allow Mr. Frey to sign it.

14 Q. To your knowledge, did Mr. Frey ever sign  
15 it?

16 A. I don't have a copy of it.

17 MR. IGLODY: Let's take a break.

18 (A lunch recess was taken.)

19 Q. (BY MR. IGLODY) Before lunch, we were  
20 talking about Star Development and the Toluca Lake  
21 project. I'd just like to follow up on where we left  
22 off.

23 A. What exhibit is this? Exhibit 8?

24 Q. Which is here.

25 MR. SAGGESE: That's the complaint,

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1 paragraph 64?

2 MR. IGLODY: Yeah, 64.

3 THE WITNESS: Okay.

4 Q. (BY MR. IGLODY) So we left off talking  
5 about how at one point there was a discussion  
6 regarding Frey signing off in effect on the release  
7 and guaranty that's at issue in this litigation. You  
8 described for us an encounter in the office that Frey  
9 apparently occupies with Mr. Hefetz. Your testimony  
10 is that he essentially physically intercepted and said  
11 there was no way he was going to let Mr. Frey sign off  
12 on the lease. Did I summarize that correctly?

13 A. Yes.

14 Q. Let's move on to the next exhibit. The next  
15 exhibit is Exhibit 9, which I'm handing to you now.  
16 That's a big document, so I'm not expecting you to  
17 read the whole thing. Just look at it briefly and let  
18 me know when you're ready to discuss.

19 A. Yes.

20 Q. All right. Now, I'll just represent to you  
21 that this document is what purports to be the Debtor's  
22 Second Amended Liquidating Chapter 11 Plan in the  
23 United States Bankruptcy Court, Central District of  
24 California, San Fernando Valley Division. In this  
25 document is what is the plan of Toluca Lake as part of

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1 its bankruptcy. What I would like you to focus on is  
2 the attachment to the plan. And what I'm going to  
3 direct you to in particular is what has been  
4 Bates-stamped Hefetz Toluca Lake 107.

5 A. Where's it at?

6 Q. The lower right-hand corner is the Bates  
7 stamping.

8 A. Mm-hmm.

9 Q. 107.

10 A. 107, okay.

11 Q. Are you ready to proceed?

12 A. Yeah, go ahead.

13 Q. All right. On 107, we have what purports to  
14 be your signature, "Christopher Beavor." Do you see  
15 that?

16 A. Yes.

17 Q. And do you recall signing this document?

18 MR. SAGGESE: If we could just lay a little  
19 foundation, if he's familiar with the document.

20 MR. IGLODY: Sure. We can approach it that  
21 way.

22 Q. (BY MR. IGLODY) Well, this document that  
23 was attached to the plan purports to be a settlement  
24 agreement between Chinatrust and essentially all the  
25 investors of Toluca Lake. Do you recall seeing this

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1 settlement agreement before?

2 A. Yes.

3 Q. And there's a signature here for you,  
4 apparently, and I just wanted to verify that you  
5 remember signing this agreement.

6 A. Well, I signed this on numerous occasions.  
7 I signed one of these documents to be held in trust by  
8 their attorneys that Yacov hired that were supposed to  
9 be representing me, but they hired them to put them  
10 for me, which in these documents -- I gave them a  
11 signed document. They were supposed to sign the  
12 release at that time, the release that Mr. Frey gave  
13 to me that Yacov intercepted and took. That release  
14 document, there was another draft version that my  
15 attorneys prepared at this time that I had signed and  
16 sent to their counsel with the signed document. Does  
17 that make sense? I signed this document with a  
18 release and sent it to their attorneys in trust.

19 Q. This settlement agreement is a settlement  
20 agreement providing for the release of the guarantors  
21 and the borrowers in the Chinatrust matter as part of  
22 the Chapter 11 plan. As a matter of reference, you  
23 can look at paragraphs 5 and 6, which are  
24 Bates-stamped 103, 104. Although I realize there  
25 was another agreement that you referenced in this

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1 deposition as well as any pleadings, I just want to  
2 focus on this one for right now. This is a release  
3 agreement between Chinatrust and the investors in  
4 Toluca Lake. I just wanted to confirm that you recall  
5 signing this agreement and agreeing to the release  
6 terms with Chinatrust on the Chinatrust guaranties.

7 A. Eventually this contract was signed in  
8 bankruptcy court that day that the motion and the  
9 judge all took us to a side chamber. I signed off on  
10 an agreement to move forward once she saved claims,  
11 once she wrote out in the motion to allow me to have  
12 claims against those parties.

13 Q. Is it your position, then, that this  
14 settlement agreement that was attached to the plan  
15 provided --

16 A. Well --

17 Q. Go ahead.

18 A. This settlement agreement here in these  
19 documents that you have, there was false affidavits.  
20 It wasn't negotiated normally as a transaction.  
21 There's false statements given to the bankruptcy  
22 court. As a matter of fact, I have e-mails. It says  
23 on January 21st Toluca Lake filed a motion.

24 All of these documents were -- they even  
25 played trickery here. It says here -- this was our

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1 attorney, David Haberbush, but he is strategically  
2 listed under attorneys for Frey and Frey Trust. They  
3 don't have me there, but yet on other documents he is  
4 listed as my attorney. Whatever these guys did --  
5 well, what I can say about that document --

6 Q. Mm-hmm.

7 A. -- is that I signed it on two occasions. I  
8 signed it once to be held in trust for further release  
9 of when our agreement was, to have it further  
10 documented. And the second time I signed it was when  
11 the judge in a chamber in the Woodland Hills  
12 bankruptcy where I signed it in front of the lender  
13 representing Chinatrust Bank to move forward when they  
14 released claims. So, yes, there's two times that I  
15 signed this document.

16 Q. Was the attorney, Haberbush, was that your  
17 attorney?

18 A. It was the attorney that was given to me by  
19 Star Development, Hefetz, and Mr. Frey, the lender.

20 Q. Did you have a retainer agreement with  
21 Mr. Haberbush?

22 A. No.

23 Q. Victor Sahn, who appears on the caption of  
24 this Chapter 11 plan, he was never your attorney;  
25 right?

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1 A. Yeah. He sent me -- he sent me documents  
2 with a full disclosure stating that he went to college  
3 and worked with Haberbush, Mark Fields, that they all  
4 worked at this law firm together for so many years and  
5 that they would all be representing the parties to the  
6 best of their abilities. And they -- I had prepared  
7 all of the bankruptcy documentation. They asked me  
8 because at the time I was managing the documents and  
9 pre-bankruptcy counseling. So at the time, you know,  
10 I was still the manager of Toluca Lake at the time. I  
11 was asked to release my counsel and to work with  
12 Mr. Sahn. So, I guess, at some point, Chris Beavor --  
13 there was about a two-week period where I met with  
14 Mr. Sahn in L.A. and was told by the lender, Mr. Frey,  
15 and his officers or agents to do whatever Mr. Sahn  
16 wanted.

17 Q. Did you consider Mr. Sahn to be your  
18 attorney though?

19 A. I assumed that he was working in the best  
20 interests of the parties, me being a member of Toluca  
21 Lake, a majority owner of Toluca Lake, that he was  
22 representing Toluca Lake, which I owned; so I  
23 considered him to have a fiduciary responsibility to  
24 represent the entity in the best capacity for the  
25 owners.

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APP00198

1 Q. Let's turn to Exhibit 10. You can put that  
2 one down. Exhibit 10 is your initial production.  
3 I'll give you a minute to kind of roll through it.  
4 When you're ready, just look up and we'll start.

5 A. Yes.

6 Q. All right. So this is a production by you  
7 through your attorney's office. And once again,  
8 whenever I talk about documents produced by you in  
9 this case in particular, pleadings or discovery  
10 documents, I'm not inquiring as to conversations you  
11 may have had with your counsel or anybody in his  
12 office, for that matter.

13 With that in mind, let's turn to Exhibit 2,  
14 attached to your production. I'll let you go to that.  
15 Let me know when you're ready.

16 A. Okay.

17 Q. So Exhibit 2 appears to be a host of checks;  
18 is that right?

19 A. Yes.

20 Q. So let's talk about these checks. Why did  
21 you include these checks in your discovery disclosure?

22 A. Those are checks that Mr. Hefetz took out  
23 of my hand with the settlement. He is still in  
24 possession of these checks.

25 Q. But he hasn't cashed them?

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1 A. Not that I'm aware of.

2 Q. In the memo line of the checks we have a  
3 reference -- I'll just read it. Tell me if I read it  
4 correctly. "Beavor/Frey settlement dated 1-3-2011."  
5 Did I read that right?

6 A. Yes.

7 Q. What are you referencing there?

8 A. It appears that around that date was the  
9 meeting of the minds for a settlement agreement.

10 Q. You're the one that signed these checks;  
11 right?

12 A. Yes.

13 Q. And you caused them to be issued; correct?

14 A. Yes.

15 Q. Who is CLB Capital, Inc.?

16 A. CLB Capital is -- was an S corporation that  
17 I was an officer --

18 Q. How much of a --

19 A. -- and shareholder.

20 Q. Did you own all of it or most of it?

21 A. 100 percent.

22 Q. Let's go to Exhibit 3. Now, Exhibit 3 is  
23 titled Mutual Release and Payment Agreement. I'm  
24 going to give you a second to look through it, and  
25 then I'm going to ask you some questions. Have you

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1 had a chance to look at the document?

2 A. Yeah. I just remembered that I probably  
3 still have a cashier's check that I could probably  
4 get.

5 Q. Do you recognize this document, Exhibit 3?

6 A. In general, it looks like it. I haven't  
7 read -- do you want me to read the entire thing word  
8 by word?

9 Q. No.

10 A. It appears to be the document that Mr. Frey  
11 had sent over for release.

12 Q. All right. Let's talk about this agreement.  
13 It's titled Mutual Release and Payment Agreement.  
14 There's a host of signatures on the second-to-last  
15 page. Do you see that?

16 A. Yes.

17 Q. And the signatories would be yourself and  
18 your ex-wife, individually as well as members,  
19 managers of C&S Holdings and Brianhead Lofts; is that  
20 right?

21 A. Yes.

22 Q. Now, these are, as far as you recall, the  
23 signatures of yourself and your wife; is that right?

24 A. That's correct, ex-wife.

25 Q. Ex-wife. Is this the document that you were

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1 talking about when you said you dropped something off  
2 at Frey's office and then my client Hefetz essentially  
3 said, no, Mr. Frey, you can't sign this?

4 A. He wouldn't allow Mr. Frey to sign this.

5 Q. Right. But is this the document you're  
6 referring to?

7 A. I believe so. It appears to me.

8 Q. It's important for me because I want to make  
9 sure we're on the same page, in other words, that  
10 there's not another agreement that you might be  
11 referring to in your complaint against Hefetz.

12 A. I'll read it through.

13 Q. Why don't you go through it real quick, and  
14 we'll take a quick break and then go back on.

15 (Pause.)

16 A. Yes. It appears to be.

17 Q. All right. So when you referred earlier in  
18 your testimony to an agreement that would have  
19 released you and your ex-wife --

20 A. And released Mr. Frey, the lender for the  
21 liability.

22 Q. This is the document?

23 A. Yes.

24 Q. That's what I needed to know. Let's go on  
25 to Exhibit 8. There we go, Exhibit 8. Do you

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1 recognize this document?

2 A. Yes.

3 Q. What is this document?

4 A. This is a motion filed -- an opposition to

5 an ex parte motion filed.

6 Q. It appears to be an e-mail of a draft of an

7 objection. Is that right?

8 A. Yeah. That's more accurate.

9 Q. The e-mail is dated May 10, 2010. Is that

10 date correct as far as you remember?

11 A. Yes.

12 Q. You indicated earlier that you thought the

13 objection was filed. I believe my records indicate

14 the same. To your knowledge, was the objection filed

15 in bankruptcy court?

16 A. Yes.

17 Q. Earlier you talked about an objection that

18 you had filed with the Court. Is this the objection

19 that you were referring to, or is there another one?

20 A. No. There's another one.

21 Q. Let's go on to Exhibit 9. Exhibit 9 is also

22 an e-mail sequence. You know what? It's a little bit

23 dense, so I'll let you read through it to refresh your

24 recollection. So let me know when you're done, and

25 we'll continue. Let's take a break.

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1 (A brief recess was taken.)

2 Q. (BY MR. IGLODY) Back on the record.

3 We's took a little break to give you an

4 opportunity to look at the document here. What I'd

5 like to do is focus on page 2, particularly the third

6 paragraph.

7 A. On which exhibit? I'm sorry.

8 Q. The exhibit you were just looking at,

9 Exhibit 9 to your disclosures to us, to 10, right.

10 A. So Exhibit 10, Exhibit 9.

11 Q. There you go, page 2. This is an e-mail

12 that purports to be from you dated April 26, 2010, to,

13 among others, David Haberbush and Rob Rink; is that

14 right?

15 A. Yes.

16 Q. Do you remember this e-mail at the time?

17 A. Yes. This is an e-mail, appears to be.

18 Q. Did you draft this e-mail?

19 A. Yes.

20 Q. Do you remember sending the e-mail at the

21 time?

22 A. Yes.

23 Q. In this e-mail I'd like to look particularly

24 at paragraph 3. And I'll just go ahead and read the

25 first sentence.

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79

1 MR. SAGGESE: Can I ask a question here? Is

2 Exhibit 9 one entire e-mail string?

3 MR. IGLODY: Apparently it is. I'm just

4 going off whatever your office's disclosure was, and

5 my understanding is it's four pages of an e-mail

6 string.

7 MR. SAGGESE: Because it goes one, two,

8 three, four, then one, two.

9 MR. IGLODY: Right. But what I'm focusing

10 on is the actual e-mail dated April 26, 2010, and this

11 is the form that I received it in.

12 MR. SAGGESE: Got it.

13 Q. (BY MR. IGLODY) The beginning of the third

14 paragraph reads: "Our group did not cause the

15 economic collapse, nor did we tell Chinatrust Bank to

16 quit funding the project." Did I read that correctly?

17 A. Yes.

18 Q. Now, going on to the next sentence, I'll

19 summarize, and tell me if I am summarizing correctly.

20 You described the fact that there is or was a

21 potential strong case against Chinatrust Bank at the

22 time; is that right?

23 A. Yes. Yes.

24 Q. Then you go on to state -- I'll go ahead and

25 read the sentence. Tell me if I read it correctly.

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80

1 "Chinatrust Bank default has caused me to become in

2 default with the Frey Family Trust \$6 million loan."

3 Did I read that correctly?

4 A. Yes, but you might not know the content of

5 my mindset.

6 Q. And I'm going to ask you follow-up questions

7 to clarify. That's why we're here. I'll go ahead and

8 read the next two sentences, and then I want to go

9 ahead and ask you to clarify for me. The next

10 sentence is: "Frey Family Trust has a second deed of

11 trust on my two primary homes and rental homes for

12 \$6 million. My personal damages could be severe."

13 Did I read that correctly?

14 A. Yes.

15 Q. Now, this is April 26, 2010. This is an

16 e-mail from you to a number of people, including the

17 attorney Haberbush and Mr. Rink; right?

18 A. Yes.

19 Q. And in this e-mail you complain, in addition

20 to a few other things, about the fact that you've been

21 put, in effect, in a terrible position as a result of

22 the default; right?

23 A. Yes.

24 Q. And, in fact, you're facing potentially the

25 loss of your personal homes and rentals; right?

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APP00200

1 A. Yes, amongst other things.  
2 Q. Now, in this e-mail -- and if you need to  
3 read it again, just go ahead and do that. In this  
4 e-mail you basically state that what you would  
5 consider to be a fair outcome, if fair was even  
6 possible at that point anymore, a release of the  
7 guaranty that you had to basically anybody including  
8 Mr. Frey. Is that roughly right?  
9 A. Let me just -- can I get familiar with this?  
10 Q. Yeah. Read it. It's a little dense. Take  
11 your time. We'll go off the record for a couple  
12 minutes again.  
13 (Pause.)  
14 A. So what's the question?  
15 MR. IGLODY: Can you read it back?  
16 (The reporter read the requested  
17 question on page 81, line 2.)  
18 THE WITNESS: What paragraph was that?  
19 MR. IGLODY: The third paragraph to the  
20 April 16th one.  
21 THE WITNESS: Okay. I know where that's at.  
22 So what's the question?  
23 Q. (BY MR. IGLODY) Were you expecting as of  
24 that date that Mr. Frey would agree to release you  
25 from the personal guaranty?

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1 A. I believe that when there was a final  
2 settlement, if I followed the direction, which I did,  
3 released my counsel, signed over the company, and  
4 allowed them to do what they wanted, allowed them to  
5 have attorneys representing us to the courts, which  
6 weren't representing us, to a group of guys that's  
7 known each other twenty years, to trust them that they  
8 were going to work on the best interest and we'd all  
9 be released subject to what everybody from their side,  
10 Hefetz, Star Development, Frey as the lender, that at  
11 this time we would all be released. That was part of  
12 the agreement or I would have defended myself through  
13 this entire process.

14 So at this time, I thought when we were  
15 going into these final documents that we would be  
16 released. Upon reviewing and reading this document  
17 myself, I realized, hey, there's some language in  
18 here. I sent it over to my legal counsel, and they  
19 brought up some of these issues that in fact it  
20 doesn't bring up some of these points. It doesn't  
21 release you, which is what I assumed was the deal.

22 And then, as soon as I started to make the  
23 issues and started to research the dates, these guys  
24 were threatening me, and I have some voicemails that  
25 I'm going to turn over, that I'm going to be sued,

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83

1 that I'm in contempt of court, that I already approved  
2 the settlement agreement and it was already submitted  
3 to the courts and the courts approved it. And that's  
4 why I submitted some of these e-mails, to show that  
5 this document, with this statement from legal counsel  
6 that said that we agreed mutually, globally, came up  
7 with a settlement in January.  
8 And we had our concerns that were never  
9 answered by Star Development. I know Gary Frey was  
10 involved with Star Development at the time, was  
11 supposed to be representing the members, myself, the  
12 guarantors. When they sent this over in a draft  
13 format, we sent that e-mail over, and I didn't hear  
14 nothing. I was being told via the phone from numerous  
15 members of Star Development that this is just an idea,  
16 we're still trying to buy the note, we're going to buy  
17 it, we're going to finish the project, it's still too  
18 early in this case. You know, I was just, okay, let  
19 me know what's going on. There's no reason why I  
20 wouldn't think that nobody would honor their word or  
21 their intentions.  
22 So when we did receive this document, I was  
23 just reviewing it, and I sent it to my attorney. They  
24 basically said that this doesn't release anybody or  
25 anything. And then that's when I started going

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84

1 through this. And when they started threatening me,  
2 stating that I'm in contempt of court, that this  
3 document has already been approved, I said, "Been  
4 approved? What are you talking about?"

5 And that's when I started looking at all the  
6 dates, and I started really looking into all the  
7 documents with the attorneys and spent probably two  
8 weeks going line by line through each e-mail and  
9 realized these guys already signed affidavits and said  
10 we globally agreed to this when we didn't. They got  
11 this approved by the judge, this settlement agreement,  
12 and we hadn't even seen it. But they're telling the  
13 courts we all agreed to it when nobody has ever even  
14 seen the document. So that's where that e-mail I  
15 sent, saying, hey, we have -- this is at that time.  
16 I'm just recasting -- not recasting, recalling that  
17 time.

18 Q. Let's go back in time slightly. You can put  
19 the exhibit down. The Toluca Lake project ended up in  
20 bankruptcy at some point. Now, originally you were  
21 the one who considered putting Toluca Lake into  
22 bankruptcy; isn't that right?

23 A. No.

24 Q. Hadn't you retained counsel in order to file  
25 a Chapter 11 for Toluca Lake?

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APP00201

1 A. No. I retained counsel to file an ex parte  
2 motion. Chinatrust Bank, when I went to Mexico, they  
3 knew I was leaving Thursday. So the strategy was,  
4 let's file an ex parte motion on Friday. So I  
5 retained counsel to fight the ex parte motion.  
6 Q. Let's shift gears and look at Exhibit 14 for  
7 a second, because I need to get some clarity on this.  
8 Take a look at Exhibit 14, review it, and when you're  
9 ready to discuss, look up for me.  
10 A. What's the question?  
11 Q. Let's ask some questions here. The first  
12 one is, do you recognize this document?  
13 A. Yes.  
14 Q. What is this document?  
15 A. It appears it's a letter, in general,  
16 talking about pre-bankruptcy.  
17 Q. All right. Let me ask it another way.  
18 It appears to be a letter from Sulmeyer Kupetz, a  
19 professional corporation of attorneys, addressed to  
20 Toluca Lake but specifically addressed to you,  
21 Mr. Beavor. And it is signed by Victor A. Sahn,  
22 S-a-h-n, and includes his federal tax ID number.  
23 Is this a letter that you received from  
24 Victor Sahn back around April 23rd, 2009?  
25 A. Yes.

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1 Q. And the last page --  
2 A. The reason I'm hesitant on that is  
3 because there's also another document talking about  
4 numerous -- that I thought was a part of this  
5 document, that talked about the disclosure between my  
6 purported counsel as Haberbush, Mark Fields, and this  
7 guy that they all worked together for so many years  
8 and they were all buddies. There was a disclosure.  
9 But your first question was, did I hire  
10 them? No. I don't know these people. Didn't hire  
11 them. There's other documents where I was asked as  
12 part of the agreement, where I terminated Ballard  
13 Spahr. And if you look here, Mr. Frey hired Mark  
14 Fields, and Mark Fields hired this person. This was  
15 all part of the strategy.  
16 So this letter says "Dear Mr. Beavor." This  
17 was all a strategy of the three counsel that were  
18 hired, retained, and strategized by Star Development,  
19 Hefetz and Frey.  
20 Q. Let's go through that. Once again --  
21 A. And this signature on this document is not  
22 even my signature. It's a stamp.  
23 Q. Let's talk about that. And I'll represent  
24 to you this is Exhibit A in your response to our  
25 request for production of documents. If you have

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87  
1 other documents that would support what you're saying  
2 in terms of disclosures, attorneys cooperating, and  
3 things like that, I would recommend that you disclose  
4 them so I have an opportunity to review them before  
5 trial.  
6 With that in mind, we're now looking at the  
7 last page. There's a signature there that purports to  
8 be from Christopher Beavor, and it provides a federal  
9 tax ID number. Are you now saying that that is not  
10 your signature?  
11 A. No. It's a stamped signature.  
12 Q. Did you authorize that stamp to be applied  
13 to this agreement?  
14 A. I'm not aware of it.  
15 Q. So you were aware of receiving this letter  
16 back in April of 2009?  
17 A. Yes. This is part of the agreement that  
18 they would obtain counsel.  
19 Q. On the second page of it, right before  
20 number 2, "Our commitments," there's a sentence in  
21 there that says, "Our employment does not include  
22 representation of any other entity or person." Do you  
23 see that sentence?  
24 A. Where?  
25 Q. On page 2 of this letter, agreement, the

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88  
1 last sentence of subparagraph number 102, right  
2 immediately before subparagraph number 2. There's a  
3 sentence that says, "Sulmeyer Kupetz is being engaged  
4 by Toluca Lake. Our employment does not include  
5 representation of any other entity or person." Do you  
6 see that?  
7 A. Yes.  
8 Q. Were you aware at the time that Sahn was  
9 being employed strictly for the purposes of  
10 representing Toluca Lake and nobody else?  
11 A. At this time there was a lot going on. I  
12 was fairly young. I've never experienced anything  
13 like this before, and at this time I didn't quite  
14 understand anything. It was happening fast. I just  
15 trusted the more experienced. Mr. Frey, Hefetz, they  
16 have been around forty years and have partners and  
17 millions and millions of dollars among developments.  
18 I mean, so when you're asking me specifically at that  
19 time did I understand everything, I don't know. I  
20 don't think so.  
21 Q. On the first page, under number 1,  
22 "Description of services to be provided," it goes into  
23 some discussion of, you know, different steps of the  
24 process. And it specifically says that "Finally we  
25 will file a Chapter 11 case for Toluca Lake." Do you

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APP00202

1 see that?

2 A. Yes. Well, this is the strategy that the  
3 lenders, when they decided not to sign the extension  
4 and fund the property, that they were going to work  
5 together as a team for the strategy. It was all  
6 planned.

7 Q. So is it fair to say that as of April 23rd,  
8 2009, you and the others had contemplated a Chapter 11  
9 bankruptcy for Toluca Lake?

10 A. Well, I believe at this time it was  
11 pre-petitioning just to look into it.

12 Q. All right. The agreement itself that was  
13 signed by some stamp with your signature specifically  
14 says that Chapter 11 will be filed. Is it your  
15 statement that that is incorrect, that as of April  
16 23rd, 2009, you were just exploring that possibility?

17 A. From my understanding, and I'll provide you  
18 more documentation.

19 Q. Victor Sahn was the one who filed the  
20 amended plan that was eventually approved by the  
21 bankruptcy court; is that right?

22 A. That's right.

23 Q. Let's go back to -- you can put that exhibit  
24 down. Let's go back to our regularly scheduled  
25 exhibits. You know what? Since we went out of order,

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1 let's just go ahead and stay out of order for a few  
2 minutes. I would like to hand you Exhibit 12.  
3 There's Exhibit 12.

4 I see something caught your attention,  
5 Mr. Beaver.

6 A. Yes. I was just looking at -- like they  
7 said, our goal is to finish the development of the  
8 property, sell the condos, and pay everybody back and  
9 retire the debts. At this time -- that's it. I was  
10 just reading something that caught my eye. Anyway, so  
11 now to Exhibit 12.

12 Q. Yes. Take a look at Exhibit 12 for me. Do  
13 you recognize this document?

14 A. Yes.

15 Q. What is this document?

16 A. Replacement of Manager.

17 Q. On the second page, I see a host of  
18 signatures. I see one signature purported to be your  
19 signature. Is that your signature?

20 A. Yes.

21 Q. Do you remember signing this document?

22 A. Yes.

23 Q. Is the date correct, May 13, 2009?

24 A. Yes.

25 Q. What caused this Notification of Replacement

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1 of Manager to be executed by everybody?

2 A. Well, this was a part of the agreement that  
3 we all had in the beginning when Chinatrust Bank, from  
4 the initial strategy, when Mr. Frey did not extend  
5 going forward on the extension for funding of the  
6 project and that we'd all work together. And as  
7 everyday offers, counteroffers from the banks and a  
8 multitude of meetings, at that point --

9 There was a pivotal point which Rebecca  
10 Winthrop of Ballard Spahr, which I have e-mails from  
11 her, there was a point of the meeting of the minds  
12 where I articulate in an e-mail with Rebecca stating  
13 that we've all worked together, that I'm going to  
14 release her as counsel. She advised me not to. She  
15 advised me to don't trust anybody, that they're going  
16 to take advantage of me, they're going to maneuver  
17 this project in bankruptcy, and I'm going to be --  
18 what she said, probably about where I'm at right now.  
19 And she advised me not to go along with their plan and  
20 don't put too much trust into anybody. And I said,  
21 oh, no, I trust these guys.

22 So anyway, like you said, Victor Sahn was  
23 retained by the Freys, hired. All the attorneys were  
24 appointed. They came to me. There was no funds, so I  
25 released my counsel, released the counsel of Toluca

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1 Lake. This wasn't forced. They came up and asked,  
2 hey, Chris, we want to -- this document, we need it  
3 signed. Can you go ahead and sign this? And I said  
4 sure. I mean, there was no fighting. I signed this  
5 document, releasing manager. And they said you've  
6 done everything up to this point like we've asked you  
7 to, now you sign here, and we'll take it here from  
8 legal, and once we beat up the bank, we'll get back to  
9 you.

10 So pretty much -- after I signed this, they  
11 pretty much handled everything from there until the  
12 release, and I didn't bother looking at anything. I  
13 just trusted everybody. So nobody -- none of the  
14 other members of Toluca Lake -- nobody questioned it.  
15 None of us had counsel. It was all going off of our  
16 agreement at the end of the day that we would finish  
17 this project. Again, this attorney beat up the bank,  
18 finished the project, everybody would get paid back  
19 and released off guaranties.

20 Q. I'm going to hand you Exhibit 13. Take a  
21 moment to look at that.

22 A. Yeah. What's the question?

23 Q. Off the record.

24 (Discussion off the record.)

25 Q. (BY MR. IGLODY) Back on the record.

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1 Exhibit 13, do you recognize it?

2 A. No. I've never seen it before.

3 Q. Let me just say that I believe, based upon

4 the title of the document, Resolution of Board of

5 Directors of Toluca Lake Vintage, LLC, it purports

6 to appoint Gary Frey as the lead in the bankruptcy

7 proceedings on behalf of Toluca Lake.

8 Now, let me ask you this. Was it your

9 understanding during the bankruptcy of Toluca Lake

10 that Gary Frey was leading the bankruptcy on behalf of

11 Toluca Lake?

12 A. No. I was under the understanding it was

13 Yacov, Gary as the contact person and Yacov. Those

14 are the two people that I thought were -- and Wayne

15 Krygier.

16 Q. Is it Krygier or Krygier?

17 A. I don't know. He would know.

18 Q. Let's call it Wayne.

19 A. Okay, Wayne.

20 Q. So we know that as of May, based on

21 Exhibit 12, that you were essentially out in terms of

22 running Toluca Lake and that Star had taken over

23 essentially. We also know that later a bankruptcy was

24 filed. My problem is that, just so you know where

25 I'm going with this, is that we believe that the

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1 bankruptcy was primarily run through Gary -- right? --

2 who -- am I correct -- is the son of Herbert Frey?

3 A. I believe so, yes.

4 Q. You've met Gary before; right?

5 A. Yeah. He could be -- he could be a

6 beneficiary of the Frey Family Trust for all I know.

7 Q. But you've met Gary? You know who Gary is?

8 A. Yes.

9 Q. And you know who Wayne is because you've met

10 him, obviously?

11 A. Yes.

12 Q. Wayne and Gary were operating Star, which

13 was in turn operating Toluca Lake. That's what the

14 written documents indicate. That's what their

15 testimony indicates. You repeatedly say that Yacov

16 Hefetz was running Star. So my question to you is --

17 A. Well --

18 Q. Go ahead.

19 A. I'm sorry.

20 Q. My question to you is, what is your basis

21 for alleging that Yacov Hefetz, my client, was

22 operating Toluca Lake through Star during the

23 bankruptcy?

24 A. Well, Star Development was -- I believe

25 Yacov was the manager per the secretary of state, and

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95

1 his son was listed as the manager. He's also listed

2 as the resident agent. All information was to go to

3 Yacov. And all of our conversations that we had at

4 every meeting was let me check with Yacov, and

5 e-mails. I have phone messages still, that I have

6 kept to this day, that every decision and pressure was

7 coming from Hefetz.

8 Q. But these were indicated to you by other

9 people; is that right?

10 A. Mr. Hefetz himself. I have it on voice

11 messages.

12 Q. The management of Toluca Lake, after you

13 allowed Star to take over, is not something that you

14 were directly involved in anymore, right, after you

15 turned it over to Star Development; correct?

16 A. That's correct. I was still, according to

17 their tax filing, under their management now that

18 we're still members, and as the members of Toluca

19 Lake, which this is -- I'm not a corporate lawyer, you

20 know. Just because somebody is a manager gives them

21 no -- managers are supposed to work on the best behalf

22 of fiduciary responsibilities of the best interests of

23 the members of Toluca Lake, which when we get

24 through -- I believe that any of these people weren't

25 working in the best interests of the members, which

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96

1 was seen as holding members, that Star Development --

2 I don't know if -- it says here, and this is the first

3 time I've seen this document, that the board of

4 directors -- I don't know what the resolution of a

5 board of directors can be assigned if Gary Frey was

6 the board of directors. I'm still a member of -- I'm

7 not a corporate lawyer, but we'll have to look into

8 these documents of who's the members and who had the

9 authority. He was given a management position

10 according to the deal that we had.

11 Well, go ahead. I've got to go back there.

12 I get a little sidetracked. I'm going back years.

13 Q. I'm just here for clarification. Let's go

14 back to Toluca Lake for a minute, the project itself.

15 You said a couple times, and you've also in your

16 disclosures said the same thing, that you had other

17 lenders that potentially could have stepped in. Who

18 were these lenders who could have potentially stepped

19 in to help save the project?

20 A. Let me see the exhibits. There was an

21 opposition filing in the case. I filed an opposition,

22 and I provided the lender -- my brain right now is --

23 I can't recall the name, but it is actually filed with

24 a whole resume' to the bankruptcy courts, who the

25 lender was that followed the case at every court

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1 appearance. And then that opposition, there's an  
2 attachment with the lender's information, with all the  
3 information, which he can testify that he would be  
4 able to step in. When I went there and I terminated  
5 Haberbush in front of the judge, that lender was even  
6 there at the court. So I'll get that information.

7 Q. Assuming these records are available and  
8 we're able to ascertain who this lender was, was there  
9 another lender beyond this one that you mentioned that  
10 appeared in your opposition and attended court  
11 hearings and bankruptcy court?

12 A. There was a lender, Jerry Weiner, with  
13 Finance California in Los Angeles.

14 Q. What was Weiner capable of doing to save  
15 Toluca Lake at the time?

16 A. Capable of providing any capital needed as  
17 required as the deal - you know, in these  
18 transactions, they change by the week in terms of what  
19 motions are being filed by all the different parties.  
20 But there was capital there and an understanding of  
21 the project.

22 Q. How many discussions did you have with them  
23 regarding their ability to save Toluca Lake?

24 A. For which party?

25 Q. The latter one. Wayne, you said?

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1 A. Jerry Weiner.

2 Q. Jerry Weiner, right.

3 A. They asked me every week, "What are you  
4 going to do?" I still do business with them today.  
5 As a matter of fact, because of this project I have  
6 built a good relationship. They were on standby,  
7 ready to fund these projects. I had two lenders look  
8 at this deal at the end and was just in shock of what  
9 kind of deal they struck and sold this project off  
10 to -- as far as we know, they could have -- I mean,  
11 this is just a possibility. You know, any of these  
12 guys on the other side of the lenders could have put  
13 money into a fund and had that fund buy it out of the  
14 bankruptcy.

15 But you're asking me how many times? Every  
16 week they've asked me, "Do you need funds? What can  
17 we do to help you?" Multiple lenders. We also had  
18 Joseph Kove.

19 Q. Kove spelled?

20 A. K-o-v-e.

21 Q. Who is that?

22 A. A lender in California.

23 Q. With what?

24 A. He is also a broker for Pinnacle Lending  
25 Group, which was a company I had in California. He

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99

1 has lived in Los Angeles his entire life. He financed  
2 all the projects.

3 Q. This Wiener fellow, he was with which group  
4 again?

5 A. He's with Finance California.

6 Q. And you said you don't remember who the  
7 lender that appeared in the opposition was; right?

8 A. No. It was a different name. I don't  
9 recall the name.

10 Q. Did Herbert Frey ever express disappointment  
11 in your performance as a manager of Toluca Lake before  
12 the default?

13 A. Not that I'm aware of.

14 Q. Did Yacov Hefetz express disappointment in  
15 your management of Toluca Lake before the default?

16 A. Not that I'm aware of.

17 Q. Did anyone express disappointment in your  
18 management of Toluca Lake before the default?

19 A. Well, what default are you talking about?

20 Q. The default that we've talked about in this  
21 deposition, which is when Chinatrust came along and  
22 said this is what we need and then didn't get it and  
23 then declared default.

24 A. So you're talking about when Chinatrust Bank  
25 filed a motion for --

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100

1 Q. Receivership.

2 A. -- for the receivership?

3 Q. Mm-hmm.

4 A. Are you asking if anybody --

5 Q. -- expressed disappointment in your  
6 management of Toluca Lake.

7 A. Not that I'm aware of, no.

8 Q. So your understanding is that prior to the  
9 default and the receivership application, that as far  
10 as you knew, everybody was satisfied with how you were  
11 managing the project?

12 A. Yes.

13 Q. Let's look at Exhibit 11. Well, let's take  
14 a break for a second.

15 (A brief recess was taken)

16 Q. (BY MR. IGLODY) I've handed you what we've  
17 previously labeled Exhibit 11. Exhibit 11 is your  
18 responses to our interrogatories, which is a fancy  
19 word for questions. Do you recognize this document?

20 A. Yes.

21 Q. Once again, when I talk about pleadings,  
22 documents, and filings in a case, I'm not asking for  
23 any conversations you had with your attorney; however,  
24 these written questions were to be answered by you,  
25 presumably answered by you. So what I'm going to do

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APP00205

1 is inquire in depth as to some of the answers you  
2 provided to us in response to our questions. Do you  
3 understand that?

4 A. Yes.

5 Q. All right. So interrogatory number one, in  
6 there you state that --

7 A. Is it response number one?

8 Q. Yes, response number one. Number one, in  
9 any case. All bills for defendants are always paid by  
10 plaintiffs; is that right? Legal bills, I mean.

11 A. Are we on page 2? Right there?

12 Q. Page 2, response to question number one,  
13 last sentence: "All legal bills for defendants are  
14 always paid by plaintiffs."

15 A. That's correct.

16 Q. So when you referred earlier to your  
17 attorney from Ballard Spahr -- what was her name  
18 again? Rebecca or something?

19 A. Rebecca Winthrop.

20 Q. Rebecca Winthrop from Ballard Spahr, her  
21 bill was paid by the plaintiff in this matter, which  
22 would be Yacov Hefetz; is that right?

23 A. I mean, I don't have the receipts of who put  
24 up the money, but there was a time -- at that  
25 particular time, Ballard Spahr was the law firm

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1 handling the development side of it. And when they  
2 filed the initial receivership motion when I was in  
3 Mexico, it sort of rendered me -- they strategically  
4 filed it when I went down to Mexico. So at that time,  
5 Steven Gilmore stated that he was going to receive a  
6 cash payment and go ahead and make the advance payment  
7 for Rebecca for the emergency motion to be in court in  
8 Los Angeles.

9 Q. Was Rebecca your attorney personally, in  
10 other words for Chris Beavor, or was she the attorney  
11 for Toluca Lake?

12 A. She was hired to represent Toluca Lake.

13 Q. Who was your personal attorney that  
14 represented you at one point?

15 A. Steven Newman.

16 Q. Was Steven Newman paid for by Yacov Hefetz  
17 or Herbert Frey?

18 A. No.

19 Q. Did you pay that -- what's his name again?

20 A. Steve Newman.

21 Q. Did you pay Steve Newman's legal bills?

22 A. Yes.

23 Q. When the Toluca Lake project was humming  
24 along before default or before any of these other  
25 problems had started, were you drawing any kind of

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103

1 salary?

2 A. Yeah. Was Christopher Beavor drawing a  
3 salary as an individual?

4 Q. Or Christopher Beavor as an entity.

5 A. I personally was not. There was a  
6 management fee that C&S Holdings was receiving.

7 Q. What was that management fee?

8 A. It varied. I believe it was a percentage  
9 of the course of construction. So if you completed --  
10 for example, if there's a \$200,000 management fee and  
11 the course of the construction was 24 months and you  
12 completed 10 percent a month of the project, they  
13 would pay a percentage accordingly to the progression  
14 of the project. So if one month we poured foundations  
15 and they gave us a 20 percent project complete, which  
16 was verified by a third-party, then we would draw down  
17 the 20 percent of the management fee, and that  
18 management fee was to pay for lease space, overhead,  
19 utilities, lights, legal, and employees that prepared  
20 the draws.

21 Q. Do you know how much, roughly, your entity  
22 made in management fees during the life of the  
23 project?

24 A. Gross or --

25 Q. Gross, approximately.

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104

1 A. For Toluca Lake, I would assume  
2 approximately, maybe, 200,000 over the year and a half  
3 period.

4 Q. When those checks were cut -- I guess I  
5 shouldn't assume. Were those paid by check, wire  
6 transfer, or other form?

7 A. They were paid by check.

8 Q. And who cut the checks?

9 A. I would receive income from China -- the  
10 checks from Chinatrust Bank from the loan.

11 Q. So these were draws on the loan?

12 A. Draws against the loan, yes.

13 Q. I'm looking at page 3 and 4. Request  
14 number 6 is on page 3. Response to request number 6  
15 is on page 4. I'm going to let you go ahead and read  
16 that for a minute.

17 A. What?

18 Q. Page 4.

19 A. Okay.

20 Q. Response to request number 6.

21 A. Where's request 6?

22 Q. I'll let you go ahead and read that for a  
23 minute. We'll go off the record, as well, while  
24 you're doing that.

25 (A brief recess was taken.)

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APP00206

1 Q. (BY MR. IGLODY) We're back on the record.  
2 I'd like to take a break from request  
3 number 6 for a second and go back to the compensation  
4 during the life of the project. It's my understanding  
5 that during the life of the project that you or your  
6 entity were getting at least \$50,000 a month in  
7 payments. Is that not correct?  
8 A. I don't believe that to be true.  
9 Q. Do you know if there were any other payments  
10 beyond the 200,000, approximately, that you had stated  
11 earlier?  
12 MR. SAGGESE: Can I interrupt and clarify?  
13 Are you saying that you gleaned \$50,000 a month from  
14 what he has testified to or what you brought to the  
15 depo?  
16 MR. IGLODY: No. Let me clarify, because I  
17 know we've been here for a while, and it's starting to  
18 drag on. My understanding is that you were making at  
19 least \$50,000 a month.  
20 MR. SAGGESE: Based on what?  
21 MR. IGLODY: On representations from my  
22 client and the records. So the question is --  
23 THE WITNESS: What records? Do we have a  
24 copy of them?  
25 Q. (BY MR. IGLODY) For now, no, but I want

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1 to clarify because ultimately this is my chance to  
2 clarify with you. And remember, going back to the  
3 estimate/guess thing, if you recall it being X amount,  
4 then it's X amount for now. I'm not, like I said --  
5 A. What year was that? Four or five years ago?  
6 Q. That's what I'm saying. So I want to  
7 clarify, to the best of your recollection, not  
8 guessing, just estimating, whether or not the  
9 \$50,000-a-month number sounds right to you or not.  
10 A. No. \$50,000 a month does not sound right.  
11 Q. In addition to yourself, was anybody else  
12 from your family drawing any kind of income from the  
13 project?  
14 A. No.  
15 Q. Was Samantha drawing any kind of income?  
16 A. No.  
17 Q. Let's go back to response to request  
18 number 6 on page 4. You had a break, an opportunity  
19 to confer with counsel. I don't want to ask you too  
20 much about it, but I do want to drill down a little  
21 bit on some of the statements you made here in regards  
22 to the release. Okay?  
23 Your answer being what it is, it's more  
24 or less what you've been saying throughout this  
25 deposition in terms of what the agreement was. You

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1 state in here that they asked you to release all  
2 counsel; right? Earlier in the deposition, you  
3 said --  
4 A. Where are we at right now? I'm sorry.  
5 Q. Response to request number 6.  
6 A. Back here?  
7 Q. Yes. That's where we are.  
8 I want to clarify. Are you saying that you  
9 were advised to no longer retain counsel for this  
10 Toluca Lake project, personally?  
11 A. I was advised to not have any counsel, that  
12 they would appoint counsel, personal counsel, and that  
13 they requested that I terminate Ballard Spahr as  
14 counsel to Toluca Lake, hire Sulmeyer, whatever their  
15 name is, that they would appoint counsel to personally  
16 represent me too.  
17 Q. All right. To clarify, Ballard Spahr was  
18 counsel for Toluca Lake?  
19 A. And counsel for me personally for years.  
20 Q. I'll represent to you that it's difficult  
21 for me to imagine that a law firm could get over a  
22 conflict like that and represent both you and the  
23 entity at the same time, even during the glory days  
24 when there was no dispute; so I'm going to ask you  
25 again. Are you saying that your understanding was

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1 that Ballard Spahr represented you, Chris Beavor, as  
2 an individual, and Toluca Lake, the entity, at the  
3 same time?  
4 A. Prior? In the past or -- what date?  
5 Q. 2007-2008.  
6 A. I do know that Steve Newman, with the Salt  
7 Lake City office, always would carve out conflicts  
8 with me, stating to like other members or other  
9 projects that I was involved with that any other  
10 members, that they will ultimately be representing  
11 myself as it were and they would withdraw. So I would  
12 assume that they were representing my interest and  
13 they were representing Toluca Lake from the  
14 development of contractual contracts. And I would  
15 assume, again, with the conflicts, that Rebecca  
16 Winthrop, in the Los Angeles office, was specifically  
17 representing Toluca Lake. Again, Steve Newman with  
18 Ballard Spahr, they're a larger firm in different  
19 cities, was representing myself.  
20 Q. And so is it Newman that you dismissed, as  
21 you claim, in response to the statement by the other  
22 investors in Toluca Lake, that they would, quote, take  
23 care of things, end quote?  
24 A. Yes. And I also released Rebecca Winthrop  
25 as counsel of Toluca Lake and filed specific

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1 documents.  
2 Q. To your understanding, if Chinatrust Bank  
3 had been successful in pursuing the guarantors for the  
4 project and obtained judgments, who to your  
5 understanding would be responsible for the bulk of the  
6 22 million, or whatever it was, promissory note?  
7 A. What's the question?  
8 Q. Let me ask you this. If Chinatrust Bank had  
9 been successful in enforcing its creditor rights in  
10 obtaining a judgment against all the guarantors and  
11 borrowers in the Toluca Lake project, who do you think  
12 they would have gone after for the money? Was it you?  
13 A. Well, they were pursuing us in a writ of  
14 attachment.  
15 You were representing me there.  
16 Q. So they could have gone after you; they  
17 could have gone after Yacov Hefetz. Right?  
18 MR. SAGGESE: I'd object to the extent it  
19 calls for a legal conclusion. I don't even know the  
20 answer to that. That would be up to a judge who would  
21 be legally obligated to pay. You're asking a  
22 layperson.  
23 MR. IGLODY: That's fine.  
24 Q. (BY MR. IGLODY) Do you think that Herbert  
25 Frey was facing potential significant personal

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1 exposure as a result of the purported default of the  
2 Toluca Lake project?  
3 MR. SAGGESE: Can you give him a time frame,  
4 please?  
5 Q. (BY MR. IGLODY) 2009.  
6 A. I don't know. They said that they are  
7 structuring themselves for bankruptcy, so I don't know  
8 what the personal exposure was.  
9 Q. Who was structuring themselves for  
10 bankruptcy?  
11 A. That's what I heard through Gary. So you're  
12 asking -- I'm still confused. Are you saying that --  
13 the what-if questions?  
14 Q. Well, let's go back to your response to  
15 request number 6. What I'll do is I'll just go ahead  
16 and give you statements, and you can go ahead and tell  
17 me what you think about that. My understanding is  
18 that the investors in the project were extremely  
19 disappointed in your management of the project that  
20 led to the default. You said earlier that you had no  
21 indication of any disappointment in you; is that  
22 right?  
23 A. That's correct.  
24 Q. And as a result of the disappointment and  
25 because of the default, you were replaced and removed

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111  
1 from any control of the Toluca Lake project. Now, we  
2 agreed that at one point you were removed from control  
3 of the Toluca Lake project; isn't that right?  
4 A. Well, we had an agreement. I wouldn't say  
5 removed. We had an agreement, and I signed off on the  
6 document.  
7 Q. That Star Development would take over  
8 management of Toluca Lake; right?  
9 A. Based on us working together in this.  
10 Q. And the investors in the project, which  
11 included, of course, Mr. Frey, faced potential,  
12 substantial personal liability based on the failure of  
13 the project. Does that sound right to you?  
14 MR. SAGGESE: I'd object. I mean, calls for  
15 a legal conclusion. And as of today, he owes zero;  
16 so, I mean, you're asking him if a third party has any  
17 legal ramifications for what happens to a company?  
18 You can try to answer it, but you're really  
19 not obligated to know that.  
20 THE WITNESS: Could you repeat the question?  
21 Q. (BY MR. IGLODY) Yeah. Would you say that  
22 if Chinatrust was successful in enforcing whatever its  
23 rights were in regards to the Toluca Lake project,  
24 that Mr. Frey or Mr. Frey's trust potentially had  
25 personal exposure?

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112  
1 A. I wouldn't know that at this point.  
2 Q. What I want to know is, what is it that you  
3 did for Mr. Frey in 2009 that would have deserved for  
4 you to be relieved of the \$6 million obligation. I'd  
5 like you to detail that for me. What did you do to  
6 earn a release on the \$6 million note?  
7 MR. SAGGESE: I'm going to object to that  
8 question because it misstates his prior testimony,  
9 which was they had an agreement that he would  
10 self-remove as part of a big plan, not that he was  
11 forcefully removed or that he poorly performed. The  
12 question assumes he was kicked out. He's already said  
13 that's not the case, if you want to rephrase it  
14 without that part.  
15 MR. IGLODY: That's fine.  
16 Q. (BY MR. IGLODY) Let me go ahead and  
17 rephrase. Once again, what I'm doing is essentially  
18 asking contention questions; in other words, there's a  
19 contention, and what's the response to that. Right?  
20 And my contention is that you didn't do anything to  
21 earn the release of the \$6 million guaranty. So what  
22 I'm giving you the opportunity to do now is detail for  
23 me what you did that entitled you to the release of  
24 the \$6 million obligation to Herbert Frey.  
25 A. Okay. Well, Ballard Spahr, Rebecca

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1 Winthrop, who was an experienced bankruptcy  
2 attorney -- and at that time, when I was 34 years old,  
3 never experienced anything like this before. Again,  
4 we haven't deposed Mr. Frey, Yacov, I'm sure, through  
5 the last thirty, forty years. They might be a little  
6 more experienced. But my counsel, basically, that I  
7 hired and that was drawing up a plan that represented  
8 Toluca Lake's best interests, with me being a member  
9 through C&S Holdings, had a plan of doing a super  
10 priority loan and/or working the same maneuver of  
11 buying the notes back, which ended up buying.

12 We owed 14 million. They ended up  
13 essentially buying their own note back, and that was  
14 the original strategy. So at a 14 and a half  
15 million-dollar loan balance, they bought their same  
16 note back for 8.3 million, approximately. So that's  
17 about 6 and a half million dollars right there. Then  
18 it was about 5 more million to finish. So 8.3 million  
19 plus 5 is 13 million. The project sells for 22 to  
20 23 million. There's about \$10 million there of  
21 profit. So the note gets paid off. That would have  
22 been a private investor, that all of the large  
23 bankruptcy institutions in L.A. sit there and will  
24 have thirty lenders ready to maneuver through  
25 bankruptcy to pay that. They would have got the note

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1 at 10 to 12 percent. I don't know what kind of deals  
2 they negotiated, but you could have got that money at  
3 a 10 to 12 percent interest rate or have an INR borrow  
4 that money. Then there would have been no money owed  
5 at all to Chinatrust Bank, and there would have been a  
6 \$10 million profit. The \$6 million could have been  
7 paid back to the Frey Family Trust. There would have  
8 been 3 or \$4 million left to pay off any such  
9 creditors, including myself, and everybody would have  
10 made out, and I would have been released.

11 So what did I do? I relinquished my counsel  
12 and relinquished any fight that I had and any  
13 strategies that I had. I had the lenders. I had the  
14 law firms. I had the attorneys. And I said, here, do  
15 what you want with it and when we're done -- they  
16 said, let's work together, do what I say. We're here  
17 for the long run. We believed in your projects,  
18 Chris, trust us, and we're going to release. Okay.  
19 And I did that. So I sat around for two years without  
20 a peep, just trusting that when this time came that  
21 we'd all --

22 They could do what they want. They could  
23 make millions. They bought the note for 8.3, whether  
24 it's the brothers, the relatives, friends, or  
25 whatever. I guess we'll have to depose all of them to

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1 see if any of that came about.

2 But you're asking, what did I earn? They  
3 rendered me unable to make any decisions for any  
4 attempt to pay back the loan and to maneuver all of my  
5 rights in court. So I don't know. For me, I would  
6 think that -- I mean, I've never personally heard of a  
7 Wells Fargo coming into your house and them telling  
8 you on a line of credit, telling you, can I buy this  
9 car, can I buy this ring, and they say yes, no, and  
10 dictate e-mails that say do this, do that, your own  
11 lender telling you what to do, and then they ask --  
12 they say we're going to take your house or your line  
13 of credit and we're going to give you your own  
14 attorneys, you're going to relinquish any rights that  
15 you have to fight, and then they make promises and  
16 come back to come after you. I mean, it's ludicrous.  
17 Talk about triple jeopardy or quadruple jeopardy down  
18 the line.

19 And then, on top of that, maneuvering with  
20 fraudulent acts. It's all sneaky stuff. There's  
21 people that gave money. I'm sure they didn't pay  
22 taxes on the interest paid on those tax years. You  
23 know, money was put through seniors. I mean, it's  
24 just all just stinky. There's brothers and other  
25 people that owed money.

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1 The bottom line is that now, looking back at  
2 the decisions -- and I don't know how they're making  
3 the money. And the 25 percent they were trying to get  
4 to Star Development, that money ethically and honestly  
5 should have always went to Toluca Lake to pay back  
6 creditors, that being -- one of them being the Frey  
7 loan, and they tried to get that money pointed to Star  
8 Development, and that was successful in overturning  
9 that motion in bankruptcy. Even the judge was like,  
10 what the heck are you trying to do, steal from these?  
11 I mean every deal -- every part of there transaction  
12 afterwards just stunk.

13 So you're asking me about the \$6 million? I  
14 just explained one aspect of it. As a matter of fact,  
15 in the e-mails in these exhibits, we broke it down.  
16 We had questions. Hey, we thought we were all going  
17 to -- not only was I going to get paid back, Essential  
18 Investments should have got paid back. They should  
19 have got paid back their \$6 million. I don't know  
20 what these guys did. We haven't found that out yet.  
21 We haven't deposed everybody down the line where this  
22 money and profits came from, insurance payout or title  
23 policy payouts or tax write -- I don't know where all  
24 these guys made their money. But if they didn't make  
25 any money, I doubt that they'd put this much effort

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1 into what they're doing, unless they should have been  
2 fired.  
3 I should have -- you know, unfortunately, I  
4 didn't have the money because I was tied up, lost my  
5 businesses, lost my houses, and trusted them, but I  
6 should have had the money to get a good corporate  
7 lawyer, because I'm still a member of it. And they're  
8 the ones that should be removed as managers if they  
9 were unsuccessful after taking -- after getting an  
10 \$8 million haircut off a building. The market is  
11 booming right now. But anyways, I'm sorry.  
12 Q. What market is booming?  
13 A. The real estate markets are going up in  
14 values right now. There's multiple offers.  
15 Valuations have gone up. In Los Angeles, there's a  
16 waiting list right now.  
17 Q. Waiting list for what?  
18 A. For properties. There's multiple offers on  
19 multiple properties in that area. Valuations are  
20 going up month after month.  
21 Q. And you said earlier in the deposition that  
22 Toluca Lake has sold some units and they're actively  
23 on the market now; right?  
24 A. Yes.  
25 Q. In response to request number 7, which is

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1 page 5 of the Exhibit 11 -- you don't have to read it.  
2 I'm just going to ask you follow-up to be clear. In  
3 terms of the representations that were made to you in  
4 regards to your release from the \$6 million liability  
5 at issue here, it was Steven Gilmore, Gary Frey, Yacov  
6 Hefetz, and Herb Frey who had made these  
7 representations to you; is that correct?  
8 A. That's correct.  
9 Q. Was there anybody else?  
10 A. Not that I recall at this time.  
11 MR. IGLODY: All right. Let's go off the  
12 record for a second.  
13 (Discussion off the record)  
14 Q. (BY MR. IGLODY) Back on the record.  
15 I want to ask you some general background  
16 questions in follow-up. Aside from the Brianhead and  
17 Toluca Lake projects, have you ever acted as a  
18 developer of any other condominium projects?  
19 A. No.  
20 Q. Was that a no?  
21 A. No.  
22 Q. Have you ever developed apartment complexes  
23 or anything like that?  
24 A. Never developed anything.  
25 Q. You said something earlier about the funding

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119  
1 of the loan. We discussed at the beginning of the  
2 deposition that there were obviously quite a few  
3 promissory notes, deeds of trust, guaranties, loan  
4 agreements executed; and then later, when Chinatrust  
5 became involved, even more were executed. And we both  
6 exchanged disclosures in this case regarding that.  
7 And what I want to ask is, aside from all the  
8 paperwork, you had indicated that Herbert Frey had not  
9 paid out \$6 million at some point; is that right?  
10 A. That was like 4.2 million.  
11 Q. On what do you base that?  
12 A. Based on the loan agreement, on one of the  
13 exhibits. It breaks it out.  
14 Q. To narrow it down even more, is it your  
15 contention in this case that Herbert Frey failed to  
16 fulfill his commitments on the initial loan  
17 agreements, not the later stuff?  
18 A. I personally -- when the loan agreements  
19 were given and accepted, and as the market changed, it  
20 really didn't take -- and I don't think any of these  
21 companies and corporations all over the world, and  
22 countries, for that matter, took into any  
23 consideration of what was going on, some of these  
24 things that have happened. You know, banks stopped  
25 funding, going out of business, projects still half a

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120  
1 decade later still sitting there. I don't know if the  
2 documents covered all of the -- but your question  
3 was -- Mr. Frey funded the \$4.3 million in payments,  
4 approximately, based on --  
5 Q. And the 1.7 million deferred interest  
6 payments?  
7 A. And the 1.7 million in deferred interest  
8 payments.  
9 Q. Once again, all I'm trying to do is  
10 establish, for purposes of the trial that we have  
11 coming up, what we're going to trial on. And  
12 obviously we have a big issue to discuss about the  
13 project itself, we have a big issue to discuss about  
14 the default on the project, a huge issue to discuss  
15 about the bankruptcy on the project, and then  
16 basically the core of the matter is what  
17 representations were made and whether or not those  
18 representations were ever made. Right? So we all  
19 agree that we're going to trial on that, and  
20 presumably there will be more discovery exchanges.  
21 What I'm trying to do is narrow the issues  
22 so I know what we're going to trial on. And so far  
23 you haven't pled that somehow Frey failed to adhere to  
24 the initial loan agreement. I just wanted to clarify  
25 that you don't maintain that at all at this point. In

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APP00210

1 other words, he did what he said you were going to do  
2 until you guys ended up in the situation that led to  
3 this litigation here today?

4 A. Well, I disagree. They didn't follow  
5 through with everything they were going to say; and if  
6 they did, they didn't need to be sneaky and file false  
7 documents with the courts. If you're doing stuff  
8 right, why do you file false affidavits that are  
9 clearly in opposition? The bankruptcy judge, which  
10 we'll eventually get those court documents of word for  
11 word what she said, you know, flat out stated that  
12 there's something funky going on here and that  
13 unfortunately they were there for Toluca Lake,  
14 Chinatrust Bank, and that entity to discuss those  
15 issues. And we will get that language. And if there  
16 was nothing funky on their side of it, why would that  
17 be an issue?

18 Q. When you say --

19 A. Funky like they're fraudulent acts. Why  
20 would a judge carve out motions, carve out in a motion  
21 of that approval and state those statements in federal  
22 bankruptcy court if, in fact, if they were doing  
23 everything they said they were doing? I mean, we'll  
24 let a jury or whoever determine all of these attorneys  
25 and relinquishing of counsel and these moves. If

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1 everything was uppity-up, why would they need to do  
2 anything funky like that?

3 Q. Let's talk about transcripts. You said that  
4 you're planning to produce transcripts of bankruptcy  
5 proceedings. Is that right?

6 A. Yeah. We'll have to get all the L.A. fund  
7 and find out where all the funds came from, I would  
8 assume, to buy the note and get their members that  
9 funded those funds. I guess we need IRS records to  
10 find out who was paying the interest for the loan.  
11 Yeah, we've got a lot of stuff to find out.

12 Q. Who was in charge of the books and records  
13 for the Toluca Lake project between 2007 and 2009?

14 A. C&S Holdings.

15 Q. Can you spell that?

16 A. C with an "and" symbol and an S.

17 Q. So your entity then?

18 A. Yes.

19 Q. So who actually did the books, the tedious  
20 entries of expenses and income and things like that?

21 A. Deanna Cruz.

22 Q. C-r-u-z?

23 A. Yes.

24 Q. Where is Deanna Cruz now?

25 A. I don't know.

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123

1 Q. Have you been in contact with Deanna Cruz at  
2 all in the last couple years?

3 A. Well, we filed a suit. She ended up -- I  
4 think she might be in jail. Deanna Cruz, yeah.

5 Q. For what?

6 A. She defrauded World Lingo, which is the  
7 Microsoft company that does the translations, and she  
8 defrauded Silver State Marble & Tile, and she  
9 defrauded our company. She was a prior felon from  
10 Texas, came to Las Vegas on a false ID, and actually  
11 learned how to be a CPA, paid by the Corrections  
12 Department of Texas, and then she came here to Vegas  
13 and defrauded three companies in that 12-month period.  
14 And we actually, through Mark's office, we filed suit  
15 and filed claims. And because of those records, I had  
16 the owner of World Lingo from Australia that had an  
17 office here and Silver State Marble --

18 Anyway, it came out that all these companies  
19 were defrauded, and the last thing I heard is that she  
20 was headed to prison. That's a whole lawsuit we can  
21 provide for you.

22 Q. Let me just clarify, because I'd like to  
23 wrap up here. We have a discovery period that ends  
24 next month, the 21st or something like that. Within  
25 the discovery period we're supposed to wrap up

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124

1 discovery, which includes the written stuff we have  
2 done so far, the disclosures, as well as the  
3 deposition of you that I just took today. After the  
4 close of discovery there's a period for motion  
5 practice here lawyers basically argue things, as  
6 you've witnessed yourself in court, and then we go to  
7 trial. Basically that's straightforward. I'm not  
8 going to see you again until trial, you know, unless  
9 we have the good fortune to be together again; so this  
10 is my one chance to figure out where you're going with  
11 this before we actually go to trial.

12 You mentioned in bankruptcy proceedings that  
13 there were particular statements that were made by a  
14 bankruptcy judge. I can represent to you that as a  
15 bankruptcy petitioner I've looked at the file for the  
16 bankruptcy court in California, and I have not seen  
17 any indication of such statements. So what I am  
18 asking now, subject to your counsel's approval, is if  
19 you would agree to provide whatever it is you're  
20 referring to before the discovery cutoff so that I  
21 would have the opportunity to review it in order to do  
22 whatever I need to do to properly prepare for trial.  
23 Is that something you think you can do?

24 A. We just have to order the transcripts;  
25 right?

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APP00211



1 Q. Right. But I'm just asking, is that  
2 something you think you're going to be able to do?  
3 Because, once again, my review of the record doesn't  
4 show anything like that. There definitely was a  
5 motion practice; I'm not denying that. I'm just  
6 saying, what you're particularly saying here, I have  
7 nothing to support that. So if you would like, I'd  
8 recommend that you supplement before discovery cutoff.  
9 If you could commit to that now, that would be great.  
10 A. Well, you know, Gary Frey actually wrote --  
11 it was right when the notepads came out -- that they  
12 used -- the I notebooks.  
13 Q. The iPad or whatever?  
14 A. Yeah, the iPad. When they first just came  
15 out, Gary Frey had it, and so maybe we'll subpoena all  
16 of his dates, but he wrote the order with the judge,  
17 on the side of his chamber, on his -- they're like,  
18 oh, this is cool.  
19 Q. But the order was entered; right?  
20 A. The order was there.  
21 MR. SAGGESE: I can make the representation  
22 that I read it. It exists. There's no question.  
23 I've read it.  
24 MR. IGLODY: Just disclose it.  
25 MR. SAGGESE: I just have to get it to you.

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1 THE WITNESS: Oh. You haven't seen the  
2 order?  
3 MR. SAGGESE: I've seen the part where the  
4 judge said there's definitely something rotten in  
5 Denmark. I read that.  
6 MR. IGLODY: What I'm saying is, if there's  
7 something out there that you have that you can provide  
8 that would be something for me to read, that would be  
9 great, because I'm sure as heck not going to be  
10 subpoenaing the federal bankruptcy judge in California  
11 to be at the trial here.  
12 MR. SAGGESE: It's public record. I have  
13 it.  
14 MR. IGLODY: That's great. And that's all  
15 I'm asking for, gentlemen. If you could do that, that  
16 would be great, just for my edification. Other than  
17 that, I think I can conclude at this point.  
18 MR. SAGGESE: I just want to ask a couple  
19 follow-up questions, but I'll be quick, because it's  
20 late.  
21 EXAMINATION  
22 BY MR. SAGGESE:  
23 Q. So, Chris, you had an attorney at the  
24 bankruptcy in California; correct? Just yes or no.  
25 A. Yes.

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127  
1 Q. Okay. And you had to fire that attorney?  
2 A. Yes.  
3 Q. And you said you fired him in court?  
4 A. Yes.  
5 Q. In front of the judge?  
6 A. Yes.  
7 Q. Who was that lawyer, by name?  
8 A. Haberbush.  
9 Q. Haberbush. And how did you acquire  
10 Haberbush to be your lawyer?  
11 A. Well, he was given -- appointed to me by  
12 Frey.  
13 Q. When you say appointed, you mean retained by  
14 Frey?  
15 A. Yes.  
16 Q. And then Frey told him to represent you?  
17 A. I was told that he was -- in front of the  
18 eyes of all the judges, that he was supposed to be  
19 representing me.  
20 Q. And that it was your impression that this  
21 individual, even though he was hired by Mr. Frey, that  
22 he was supposed to be looking out for your best  
23 interests?  
24 A. Yes.  
25 Q. And you discovered that he wasn't looking

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128  
1 out for your best interests?  
2 A. No.  
3 Q. And when you discovered that, in front of  
4 the judge, you fired him?  
5 A. Yes.  
6 Q. But, to the best of your knowledge, he  
7 received money, compensation, in the form of a  
8 retainer from Mr. Frey, for you?  
9 A. I never paid him one penny.  
10 Q. Okay. So Haberbush --  
11 A. Nor did I receive a bill, nor did I receive  
12 anything.  
13 Q. Okay. So it's your feeling that this  
14 individual, this lawyer, was put in place to represent  
15 you but was truly representing Frey and Hefetz and the  
16 family trust, et cetera?  
17 A. Yes.  
18 Q. Okay. Mr. Sahn. There's reference to a  
19 letter. It seems to have a stamp on it with your  
20 signature.  
21 A. Mm-hmm.  
22 Q. You said like a stamp.  
23 A. Yes.  
24 Q. It referenced in that letter \$100,000  
25 retainer that had to be paid down for this individual

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1 to be representing you. Did you read that?  
 2 A. Yes.  
 3 Q. Did you pay a \$100,000 retainer for  
 4 Mr. Sahn?  
 5 A. No.  
 6 Q. Did you pay Mr. Sahn one cent?  
 7 A. No.  
 8 Q. Okay. Do you know if Mr. Sahn was paid  
 9 and/or retained by Plaintiff or Mr. Frey?  
 10 A. Yes, he was.  
 11 Q. And again, this individual, paid for by  
 12 Plaintiff and/or potentially paid for by Mr. Frey, was  
 13 supposedly representing your interests to some degree;  
 14 correct?  
 15 A. Well, at that time, I assumed, yes.  
 16 Q. Moving along to the \$1250 checks. In  
 17 Exhibit 10, there were a number of them. Okay? And  
 18 the total -- correct me if I'm wrong -- of these \$1250  
 19 checks --  
 20 A. And cashier's checks, I think.  
 21 Q. And the cashier's checks, combined, the  
 22 total of all these prepared and signed checks which  
 23 counsel has provided as Exhibit 10, total \$24,000; is  
 24 that right?  
 25 A. Approximately.

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1 Q. Where does that \$24,000 number come from?  
 2 A. It comes from the offer and settlement from  
 3 Frey to release all guaranties.  
 4 Q. Which leads me to my next question. Frey  
 5 offered to settle the \$6 million obligation you  
 6 signed --  
 7 A. Mm-hmm.  
 8 Q. -- for \$24,000? And did he send you the  
 9 settlement agreement or did he e-mail it to you? Did  
 10 he produce it? Did you produce it?  
 11 A. He e-mailed it through Star Development.  
 12 Q. So Mr. Frey produced, through Star  
 13 Development, a release for you on \$6 million for --  
 14 and you printed it; correct?  
 15 A. Yes.  
 16 Q. Did you sign it?  
 17 A. Yes.  
 18 Q. And did you bring that signed copy to  
 19 Mr. Frey's office?  
 20 A. Yes, with checks and with cashier's checks.  
 21 Q. And that's what these checks are?  
 22 A. Yes.  
 23 Q. So in e-mail communications with Mr. Frey,  
 24 he gave you a \$6 million release, you signed it, you  
 25 produced the \$24,000 consideration. And when you went

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1 to the office, why -- tell us what happened. What  
 2 interfered with your ability to get that release  
 3 signed and for you to be free of this debt?  
 4 A. Well, Mr. Hefetz was in the office. He  
 5 looked at the document and said that he was going to  
 6 make sure that Mr. Frey didn't sign it, period.  
 7 Q. So he physically interfered with your  
 8 ability to engage in a contract with Mr. Frey?  
 9 A. Yes.  
 10 Q. Took it out of your hand?  
 11 A. Yes.  
 12 Q. Did he have anything else to say in relation  
 13 to your ability to finalize this contract, this  
 14 agreement?  
 15 A. Yeah. He said that he'll make sure that  
 16 Mr. Frey doesn't sign this agreement and that he'll  
 17 make sure that I'll be negotiating with him only.  
 18 Q. Okay. So that leads me to my next question,  
 19 which is: The \$6 million debt we're all here for  
 20 really was a guaranty you signed with Mr. Frey;  
 21 correct?  
 22 A. Frey Family Trust, yes.  
 23 Q. Frey Family Trust. Now Mr. Hefetz is here  
 24 saying he wants the 6 million. Do you know if he  
 25 actually put up \$6 million, Mr. Hefetz?

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1 A. Well, I actually don't know anything. I  
 2 mean, I don't have receipts.  
 3 Q. Of the \$6 million that you guaranteed from  
 4 the Frey Family Trust, how much of it do you know came  
 5 from Mr. Frey?  
 6 A. Well, it's alleged through the documents and  
 7 through their complaint that Yacov Hefetz put up 2.2  
 8 million.  
 9 Q. So if he put up 2.2 million, do you know why  
 10 he is trying through this litigation to get 6 million  
 11 from you?  
 12 MR. IGLODY: Objection. Calls for  
 13 speculation.  
 14 Q. (BY MR. SAGGESE) You can answer.  
 15 A. No.  
 16 Q. Did he communicate to you through messages?  
 17 He's talked to you.  
 18 A. And Star Development received other income  
 19 for negotiating debt.  
 20 Q. Let me ask it this way. He's put up 2-plus  
 21 million dollars of his own money, but he is now suing  
 22 you for 6 million. Has he communicated to you, left a  
 23 voicemail, sent you an e-mail? Has he communicated to  
 24 you why he believes he is justified for an additional  
 25 4 million?

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1 A. No.

2 Q. Do you have any personal understanding why

3 he might be justified for an additional 4 million?

4 A. No.

5 Q. Do you know how he acquired the actual

6 guaranty you signed between you and Mr. Frey for

7 6 million, do you know how he acquired rights to that?

8 A. I don't know. I don't believe he is a

9 licensed mortgage broker.

10 Q. Do you have personal knowledge in regard

11 to whether or not he does actually have your guaranty

12 that you made with Mr. Frey in his possession?

13 A. I've received no notices that he -- no

14 documentation or notices that he has the collaterals

15 against my residences.

16 Q. So did he tell you why he was trying to --

17 why he was -- did he communicate to you why he,

18 Plaintiff Hefetz, was trying to enforce a guaranty for

19 \$6 million that you had with a third party?

20 A. No. No. Other than preventing and

21 modifying my homes, I received no notices.

22 Q. Do you have any documentation related to his

23 legal right to assert and/or enforce this \$6 million

24 obligation against you?

25 A. No, besides the lawsuit and complaint, I

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1 guess.

2 Q. And you don't have any personal knowledge

3 as to how he acquired the \$6 million debt obligation?

4 A. Not other than what's stated on his

5 complaint.

6 Q. Now, the last couple of questions. Of the

7 \$6 million loan that was received from the Herbert

8 Frey Family Trust, how many dollars did you actually

9 personally receive?

10 A. Personally, as an individual?

11 Q. Yeah.

12 A. Zero.

13 Q. So, for clarification of the record, this

14 isn't to say a \$6 million loan was guaranteed by you.

15 You took 2 million of it. The rest went under because

16 the economy tanked. You actually received personally,

17 Chris Beavor as an individual, zero dollars of the

18 6 million?

19 A. That's correct.

20 Q. So you don't have it under a mattress? You

21 don't have it in a bank account? You never received

22 it?

23 A. It's completely documented on a settlement

24 statement. It went to pay off land.

25 Q. All the money?

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1 A. Yes.

2 Q. So you personally guaranteed --

3 A. And some architectural and engineers. The

4 checks weren't paid to me. They were paid directly

5 from Frey to vendors. It was never paid directly to

6 me.

7 Q. Out of the 6 million, you received, as an

8 individual, Chris Beavor, zero?

9 A. Zero.

10 MR. SAGGESE: No other questions.

11 FURTHER EXAMINATION

12 BY MR. IGLODY:

13 Q. As follow-up to those questions, going back

14 to the confrontation in the office where you dropped

15 off the agreement that you had signed but that

16 Mr. Frey did not sign, you're not testifying that

17 Mr. Hefetz physically restrained Mr. Frey from signing

18 the agreement, are you?

19 A. All I know is that he specifically -- I do

20 have voice messages stating that he'll go about his

21 ways of making things happen, and I do have numerous

22 voice messages asserting -- you know, I don't know.

23 He just said that he won't allow him to sign it. And

24 I don't know how old Mr. Frey is. You know, I know

25 there's a lot of senior abuse cases. I don't know. I

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1 don't know how old he is, and I don't know -- I'm

2 saying I know that he said that he won't allow him to

3 sign it.

4 Q. And what did Mr. Frey say?

5 A. I haven't spoken to Mr. Frey.

6 Q. What did he say during that meeting that you

7 described for us?

8 A. Which meeting?

9 Q. The meeting where you dropped off your --

10 A. Well, I was going to Mr. Frey's office, and

11 Mr. Hefetz was there at the office, only.

12 Q. Just so I'm clear, is it your contention in

13 this lawsuit that my client somehow exerted undue

14 influence over Mr. Frey?

15 A. I don't know how a lender releases me with

16 an agreement from an agreement we had two years prior

17 that I fulfilled and releases documents so we release

18 each other and now all of a sudden that document is

19 intercepted and the checks are intercepted and the

20 cashiers are being intercepted and I'm being sued for

21 \$6 million.

22 Q. But isn't it true that you had to pester

23 Mr. Frey to finally at some point to at least consider

24 the agreement?

25 A. I didn't talk to him for months, and he came

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1 of his own free will and contacted me.

2 Q. Is your testimony that he drafted that  
3 agreement?

4 A. Yes.

5 Q. How do you know that?

6 MR. SAGGESE: It was actually from Star.

7 THE WITNESS: It came from Star Development,  
8 actually.

9 MR. SAGGESE: At the request of Mr. Frey,  
10 was what he testified to earlier, but produced by  
11 Star.

12 THE WITNESS: Well, Wayne Krygier allegedly  
13 started as a member or manager of Star Development,  
14 and a representative of Mr. Frey. And I have e-mails  
15 going back and forth that he spoke with Mr. Frey and  
16 Mr. Frey came back. We have phone logs of  
17 conversations, and I'm sure there's phone  
18 conversations or logs somewhere on Mr. Frey's phone, I  
19 would assume, at this time.

20 Q. (BY MR. IGLODY) Do you know when Mr. Hefetz  
21 became involved in the Toluca Lake project?

22 A. I didn't know exactly what date or what  
23 time.

24 Q. Roughly.

25 A. I knew that he worked with Mr. Frey and that

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1 he was a part of the transaction.

2 Q. Part of the transaction from day one?

3 A. Possibly. I didn't know what capacity or  
4 what.

5 Q. So it's fair to say that you knew that he  
6 had some involvement from day one, but you weren't  
7 exactly sure what that involvement was?

8 A. No.

9 Q. But is your testimony today that at some  
10 point when Star Development got involved he definitely  
11 was directly involved? Is that what you're saying?

12 A. Yes.

13 MR. IGLODY: I'm done. That concludes the  
14 deposition.

15 (Thereupon, the deposition was  
16 concluded at 3:25 p.m.)

17 \* \* \* \* \*

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# CERTIFICATE OF WITNESS

2 PAGE LINE CHANGE

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15 I, CHRISTOPHER L. BEAVOR, deponent herein, do  
16 hereby certify and declare the within and foregoing  
17 transcription to be my deposition in said action;  
18 that I have read, corrected, and do hereby affix my  
19 signature to said deposition.

20 \_\_\_\_\_ CHRISTOPHER L. BEAVOR, Deponent

21  
22 Subscribed and sworn to before me this  
23 day of \_\_\_\_\_, 2012.

24 \_\_\_\_\_  
25 Notary Public

Melinda Songstad, RPR - Certified Court Reporter  
(702) 558-6773

# CERTIFICATE OF REPORTER

2 STATE OF NEVADA )  
3 :SS  
4 COUNTY OF CLARK )

5 I, Melinda J. Songstad, RPR, CCR No. 919,  
6 a Certified Court Reporter licensed by the State  
7 of Nevada, do hereby certify:

8 That I reported the deposition of the witness,  
9 CHRISTOPHER L. BEAVOR, commencing on Thursday,  
10 April 26, 2012, at the hour of 10:30 a.m.;

11 That prior to being examined, the witness was  
12 by me first duly sworn to testify to the truth, the  
13 whole truth, and nothing but the truth; that I  
14 thereafter transcribed my said shorthand notes into  
15 typewriting and that the typewritten transcript of  
16 said deposition is a complete, true, and accurate  
17 record of testimony provided by the witness at said  
18 time;

19 I further certify (1) that I am not a relative  
20 or employee of an attorney or counsel of any of the  
21 parties, nor a relative or employee of any attorney  
22 or counsel involved in said action, nor a person  
23 financially interested in the action, and (2) that  
24 transcript review by the witness pursuant to  
25 Rule 30(e) was requested.

IN WITNESS WHEREOF, I have hereunto set my hand  
in the County of Clark, State of Nevada, this 26th day  
of May, 2012.

20 \_\_\_\_\_  
21 *Melinda J. Songstad*  
22 Melinda J. Songstad, RPR, CCR No. 919  
23  
24  
25

Melinda Songstad, RPR - Certified Court Reporter  
(702) 558-6773

APP00215

# **EXHIBIT 6**

## PAYMENT GUARANTY

THIS PAYMENT GUARANTY ("Guaranty") made as of March 29, 2007, by Christopher Beavor, an individual, and Samantha Beavor, an individual (collectively, "*Guarantor*"), to and for the benefit of Herbert Frey, Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982 ("*Lender*").

## RECITALS

A. On or about the date hereof Toluca Lake Vintage, LLC, a California limited liability company, ("*Borrower*") and Lender entered into that certain Loan Agreement ("*Loan Agreement*") whereby Lender agreed to make a secured loan (the "*Loan*") available to Borrower in the aggregate amount of Six Million Dollars (\$6,000,000), to finance the acquisition and development of the Toluca Lake Property. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

B. In connection with the Loan, Borrower will execute and deliver the Notes in favor of Lender, payment of which will be secured by (i) the Deeds of Trust made by Borrower in favor of Lender and (ii) the other Security Documents.

C. Guarantor will derive material financial benefit from the Loan evidenced and secured by the Notes, the Deeds of Trust and the other Security Documents.

D. Lender has relied on the statements and agreements contained herein in agreeing to make the Loan. The execution and delivery of this Guaranty by Guarantor is a condition precedent to the making of the Loan by Lender.

## AGREEMENTS

NOW, THEREFORE, intending to be legally bound, Guarantor, in consideration of the matters described in the foregoing Recitals, which Recitals are incorporated herein and made a part hereof, and for other good and valuable consideration the receipt and sufficiency of which are acknowledged, hereby covenants and agrees for the benefit of Lender and its respective successors, indorsees, transferees, participants and assigns as follows:

1. Guarantor absolutely, unconditionally and irrevocably guarantees:

(a) the full and prompt payment of the principal of and interest on the Notes when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, and the full and prompt payment of all sums which may now be or may hereafter become due and owing under the Notes, the Loan Agreement and the other Loan Documents;

(b) the prompt, full and complete performance of all of Borrower's obligations under each and every covenant contained in the Loan Documents; and

(c) the full and prompt payment of any Enforcement Costs (as hereinafter defined in Section 6 hereof).

All amounts due, debts, liabilities and payment obligations described in subsections (a) and (b) of this Section 1 shall be hereinafter collectively referred to as the "Indebtedness".

2. In the event of any default by Borrower in the payment of the Indebtedness, after the expiration of any applicable cure or grace period, Guarantor agrees, on demand by Lender or the holder of the Note, to pay the Indebtedness regardless of any defense, right of set-off or claims which Borrower or Guarantor may have against Lender or the holder of the Note.

All of the remedies set forth herein and/or provided for in any of the Loan Documents or at law or equity shall be equally available to Lender, and the choice by Lender of one such alternative over another shall not be subject to question or challenge by Guarantor or any other person, nor shall any such choice be asserted as a defense, setoff, or failure to mitigate damages in any action, proceeding, or counteraction by Lender to recover or seeking any other remedy under this Guaranty, nor shall such choice preclude Lender from subsequently electing to exercise a different remedy. The parties have agreed to the alternative remedies provided herein in part because they recognize that the choice of remedies in the event of a default hereunder will necessarily be and should properly be a matter of good faith business judgment, which the passage of time and events may or may not prove to have been the best choice to maximize recovery by Lender at the lowest cost to Borrower and/or Guarantor.

3. Guarantor does hereby (a) waive notice of acceptance of this Guaranty by Lender and any and all notices and demands of every kind which may be required to be given by any statute, rule or law, (b) agree to refrain from asserting, until after repayment in full of the Loan, any defense, right of set-off or other claim which Guarantor may have against Borrower (c) waive any defense, right of set-off or other claim which Guarantor or Borrower may have against Lender, or the holder of the Note, (d) waive any and all rights Guarantor may have under any anti-deficiency statute or other similar protections, (e) waive presentment for payment, demand for payment, notice of nonpayment or dishonor, protest and notice of protest, diligence in collection and any and all formalities which otherwise might be legally required to charge Guarantor with liability, and (f) waive any failure by Lender to inform Guarantor of any facts Lender may now or hereafter know about Borrower, the Loan, or the transactions contemplated by the Loan Agreement, it being understood and agreed that Lender has no duty so to inform and that Guarantor is fully responsible for being and remaining informed by Borrower of all circumstances bearing on the risk of nonperformance of Borrower's obligations. Credit may be granted or continued from time to time by Lender to Borrower without notice to or authorization from Guarantor, regardless of the financial or other condition of Borrower at the time of any such grant or continuation.

4. Guarantor further agrees that Guarantor's liability as guarantor shall not be impaired or affected by any renewals or extensions which may be made from time to time, with or without the knowledge or consent of Guarantor of the time for payment of interest or principal under the Notes or by any forbearance or delay in collecting interest or principal under the Notes, or by any waiver by Lender under the Loan Agreement, Deeds of Trust or any other Loan Documents, or by Lender's failure or election not to pursue any other remedies it may have against Borrower or Guarantor, or by any change or modification in the Notes, Loan Agreement, Deeds of Trust or any other Loan Document, or by the acceptance by Lender of any additional security or any increase, substitution or change therein, or by the release by Lender of any security or any withdrawal thereof or decrease therein, or by the application of payments received from any source to the payment of any obligation other than the Indebtedness even though Lender might lawfully have elected to apply such payments to any part or all of the Indebtedness, it being the intent hereof that, subject to Lender's compliance with the terms of this Guaranty, Guarantor shall remain liable for the payment of the Indebtedness, until the Indebtedness has been paid in full, notwithstanding any act or thing which might otherwise operate as a legal or equitable discharge of a surety. Guarantor further understands and agrees that Lender may at any time enter into agreements with Borrower to amend and modify the Notes, Loan Agreement, Deeds of Trust or other Loan Documents,

and may waive or release any provision or provisions of the Notes, Loan Agreement, Deeds of Trust and other Loan Documents or any thereof, and, with reference to such instruments, may make and enter into any such agreement or agreements as Lender and Borrower may deem proper and desirable, without in any manner impairing or affecting this Guaranty or any of Lender's rights hereunder or Guarantor's obligations hereunder.

5. This is an absolute, present and continuing guaranty of payment and not of collection. Guarantor agrees that this Guaranty may be enforced by Lender without the necessity at any time of resorting to or exhausting any other security or collateral given in connection herewith or with the Notes, Loan Agreement, Deeds of Trust or any of the other Loan Documents through foreclosure or sale proceedings, as the case may be, under the Deeds of Trust or otherwise, or resorting to any other guaranties, and without limiting the generality of the foregoing, Guarantor waives any right Guarantor may have under the Nevada one action rule, Nevada Revised Statutes Section 40.430.

6. If: (a) this Guaranty is placed in the hands of an attorney for collection or is collected through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Guaranty; (c) an attorney is retained to provide advice or other representation with respect to this Guaranty; or (d) an attorney is retained to represent Lender in any proceedings whatsoever in connection with this Guaranty and Lender prevails in any such proceedings, then Guarantor shall pay to Lender upon demand all attorney's fees, costs and expenses incurred in connection therewith (all of which are referred to herein as "*Enforcement Costs*"), in addition to all other amounts due hereunder, regardless of whether all or a portion of such Enforcement Costs are incurred in a single proceeding brought to enforce this Guaranty as well as the other Loan Documents.

7. The parties hereto intend and believe that each provision in this Guaranty comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Guaranty is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Guaranty to be illegal, invalid, unlawful, void or unenforceable, as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Guaranty shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Lender or the holder of the Note under the remainder of this Guaranty shall continue in full force and effect.

8. TO THE GREATEST EXTENT PERMITTED BY LAW, GUARANTOR HEREBY WAIVES ANY AND ALL RIGHTS TO REQUIRE MARSHALLING OF ASSETS BY LENDER WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS GUARANTY (EACH, A "PROCEEDING"), LENDER AND GUARANTOR IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN THE CITY OF LAS VEGAS, AND STATE OF NEVADA, AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS GUARANTY SHALL PRECLUDE LENDER FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. LENDER



AND GUARANTOR FURTHER AGREE AND CONSENT THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY PROCEEDING IN ANY NEVADA STATE OR UNITED STATES COURT SITTING IN THE CITY OF LAS VEGAS AND MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE APPLICABLE PARTY AT THE ADDRESS INDICATED BELOW, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF SUCH PARTY SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

9. Any indebtedness of Borrower to Guarantor now or hereafter existing is hereby subordinated to the payment of the Indebtedness. Guarantor agrees that, until the entire Indebtedness has been paid in full, Guarantor will not seek, accept, or retain for its own account, any payment from Borrower on account of such subordinated debt. Any payments to Guarantor on account of such subordinated debt shall be collected and received by Guarantor in trust for Lender and shall be paid over to Lender on account of the Indebtedness without impairing or releasing the obligations of Guarantor hereunder.

10. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to such courier service or (d) if by telecopier on the day of transmission so long as copy is sent on the same day by overnight courier as set forth below:

Guarantor:

Christopher Beavor  
1930 Village Center Circle Suite 3-231  
Las Vegas, Nevada 89134  
Telephone: (702) 853-7900  
Facsimile: (702) 947-6111

Lender:

Herbert Frey, Trustee of the Herbert Frey  
Revocable Family Trust dated November 22, 1982  
157 E. Warm Springs Road  
Las Vegas, Nevada 89119  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

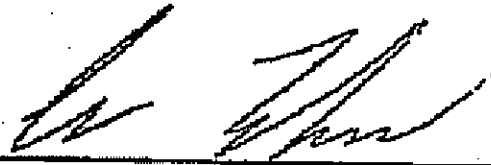
or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

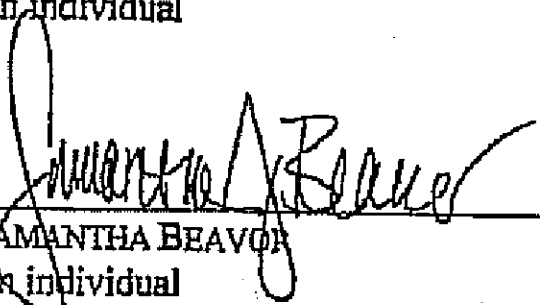
11. This Guaranty shall be binding upon the heirs, executors, legal and personal representatives, successors and assigns of Guarantor and shall not be discharged in whole or in part by the death of Guarantor. If more than one party executes this Guaranty, the liability of all such parties shall be joint and several.

12. This Guaranty may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Guarantor has delivered this Guaranty in the State of Nevada as of the date first written above.

GUARANTOR:

  
3/28/07  
CHRISTOPHER BEAVOR  
An individual

  
3/28/07  
SAMANTHA BEAVOR  
An individual

# EXHIBIT 7

1 **RESP**  
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; and  
14 ALIS COHEN, an individual,

15 Plaintiffs,

16 vs.

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

21 Defendants.

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

**DEFENDANTS' RESPONSES TO  
PLAINTIFFS' FIRST SET OF  
INTERROGATORIES**

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

24 Counterclaimants,

25 vs.

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

Counter-Defendant.

COMES NOW, DEFENDANTS, by and through their undersigned counsel, and respond  
to Plaintiffs' First Set of Interrogatories to Defendants.

1 **REQUEST NO. 1:**

2 Please set forth the facts supporting Your denial of Plaintiffs' allegation that You  
3 defaulted on Your loan guarantee obligations to Plaintiffs.  
4

5 **RESPONSE TO REQUEST NO. 1:**

6 It was believed that all financial obligations to the lender were settled by executing  
7 settlement agreements and initiating payments, etc. Toluca Lake Vintage, LLC, was managed by  
8 Plaintiff, and management was released to Star Development, which was managed by Yacov  
9 Hefetz. All rights to defense were released to Ballard Spahr Ingersoll for appointed counsel by  
10 Lender, the Herbert Frey Revocable Family Trust dated November 22, 1982 and Yacov Hefetz.  
11 All legal bills for Defendants were always paid by Plaintiffs.  
12  
13

14 **REQUEST NO. 2:**

15 Please set forth the facts supporting Your denial of Plaintiffs' allegation that Plaintiffs  
16 performed their obligations under the Loan.  
17

18 **RESPONSE TO REQUEST NO. 2:**

19 Plaintiff was not the lender or a party to the loan agreement, loan documents or guarantee  
20 with the Herbert Frey Revocable Family Trust dated November 22, 1982.  
21

22 **REQUEST NO. 3:**

23 Please set forth and explain the nature of the real estate project alleged in Paragraph 7 and  
24 11 of the Counterclaim.  
25

26 **RESPONSE TO REQUEST NO. 3:**

27 The real estate project alleged in Paragraphs 7 and 11 of the Counterclaim consisted of a  
28 45-unit condominium development in Toluca Lake, California, with one 20-unit building located

1 at 10639-10653 Woodbridge Street, Toluca Lake, California, and one 25-unit building located at  
2 10648-10660 Woodbridge Street, Toluca Lake, California.

3 **REQUEST NO. 4:**  
4

5 Please set forth the identity of the "bank backing the project" as alleged in Paragraph 13  
6 of the Counterclaim.

7 **RESPONSE TO REQUEST NO. 4:**  
8

9 The bank backing the real estate project was Chinatrust Bank, located in California. The  
10 information for the loan officer with Chinatrust Bank is as follows:

11 Melody Tsai  
12 Chinatrust Bank (U.S.A.)  
13 17851-A1 Colima Road  
14 City of Industry, California 91748  
15 Tel. (626) 913-8815 extension 103  
16 Fax (626) 839-5784

17 **REQUEST NO. 5:**  
18

19 Please set forth the loan amount and date of the loan from the "bank backing the project"  
20 as alleged in Paragraph 13 of the Counterclaim.

21 **RESPONSE TO REQUEST NO. 5:**  
22

23 The loan amount from Chinatrust Bank was \$22,000,000.00, and was dated August 21,  
24 2007.

25 **REQUEST NO. 6:**  
26

27 Please explain why the "bank backing the project" ceased funding the loan, halting  
28 construction, as alleged in Paragraph 13 of the Counterclaim.

...

...

1 **RESPONSE TO REQUEST NO. 6:**

2       The Herbert Frey Revocable Family Trust dated November 22, 1982 (“Lender”) was an  
3 additional guarantor on the loan along with Defendants. Lender refused to sign an extension  
4 agreement that Chinatrust Bank presented to all guarantors to sign for the continued funding of  
5 the construction project in Toluca Lake, California, which is the subject of this instant litigation.  
6 Lender and Plaintiffs advised Defendants to obtain legal counsel of their choosing to file suit  
7 against Chinatrust Bank for lender liability claims, then presented Defendants with the plan that  
8 they (Lender and Plaintiffs) would take over Toluca Lake Vintage, LLC, so they could maneuver  
9 the development in their favor and negotiate the loan balance down and finish the project and the  
10 profits could be split as a team. Lender and Plaintiffs then asked Defendants to release all  
11 counsel and rights for defense so they could negotiate a deal with Chinatrust Bank. This deal  
12 would be a discount of the construction loan note with the balance of approximately  
13 \$14,500,000.00, an extension of the loan terms and continued funding of the project, and if  
14 Chinatrust Bank did not comply, a lender liability suit would be filed against them. Then,  
15 Bankruptcy protection would be filed with the Debtor in Possession which was Toluca Lake  
16 Vintage, LLC, the borrower of the \$6 million dollar loan, which Defendants signed personal  
17 guarantee for. It was agreed that prior to Defendants releasing counsel and following the  
18 direction of the Lender and Plaintiff that, at minimum, Defendants would be released from the all  
19 personal guarantees and would participate in the profits of completing the development project.

20 **REQUEST NO. 7:**

21       Please identify the individuals who allegedly contacted You “with a strategy” – as  
22 alleged in Paragraph 15 of the Counterclaim, and explain the specific details of those alleged  
23 communications (dates, times, witnesses, details of conversation, etc.)  
24

1 **RESPONSE TO REQUEST NO. 7:**

2 Stephen Gilmore, now deceased, was a representative of Lender and basically reviewed  
3 and approved every business decision made by Defendants regarding the loans and construction  
4 projects. On or about April 21, 2009, Defendant Chris Beavor was approached by Stephen  
5 Gilmore, Gary Frey and Plaintiff Hefetz, and was informed to that he was to do what he was told  
6 and "trust" Mr. Frey and Jacob Hefetz. He was told that "we" were a team—Frey Family Trust  
7 ("Lender"), Star Development, LLC, and Plaintiff Hefetz. Defendant Beavor was supposed to  
8 release all prior counsel, sign all documents that were presented to him, hire counsel that  
9 Plaintiff Hefetz, Mr. Frey appointed to him, and all billing and legal fees would be paid for (see  
10 Agreement for Legal Services attached as Exhibit A). If Defendant Beavor did exactly what he  
11 was told, that "we" would purchase the discounted note from the bank, Defendants would be  
12 released from all personal guarantees and would receive income from the completion of the  
13 project. As such, Defendant released his counsel and signed to their counsel. Defendant released  
14 management of Toluca Lake Vintage, LLC to Star Development, LLC, a company that had just  
15 formed by Plaintiff Hefetz to manage Toluca Lake Vintage, LLC. Defendant did what the parties  
16 asked that was within the law and ethical. The plan was that Plaintiff Hefetz and Lender were to  
17 obtain legal counsel for all parties, including Defendants Chris and Samantha Beavor, Alan  
18 Floyd and Robert Rink as individuals, hire counsel for Toluca Lake Vintage, LLC, and hire  
19 counsel for Mr. Frey and the Frey Family Trust, and Plaintiff Hefetz, the \$2.2 million dollar  
20 silent lender via the Frey Family Trust.

21  
22 On May 13, 2009, Star Development, LLC, whose Manager and Member was Plaintiff  
23 Hefetz, became Manager of Toluca Lake Vintage, LLC, and assumed full control over the  
24  
25  
26  
27  
28



1 company. On May 14, 2009, Toluca Lake Vintage, LLC, filed bankruptcy while under control of  
2 Plaintiff Hefetz via Star Development, LLC.

3 **REQUEST NO. 8:**

4  
5 Please set forth how, according to your allegations, "Counter-Defendant Hefetz caused  
6 Toluca Lake Vintage, LLC to file bankruptcy, causing the loan to default and the \$6,000,000.00  
7 to become due to Lender." – as alleged in Paragraph 17 of the Counterclaim.

8 **RESPONSE TO REQUEST NO. 8:**

9  
10 On May 13, 2009, Star Development LLC, became the Manager of Toluca Lake Vintage,  
11 LLC. Star Development was managed by Yacov Hefetz, who became, in turn, Manager of  
12 Toluca Lake Vintage, LLC, and had full control over the company. On May 14, 2009, Toluca  
13 Lake Vintage, LLC, filed bankruptcy, while under the control, management and direction of  
14 Yacov Hefetz. As a result of the bankruptcy, the terms of the loan were violated, causing the loan  
15 to default and the \$6,000,000.00 to become due to Lender the loan that Hefetz received and now  
16 filed suit against defendants which He caused to be in default.

17 **REQUEST NO. 9:**

18  
19 Please set forth the identity of the attorney or attorneys set forth in Paragraph 22 of the  
20 Counterclaim.

21 **RESPONSE TO REQUEST NO. 9:**

22  
23 David R. Haberbush, Esq.  
24 HABERBUSH & ASSOCIATES, LLP  
25 444 West Ocean Boulevard, Suite 1400  
26 Long Beach, CA 90802  
27 Telephone: (562) 435-3456  
28 Facsimile: (562) 435-6335  
Mobile: (562) 884-0090  
Cell: (562) 533-1851

...

1 **REQUEST NO. 10:**

2 Please set forth the exact details of the events alleged in Paragraph 23 of the  
3 Counterclaim regarding the ostensible settlement reached between You and Lender in which you  
4 were ostensibly released from obligations to Lender. Your explanation should include, but not be  
5 limited to, the identity of the individual who supposedly reached this agreement and the date  
6 upon which it was supposedly reached.  
7

8 **RESPONSE TO REQUEST NO. 10:**

9 See Response to Interrogator No. 7.  
10

11 **REQUEST NO. 11:**

12 Please set forth the date and details of the alleged call "from Counter-Defendant Hefetz  
13 stating that he was going to force Lender to assign him the outstanding debts, to which  
14 Counterclaimants could never be released." Specifically, set forth the nature of the call; the  
15 parties to the call; the date of the call; and the exact topics discussed on the call.  
16  
17

18 **RESPONSE TO REQUEST NO. 11:**

19 On January 13, 2011, at approximately 1:00 pm, Defendant Christopher Beavor  
20 attempted to drop off the settlement agreement offered by the Herbert Frey Revocable Family  
21 Trust dated November 22, 1982 ("Lender"). On January 16, 2011, Plaintiff Hefetz called  
22 Defendant Beavor to inform him that he would not allow Mr. Frey/Lender to sign the release that  
23 Lender prepared to release all guarantees and to comply with the prior agreements with  
24 Defendants. Plaintiff Hefetz informed Defendant Beavor that he didn't care if he lost his home  
25 to foreclosure and would not release him from the debt. He stated that Defendant Beavor would  
26 need to pay \$6,000,000.000 to him or his children for the rest of Defendant Beavor's life.  
27  
28

1 Beavor emailed him on January 18, 2011, and informed Hefetz that he would only sign the  
2 agreement that Mr. Frey/Lender and he had already agreed to. For reference, please see the email  
3 from Plaintiff Hefetz to Defendant Beavor dated February 11, 2011 at 9:29 a.m., attached hereto  
4 as Exhibit B. Per the original Complaint, on page 3, paragraph 15, "On or about July 6, 2011,  
5 Lender assigned to Plaintiffs all the Lenders's right, title and interest in and to the Loan,  
6 including all documents evidencing, securing, guaranteeing or otherwise executed in connection  
7 with the Loan." Defendant Beavor was told on the date in which he attempted to drop off the  
8 settlement documents that were prepared by Lender that Mr. Frey of the Herbert Frey Revocable  
9 Family Trust dated November 22, 1982, the original Lender, shared an office with Plaintiff  
10 Hefetz in the Flamingo Hilton on Las Vegas Boulevard.  
11

12  
13 **REQUEST NO. 12:**  
14

15 Please set forth the factual basis for the allegation in Paragraph 32 of the Counterclaim  
16 that "Counter-Defendant Hefetz caused, through Star Development as Manager, false  
17 information to be relayed to Star Development's counsel ... stating that there existed a global  
18 settlement agreement that would have released all parties to \$6,000,000.00 loan." Specially, set  
19 forth Your Source of Information for this allegation.  
20

21 **RESPONSE TO REQUEST NO. 12:**  
22

23 There was an affidavit that was false that was given to the courts. On January 21, 2010,  
24 declaration from Victor Sahn, attorney for Toluca Lake Vintage, LLC, was submitted to the  
25 Court, which stated that he had knowledge of negotiations between the parties. Defendant  
26 Beavor never spoke with Victor Sahn. The only information received by Victor Sahn would have  
27 come from Plaintiff Hefetz via Star Development, LLC. Toluca Lake Vintage, LLC, at the time,  
28 was managed by Star Development, LLC, via Plaintiff Hefetz, (The affidavit of Victor Sahn has

1 been previously provided in Defendant's First Supplemental List of Witnesses & Documents  
2 Pursuant to NRCP 16.1)

3  
4 **REQUEST NO. 13:**

5 Please set forth the factual basis for the allegation in Paragraph 35 of the Counterclaim  
6 that You "Justifiably relied on prior representation of Counter-Defendant Hefetz."  
7

8 **RESPONSE TO REQUEST NO. 13:**

9 Plaintiff Hefetz and his children are the members of Star Development, LLC, and all seek  
10 to benefit from the fraud propagated by Plaintiff. Defendants relied on Plaintiff Hefetz via Star  
11 Development, LLC, to provide accurate and honest information as management of Toluca Lake  
12 Vintage, LLC, to Defendants as members of Toluca Lake Vintage, LLC.  
13

14 **REQUEST NO. 14:**

15  
16 Please set forth with specific particularity the calculation and nature of damages You  
17 claim to have suffered under Your first Claim for Relief for Fraud.

18 **RESPONSE TO REQUEST NO. 14:**

19  
20 I have lost my marriage. The pressure and stress resulted in my wife medicating her  
21 stress, rendering an impossible personal relationship. I later found out that Plaintiff Hefetz  
22 approached my wife at the time and asked her out on dates including giving her illegal drugs  
23 like cocaine. The expense for drug treatment exceeded \$15,000.00 and her inability to function  
24 still today has resulted in over a \$100,000.00 loss of job income. I have lost 9 rental properties  
25 that I was unable to modify the debt because the unwillingness of Plaintiff Hefetz to release the  
26 \$6,000,000.00 deed of trust against my properties. Because of the \$6,000,000.00 deed of trust  
27 that was attached to my rental property, the lenders in first trust deed positions were unable to  
28

1 modify the loans so that I could keep the properties and debt service the loans via the monthly  
2 rental income. These 9 rental properties were going to be my retirement once they were paid in  
3 full via the monthly rental payments that I was receiving and would receive for the foreseeable  
4 future. These 9 properties were valued at approximately \$3,000,000.00 and were to paid off  
5 within 20 years when I would be approximately 55 years of age. I have emails in February 2011  
6 to Plaintiff Hefetz referencing my frustration and stress with this situation.  
7

8 **REQUEST NO. 15:**

9  
10 Please identify the agreement You allege forms the basis for Your Second Claim for  
11 Relief for Breach of the Covenant of Good Faith and Fair Dealing.  
12

13 **RESPONSE TO REQUEST NO. 15:**

14 As manager of Toluca Lake Vintage, LLC, Plaintiff Hefetz, via Star Development, made  
15 choices and decisions that he knew were not in the best interest of Toluca Lake Vintage, LLC,  
16 and for the Members which directly are the Defendants in this case. One such choice is relaying  
17 false information to Toluca Lake Vintage bankruptcy counsel, Victor Sahn, evidenced by the  
18 Motion on January 21, 2010, where Victor Sahn states there were good faith negotiations  
19 between "Defendants and Plaintiffs" when no such negotiations ever took place. This false  
20 information was received from Sahn via Hefetz and Hefetz's direct agents.  
21  
22

23 **REQUEST NO. 16:**

24 Please set forth with specific particularity the calculation and nature of damages You  
25 claim to have suffered under Your Second Claim for Relief for Breach of the Covenant of Good  
26 Faith and Fair Dealing.  
27

28 ...

1 **RESPONSE TO REQUEST NO. 16:**

2 See Response to Request No. 14.

3  
4 **REQUEST NO. 17:**

5 Please set forth the facts supporting the allegation that there was fiduciary relationship  
6 between "Counter –Defendant Hefetz, as a manager of Star Development, LLC, and Star  
7 Development, as Manager of Toluca Lake Vintage, LLC" and "Counterclaimant, [as] owner of  
8 Toluca Lake Vintage, LLC."  
9

10  
11 **RESPONSE TO REQUEST NO. 17:**

12 Christopher Beavor and Samantha Beavor are 65% owners/members of Toluca Lake  
13 Vintage via C & S Holding LLC, which is 100% owned by the Beavors. Star Development,  
14 LLC, was managed by Yacov Hefetz. Star Development, LLC, then assumed management of  
15 Toluca Lake Vintage, LLC. As Managers of Star Development, Hefetz had a fiduciary  
16 responsibility to represent the best interest of the Members of Toluca Lake Vintage, LLC, per  
17 the operating agreement and had a duty to not act in bad faith.  
18

19  
20 **REQUEST NO. 18:**

21 Please set forth with specific particularity the calculation and nature of damages You  
22 claim to have suffered under Your Third Claim for Relief for Breach of Fiduciary Duty.

23  
24 **RESPONSE TO REQUEST NO. 18:**

25 See Response to Request No. 14. The damages are still ongoing and will be hard to determine.  
26 The stress and inability Plaintiff Hefetz has caused is life altering.  
27

28 ...

1 **REQUEST NO. 19:**

2 Please set forth the date and terms of the agreement you allege to have entered-into with  
3 the Herbert Frey Revocable Trust, dated November 22, 1982 in Paragraph 53 of the  
4 Counterclaim. Specifically, please set forth the terms; the persons You allege negotiated the  
5 terms; and the consideration given under the alleged agreement; and the range of dates that  
6 comprised the negotiations that eventually culminated in the alleged agreement.  
7

8  
9 **RESPONSE TO REQUEST NO. 19:**

10 Wayne Krygier, Manager of Star Development and representative of Mr. Frey (Lender),  
11 on or about November 20<sup>th</sup>, 2010, contacted Defendant Beavor to inform him that Lender was  
12 going to be releasing Defendants of all guarantees and obligations as promised in regards to the  
13 \$6,000,000.00 loan to Toluca Lake Vintage, LLC. Wayne Krygier asked Defendant Beavor to  
14 provide documents and title reports for the remaining property Defendants still had in their  
15 possession. On December 6<sup>th</sup>, 2010, Chris Beavor sent all information that had been requested  
16 by Wayne via email (see attached Exhibit C). Thursday, December 30, 2010 at 8:05 pm, Wayne  
17 Krygier, co-Manager with Plaintiff Hefetz of Star Development and representative for Lender,  
18 emailed Chris Beavor a settlement agreement that released Defendants of their guarantees and  
19 also released Lender and Plaintiff Hefetz of any prior wrongdoing. On January 6, 2011, Chris  
20 Beavor sent to Krygier a copy of the signed agreement and informed Krygier that he would be  
21 dropping off the original release documents at Lender's offices where he shares an office with  
22 Plaintiff Hefetz.  
23

24 ...  
25

26 ...  
27

1 **REQUEST NO. 20:**

2 Please set forth with specific particularity the calculation and nature of damages you are  
3 claiming under your Fourth Claim for Relief for Negligence Per Se.  
4

5 **RESPONSE TO REQUEST NO. 20:**

6 See Responses to Request Nos. 14 and 18.  
7

8 **REQUEST NO. 21:**

9 Please set forth with specific particularity the special damages you claim to have incurred  
10 in this action.  
11

12 **RESPONSE TO REQUEST NO. 21:**

13 See Responses to Request Nos. 14 and 18.  
14

15 **REQUEST NO. 22:**

16 Please set forth with specific particularity the future damages you allege to have incurred  
17 in this action.  
18

19 **RESPONSE TO REQUEST NO. 22:**

20 See Responses to Request Nos. 14 and 18. Furthermore, as a result of this action and the  
21 situation that has developed from these events, Defendants have been unable to move forward  
22 with the development of their business due to the current legal situation. Financing cannot be  
23 obtained for the development of additional real estate projects, thereby limiting the financial  
24 support for ongoing business expenses, creating a strain for daily life.  
25  
26

27 ...

28 ...



1 **REQUEST NO. 23:**

2  
3 Please set forth with specific particularity the prejudgment interest you allege you are  
4 entitled to in this action. Please include the principal amount upon which you allege prejudgment  
5 interest is accruing.

6 **RESPONSE TO REQUEST NO. 23:**

7  
8 Objection. This response calls for a legal conclusion.

9 **REQUEST NO. 24:**

10  
11 To the extent any response to the Requests for Admission served concurrently herewith is  
12 not an unequivocal admit, please set forth the basis for the lack of admissions.

13 **RESPONSE TO REQUEST NO. 24:**

14  
15 Please see all Responses to Admissions as all bases for denials were fully explained  
16 therein.

17 **REQUEST NO. 25:**

18  
19 Please set forth the identity of each person who You allege witnessed the events alleged  
20 in Paragraph 29 of the Counterclaim.

21 **RESPONSE TO REQUEST NO. 25:**

22  
23 Jeffrey Hatfield drove with me Defendant Beavor in his car—he was a Real Estate Agent  
24 that was going to show him property that day in the area.

25 **REQUEST NO. 26:**

26  
27 Please set forth the date of each attempt You made to obtain a signature on the settlement  
28 agreement You allege in Paragraph 29 of the Counterclaim. For each attempt at a signature,

1 please set forth the date and individuals involved in any way in Your attempt to obtain a  
2 signature.

3  
4 **RESPONSE TO REQUEST NO. 26:**

5 Defendant Beavor made multiple attempts to have the settlement agreement executed  
6 between the dates of January 10, 2011 and January 14, 2011. Additionally, multiple attempts  
7 were made to communicate with the parties via phone and email to discuss obtaining said  
8 signatures during the aforementioned dates. Calls and emails were placed to Plaintiff Hefetz and  
9 to Wayne Krygier. Defendant will be checking his phone records to provide additional proof of  
10 such. Furthermore, emails were again sent on January 30, 2011, February 1, 2, 3, 8 and 30, 2011,  
11 to Plaintiff Hefetz, which Wayne Krygier was courtesy copied. Plaintiff Hefetz was also contact  
12 by phone on February 30, 2011.  
13  
14

15 DATED this 14<sup>th</sup> day of March, 2012.

16  
17 /s/ MARC A. SAGGESE, ESQ.

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

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**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that on the 15<sup>th</sup> day of March, a copy of the foregoing  
**DEFENDANTS' RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**  
was sent via electronic mail and US Mail in a sealed envelope, postage pre-paid, to the following  
counsel of record:

Lee I. Iglody, Esq.  
Iglody Law  
3960 Howard Hughes Pkwy., Suite 600  
Las Vegas, NV 89169  
lee@iglody.com

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

/s/ Alexis Vardoulis

---

An employee of SAGGESE & ASSOCIATES, LTD.

# EXHIBIT 8

# SulmeyerKupetz

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW SINCE 1952

April 23, 2009

Toluca Lake Vintage, LLC,  
a California limited liability company  
c/o Mr. Christopher Beavor

Re: Agreement for Legal Services

Dear Mr. Beavor:

SulmeyerKupetz, a Professional Corporation, is pleased that the firm has been selected to represent Toluca Lake Vintage, LLC (sometimes referred to as "you" or "Toluca Lake") to assist in connection with its financial problems including its problem with Chinatrust Bank ("Bank").

Our objective is to provide high quality legal services to our clients at a fair and reasonable cost. This letter agreement ("Agreement") explains the conditions under which we agree to represent you, and confirms our understanding with respect to payment of legal fees, costs and expenses incurred in conjunction with such representation. Inasmuch as this letter constitutes a legal agreement between us, we cannot advise you concerning it. We apologize for the inherent formality of this letter agreement, but we believe that it is important for our clients to have a clear understanding of the firm's policies regarding legal fees and costs from the inception of our relationship. Moreover, many of the provisions of this letter are required or recommended by California law.

1. **Description of Services to be Provided.** The services SulmeyerKupetz will perform include the time spent with you and working on matters for which we have been retained.

Based on my conversations with you and my review of certain documents, I understand that we will be retained to provide prepetition insolvency advice to you and we will appear in connection with a request for appointment of a Receiver over Toluca Lake as well as appearing as counsel for Toluca Lake in connection with a lender liability action being commenced against them. In connection with the lender liability action ("Action"), Mark C. Fields, Esq. will be doing the majority of the work as counsel for certain individuals including Herbert Frey and the Herbert Frey Revocable Family Trust. Finally, we will file a Chapter 11 case for Toluca Lake. Given the location of the property involved, the Chapter 11 case will be filed in the Bankruptcy Court located in the San Fernando Valley. Your goal is to stop the Bank from foreclosing on the

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333 SOUTH HOPE STREET, THIRTY-FIFTH FLOOR, LOS ANGELES, CA 90071-1406 • TELEPHONE 213.625.2311 • FACSIMILE 213.629.4520

[VASLTR0525606.1]

APP00240

Mr. Christopher Beavor  
April 23, 2009  
Page 2

property ("Property") owned by Toluca Lake and to finish development of the Property and sell off the condominium units to buyers at prices that will retire the Bank's debt, pay off any additional indebtedness incurred to finish construction and leave whatever funds that remain for investors and other creditors of the Property. I anticipate a number of issues and problems in this representation. Those that we can identify at this time are business issues concerning the development of the Property, questions about the value of the Property, the requirements that we file a Plan of Reorganization within 90 days or commence making interest payments on the Bank's debt and similar requirements attendant to the Chapter 11 process. Further issues include proposing and confirming a Plan of Reorganization in this case to the extent that such a Plan does not result in full payment on the Toluca Lake indebtedness to the Bank.

At this point and time, we have not been asked nor have we agreed to represent you in any litigation or other contested proceeding, and no chapter 11 or other reorganization options are being contemplated. To the extent that we are asked to do anything more than that described above, we will need to discuss new arrangements and possibly an additional cash retainer.

**[Optional for Chapter 7, 11, 12:** To proceed with a chapter 11 filing, you will be required to complete a number of documents. From our experience, we expect that information in addition to that requested in the package will be required and that the responses given to the questions in the form will raise new areas of inquiry.

SulmeyerKupetz is being engaged by Toluca Lake. Our employment does not include representation of any other entity or person.

## **2. Our Commitments.**

a. *To use our best efforts.* All of the attorneys and staff at SulmeyerKupetz have trained extensively in order to provide you with excellent legal counsel and service. While we cannot guaranty particular outcomes, we commit to you that we will apply our experience, training and energies in our representation of you.

b. *To promptly return phone calls.* SulmeyerKupetz commits to promptly respond to your questions and concerns. We understand how important it is to you that your phone calls be promptly returned. If we cannot return your call within a day (which sometimes happens), we shall make every effort to have a staff member call to explain why the call has not been returned by your attorney, and approximately when it will be returned. If your call is urgent, please advise us so that we may make sure a lawyer is able to reach you in the event the lawyer assigned to your matter cannot.

Mr. Christopher Beavor  
April 23, 2009  
Page 3

c. *To inform you of the truth as we see it.* We know you did not retain this firm to be "yes" lawyers – and we shall not be. Thus, we will tell you the truth as we honestly see it – even if the truth is unpleasant.

d. *To keep you informed.* We are aware that your legal issues are very important to you. We are also aware that a common complaint against lawyers is that sometimes lawyers do not keep their clients fully advised about the progress of their own case. We intend that you never have to express that complaint about us, and that you are kept current on what is happening with respect to the matter for which we have been retained.

e. *To tell you what is going to happen step by step.* A great cause of anxiety among clients is that they do not understand how the legal system works. We will tell you as best we can what to expect before it happens to minimize the possibility of surprise.

f. *To treat you with respect.* You are our client, and as such, you deserve the utmost respect from our attorneys and staff. If this courtesy is breached, you have every right to speak up about it, and we encourage you to do so.

### 3. Our Requests From You.

a. *To be candid with us.* Our ability to assist you requires that you be frank and open with us. We need you to always be completely candid about your case, even if it is unpleasant, and even if you think it hurts your case. Remember, our success depends on the accuracy of the information we receive.

b. *To be prepared.* Please do your best to respond to our questions and requests regarding your case. Do your homework before you consult with us. Preparation allows us to all work more efficiently, which ultimately saves you money.

c. *To tell us how you feel.* If you are satisfied with our work (which we hope and expect you will be), please tell us. If, for some reason you are not, you agree to inform us promptly, so that we may discuss the matter with you and address your concerns.

d. *To ask questions.* If at any time you do not understand something that is, or is not, happening, or will be happening, please feel free to ask questions. After all, you have the right to know.

Mr. Christopher Beavor

April 23, 2009

Page 4

4. Fees.

You will be responsible for payment of the reasonable fees SulmeyerKupetz charges for services. Our regular hourly billing rates depend upon the experience of the attorney, paralegal or legal assistant working on the matter. Fees charged may include, among other things, the time involved in conferences or other communications with you or others, including members of our firm, any legal research necessary to properly advise you, preparation of documents and correspondence, discussion and negotiations with other parties, interoffice conferences and travel time portal to portal. In the event litigation is commenced, our services will also include such things as the preparation and filing of pleadings and documents, factual investigation, appearances before courts, arbitrators or mediators, and other such work.

We ordinarily bill in minimum increments of one-tenths of an hour. We will charge you for the number of hours spent working on your matter, multiplied by our hourly billing rates. We would be pleased to advise you of the current hourly billing rates of any attorneys and/or legal assistants working on your matters, as you may from time to time request.

We reserve the right, around the beginning of each calendar year, to establish new hourly rates, which rates should reflect changes in the market, increased experience or capability, or other factors that bear on the cost of services. You will be charged the rates in effect at the time services are rendered. We will work to ensure that, where feasible and appropriate, legal assistants are used to perform tasks in our effort to represent you in a cost-effective manner.

You hereby authorize us, in our discretion, to access information from credit reporting agencies about you.

In order for us to commence our representation, the firm requires the deposit of a retainer in the amount of \$100,000. Additionally, if the guarantee of the firm's fees and costs is not approved by the Bankruptcy Court, we will require an additional payment of \$50,000 from Mr. Herbert Frey. This retainer will be deposited in our attorney trust account but we are authorized to draw on it, up to its full amount, as and when we deem appropriate. Any unused portion of the retainer at the conclusion of our representation will be refunded to you or the party who advanced it. Additionally, we require a guarantee of our fees and costs. In that regard, we have prepared and separately attached a proposed guarantee to be signed by Mr. Herbert Frey and by the Herbert Frey Revocable Family Trust dated November 22, 1982 ("Guarantors"). As stated, we will ask the Bankruptcy Court in Toluca Lake's bankruptcy case to approve the terms of retention set forth in this paragraph. However, if these terms and conditions of retention are not approved, the Guarantors will be required to immediately provide us with an



Mr. Christopher Beavor

April 23, 2009

Page 5

additional \$50,000 toward our retainer in connection with the representation described herein.

Currently our hourly rates range from \$65.00 - \$185.00 for law clerks, legal assistants and paralegals, and from \$285.00 - \$650.00 for our attorneys. My hourly rate is presently \$550.00/hour.

**5. Costs and Other Charges.**

a. *In General.* We will incur various costs and expenses in the normal course of performing legal services under this Agreement. Costs and expenses commonly include filing and recordation fees, court reporters' fees, computerized legal research of fee-based online legal libraries, messenger and other delivery services, postage, parking and other local travel expenses, facsimile, photocopying and other reproduction costs. We make every effort to approximate the cost of reproduction and similar expense. The costs indicated on your bill may be slightly more or slightly less than the actual cost incurred by the firm.

b. *Out of Town Travel and Extraordinary Expenses.* You agree to pay transportation, business class airfare on flights over two hours, meals, lodging and all other costs of any necessary out-of-town travel by our personnel. You will be charged the hourly rates for the time legal personnel spend traveling. In the event extraordinary charges or significant expenses are incurred, such as deposition transcript costs, expert witness fees, title insurance fees, consultant and investigator fees, and the like, you agree to pay those expenses directly.

c. *Billing Statements.* We will send you monthly statements indicating fees and costs incurred and their basis, amounts applied from any retainer, and the current balance owed. The billing statement will list the professionals who worked on your matter for that billing period with their current hourly billing rates. When an increase occurs, the new hourly billing rate will appear in your statement. If no fees or costs are incurred for a particular month, or they are nominal, the statement may be held and combined with that for the following month or months. Should you have any questions concerning any statement, we encourage you to discuss them with us so that we may have an opportunity to resolve any misunderstandings in a mutually agreeable manner. Should you question any of our charges, you agree to raise such questions with us promptly and in writing. Statements are due on receipt. For any statements not paid within 30 days of billing, interest shall accrue on the unpaid balance at the rate of one percent (1%) per month.

**6. Discharge and Withdrawal.** You may discharge us at any time and we have the right to withdraw from your representation at any time or suspend providing services. Reasons for our withdrawal or suspension of services include, but are not

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APP00244

Mr. Christopher Beavor  
April 23, 2009  
Page 6

limited to, your breach of this Agreement, your failure to pay our bills as they become due, your refusal to cooperate with us or follow our advice on a material matter or any fact or circumstance that would render our continuing representation of you unlawful, unethical or impracticable.

When our services conclude, all unpaid charges will immediately become due and payable. After our services conclude, we will, upon written request, deliver your file to you along with any funds or property of yours in our possession. The work product produced in the course of our representation will remain our property.

7. **Future Conflict.** You agree that you do not consider the representation by SulmeyerKupetz, in unrelated matters, of any adversary to you or to clients represented by us to be inappropriate and therefore waive any objections to any such present or future representation, including the representation of SulmeyerKupetz of clients adverse to you.

8. **Duties Upon Termination of Active Representation.** Upon cessation of our active involvement in a particular matter for which we have been engaged, we will have no further duty to inform you of future developments, deadlines or changes in the law as may be relevant to such matter in which our representation has ceased.

9. **Maintenance of Records.** It is our policy to promptly return all client files (other than work product) at the conclusion of our engagement with you, or the conclusion of the project on which we are working for you.

To the extent we retain any client files, it is our policy to maintain client records for a period of five (5) years from the earlier of the date of the conclusion of our engagement with you, or the conclusion of the project on which we are working for you. At the expiration of the 5 year time period, it is our policy to destroy such records. Prior to the destruction of the records, we shall attempt to contact you, at the last known address we have for you in our files, to inquire whether you would rather that we forward your files to you. Should we not reach you, you hereby authorize us to destroy files closed by us after five (5) years have passed. If at any time before the expiration of such time period you would like to obtain copies of such documents and other records, please let us know, and we will provide copies to you at your expense. You hereby permit us, at our election, to maintain your records (including the signed copy of this agreement) in a digital format rather than maintaining originals or hard copies of documents.

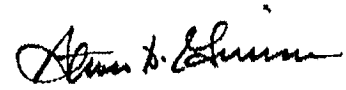
10. **Lien.** You hereby grant us a lien on any and all claims or causes of action, and proceeds of such claims or causes that are the subject of our representation under this Agreement. Our lien will be for any and all sums owing to us. The lien will attach to any recovery you may obtain, whether by arbitration award, judgment, settlement or otherwise.

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Lee I. Iglody, Esq.  
Nevada Bar #: 7757  
9555 S. Eastern Avenue, Suite 280  
Las Vegas, NV 89123  
Tel: (702) 425-5366  
Fax: (702) 446-5148  
Email: [Lee@Iglody.com](mailto:Lee@Iglody.com)  
Attorney for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

YACOV JACK HEFETZ, an individual, and  
ALIS COHEN, an individual,  
Plaintiffs,

CASE NO: A - 11 - 645353 - C  
DEPT NO.: XXVII I

vs.

VERIFIED COMPLAINT

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

Defendants.

Plaintiffs YACOV JACK HEFETZ and ALIS COHEN (collectively, "Plaintiffs"), by and through their counsel, Lee Iglody, Esq., hereby complain and allege against Defendants CHRISTOPHER BEAVOR and SAMANTHA BEAVOR (the "Guarantors") and DOES I - X and ROE ENTITIES I - X, inclusive, (collectively, "Defendants") as follows:

I. NATURE OF THE ACTION

1. This action is necessary as a result of Defendants' failure to meet their joint and several obligations as guarantors of a defaulted loan in the principal amount of \$6,000,000.00.

II. PARTIES, JURISDICTION AND VENUE

2. Plaintiff Yacov Jack Hefetz is and was at all relevant times hereto an individual that resides in Clark County, Nevada.

LEE IGLODY, ESQ.  
9555 S. Eastern Ave., Suite 280  
Las Vegas, Nevada 89123  
(702) 425-5366 FAX: (702) 446-5148

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1           3.     Plaintiff Alis Cohen is and was at all relevant times hereto an individual that  
2 resides in Clark County, Nevada.

3           4.     Defendant Christopher Beavor is and was at all relevant times hereto an  
4 individual residing in Clark County, Nevada.

5           5.     Defendant Samantha Beavor is and was at all relevant times hereto an individual  
6 residing in Clark County, Nevada.

7           6.     Defendants designated herein as Does and Roe Entities are individuals and legal  
8 entities that are liable to Plaintiffs for the claims set forth herein. In addition to possible alter  
9 egos of the above-named Defendants, if discovery should reveal the individual Defendants, or  
10 any of their trusts, affiliated entities, family members or ex-spouses are participating in  
11 fraudulent transfers for the purpose of avoiding claims such as Plaintiffs' set forth in this  
12 Complaint, then members of these entities, trusts and/or third-party transferees, including but not  
13 limited to, individual transferees and/or new entities formed for the purpose of holding property  
14 and assets, shall be added as Defendants herein. Any transactions and the true capacities of Does  
15 and Roe Entities are presently unknown to Plaintiffs and, therefore, Plaintiffs sue said  
16 Defendants by such fictitious names. Plaintiffs will amend this Complaint to assert the true  
17 names and capacities of such Doe and Roe Entities when more information has been ascertained.  
18

19           7.     The majority of Defendants' wrongful acts occurred and/or arose from or in Clark  
20 County, Nevada, and the loan documents at issue provide for jurisdiction and venue in Las  
21 Vegas, Clark County, Nevada. Thus, jurisdiction is proper in the courts of this state and venue is  
22 proper in this judicial district.

23     **III. GENERAL ALLEGATIONS**

24           8.     On or about March 29, 2007, Toluca Lake Vintage, LLC ("Borrower") entered  
25 into a Loan Agreement whereby Borrower procured a loan in the amount of \$6,000,000.00 (the  
26 "Loan") from a lender, the Herbert Frey Revocable Family Trust ("Lender"). True and correct  
27 copies of the Loan Agreement (without exhibits) and the Promissory Note evidencing the Loan  
28 are attached hereto as **Exhibits 1 and 2** respectively.

1           9.     The purpose for the Loan was to improve and develop certain real property  
2 located in Iron County, Utah; Los Angeles County, California; and Clark County, Nevada.

3           10.    Plaintiffs participated in the Loan by contributing \$2,214,875.00 toward funding  
4 of the Loan ("Participation Amount").

5           11.    The Loan was benefitted by the Guarantors' joint and several, absolute,  
6 unconditional and irrevocable personal guarantee of full and prompt payment of the principal  
7 and interest due and owing on the Loan. A true copy of the Payment Guarantee evidencing  
8 Guarantors' obligations is attached hereto as **Exhibit 3**.

9           12.    Borrower defaulted on the Loan. On or about May 14, 2009, Borrower filed a  
10 voluntary Chapter 11 petition under the United States Bankruptcy Code, 11 U.S.C. § 101, et seq.  
11 on May 14, 2009.

12           13.    Guarantors did not meet their guarantee obligations upon Borrower's default.

13           14.    The Loan has not been repaid, and the Participation Amount has not been repaid  
14 to Plaintiffs from Lender, Borrower, or Guarantors.

15           15.    On or about July 6, 2011, Lender assigned to Plaintiffs all of Lender's right, title  
16 and interest in and to the Loan, including all documents evidencing, securing, guaranteeing or  
17 otherwise executed in connection with the Loan. The Guarantors' obligations, as evidenced by  
18 the Payment Guarantee, were included in the assignment.

19  
20 **IV. CLAIM FOR RELIEF**

21 **FIRST CLAIM FOR RELIEF**

22 **(Breach of Guarantee)**

23           16.    Plaintiffs repeat and incorporate by reference the allegations in the preceding  
24 paragraphs as if fully set forth herein.

25           17.    Guarantors executed the Payment Guarantee in which they agreed to jointly and  
26 severally, absolutely, unconditionally and irrevocably guarantee the full and prompt payment of  
27 the principal and interest due and owing on the Loan.

28           18.    Borrower defaulted on its obligations under the Loan.

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19. Guarantors failed to meet their guarantee obligations upon Borrower's default.

20. Lender assigned to Plaintiffs all of Lender's right, title and interest in and to the Loan, including all documents evidencing, securing, guaranteeing or otherwise executed in connection with the Loan, which encompassed Guarantors' Payment Guarantee.

21. Guarantors' failure to meet their guarantee obligations has damaged Plaintiffs in an amount in excess of \$10,000.00.

22. It has been necessary for Plaintiffs to retain the services of attorneys to prosecute their claims, and Plaintiffs are thereby entitled to an award of reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs pray for judgment in its favor and against Defendants as follows:

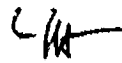
1. For judgment in favor of Plaintiffs and against Defendants, jointly and separately, in an amount to be determined at trial, in excess of \$10,000;

2. For prejudgment interest;

3. For attorneys' fees and costs; and

4. For any such other and further relief as the Court deems just and proper under the circumstances.

Dated this 20<sup>th</sup> day of July, 2011.



Lee I. Iglody, Esq.  
Nevada Bar #: 7757  
Email: [Lee@Iglody.com](mailto:Lee@Iglody.com)  
*Attorney for Plaintiffs*

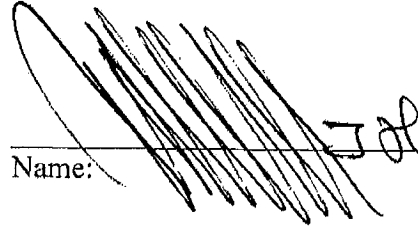
**VERIFICATION**

Under penalties of perjury, the undersigned declares that he is a Plaintiff named in the foregoing Verified Complaint and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes it to be true.

Date:

7/18/2011

Name:

A handwritten signature in dark ink, appearing to be "J. H.", written over a horizontal line.

**LEE IGLODY, ESQ.**

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Las Vegas, Nevada 89123  
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# EXHIBIT 1



## LOAN AGREEMENT

THIS LOAN AGREEMENT ("Agreement"), is made and entered into as of March 29, 2007 by and between Toluca Lake Vintage, LLC, a California limited liability company ("*Borrower*"), and Herbert Frey, Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982 ("*Lender*").

### SECTION 1. DEFINITIONS AND ACCOUNTING TERMS.

1.1 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth respectively after each:

"Acquisition Financing" shall have the meaning set forth in Section 6.7.

"Agreement" means this Loan Agreement.

"Beavor" shall mean Christopher Beavor and Samantha Beavor, each an individual.

"Borrower" means Toluca Lake Vintage, LLC, a California limited liability company.

"Brian Head Deed of Trust" shall have the meaning set forth in Section 4.1(b).

"Brian Head Property" shall have the meaning as described in Exhibit A attached hereto.

"Business Day" means any day on which banks in the State of Nevada are open for business.

"C&S" shall mean C&S Holdings, LLC, a Nevada limited liability company.

"Deeds of Trust" mean (a) the Brian Head Deed of Trust, (b) the Nevada Deed of Trust, and (c) the Toluca Lake Deed of Trust.

"Event of Default" shall have the meaning set forth in Section 7.1.

"Financing Notice" shall have the meaning set forth in Section 6.7.

"Governmental Agency" means any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, court, administrative tribunal or public utility.

"Guarantors" mean, collectively, Beavor; C&S; and Brian Head Lofts, LLC, a Utah limited liability company.

"Guaranty" means, collectively, the Payment Guaranty executed by each Guarantor in favor of Lender, either as originally executed or as it may from time to time be supplemented, modified or amended.

"Improvements" means any and all improvements now existing or hereafter constructed on the Toluca Lake Property.

"Interest Reserve" means that portion of the Loan funds allocated to interest reserve pursuant to Section 3.2 below.

"Laws" means, collectively, all federal, state and local laws, rules, regulations, ordinances and codes.

"Lender" means Herbert Frey, Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982.

"Loan" means the loan to be made by Lender to Borrower pursuant to Section 3 hereof.

"Loan Documents" means, collectively, this Agreement, the Notes, the Deeds of Trust, the Guaranty and the Security Agreement, in each case either as originally executed or as the same may from time to time be supplemented, modified or amended, together with any other documents or instruments which may at any time be executed by Borrower in connection with the Loan.

"Nevada Deed of Trust" shall have the meaning set forth in Section 4.1(c).

"Nevada Property" shall have the meaning as described in Exhibit A attached hereto.

"Notes" mean the Phase I Note and the Phase II Note, executed by Borrower in favor of Lender to evidence the Loan, either as originally executed or as it may from time to time be supplemented, modified or amended.

"NRS" means the Nevada Revised Statutes, as amended from time to time.

"Person" means any entity, whether an individual, trustee, corporation, partnership, trust, unincorporated organization or otherwise.

"Personal Property" means all present and future personal property of Borrower of every kind and nature, whether tangible or intangible, now or hereafter located at, upon or about the Toluca Lake Property, or used or to be used in connection with or relating to or arising with respect to the Toluca Lake Property, including but not limited to the property described in the Toluca Lake Deed of Trust.

"Phase I Loan Amount" shall have the meaning set forth in Section 3.1(a).

"Phase I Note" shall have the meaning set forth in Section 4.1(a).

"Phase II Note" shall have the meaning set forth in Section 4.1(b).

"Preferred Return" shall have the meaning set forth in Section 4.2(a).

"Property" means, collectively, the Real Property, the Personal Property and any buildings, structures, or improvements now or hereafter located on all or any portion of the Real Property.

"Real Property" means, collectively, (a) the Brian Head Property, (b) the Nevada Property, and (c) the Toluca Lake Property, all as more particularly described in Exhibit A attached hereto.

"Security Agreement" shall have the meaning set forth in Section 4.1(e).

"Security Documents" means the Deeds of Trust, the Guaranty and the Security Agreement.

"Toluca Lake Deed of Trust" shall have the meaning set forth in Section 4.2(b).

"Toluca Lake Property" shall have the meaning as described in Exhibit A attached hereto.

"Unit" means each residential condominium unit created by Borrower on the Toluca Lake Property.

1.2 Use of Defined Terms. Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of the members of the relevant class. Any reference to the Loan Documents and other instruments, documents and agreements shall include such Loan Documents and other instruments, documents and agreements as originally executed or as the same may be supplemented, modified or amended.

1.3 Accounting Terms. All accounting terms not specifically defined in this Agreement shall be construed in conformity with, and all financial data required to be submitted by this Agreement shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis.

1.4 Exhibits. All exhibits to this Agreement, either as now existing or as the same may from time to time be supplemented, modified or amended, are incorporated herein by this reference.

## SECTION 2. RECITALS.

Borrower has applied to Lender for a Loan to complete the acquisition and development of the Toluca Lake Property. Lender is willing to make the Loan to Borrower on the terms and conditions contained in this Agreement and the other Loan Documents.

## SECTION 3. THE LOAN.

3.1 Amount of the Loan. Subject to the terms and conditions set forth in this Agreement, Lender agrees to make a loan ("Loan") to Borrower in the aggregate principal amount of Six Million Dollars (\$6,000,000) (the "Loan Amount"), the disbursement of which by Lender is subject to the terms and conditions of the Loan Documents. The Loan Amount shall be disbursed to Borrower as follows:

(a) *Phase I.* Concurrently with the execution of this Agreement, Lender shall disburse to Borrower the sum of Two Million Two Hundred Ninety One Thousand Four Hundred Ninety Dollars (\$2,291,490) (the "Phase I Loan Amount") in the amounts and according to the disbursement schedule attached hereto as Exhibit B. Of this amount, Borrower and Lender acknowledge and agree that One Hundred Sixty Four Thousand Dollars (\$164,000) shall be withheld by Lender as a loan fee, which shall be deemed nonrefundable and fully earned upon disbursement of the Phase II Loan proceeds as set forth in Section 3.1(b) below, and Seventy Seven Thousand Four Hundred Ninety Dollars (\$77,490) shall be withheld by Lender as a portion of the Interest Reserve to be utilized as set forth in Section 3.2 below. The Phase I Loan shall be evidenced by the Phase I Note.

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(b) Phase II. On June 20, 2007, Lender shall disburse to Borrower the sum of Six Million Dollars (\$6,000,000). Of this amount, Borrower and Lender acknowledge and agree that Two Million Two Hundred Ninety One Thousand Four Hundred Ninety Dollars (\$2,291,490) shall be withheld by Lender and applied to pay and satisfy in full the Phase I Note, and One Million Three Hundred Fifty Thousand Dollars (\$1,350,000) shall be withheld by Lender as a portion of the Interest Reserve to be utilized as set forth in Section 3.2 below. The Phase II Loan shall be evidenced by the Phase II Note.

3.2 Interest Reserve. A portion of the Loan Amount, in the amounts set forth in Section 3.1 above, shall withheld by Lender and applied as interest reserve for its benefit (the "Interest Reserve"). Interest accrued on the then outstanding Loan Amount shall be paid from a portion of the Interest Reserve upon presentation of a monthly interest statement by Lender to Borrower, without the necessity of any instruction or request from Borrower. Except as provided in this paragraph, the funds in the Interest Reserve shall never be used for any other purpose. Depletion of the Interest Reserve shall not release Borrower from any of Borrower's obligations under the Loan Documents, including, but not limited to, the obligation to pay interest accruing under the Note.

3.3 Prepayment. Borrower may prepay the Loan, in full or in part, at any time.

3.4 Security. The indebtedness evidenced by the Notes, and all other indebtedness and obligations of Borrower under the Loan Documents, shall be secured as set forth in Section 4. The Guaranty and the obligations of any Guarantor thereunder shall be unsecured.

#### **SECTION 4. LOAN DOCUMENTS AND SECURITY.**

4.1 Phase I Loan. Upon disbursement of the Phase I Loan, Borrower shall deliver to Lender the following:

(a) A promissory note in the principal amount of the Phase I Loan Amount bearing interest at the rate of twelve percent (12%) per annum (the "Phase I Note"), unless said rate is reduced to eight percent (8%) per annum by reason of a failure by Lender to timely fund the Phase II Loan Amount as set forth in Section 7.2(b);

(b) A Deed of Trust executed by C&S, as grantor, encumbering the Brian Head Property as a first priority lien (the "Brian Head Deed of Trust");

(c) A Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by Beavor, as grantor, encumbering the Nevada Property as a second priority lien (the "Nevada Deed of Trust");

(d) A Payment Guaranty executed by each Guarantor in favor of Lender; and

(e) A Security Agreement and Assignment of Membership Interest by and between C&S; Rocket Construction, Inc., a California corporation; and Essential Investments, LLC, a Nevada limited liability company, collectively, as assignor, and Lender, as assignee (the "Security Agreement").

4.2 Phase II Loan. Upon disbursement of the Phase II Loan, Borrower shall deliver to Lender the following:

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(a) A promissory note in the principal amount of the Phase II Loan bearing interest at the rate of fifteen percent (15%) per annum plus a preferred return ("*Preferred Return*") in the amount of One Million Eight Hundred Thousand Dollars (\$1,800,000), in the form attached hereto as Exhibit C (the "*Phase II Note*"). Upon delivery of the Phase II Note, the Phase I Note shall be deemed paid and satisfied in full and Lender shall return the Phase I Note to Borrower marked "Paid in Full"; and

(b) A Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing encumbering the Toluca Lake Property as a second priority lien (the "*Toluca Lake Deed of Trust*"), in the form attached hereto as Exhibit D. Borrower and Lender acknowledge and agree that the Phase II Loan proceeds will be used by Borrower to acquire the Toluca Lake Property and that the Toluca Lake Deed of Trust will be delivered to Lender concurrently with close of escrow by Borrower for the Toluca Lake Property.

## **SECTION 5. REPRESENTATIONS AND WARRANTIES BY BORROWER.**

5.1 Formation, Qualification and Powers of Borrower. Borrower is a limited liability company duly formed and validly existing under the laws of the State of California and has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver and perform all of its obligations under the Loan Documents.

5.2 Authority and Compliance with Instruments and Government Regulations. The execution, delivery and performance by Borrower of all of its obligations under each Loan Document have been duly authorized by all necessary action and do not and will not:

(a) require any consent or approval not heretofore obtained of any Person holding any security or interest or entitled to receive any security or interest in Borrower;

(b) violate any provision of any organizational document or certificate of Borrower;

(c) result in or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, claim, charge, right of others or other encumbrance of any nature, other than under the Loan Documents, upon or with respect to any property now owned or leased or hereafter acquired by Borrower;

(d) violate any provision of any Law, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Borrower or the Property, which violation would have a material, adverse impact thereon; or

(e) result in a breach of or constitute a default under, cause or permit the acceleration of any obligation owed under, or require any consent under, any indenture or loan or credit agreement or any other agreement, lease or instrument to which Borrower is a party or by which Borrower or any property of Borrower, is bound or affected; and Borrower is not in default in any respect that is materially adverse to the interest of Lender or that would have any material adverse effect on the financial condition of Borrower or the conduct of its business under any Law, order, writ, judgment, injunction, decree, determination, award, indenture, agreement, lease or instrument described in Sections 5.2(d) and 5.2(e).

*Law H.P.*

Guaranty: 5.3 Execution of the Guaranty by the Guarantors. The execution and delivery of the

- (a) have been duly authorized by all necessary action;
- (b) do not require the consent, authorization or approval of any Governmental Agency or Person;
- (c) will not result in the creation of any lien or other claim of any nature upon or with respect to the property of the Guarantors, other than as may be set forth in the Guaranty; and
- (d) will not violate any provision of any Law having applicability to the Guarantors, in a manner which would have a material, adverse impact on any Guarantors; and, when executed and delivered, the Guaranty will constitute the legal, valid and binding obligation of the Guarantors enforceable against the Guarantors in accordance with its terms.

5.4 No Governmental Approvals Required. No authorization, consent, approval, order, license, exemption from, or filing, registration or qualification with, any Governmental Agency is or will be required to authorize, or is otherwise required in connection with:

- (a) the execution, delivery and performance by Borrower and the Guarantors of the Loan Documents; or
- (b) the creation of the liens, security interests or other charges or encumbrances described in the Security Documents; except that filing and/or recording may be required to perfect Lender's interest under the Security Documents.

5.5 Binding Obligations. The Loan Documents, when executed and delivered, will constitute the legal, valid and binding obligations of Borrower and the Guarantors, as the case may be, enforceable against them in accordance with their respective terms.

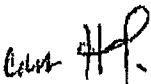
## SECTION 6. AFFIRMATIVE AND NEGATIVE COVENANTS.

Until payment of the Notes in full and performance of all obligations of Borrower under the Loan Documents, unless Lender otherwise consents in writing:

6.1 Compliance with Requirements. Borrower shall comply with all conditions, covenants, restrictions, leases, easements, reservations, rights and rights-of-way and all applicable Laws and other requirements relating to the Property, and obtain all necessary approvals, consents, licenses and permits of any Governmental Agency.

6.2 Sale or Other Encumbrances. Borrower specifically agrees that:

- (a) In order to induce Lender to make the Loan, Borrower agrees that if the Property or any part thereof or any interest therein, shall be sold, assigned, transferred, or conveyed, except as shall be specifically hereinafter permitted or without the prior written consent of Lender, then Lender, at its option, may declare the Notes, and all other obligations hereunder, to be forthwith due and payable. Except as shall be otherwise specifically provided herein, (a) a change in the legal or equitable ownership of the Property whether or not of record, or (b) a change in the form of entity or ownership (including the hypothecation or encumbrance

  
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thereof) of the stock or any other ownership interest in Borrower shall be deemed a transfer of an interest in the Property; provided, however, that any transfer of the Property or any interest therein to an entity which controls, is controlled by or is under common control with Borrower shall not be considered a transfer hereunder.

(b) Borrower may request Lender to approve a sale or transfer of the Property to a party who would become the legal and equitable owner of the Property and would assume any and all obligations of Borrower under the Loan Documents. Lender shall not be obligated to consider or approve any such sale, transfer or assumption or request for the same. However, upon such request, Lender may impose limiting conditions and requirements to its consent to an assumption.

(c) In the event ownership of the Property, or any part thereof, becomes vested in a person or persons other than Borrower, the Lender may deal with such successor or successors in interest with reference to the Notes or the Deeds of Trust in the same manner as with Borrower, without in any way releasing, discharging or otherwise affecting the liability of Borrower under the Notes, the Deeds of Trust or the other Loan Documents.

6.3 Payment of Taxes, Assessments and Charges. Borrower shall pay, prior to delinquency, all taxes, assessments, charges and levies imposed by any Governmental Agency which are or may become a lien affecting the Property or any part thereof, including, without limitation, assessments on any appurtenant water stock; except that Borrower shall not be required to pay and discharge any tax, assessment, charge or levy that is being actively contested in good faith by appropriate proceedings, as long as Borrower has established and maintains reserves adequate to pay any liabilities contested pursuant to this Section in accordance with generally accepted accounting principles and, by reason of nonpayment, none of the property covered by the Security Documents or the lien or security interest of Lender is in danger of being lost or forfeited.

6.4 Insurance. Borrower shall at all times maintain the following policies of insurance:

(a) prior to completion of the Improvements, builder's "all risk" insurance ("completed value" form), including "course of construction" coverage, covering the Improvements and any Personal Property;

(b) from and after completion of the Improvements, property "all risk" Insurance covering the Improvements and any Personal Property;

(c) commercial general liability insurance in favor of the Borrower (and naming Lender as an additional insured) in an aggregate amount not less than \$2,000,000 (or such greater amount as may be specified by Lender from time to time) combined single limit; and

(d) such other insurance as may be required by applicable Laws (including worker's compensation and employer's liability insurance) or as Lender may reasonably require from time to time (including "all risk" insurance with respect to any other improvements now or in the future located on the Toluca Lake Property and comprehensive form boiler and machinery insurance, if applicable, rental loss insurance and business interruption insurance).

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6.5 Physical Security of Property. Borrower shall take appropriate measures to protect the physical security of the Property.

6.6 Reporting and Requirements. Borrower shall cause to be delivered to Lender, in form and detail satisfactory to Lender promptly upon Borrower's learning thereof, notice of:

(a) any litigation affecting or relating to Borrower, and/or the Guarantors, and the Property;

(b) any dispute between Borrower and any Governmental Agency relating to the Property, the adverse determination of which would adversely affect the Property;

(c) any threat or commencement of proceedings in condemnation or eminent domain relating to the Property;

(d) any Event of Default or event which, with the giving of notice and/or the passage of time, could become an Event of Default; and

(e) any change in the Manager of Borrower, as defined in Borrower's Operating Agreement.

6.7 Approval of Toluca Lake Property Financing. Borrower and Lender acknowledge and agree that Borrower intends to obtain a loan for the acquisition of the Toluca Lake Property and construction of a condominium project thereon (the "Acquisition Financing"). The Acquisition Financing shall be secured by a deed of trust encumbering the Toluca Lake Property as a lien superior in priority to the Toluca Lake Deed of Trust. Except as set forth herein, the terms of the Acquisition Financing shall be subject to the written approval of the Lender within its commercially reasonable discretion. Borrower shall deliver written notice (the "Financing Notice") to Lender describing the terms of the Acquisition Financing no later than fifteen (15) days prior to the scheduled close of escrow. In the event Borrower does not receive written notice from Lender within five (5) days after delivery of the Financing Notice to Lender disapproving the proposed terms of the Acquisition Financing, the Acquisition Financing shall be deemed approved by Lender. Notwithstanding the foregoing, Borrower shall not be required to obtain Lender's consent to the Acquisition Financing if the interest rate therefor does not exceed three percent (3%) over the prime rate then charged by major money center banks in the United States and the loan origination fee does not exceed one percent (1%) of the principal loan amount. Borrower and Lender acknowledge and agree that during the term of the Loan, the aggregate principal amount of all indebtedness secured by the Toluca Lake Property, including the Acquisition Financing and the Loan, shall not exceed Twenty Six Million Dollars (\$26,000,000).

## **SECTION 7. EVENTS OF DEFAULT AND REMEDIES UPON DEFAULT.**

7.1 Events of Default. The occurrence of any one or more of the following, whatever the reason therefor, shall constitute an Event of Default hereunder:

(a) Borrower shall fail to pay when due any installment of principal or interest on the Notes or any other amount owing under this Agreement or the other Loan Documents, and such failure shall continue uncured as of ten (10) calendar days after Borrower receives written notice of such failure; or

(b) Borrower or any Guarantor shall fail to perform or observe any term, covenant or agreement contained in any of the Loan Documents on its part to be performed or



observed, other than the failure to make a payment covered by Section 7.1(a), and such failure shall continue uncured as of thirty (30) calendar days after Borrower receives written notice of such failure; provided, however, that if Borrower has commenced to cure the default within said thirty (30) day period and is diligently pursuing such cure, but the default is of such a nature that it cannot be cured within thirty (30) days, then the cure period shall be extended for the number of days necessary to complete the cure, but in no event shall the total cure period be longer than sixty (60) days (the cure period set forth in this Section 7.1(b) shall not apply to any other Events of Default); or

(c) any representation or warranty in any of the Loan Documents or in any certificate, agreement, instrument or other document made or delivered pursuant to or in connection with any of the Loan Documents proves to have been incorrect in any material respect when made; or

(d) Borrower (which term shall include any entity comprising Borrower) is dissolved or liquidated, or otherwise ceases to exist, or all or substantially all of the assets of Borrower or any Guarantor are sold or otherwise transferred without Lender's written consent; or

(e) Borrower or any Guarantor is the subject of an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or Borrower or any Guarantor applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer (the "Receiver"); or a Receiver is appointed without the application or consent of Borrower or any Guarantor, as the case may be, and the appointment continues undischarged or unstayed for sixty (60) calendar days; or Borrower or any Guarantor institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceedings relating to it or to all or any part of its property under the laws of any jurisdiction; or any similar proceeding is instituted without the consent of Borrower or any Guarantor, as the case may be, and continues undismissed or unstayed for sixty (60) calendar days; or any judgment, writ, attachment, execution or similar process is issued or levied against all or any part of the Property of Borrower or any Guarantor, and is not released, vacated or fully bonded within sixty (60) calendar days after such issue or levy.

## 7.2 Remedies Upon Default.

(a) Upon the occurrence of any Event of Default, Lender may, at its option, do any or all of the following:

(i) declare the principal of all amounts owing under a Note, this Agreement and the other Loan Documents and other obligations secured by the Security Documents, together with interest thereon, and any other obligations of Borrower to Lender, to be forthwith due and payable, regardless of any other specified maturity or due date, without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character, and without the necessity of prior recourse to any security;

(ii) terminate any right of Borrower to receive any additional advance;

(iii) terminate all rights of Borrower and obligations of Lender under the Loan Documents;

(iv) exercise its right and power to sell, or otherwise dispose of, the Personal Property, or any part thereof, and for that purpose may take immediate and exclusive possession of the Personal Property, or any part thereof, and with or without judicial process to the extent permitted by law, enter upon any premises on which the Personal Property or any part thereof may be situated and remove the same therefrom without being deemed guilty of trespass and without liability for damages thereby occasioned, or at Lender's option Borrower shall assemble the Personal Property and make it available to the Lender at the place and the time designated in the demand; and

(v) exercise any and all of its rights under the Loan Documents, including but not limited to the right to take possession of and foreclose on any security, and exercise any other rights with respect to any security, whether under the Security Documents or any other agreement or as provided by Law, all in such order and in such manner as Lender in its sole discretion may determine.

(b) If Lender shall fail to perform any obligation under this Agreement, including, without limitation, timely disbursement of the funds as set forth in Section 3.1, Borrower shall be entitled to all or any of the following remedies:

(i) in the event Lender fails to timely disburse funds as set forth in Section 3.1, the interest rate under the Phase I Note shall be reduced from twelve percent (12%) to eight percent (8%) per annum effective as of the date of Lender's failure to so fund; and

(ii) pursue an action to specifically enforce the performance of any and all provisions of this Agreement, including, without limitation, Section 7.2(b)(i).

## SECTION 8. MISCELLANEOUS.

8.1 Performance by Lender. In the event that Borrower shall default in or fail to perform any of its obligations under the Loan Documents, Lender shall have the right, but not the duty, without limitation upon any of Lender's rights pursuant thereto, upon no less than fifteen (15) calendar days prior written notice, to perform the same, and Borrower agrees to pay to Lender, within seventy-two (72) hours after demand therefor, all costs and expenses incurred by Lender in connection therewith, including without limitation actual attorneys' fees reasonably incurred.

8.2 Actions. Provided Borrower has not promptly so acted, Lender shall have the right to commence, appear in, and defend any action or proceeding purporting to affect the rights or duties of the parties hereunder or the payment of any funds, and in connection therewith Lender may pay necessary expenses, employ counsel, and pay reasonable attorneys' fees. Borrower agrees to pay to Lender within seventy-two (72) hours after demand therefor, all costs and expenses incurred by Lender in connection therewith, including without limitation actual attorneys' fees reasonably incurred.

8.3 Advances Obligatory. Anything herein to the contrary notwithstanding, it is specifically understood and agreed that any advances made by Lender pursuant to this Agreement,

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including, but not limited to, all funds advanced by Lender, shall be deemed advanced by Lender under an obligation to do so.

8.4 Binding Effect: Assignment. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns, except that, as provided herein, Borrower may not assign its rights or interest or delegate any of its duties under this Agreement or any of the other Loan Documents without prior written consent of Lender.

8.5 Amendments: Consents. No amendment, modification, supplement, termination or waiver of any provision of this Agreement or any of the other Loan Documents, and no consent to any departure by Borrower therefrom, may in any event be effective unless in writing signed by Lender, and then only in the specific instance and for the specific purpose given.

8.6 Notices. All notices to be given pursuant to this Agreement shall be sufficient if given by personal service, by guaranteed overnight delivery service, by telex, telecopy or telegram or by being mailed postage prepaid, certified or registered mail, return receipt requested, to the described addresses of the parties hereto as set forth below, or to such other address as a party may request in writing. Any time period provided in the giving of any notice hereunder shall commence upon the date of personal service, the day after delivery to the guaranteed overnight delivery service, the date of sending the telex, telecopy or telegram or two (2) days after mailing certified or registered mail.

BORROWER'S ADDRESS:

Toluca Lake Vintage, LLC  
1930 Village Center Circle, Suite 3-231  
Las Vegas, Nevada 89134  
Attention: Christopher Beavor  
Telephone: (702) 853-7900  
Facsimile: (702) 947-6111

LENDER'S ADDRESS:

Herbert Frey, Trustee of the  
Herbert Frey Revocable Family Trust  
157 E. Warm Springs Road  
Telephone: (702) \_\_\_\_\_  
Facsimile: (702) \_\_\_\_\_

8.7 Governing Law. The laws of the State of Nevada, without regard to its choice of law provisions, shall govern enforcement of the Loan Documents.

8.8 Jurisdiction. Borrower and Lender, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, (i) submit to personal jurisdiction in the State of Nevada over any suit, action or proceeding by any person arising from or relating to the Notes, this instrument or any other of the Loan Documents, (ii) agree that any such action, suit or proceeding shall be brought in a state or federal court of competent jurisdiction sitting in Clark County, Nevada, (iii) submit to the jurisdiction of such courts, and (iv) to the fullest extent permitted by law, agrees that they will not bring any action, suit or proceeding in any forum other than Clark County, Nevada.

8.9 Severability of Provisions. Any provision in any Loan Document that is held to be inoperative, unenforceable or invalid shall be inoperative, unenforceable or invalid without affecting the remaining provisions, and to this end the provisions of all Loan Documents are declared to be severable.

8.10 Headings. Section headings in this Agreement are included for convenience of reference only and are not part of this Agreement for any other purpose.

8.11 Attorney's Fees. If any legal action or proceeding is initiated by a party to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover the reasonable fees of attorneys and any other costs incurred in connection therewith.

8.12 Time of the Essence. Time is of the essence as to any and all provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

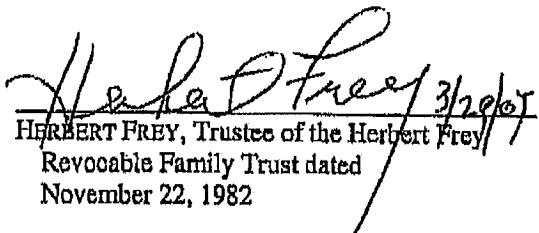
**BORROWER:**

TOLUCA LAKE VINTAGE, LLC  
A California limited liability company

By:  3/29/07

Christopher Beavor  
Manager

**LENDER:**

 3/29/07  
HERBERT FREY, Trustee of the Herbert Frey  
Revocable Family Trust dated  
November 22, 1982

# EXHIBIT 2

## PROMISSORY NOTE

U.S. \$6,000,000.00

As of 8/23/07

FOR VALUE RECEIVED, Toluca Lake Vintage, LLC, a California limited liability company, having an address at 1930 Village Center Circle, Suite 3-231, Las Vegas, Nevada 89134 ("Maker"), hereby promises to pay to the order of Herbert Frey, Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982 ("Payee"), having an address at 157 E. Warm Springs Road, Las Vegas, Nevada 89119, the principal sum of Six Million Dollars (\$6,000,000.00) or so much thereof as may be advanced from time to time, and interest from the date hereof on the balance of principal from time to time outstanding, in United States currency, at the rates and at the times hereinafter described.

This Note is issued by Maker pursuant to that certain Loan Agreement dated as of March 29, 2007, as amended, (the "Loan Agreement") entered into between Payee and Maker. This Note evidences the Phase II Loan (as defined in the Loan Agreement). Payment of this Note is governed by the Loan Agreement, the terms of which are incorporated herein by express reference as if fully set forth herein. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

1. Interest. The principal amount hereof outstanding from time to time shall bear interest until paid in full at the rate of fifteen percent (15%) per annum.

2. Monthly Payments. Interest only shall be payable in arrears on the first (1st) Business Day of each calendar month after the date hereof up to and including the Maturity Date in the amount of all interest accrued during the immediately preceding calendar month. All payments on account of the indebtedness evidenced by this Note shall be made to Payee not later than 11:00 a.m. Las Vegas, Nevada time on the day when due in lawful money of the United States and shall be first applied to late charges, costs of collection or enforcement and other similar amounts due, if any, under this Note and any of the other Loan Documents, then to interest due and payable hereunder and the remainder to principal due and payable hereunder.

3. Maturity Date. The indebtedness evidenced hereby shall mature on February 21, 2009, as such date may be extended by Maker as set forth herein ("Maturity Date"). Provided that an Event of Default does not exist under the Loan Documents, Maker shall have the right to extend the Maturity Date to 5/21/09 by delivering written notice to Payee of such extension at the address set forth above on or before 1/21/09. Moreover, provided that Maker has so extended the Maturity Date and an Event of Default does not exist under the Loan Documents, Maker shall have the right to further extend the Maturity Date to 8/21/09 by delivering written notice to Payee of such further extension at the address set forth above on or before 4/21/09. On the Maturity Date, the entire outstanding principal balance hereof, together with accrued and unpaid interest and all other sums evidenced by this Note, shall, if not sooner paid, become due and payable.

4. Preferred Return. In consideration for the Loan, Payee shall be entitled to receive a preferred return (the "Preferred Return") in the amount of One Million Eight Hundred Thousand Dollars (\$1,800,000.00). The Preferred Return shall not bear interest hereunder and shall be payable upon the sale, transfer or conveyance of each Unit by Maker to any Person as follows: (a) to Payee, the

amount of Thirty Five Thousand Dollars (\$35,000.00); and (b) to The Gilmore Company, a Nevada corporation, at its offices located at \_\_\_\_\_, the amount of Five Thousand Dollars (\$5,000.00).

5. General Provisions.

(a) The parties hereto intend and believe that each provision in this Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Maker and the holder or holders hereof under the remainder of this Note shall continue in full force and effect. All agreements herein are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance hereof, or otherwise, shall the amount paid or agreed to be paid to the holders hereof for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, the fulfillment of any provision hereof, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the holder hereof shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest.

(b) This Note and all provisions hereof shall be binding upon Maker and all persons claiming under or through Maker, and shall inure to the benefit of Payee, together with its successors and assigns, including each owner and holder from time to time of this Note.

(c) Time is of the essence as to all dates set forth herein.

(d) Maker agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Payee; and Maker consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Payee with respect to the payment or other provisions of this Note, and to any substitution, exchange or release of the collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any makers, endorsers, guarantors, or sureties, all whether primarily or secondarily liable, without notice to Maker and without affecting its liability hereunder.

(e) If this Note is placed in the hands of attorneys for collection or is collected through any legal proceedings, Maker promises and agrees to pay, in addition to the principal, interest and other sums due and payable hereon, all costs of collecting or attempting to collect this Note, including all reasonable attorneys' fees and disbursements.

(f) All parties now or hereafter liable with respect to this Note, whether Maker, principal, surety, guarantor, endorsee or otherwise hereby severally waive presentment for payment, demand, notice of nonpayment or dishonor, protest and notice of protest, except as Lender

agrees to provide in the Loan Documents. No failure to accelerate the indebtedness evidenced hereby, acceptance of a past due installment following the expiration of any cure period provided by this Note, any Loan Document or applicable law, or indulgences granted from time to time shall be construed (i) as a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of Payee thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by the laws of the State. Maker hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(g) THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEVADA AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

Maker has delivered this Note as of the date first set forth above.

MAKER:

TOLUCA LAKE VINTAGE, LLC  
A California limited liability company

By: 

Christopher Beavor  
Manager



# EXHIBIT 3

## PAYMENT GUARANTY

THIS PAYMENT GUARANTY ("Guaranty") made as of March 29, 2007, by Christopher Beavor, an individual, and Samantha Beavor, an individual (collectively, "Guarantor"), to and for the benefit of Herbert Frey, Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982 ("Lender").

## RECITALS

A. On or about the date hereof Toluca Lake Vintage, LLC, a California limited liability company, ("Borrower") and Lender entered into that certain Loan Agreement ("Loan Agreement") whereby Lender agreed to make a secured loan (the "Loan") available to Borrower in the aggregate amount of Six Million Dollars (\$6,000,000), to finance the acquisition and development of the Toluca Lake Property. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

B. In connection with the Loan, Borrower will execute and deliver the Notes in favor of Lender, payment of which will be secured by (i) the Deeds of Trust made by Borrower in favor of Lender and (ii) the other Security Documents.

C. Guarantor will derive material financial benefit from the Loan evidenced and secured by the Notes, the Deeds of Trust and the other Security Documents.

D. Lender has relied on the statements and agreements contained herein in agreeing to make the Loan. The execution and delivery of this Guaranty by Guarantor is a condition precedent to the making of the Loan by Lender.

## AGREEMENTS

NOW, THEREFORE, intending to be legally bound, Guarantor, in consideration of the matters described in the foregoing Recitals, which Recitals are incorporated herein and made a part hereof, and for other good and valuable consideration the receipt and sufficiency of which are acknowledged, hereby covenants and agrees for the benefit of Lender and its respective successors, indorsees, transferees, participants and assigns as follows:

1. Guarantor absolutely, unconditionally and irrevocably guarantees:

(a) the full and prompt payment of the principal of and interest on the Notes when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, and the full and prompt payment of all sums which may now be or may hereafter become due and owing under the Notes, the Loan Agreement and the other Loan Documents;

(b) the prompt, full and complete performance of all of Borrower's obligations under each and every covenant contained in the Loan Documents; and

(c) the full and prompt payment of any Enforcement Costs (as hereinafter defined in Section 6 hereof).

All amounts due, debts, liabilities and payment obligations described in subsections (a) and (b) of this Section 1 shall be hereinafter collectively referred to as the "Indebtedness".

2. In the event of any default by Borrower in the payment of the Indebtedness, after the expiration of any applicable cure or grace period, Guarantor agrees, on demand by Lender or the holder of the Note, to pay the Indebtedness regardless of any defense, right of set-off or claims which Borrower or Guarantor may have against Lender or the holder of the Note.

All of the remedies set forth herein and/or provided for in any of the Loan Documents or at law or equity shall be equally available to Lender, and the choice by Lender of one such alternative over another shall not be subject to question or challenge by Guarantor or any other person, nor shall any such choice be asserted as a defense, setoff, or failure to mitigate damages in any action, proceeding, or counteraction by Lender to recover or seeking any other remedy under this Guaranty, nor shall such choice preclude Lender from subsequently electing to exercise a different remedy. The parties have agreed to the alternative remedies provided herein in part because they recognize that the choice of remedies in the event of a default hereunder will necessarily be and should properly be a matter of good faith business judgment, which the passage of time and events may or may not prove to have been the best choice to maximize recovery by Lender at the lowest cost to Borrower and/or Guarantor.

3. Guarantor does hereby (a) waive notice of acceptance of this Guaranty by Lender and any and all notices and demands of every kind which may be required to be given by any statute, rule or law, (b) agree to refrain from asserting, until after repayment in full of the Loan, any defense, right of set-off or other claim which Guarantor may have against Borrower (c) waive any defense, right of set-off or other claim which Guarantor or Borrower may have against Lender, or the holder of the Note, (d) waive any and all rights Guarantor may have under any anti-deficiency statute or other similar protections, (e) waive presentment for payment, demand for payment, notice of nonpayment or dishonor, protest and notice of protest, diligence in collection and any and all formalities which otherwise might be legally required to charge Guarantor with liability, and (f) waive any failure by Lender to inform Guarantor of any facts Lender may now or hereafter know about Borrower, the Loan, or the transactions contemplated by the Loan Agreement, it being understood and agreed that Lender has no duty so to inform and that Guarantor is fully responsible for being and remaining informed by Borrower of all circumstances bearing on the risk of nonperformance of Borrower's obligations. Credit may be granted or continued from time to time by Lender to Borrower without notice to or authorization from Guarantor, regardless of the financial or other condition of Borrower at the time of any such grant or continuation.

4. Guarantor further agrees that Guarantor's liability as guarantor shall not be impaired or affected by any renewals or extensions which may be made from time to time, with or without the knowledge or consent of Guarantor of the time for payment of interest or principal under the Notes or by any forbearance or delay in collecting interest or principal under the Notes, or by any waiver by Lender under the Loan Agreement, Deeds of Trust or any other Loan Documents, or by Lender's failure or election not to pursue any other remedies it may have against Borrower or Guarantor, or by any change or modification in the Notes, Loan Agreement, Deeds of Trust or any other Loan Document, or by the acceptance by Lender of any additional security or any increase, substitution or change therein, or by the release by Lender of any security or any withdrawal thereof or decrease therein, or by the application of payments received from any source to the payment of any obligation other than the Indebtedness even though Lender might lawfully have elected to apply such payments to any part or all of the Indebtedness, it being the intent hereof that, subject to Lender's compliance with the terms of this Guaranty, Guarantor shall remain liable for the payment of the Indebtedness, until the Indebtedness has been paid in full, notwithstanding any act or thing which might otherwise operate as a legal or equitable discharge of a surety. Guarantor further understands and agrees that Lender may at any time enter into agreements with Borrower to amend and modify the Notes, Loan Agreement, Deeds of Trust or other Loan Documents,

and may waive or release any provision or provisions of the Notes, Loan Agreement, Deeds of Trust and other Loan Documents or any thereof, and, with reference to such instruments, may make and enter into any such agreement or agreements as Lender and Borrower may deem proper and desirable, without in any manner impairing or affecting this Guaranty or any of Lender's rights hereunder or Guarantor's obligations hereunder.

5. This is an absolute, present and continuing guaranty of payment and not of collection. Guarantor agrees that this Guaranty may be enforced by Lender without the necessity at any time of resorting to or exhausting any other security or collateral given in connection herewith or with the Notes, Loan Agreement, Deeds of Trust or any of the other Loan Documents through foreclosure or sale proceedings, as the case may be, under the Deeds of Trust or otherwise, or resorting to any other guaranties, and without limiting the generality of the foregoing, Guarantor waives any right Guarantor may have under the Nevada one action rule, Nevada Revised Statutes Section 40.430.

6. If: (a) this Guaranty is placed in the hands of an attorney for collection or is collected through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Guaranty; (c) an attorney is retained to provide advice or other representation with respect to this Guaranty; or (d) an attorney is retained to represent Lender in any proceedings whatsoever in connection with this Guaranty and Lender prevails in any such proceedings, then Guarantor shall pay to Lender upon demand all attorney's fees, costs and expenses incurred in connection therewith (all of which are referred to herein as "*Enforcement Costs*"), in addition to all other amounts due hereunder, regardless of whether all or a portion of such Enforcement Costs are incurred in a single proceeding brought to enforce this Guaranty as well as the other Loan Documents.

7. The parties hereto intend and believe that each provision in this Guaranty comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Guaranty is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Guaranty to be illegal, invalid, unlawful, void or unenforceable, as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Guaranty shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Lender or the holder of the Note under the remainder of this Guaranty shall continue in full force and effect.

8. TO THE GREATEST EXTENT PERMITTED BY LAW, GUARANTOR HEREBY WAIVES ANY AND ALL RIGHTS TO REQUIRE MARSHALLING OF ASSETS BY LENDER. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS GUARANTY (EACH, A "PROCEEDING"), LENDER AND GUARANTOR IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN THE CITY OF LAS VEGAS, AND STATE OF NEVADA, AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS GUARANTY SHALL PRECLUDE LENDER FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. LENDER

AND GUARANTOR FURTHER AGREE AND CONSENT THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY PROCEEDING IN ANY NEVADA STATE OR UNITED STATES COURT SITTING IN THE CITY OF LAS VEGAS AND MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE APPLICABLE PARTY AT THE ADDRESS INDICATED BELOW, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF SUCH PARTY SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

9. Any indebtedness of Borrower to Guarantor now or hereafter existing is hereby subordinated to the payment of the Indebtedness. Guarantor agrees that, until the entire Indebtedness has been paid in full, Guarantor will not seek, accept, or retain for its own account, any payment from Borrower on account of such subordinated debt. Any payments to Guarantor on account of such subordinated debt shall be collected and received by Guarantor in trust for Lender and shall be paid over to Lender on account of the Indebtedness without impairing or releasing the obligations of Guarantor hereunder.

10. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to such courier service or (d) if by telecopier on the day of transmission so long as copy is sent on the same day by overnight courier as set forth below:

Guarantor:

Christopher Beavor  
1930 Village Center Circle Suite 3-231  
Las Vegas, Nevada 89134  
Telephone: (702) 853-7900  
Facsimile: (702) 947-6111

Lender:

Herbert Frey, Trustee of the Herbert Frey  
Revocable Family Trust dated November 22, 1982  
157 E. Warm Springs Road  
Las Vegas, Nevada 89119  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_


or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

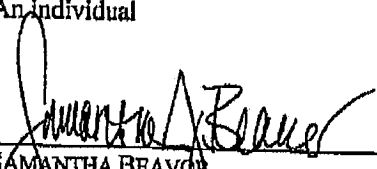
11. This Guaranty shall be binding upon the heirs, executors, legal and personal representatives, successors and assigns of Guarantor and shall not be discharged in whole or in part by the death of Guarantor. If more than one party executes this Guaranty, the liability of all such parties shall be joint and several.

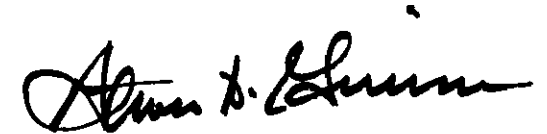
12. This Guaranty may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Guarantor has delivered this Guaranty in the State of Nevada as of the date first written above.

GUARANTOR:

  
CHRISTOPHER BEAVOR  
An individual 3/28/07

  
SAMANTHA BEAVOR  
An individual 3/28/07



CLERK OF THE COURT

1 ACN  
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](mailto:marc@maxlawnv.com)  
10 Attorney for Defendants/Counterclaimants

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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

YACOV JACK HEFETZ, an individual; and  
ALIS COHEN, an individual,

Plaintiffs,

vs.

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

Defendants.

Case No.: A-10-645353-C  
Dept. No.: XI

**DEFENDANTS' ANSWER TO  
COMPLAINT AND COUNTERCLAIM**

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.

...

...

1 COMES NOW Defendants CHRISTOPHER BEAVOR and SAMANTHA BEAVOR by  
2 and through their attorney of record, MARC A. SAGGESE, ESQ., of the law firm of SAGGESE  
3 & ASSOCIATES, LTD., and hereby answers PLAINTIFFS' Complaint as follows:  
4

5 1. In answering Paragraph 1 of Plaintiffs' Complaint, Defendants deny the  
6 allegations contained therein.

7 2. In answering Paragraph 2 of Plaintiffs' Complaint, Defendants admit the  
8 allegations contained therein.

9 3. In answering Paragraph 3 of Plaintiffs' Complaint, Defendants are without  
10 sufficient knowledge or information to form a belief as to the allegations contained therein and  
11 therefore deny each allegation contained therein.  
12

13 4. In answering Paragraphs 4 and 5 of Plaintiffs' Complaint, Defendants admit the  
14 allegations contained therein.  
15

16 6. In answering Paragraph 6 of Plaintiffs' Complaint, Defendants deny the  
17 allegations contained therein.

18 7. In answering Paragraph 7 of Plaintiffs' Complaint, Defendants only admit that  
19 jurisdiction and venue are proper in Las Vegas, Clark County, Nevada, and deny every other  
20 allegation contained therein.  
21

22 8. In answering Paragraph 8 of Plaintiffs' Complaint, Defendants make special note  
23 that the correct name of Lender is the Herbert Frey Revocable Family Trust, dated November 22,  
24 1982, and admits the allegations contained therein.

25 9. In answering Paragraph 9 of Plaintiffs' Complaint, Defendants only admit that the  
26 purpose of the Loan was to improve and develop certain real property located in Los Angeles,  
27 California, and deny every other allegation contained therein.  
28



1           10.     In answering Paragraph 10 of Plaintiffs' Complaint, Defendants are without  
2 sufficient knowledge or information to form a belief as to the allegations contained therein and  
3 therefore deny each allegation contained therein.  
4

5           11.     In answering Paragraphs 11, 12, 13 and 14 of Plaintiffs' Complaint, Defendants  
6 deny the allegations contained therein.

7           12.     In answering Paragraph 15 of Plaintiffs' Complaint, Defendants admit the  
8 allegations contained therein.  
9

10                           **FIRST CLAIM FOR RELIEF**  
11                           **(Breach of Guarantee)**

12           13.     In answering Paragraph 16 of Plaintiffs' Complaint, Defendants reincorporate all  
13 of their answers to all preceding paragraphs as though set forth fully herein.

14           14.     In answering Paragraphs 17, 18, 19, 21 and 22 of Plaintiffs' Complaint,  
15 Defendants deny the allegations contained therein.

16           15.     In answering Paragraph 20 of Plaintiffs' Complaint, Defendants admit the  
17 allegations contained therein.  
18

19                           **AFFIRMATIVE DEFENSES**

20           1.       Plaintiffs' claims have been waived as a result of Plaintiffs' acts and conduct.

21           2.       Plaintiffs are estopped from asserting the claims herein as a result of Plaintiffs'  
22 acts and conduct.

23           3.       Plaintiffs have unclean hands.  
24

25           4.       Plaintiffs have failed to mitigate their damages.

26           5.       Some or all of Plaintiffs' claims for relief are barred by Plaintiffs' own acts,  
27 omissions and/or negligence.  
28

1           6.       Plaintiffs' damages, if any, must be offset against the damages Plaintiffs have  
2 caused Defendants Christopher and Samantha Beavor.

3           7.       The damages sustained by Plaintiffs, if any, were caused by the acts of third  
4 persons who were not agents, servants, or employees of Defendants and who were not acting on  
5 behalf of Defendants in any manner or form, and as such, Defendants are not liable in any  
6 manner toward Plaintiffs.

7           8.       Plaintiffs have failed to state a claim upon which relief can be granted.

8           9.       Plaintiffs have materially breached their obligations to these answering parties,  
9 thereby excusing any further obligation of performance by these answering parties of any  
10 contractual obligations.

11          10.      The claim for breach of guarantee is barred as a result of the failure to satisfy  
12 conditions precedent.

13          11.      Plaintiffs' claims are brought without reasonable ground or to harass these  
14 answering parties.

15          12.      Plaintiffs' claims are barred from recovery by the Doctrine of Laches.

16          13.      Plaintiffs' claims are barred by the Doctrine of Ratification.

17          14.      The damages sustained by Plaintiffs, if any, were accomplished with the full  
18 knowledge of and consent of Plaintiffs.

19          15.      The damages, if any, were not caused by and conduct of this answering party, and  
20 were caused by Plaintiffs, and Plaintiffs' agents.

21          16.      Plaintiffs' claims are barred by the statute of limitations.

22          17.      Plaintiffs' claims are barred by their own fraudulent acts, omissions, and  
23 misrepresentations, whether intentional, negligent, or constructive.

19. Plaintiffs have not been damaged directly, indirectly, or proximately, or in any manner whatsoever, by any conduct of these answering parties.

20. Plaintiffs' Complaint is filed in bad faith and has no merit.

21. Defendants Christopher and Samantha Beavor are excused from any and all liability under the facts alleged in Plaintiffs' claims for relief because at all material times Defendants acted in good faith and conducted all material transactions in good faith.

22. All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendants' Answer to Plaintiffs' Complaint, and therefore, Defendants reserve the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants.

WHEREFORE Defendants Christopher and Samantha Beavor pray as follows:

1. That Plaintiffs take nothing by way of their Complaint;
2. That this Court deny Plaintiffs' claim for equitable relief;
3. That Defendants Christopher and Samantha Beavor be awarded costs and reasonable attorneys' fees incurred in defending this action; and
4. For such other and further relief as this Court deems just and proper.

DATED this 21<sup>st</sup> day of October, 2011.

/s/ MARC A. SAGGESE, ESQ.

**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

1 COUNTERCLAIM

2 COMES NOW, Counterclaimants CHRISTOPHER BEAVOR and SAMANTHA  
3 BEAVOR, by and through the undersigned counsel, and hereby asserts the following  
4 Counterclaim against Counter-Defendant YACOV JACK HEFETZ, as follows:  
5

6 1. CHRISTOPHER BEAVOR is an individual, who at all times relevant, is a  
7 resident of Clark County, Nevada.

8 2. SAMANTHA BEAVOR is an individual, who at all times relevant, is a resident  
9 of Clark County, Nevada.  
10

11 3. Upon information and belief, Counter-Defendant YACOV JACK HEFETZ  
12 (henceforth "HEFETZ") is an individual, who at all times relevant is a resident of Clark County,  
13 Nevada.

14 4. That pursuant to NRCP 10(a) and Nurenberger Hercules-Werke GMBH v.  
15 Virostek, 107 Nev. 873 (Nev. 1991), the identity of resident and non-resident Designated herein  
16 as DOES I-X and ROE CORPORATIONS XXI-XXX, inclusive, are unknown to Counter-  
17 Claimants at this present time; however, it is alleged and believed these Defendants were  
18 involved in the initiation, approval, support, or execution of the wrongful acts on which this  
19 action is premised, or of similar actions directed against Counter-Claimants about which they are  
20 presently unaware. As the specific identities of these parties are revealed through the course of  
21 discovery, the DOES and ROES will be replaced to identify these parties by their true names and  
22 capacities.  
23  
24

25 5. That jurisdiction and venue are proper in this Court.  
26

27 ...

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7. Said Loan was procured by Borrower for the purpose of developing certain real property located in Los Angeles County, California.

9. Lender then recorded a deed of trust against Counterclaimants' two Nevada properties as collateral to secure the loan. Said properties are located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.

11. Said Loan was utilized as a down payment for the real estate project to include the purchase price for the land, engineering, marketing, and architects.

13. After eighteen months of construction of the real property project in Los Angeles County, California, the bank backing the project ceased funding the loan, halting construction.

15. Following the filing of said motion, Counterclaimants were contact by Lender and Counter-Defendant Hefetz with a strategy: for Counterclaimant to terminate his legal counsel

1 and retain Counter-Defendant's attorney to file a Complaint against the bank originally funding  
2 the loan. In turn, Borrower should then file bankruptcy, but Counterclaimants would be released  
3 from all obligations and personal guarantees under the loan, and the deeds of trust would be  
4 released against Counterclaimants' properties.  
5

6 16. Lender then appointed Star Management, LLC, as Manager of Toluca Lake  
7 Vintage, LLC, on May 13, 2009. Counter-Defendant Hefetz was Manager of Star Development,  
8 LLC.  
9

10 17. On May 14, 2009, Counter-Defendant Hefetz, as Manager of Star Development,  
11 LLC, which was Manager of Toluca Lake Vintage, LLC, caused Toluca Lake Vintage, LLC, to  
12 file bankruptcy, causing the loan to default and the \$6,000,000.00 to become due to Lender.  
13

14 18. Pursuant to prior negotiations with Lender, Counterclaimants were to be released  
15 from all obligations and personal guarantees under the loan after the filing of the bankruptcy, and  
16 the deeds of trust were to be released against Counterclaimants' properties.  
17

18 19. Bankruptcy proceedings were initiated in the Central District of San Fernando  
19 Valley, California, Case No. 1:09BK15680-GM.  
20

21 20. Following the bankruptcy proceedings in court, Counter-Defendant Hefetz  
22 reported fraudulent statements to his legal counsel, causing said counsel to file false affidavits  
23 with the court stating that Counterclaimants had reached a global settlement agreement with the  
24 bank funding the loan, when Counterclaimants had never been briefed on the issue and had never  
25 been presented with the purported settlement documents for review.  
26

27 21. A settlement agreement was not presented to Counterclaimants until  
28 approximately three (3) months after said affidavits were filed and approved by the court for the  
bankruptcy proceedings.

1           22.     Upon learning this information, Counterclaimants contacted counsel retained by  
2 Lender on Counterclaimants' behalf and alerted said counsel of the fraudulent actions being  
3 committed by Counter-Defendant Hefetz, as he filed an Ex Parte Motion to finalize the  
4 bankruptcy settlement, the terms of which Counterclaimants had not agreed.  
5

6           23.     Upon reviewing the settlement information, Counterclaimants discovered that  
7 said settlement documents release Counterclaimants from their obligations to the bank, but not  
8 their obligations and personal guarantees to Lender, which had previously been agreed upon.  
9

10          24.     New counsel was retained by Counterclaimants, at which time oppositions to said  
11 bankruptcy proceedings were filed to expose the fraudulent activities that had taken place on the  
12 part of Counter-Defendant Hefetz.

13          25.     Upon the filing of said affidavits, the bankruptcy court issued a Section 363(b)  
14 ruling and stated that good faith dealings had not taken place, and claims were preserved against  
15 Lender, Star Development, LLC, and Counter-Defendant Hefetz.  
16

17          26.     In December 2010, Counterclaimants were contacted by Wayne Krieger, another  
18 Manager of Star Development, LLC, that release documents had been drafted for  
19 Counterclaimants' signature that were to release all claims against Lender, and in turn, released  
20 Counterclaimants of all obligations and personal guarantees from the \$6,000,000.00 loan, as well  
21 as release of the deeds of trust recorded against Counterclaimants' properties.  
22

23          27.     Counterclaimants signed the settlement agreement, and agreed to remit  
24 \$23,000.00 for payment of associated legal fees.

25          28.     In January 2011, Counterclaimant Christopher Beavor proceeded to personally  
26 drop off all settlement documents and payments for legal fees to Lender.  
27  
28

1           29.     Counter-Defendant Hefetz was in Lender's office at the time of  
2 Counterclaimant's arrival, and physically grabbed the settlement agreement from  
3 Counterclaimant and stated that he would not allow Lender to sign the settlement documents  
4 releasing Counterclaimants of all obligations under the loan.  
5

6           30.     Counterclaimants then received a call from Counter-Defendant Hefetz stating that  
7 he was going to force Lender to assign him the outstanding debt, to which Counterclaimants  
8 could never be released. The instant litigation ensued.  
9

### 10                               **FIRST CLAIM FOR RELIEF**

#### 11                                       **Fraud**

12           31.     Counterclaimants hereby adopt and incorporate by reference Paragraphs 1  
13 through 30 above as though fully set forth herein.  
14

15           32.     Counter-Defendant Hefetz caused, through Star Development as Manager, false  
16 information to be relayed to Star Development's counsel, and the filing of fraudulent affidavits  
17 to be filed with the Central District of San Fernando Valley, Case No. 1:09BK15680-GM, by  
18 Counter-Defendant Hefetz stating that there existed a global settlement agreement that would  
19 have released all parties to the \$6,000,000.00 loan.  
20

21           33.     Specifically, upon reviewing the settlement information, Counterclaimants  
22 discovered that said settlement documents release Counterclaimants from their obligations to the  
23 bank, but not their obligations and personal guarantees to Lender, which had previously been  
24 agreed upon.

25           34.     Counterclaimants were not included in the global settlement as per Counter-  
26 Defendant Hefetz' prior representations, and was excluded from said agreement by the counsel  
27 that Counter-Defendant had provided for Counterclaimants.  
28



1           35.     Counterclaimants justifiably relied on the prior representation of Counter-  
2 Defendant Hefetz that they would be released from their obligations and personal guarantees  
3 under the loan, when in fact, the counsel provided by Counter-Defendant purposefully excluded  
4 Counterclaimants from being released in the settlement documents.  
5

6           36.     As a direct and proximate result of Counter-Defendant's actions,  
7 Counterclaimants have suffered damages in excess of ten thousand dollars (\$10,000.00).  
8

9           37.     As a result of Counter-Defendant's actions, Counterclaimants have suffered an  
10 unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada  
11 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.

12           38.     As a result of Counter-Defendant's actions, Counterclaimants have been forced to  
13 retain an attorney and have incurred attorney's fees and costs.  
14

## 15                                   **SECOND CLAIM FOR RELIEF**

### 16                                   **Breach of the Covenant of Good Faith and Fair Dealing**

17           39.     Counterclaimants hereby adopt and incorporate by reference Paragraphs 1  
18 through 38 above as though fully set forth herein.

19           40.     Every contract contains an implied covenant of good faith and fair dealing.  
20 Counter-Defendant Hefetz breached said Covenant of Good Faith and Fair Dealing when he  
21 misrepresented the terms of the global settlement agreement during the bankruptcy proceedings.  
22

23           41.     Counter-Defendant further breached said Covenant of Good Faith and Fair  
24 Dealing when he failed to allow Counterclaimants to be released from their obligations and  
25 personal guarantees under the loan from Lender, holding them personally responsible for all  
26 monies due, as well as holding liens against their properties.  
27  
28

1           42.     Counterclaimants suffered damages in excess of ten thousand dollars  
2 (\$10,000.00) as a result of Counter-Defendant's breach of said Covenant of Good Faith and Fair  
3 Dealing.

4           43.     As a result of Counter-Defendant's actions, Counterclaimants have suffered an  
5 unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada  
6 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.

7           44.     As a result of Counter-Defendant's actions, Counterclaimants have been forced to  
8 retain an attorney and have incurred attorney's fees and costs.  
9  
10

### 11                           **THIRD CLAIM FOR RELIEF**

#### 12                                   **Breach of Fiduciary Duty**

13           45.     Counterclaimants hereby adopt and incorporate by reference Paragraphs 1  
14 through 44 above as though fully set forth herein.  
15

16           46.     Counter-Defendant Hefetz, as Manager of Star Development, LLC, and Star  
17 Development, as Manager of Toluca Lake Vintage, LLC, owed a fiduciary duty to  
18 Counterclaimant, owner of Toluca Lake Vintage, LLC.

19           47.     Counter-Defendant Hefetz breached that fiduciary duty when he caused, through  
20 Star Development as Manager, false information to be relayed to Star Developments's counsel,  
21 causing fraudulent affidavits to be filed with the Central District of San Fernando Valley, Case  
22 No. 1:09BK15680-GM, by stating that there existed a global settlement agreement that would  
23 have released all parties to the \$6,000,000.00 loan.  
24

25           48.     Counter-Defendant Hefetz further breached that duty when he failed to act for the  
26 benefit of Counterclaimants by failing to include Counterclaimants in said settlement agreement  
27  
28

1 to release Counterclaimants from their obligations to and personal guarantees to Lender, which  
2 had previously been agreed upon.

3           49. As a result of Counter-Defendant's actions, Counterclaimants suffered damages in  
4 excess of ten thousand dollars (\$10,000.00).

5           50. As a result of Counter-Defendant's actions, Counterclaimants have suffered an  
6 unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada  
7 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.

8           51. As a result of Counter-Defendant's actions, Counterclaimants have been forced to  
9 retain an attorney and have incurred attorney's fees and costs.

#### 12 **FOURTH CLAIM FOR RELIEF**

##### 13 **Tortious Interference with Contractual Relations**

14           52. Counterclaimants hereby adopt and incorporate by reference Paragraphs 1  
15 through 51 above as though fully set forth herein.

16           53. Counterclaimants entered into a contract with Lender (the Herbert Frey Revocable  
17 Family Trust, dated November 22, 1982) for a mutual release and payment agreement regarding  
18 the loan for \$6,000,000.00.

19           54. Counter-Defendant Hefetz physically intercepted the contract to release  
20 Counterclaimants from their obligations, personal guarantee, and property liens on said  
21 \$6,000,000.00 loan, as it was being delivered to Mr. Frey for signature.

22           55. Counterclaimant Christopher Beavor presented the signed contract to Lender via  
23 personal delivery for signature and finalization of the contract.

24           56. Counter-Defendant Hefetz purposefully, actively and deliberately withheld said  
25 contract from the possession of Lender.

57. As a result of Counter-Defendant's actions, Counterclaimants suffered damages in excess of ten thousand dollars (\$10,000.00).

58. As a result of Counter-Defendant's actions, Counterclaimants have suffered an unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.

59. As a result of Counter-Defendant's actions, Counterclaimants have been forced to retain an attorney and have incurred attorney's fees and costs.

#### **FOURTH CLAIM FOR RELIEF**

## Negligence Per Se (Violation of NRS 645B)

60. Counterclaimants hereby adopt and incorporate by reference Paragraphs 1 through 59 above as though fully set forth herein.

61. Counter-Defendant Hefetz acquired the \$6,000,000.00 note unlawfully from Lender in violation of NRS 645B.

62. The Herbert Frey Revocable Family Trust dated November 22, 1982 (Lender) is an unlicensed mortgage broker who transferred the note to Counter-Defendant Hefetz, also an unlicensed mortgage broker, in violation of NRS 645B.

63. Counter-Defendant Hefetz and Lender do not meet the exception to the license requirement as designated in NRS 645B.015, as the transfer of the \$6,000,000.00 note was secured by Counterclaimants' real property, and was, at all times an unlawful transfer of a secured transaction.

64. As a result of Counter-Defendant's actions, Counterclaimants suffered damages in excess of ten thousand dollars (\$10,000.00).

65. As a result of Counter-Defendant's actions, Counterclaimants have suffered an unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.

66. As a result of Counter-Defendant's actions, Counterclaimants have been forced to retain an attorney and have incurred attorney's fees and costs.

WHEREFORE, Counter-Claimants expressly reserve the right to amend this Counterclaim at time of trial to include all items of damages not yet ascertained, prays for the following relief against Counter-Defendant:

1. For general damages in an amount in excess of ten thousand dollars (\$10,000.00);
2. For special damages in an amount in excess of ten thousand dollars (\$10,000.00);
3. For economic damages in an amount in excess of ten thousand dollars (\$10,000.00);
4. For future damages in an amount in excess of ten thousand dollars (\$10,000.00);
5. For punitive damages in an amount in excess of ten thousand dollars (\$10,000.00);
6. For an award of attorney's fees and costs of suit as provided by Nevada Revised Statutes;
7. For prejudgment interest as provided by law; and
8. For such other and further relief as the Court may deem just or proper.

DATED this 21<sup>st</sup> day of October, 2011.

/s/ MARC A. SAGGESE, ESQ.

**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@maxlawny.com

Attorney for Defendants/Counterclaimants

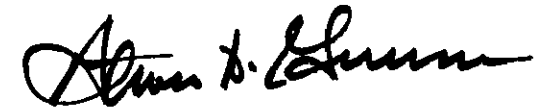
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Lee I. Iglody, Esq.  
9555 S. Eastern Avenue, Suite 280  
Las Vegas, NV 89123  
702.446.5366  
Attorney for Plaintiffs/Counter-Defendant Hefetz

/s/ Alexis Vardoulis

---

Employee of SAGGESE & ASSOCIATES, LTD.



CLERK OF THE COURT

CCAN  
Lee I. Iglody, Esq.  
Nevada Bar #: 7757  
9555 S. Eastern Avenue, Suite 280  
Las Vegas, NV 89123  
Tel: (702) 425-5366  
Fax: (702) 446-5148  
Email: [Lee@Iglody.com](mailto:Lee@Iglody.com)  
Attorney for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

YACOV JACK HEFETZ, an individual, and )  
ALIS COHEN, an individual, )  
Plaintiffs, )

CASE NO: A-10-645353-C  
DEPT NO.: XXVIII

vs. )

REPLY TO COUNTERCLAIM

CHRISTOPHER BEAVOR, an individual, )  
and SAMANTHA BEAVOR, an individual, )  
DOES I – X and ROE ENTITIES I – X, )  
inclusive )  
Defendants. )

Plaintiffs YACOV JACK HEFETZ and ALIS COHEN (collectively, "Plaintiffs"), by and through their counsel, Lee Iglody, Esq., hereby reply to the Counterclaim filed by Defendants CHRISTOPHER BEAVOR and SAMANTHA BEAVOR (the "Defendants") as follows:

1. Answering Paragraph 1 of the Counterclaim, Plaintiffs admit the allegations therein.
2. Answering Paragraph 2 of the Counterclaim, Plaintiffs admit the allegations therein.
3. Answering Paragraph 3 of the Counterclaim, Plaintiffs admit the allegations therein.
4. Answering Paragraph 4 of the Counterclaim, Plaintiffs are without sufficient

LEE IGLODY, ESQ.

9555 S. Eastern Ave., Suite 280

Las Vegas, Nevada 89123

(702) 425-5366 FAX: (702) 446-5148

1 information upon which to base an answer to the allegations therein and on that basis deny the  
2 allegations therein.

3 5. Answering Paragraph 5 of the Counterclaim, Plaintiffs admit the allegations  
4 therein.

5 FACTS

6 6. Answering Paragraph 6 of the Counterclaim, Plaintiffs are without sufficient  
7 information upon which to base an answer to the allegations therein and on that basis deny the  
8 allegations therein.

9 7. Answering Paragraph 7 of the Counterclaim, Plaintiffs are without sufficient  
10 information upon which to base an answer to the allegations therein and on that basis deny the  
11 allegations therein.

12 8. Answering Paragraph 8 of the Counterclaim, Plaintiffs are without sufficient  
13 information upon which to base an answer to the allegations therein and on that basis deny the  
14 allegations therein.

15 9. Answering Paragraph 9 of the Counterclaim, Plaintiffs are without sufficient  
16 information upon which to base an answer to the allegations therein and on that basis deny the  
17 allegations therein.

18 10. Answering Paragraph 10 of the Counterclaim, Plaintiffs are without sufficient  
19 information upon which to base an answer to the allegations therein and on that basis deny the  
20 allegations therein.

21 11. Answering Paragraph 11 of the Counterclaim, Plaintiffs are without sufficient  
22 information upon which to base an answer to the allegations therein and on that basis deny the  
23 allegations therein.

24 12. Answering Paragraph 12 of the Counterclaim, Plaintiffs are without sufficient  
25 information upon which to base an answer to the allegations therein and on that basis deny the  
26 allegations therein.

27 13. Answering Paragraph 13 of the Counterclaim, Plaintiffs are without sufficient  
28



1 information upon which to base an answer to the allegations therein and on that basis deny the  
2 allegations therein.

3 14. Answering Paragraph 14 of the Counterclaim, Plaintiffs are without sufficient  
4 information upon which to base an answer to the allegations therein and on that basis deny the  
5 allegations therein.

6 15. Answering Paragraph 15 of the Counterclaim, Plaintiffs deny the allegations  
7 therein.

8 16. Answering Paragraph 16 of the Counterclaim, Plaintiffs deny the allegations  
9 therein.

10 17. Answering Paragraph 17 of the Counterclaim, Plaintiffs deny the allegations  
11 therein.

12 18. Answering Paragraph 18 of the Counterclaim, Plaintiffs deny the allegations  
13 therein.

14 19. Answering Paragraph 19 of the Counterclaim, Plaintiffs are without sufficient  
15 information upon which to base an answer to the allegations therein and on that basis deny the  
16 allegations therein.

17 20. Answering Paragraph 20 of the Counterclaim, Plaintiffs deny the allegations  
18 therein.

19 21. Answering Paragraph 21 of the Counterclaim, Plaintiffs deny the allegations  
20 therein.

21 22. Answering Paragraph 22 of the Counterclaim, Plaintiffs are without sufficient  
22 information upon which to base an answer to the allegations therein and on that basis deny the  
23 allegations therein.

24 23. Answering Paragraph 23 of the Counterclaim, Plaintiffs deny the allegations  
25 therein.

26 24. Answering Paragraph 24 of the Counterclaim, Plaintiffs are without sufficient  
27 information upon which to base an answer to the allegations therein and on that basis deny the  
28

1 allegations therein.

2 25. Answering Paragraph 25 of the Counterclaim, Plaintiffs are without sufficient  
3 information upon which to base an answer to the allegations therein and on that basis deny the  
4 allegations therein.

5 26. Answering Paragraph 26 of the Counterclaim, Plaintiffs are without sufficient  
6 information upon which to base an answer to the allegations therein and on that basis deny the  
7 allegations therein.

8 27. Answering Paragraph 27 of the Counterclaim, Plaintiffs are without sufficient  
9 information upon which to base an answer to the allegations therein and on that basis deny the  
10 allegations therein.

11 28. Answering Paragraph 28 of the Counterclaim, Plaintiffs deny the allegations  
12 therein.

13 29. Answering Paragraph 29 of the Counterclaim, Plaintiffs deny the allegations  
14 therein.

15 30. Answering Paragraph 30 of the Counterclaim, Plaintiffs deny the allegations  
16 therein.

17  
18 **FIRST COUNTERCLAIM FOR RELIEF**

19 **(Fraud)**

20 31. Plaintiffs repeat and incorporate by reference their answers in the preceding  
21 paragraphs as if fully set forth herein.

22 32. Answering Paragraph 32 of the Counterclaim, Plaintiffs deny the allegations  
23 therein.

24 33. Answering Paragraph 33 of the Counterclaim, Plaintiffs deny the allegations  
25 therein.

26 34. Answering Paragraph 34 of the Counterclaim, Plaintiffs deny the allegations  
27 therein.

28 35. Answering Paragraph 35 of the Counterclaim, Plaintiffs deny the allegations

1 therein.

2 36. Answering Paragraph 36 of the Counterclaim, Plaintiffs deny the allegations  
3 therein.

4 37. Answering Paragraph 37 of the Counterclaim, Plaintiffs deny the allegations  
5 therein.

6 38. Answering Paragraph 38 of the Counterclaim, Plaintiffs deny the allegations  
7 therein.

8 **SECOND COUNTERCLAIM FOR RELIEF**

9 (Breach of the Implied Covenant of Good Faith and Fair Dealing)

10 39. Plaintiffs repeat and incorporate by reference their answers in the preceding  
11 paragraphs as if fully set forth herein.

12 40. Answering Paragraph 40 of the Counterclaim, Plaintiffs deny the allegations  
13 therein.

14 41. Answering Paragraph 41 of the Counterclaim, Plaintiffs deny the allegations  
15 therein.

16 42. Answering Paragraph 42 of the Counterclaim, Plaintiffs deny the allegations  
17 therein.

18 43. Answering Paragraph 43 of the Counterclaim, Plaintiffs deny the allegations  
19 therein.

20 44. Answering Paragraph 44 of the Counterclaim, Plaintiffs deny the allegations  
21 therein.

22 **THIRD COUNTERCLAIM FOR RELIEF**

23 (Breach of Fiduciary Duty)

24 45. Plaintiffs repeat and incorporate by reference their answers in the preceding  
25 paragraphs as if fully set forth herein.

26 46. Answering Paragraph 46 of the Counterclaim, Plaintiffs deny the allegations  
27 therein.

1           47.     Answering Paragraph 47 of the Counterclaim, Plaintiffs deny the allegations  
2     therein.

3           48.     Answering Paragraph 48 of the Counterclaim, Plaintiffs deny the allegations  
4     therein.

5           49.     Answering Paragraph 49 of the Counterclaim, Plaintiffs deny the allegations  
6     therein.

7           50.     Answering Paragraph 50 of the Counterclaim, Plaintiffs deny the allegations  
8     therein.

9           51.     Answering Paragraph 51 of the Counterclaim, Plaintiffs deny the allegations  
10    therein.

11                               **FOURTH COUNTERCLAIM FOR RELIEF**

12                               **(Tortious Interference with Contractual Relations)**

13           52.     Plaintiffs repeat and incorporate by reference their answers in the preceding  
14     paragraphs as if fully set forth herein.

15           53.     Answering Paragraph 53 of the Counterclaim, Plaintiffs deny the allegations  
16     therein.

17           54.     Answering Paragraph 54 of the Counterclaim, Plaintiffs deny the allegations  
18     therein.

19           55.     Answering Paragraph 55 of the Counterclaim, Plaintiffs deny the allegations  
20     therein.

21           56.     Answering Paragraph 56 of the Counterclaim, Plaintiffs deny the allegations  
22     therein.

23           57.     Answering Paragraph 57 of the Counterclaim, Plaintiffs deny the allegations  
24     therein.

25           58.     Answering Paragraph 58 of the Counterclaim, Plaintiffs deny the allegations  
26     therein.

27           59.     Answering Paragraph 59 of the Counterclaim, Plaintiffs deny the allegations  
28

therein.

**FOURTH (sic) COUNTERCLAIM FOR RELIEF**

**(Negligence Per Se Violation of NRS 645B)**

60. Plaintiffs repeat and incorporate by reference their answers in the preceding paragraphs as if fully set forth herein.

61. Answering Paragraph 61 of the Counterclaim, Plaintiffs deny the allegations therein.

62. Answering Paragraph 62 of the Counterclaim, Plaintiffs deny the allegations therein.

63. Answering Paragraph 63 of the Counterclaim, Plaintiffs deny the allegations therein.

64. Answering Paragraph 64 of the Counterclaim, Plaintiffs deny the allegations therein.

65. Answering Paragraph 65 of the Counterclaim, Plaintiffs deny the allegations therein.

66. Answering Paragraph 66 of the Counterclaim, Plaintiffs deny the allegations therein.

**AFFIRMATIVE DEFENSES**

1. Defendants' have failed to state a claim upon which relief can be granted.

2. Defendants' claims are barred by the applicable statute of limitations.

3. The liability, if any, of Plaintiffs must be reduced by the percentage of fault of others, including Defendants.

4. Any damages sustained by Defendants were cause by the acts of third parties who were not acting on Plaintiffs' behalf, such that Plaintiffs are not liable in any matter toward Plaintiffs.

5. Plaintiff Yacov Hefetz is not the real party in interest.

1           6.       Defendants' claims are barred by the failure of Defendants to plead those claims  
2 with particularity.

3           7.       Defendants' claims are barred by the doctrines of waiver, estoppel, and laches.

4           8.       Plaintiffs assert the defenses of mistake, excused, non-performance by  
5 Defendants, and failure of consideration.

6           9.       Defendants failed to plead fraud with the required particularity under NRCP 9.

7           10.      Defendants' reliance on any of the representations alleged in the Counterclaim  
8 was not justifiable.

9           11.      Plaintiffs owed no fiduciary duty to Defendants.

10          12.      Defendants failed to mitigate any damages they may have suffered.

11          13.      Defendants' claim to damages is barred by the Economic Loss Doctrine.

12          14.      Defendants' claims were brought without reasonable ground and to harass  
13 Plaintiffs.

14          15.      It has been necessary for Plaintiffs to retain the services of attorneys to defend this  
15 action and Plaintiffs should be allowed attorneys fees, together with their costs incurred in the  
16 defense of this action.

17          16.      Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have  
18 been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon  
19 the filing of the Reply to Counterclaim, and therefore, Plaintiffs reserve the right to amend this  
20 answer to allege additional affirmative defenses if subsequent investigation warrants.

21          ...

22          ...

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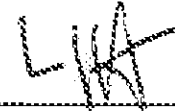
1 WHEREFORE, Plaintiffs pray as follows:

2 1. That Defendants take nothing by way of their Counterclaim;

3 2. For attorneys fees and costs; and

4 3. For any such other and further relief as the Court deems just and proper under the  
5 circumstances.

6 Dated this 1<sup>st</sup> day of November, 2011.

7  
8 

9 Lee I. Iglody, Esq.

10 Nevada Bar #: 7757

11 Email: Lee@Iglody.com

12 *Attorney for Plaintiffs*

13 LEE IGLODY, ESQ.

14 9555 S. Eastern Ave., Suite 280

15 Las Vegas, Nevada 89123

16 (702) 425-5366 FAX: (702) 446-5148  
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LEE IGLODY, ESQ.  
9555 S. Eastern Ave., Suite 280  
Las Vegas, Nevada 89123  
(702) 425-5366 FAX: (702) 446-5148

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1 day of November, 2011, I served a copy of foregoing, by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

**SAGGESE & ASSOCIATES, LTD.**


Marc A. Saggese, Esq.

732 S. Sixth Street, Suite 201

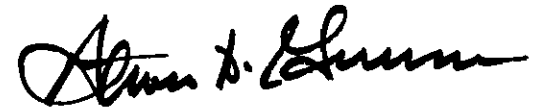
Las Vegas, Nevada 89101

Attorney for Defendants/Counterclaimants

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

  
An employee of IGLODY LAW





CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

DSO

YACOV JACK HEFETZ, an  
individual, and ALIS COHEN, an  
individual,

Plaintiffs,

v.

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

Defendants.

CASE NO. A645353  
DEPT NO. XXVIII

AND RELATED COUNTERCLAIM.

**SCHEDULING ORDER**

(Discovery/Dispositive Motions/Motions to Amend or Add Parties)

NATURE OF ACTION: **Breach of guarantee**

DATE OF FILING JOINT CASE CONFERENCE REPORT(S): **12/12/11**

TIME REQUIRED FOR TRIAL: **3 days**

Counsel for Plaintiffs:

**Lee I. Iglody, Esq.**

~~Counsel for Defendants:~~

**Marc A. Saggese, Esq., Saggese & Associates**

Counsel representing all parties have been heard and  
after consideration by the Discovery Commissioner,

IT IS HEREBY ORDERED:

1. all parties shall complete discovery on or before  
5/21/12.

RECEIVED

DEC 28 2011

CLERK OF THE COURT

DISCOVERY  
COMMISSIONER

EIGHTH JUDICIAL  
DISTRICT COURT

APP0055

1           2.     all parties shall file motions to amend pleadings or  
2 add parties on or before 2/21/12.

3           3.     all parties shall make initial expert disclosures  
4 pursuant to N.R.C.P. 16.1(a)(2) on or before 2/21/12.

5           4.     all parties shall make rebuttal expert disclosures  
6 pursuant to N.R.C.P. 16.1(a)(2) on or before 3/22/12.

7           5.     all parties shall file dispositive motions on or  
8 before 6/20/12.

9  
10           Certain dates from your case conference report(s) may  
11 have been changed to bring them into compliance with N.R.C.P.  
12 16.1.

13  
14           Within 60 days from the date of this Scheduling Order,  
15 the Court shall notify counsel for the parties as to the date  
16 of trial, as well as any further pretrial requirements in  
17 addition to those set forth above.

18           Unless otherwise directed by the court, all pretrial  
19 disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at  
20 least 30 days before trial.

21           Motions for extensions of discovery shall be made to the  
22 Discovery Commissioner in strict accordance with E.D.C.R.  
23 2.35. Discovery is completed on the day responses are due or  
24 the day a deposition begins.

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1 Unless otherwise ordered, all discovery disputes (except  
2 disputes presented at a pre-trial conference or at trial) must  
3 first be heard by the Discovery Commissioner.

4 Dated this 28 day of December, 2011.

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8 DISCOVERY COMMISSIONER

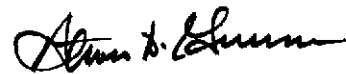
9 **CERTIFICATE OF SERVICE**

10 I hereby certify that on the date filed, I placed a copy  
11 of the foregoing DISCOVERY SCHEDULING ORDER in the folder(s)  
12 in the Clerk's office or mailed as follows:

13 Lee I. Iglody, Esq.  
14 Marc A. Saggese, Esq.

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16 COMMISSIONER DESIGNEE  
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0123



CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

Yacov Hefetz, et al, Plaintiff(s),

Case No.: A-11-645353-C

vs.

Christopher Beavor, et al,  
Defendant(s).

Dept. No.: XXVIII

FILE WITH  
MASTER CALENDAR

And All Related Matters.

ORDER SETTING CIVIL JURY TRIAL

IT IS HEREBY ORDERED THAT:

A. The above-entitled case is set to be tried to a jury on a **five-week stack** to begin on the **4th day of September, 2012, at 1:30 p.m.**

B. A Pre-Trial Conference with the designated attorney and/or parties in proper person will be held on the **13th day of August, 2012, at 9:30 a.m.**

C. A Calendar Call with the designated attorney and/or parties in proper person will be held on the **27th day of August, 2012, at 9:30 a.m.** You will leave Calendar Call with a FIRM trial date.

D. A Status Check on Referral to a Settlement Conference // Trial Readiness with the designated attorney and/or parties in proper person will be held on the **6th day of June, 2012, at 9:15 a.m.**

E. The Pre-Trial Memorandum must be filed not less than 15 days before the date set for trial, with a courtesy copy delivered to Department XXVIII Chambers. All parties, (attorneys and parties in Proper Person) **MUST** comply with **ALL REQUIREMENTS** of E.D.C.R. 2.67, 2.68 and 2.69.

F. All discovery deadlines, deadlines for filing dispositive motions and

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DEC 30 2011  
CLERK OF THE COURT

33

MC

1 motions to amend the pleadings or add parties are controlled by the previously  
2 issued Scheduling Order.  
3

4 G. All pre-trial motions MUST be **filed** at least 45 days before, and **heard** at  
5 least fourteen days prior to the trial date. ORDERS SHORTENING TIME WILL  
6 NOT BE SIGNED EXCEPT IN EXTREME EMERGENCIES. An upcoming trial  
7 date is not an EXTREME EMERGENCY.

8 Failure of the designated trial attorney or any party appearing in  
9 proper person to appear for any court appearances or to comply with this  
10 Order shall result in any of the following: (1) dismissal of the action; (2)  
11 default judgment; (3) monetary sanctions; (4) vacation of the trial date;  
and/or any other appropriate remedy or sanction.

12 Counsel are required to advise the Court immediately when the case settles  
13 or is otherwise resolved prior to trial. A Stipulation which terminates a case by  
14 dismissal shall also indicate whether a Scheduling Order has been filed and if a trial  
15 date has been set, and the date of that trial. A copy should be provided to  
16 Chambers.

17 DATED this 29th day of December, 2011.

18   
19

20 RONALD J. ISRAEL  
21 District Court Judge, Dept. XXVIII

22 **CERTIFICATE OF SERVICE**

23 I hereby certify that on or about the date signed, a copy of this Order was placed  
24 in the attorney's folder in the office of the Clerk of the Court and/or transmitted via  
facsimile and/or mailed to the proper party as follows:

25 Marc A. Saggese, Esq. (SAGGESE & ASSOCIATES)  
26 FAX: (702)382-2977

27 ///

28 ///

APP0059

1 *Order Setting Civil Jury Trial*  
2 *A-11-645353-C*  
3 *Hefetz et al v. Beavor et al*

4  
5 Lee I. Iglody, Esq.  
6 FAX: (702)446-5148

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SANDRA JETER  
Judicial Executive Assistant

APP0060

TRANSMISSION VERIFICATION REPORT

TIME : 12/29/2011 13:53  
NAME : DDPT 28  
FAX : 7023661407  
TEL : 17026713631  
SER.# : 000K0N596596

DATE, TIME 12/29 13:52  
FAX NO./NAME 3822977  
DURATION 00:00:48  
PAGE(S) 03  
RESULT OK  
MODE STANDARD  
ECM

ORIGINAL

0123

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Case No.: A-11-645353-C

Dept. No.: XXVIII

FILE WITH  
MASTER CALENDAR

And All Related Matters.

**ORDER SETTING CIVIL JURY TRIAL**

IT IS HEREBY ORDERED THAT:

A. The above-entitled case is set to be tried to a jury on a **five-week** stack to begin on the **4th day of September, 2012, at 1:30 p.m.**

B. A Pre-Trial Conference with the designated attorney and/or parties in proper person will be held on the **13th day of August, 2012, at 9:30 a.m.**

C. A Calendar Call with the designated attorney and/or parties in proper person will be held on the **27th day of August, 2012, at 9:30 a.m.** You will

leave Calendar Call with a FIRM trial date.

APP0061

TRANSMISSION VERIFICATION REPORT

TIME : 12/29/2011 13:54  
NAME : DDPT 28  
FAX : 7023661407  
TEL : 17026713631  
SER.# : 000K0N596596

DATE, TIME	12/29 13:53
FAX NO./NAME	4465148
DURATION	00:00:48
PAGE(S)	03
RESULT	OK
MODE	STANDARD
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DISTRICT COURT  
CLARK COUNTY, NEVADA

Yacov Hefetz, et al, Plaintiff(s), Case No.: A-11-645353-C  
vs.  
Christopher Beavor, et al, Dept. No.: XXVIII  
Defendant(s).

And All Related Matters.

ORDER SETTING CIVIL JURY TRIAL

IT IS HEREBY ORDERED THAT:

A. The above-entitled case is set to be tried to a jury on a **five-week** stack to begin on the **4th day of September, 2012, at 1:30 p.m.**

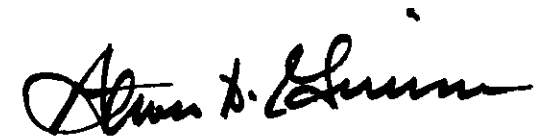
B. A Pre-Trial Conference with the designated attorney and/or parties in proper person will be held on the **13th day of August, 2012, at 9:30 a.m.**

C. A Calendar Call with the designated attorney and/or parties in proper person will be held on the **27th day of August, 2012, at 9:30 a.m.** You will leave Calendar Call with a FIRM trial date.

FILE WITH  
MASTER CALENDAR

APP0062





CLERK OF THE COURT

1 **ACTCM**  
2 **MARC A. SAGGESE, ESQ.**  
Nevada Bar No. 7166  
3 **SAGGESE & ASSOCIATES, LTD.**  
732 S. Sixth Street, Suite 201  
4 Las Vegas, Nevada 89101  
Telephone 702.778.8883  
5 Facsimile 702.778.8884  
6 Marc@MaxLawNV.com  
Attorney for Defendants/Counterclaimants

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

10 YACOV JACK HEFETZ, an individual; and  
ALIS COHEN, an individual,

11 Plaintiffs,

12 vs.

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

16 Defendants.

18 CHRISTOPHER BEAVOR, an individual;  
19 SAMANTHA BEAVOR, an individual,

20 Counterclaimants,

21 vs.

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

25 Counter-Defendant.

Case No.: A-10-645353-C  
Dept. No.: XXVIII

**FIRST AMENDED COUNTERCLAIM**

26 COMES NOW, Counterclaimants CHRISTOPHER BEAVOR and SAMANTHA  
27 BEAVOR, by and through the undersigned counsel, and hereby asserts the following  
28 Counterclaim against Counter-Defendant YACOV JACK HEFETZ, as follows:

1. CHRISTOPHER BEAVOR is an individual, who at all times relevant, is a resident of Clark County, Nevada.

2. SAMANTHA BEAVOR is an individual, who at all times relevant, is a resident of Clark County, Nevada.

3. Upon information and belief, Counter-Defendant YACOV JACK HEFETZ (henceforth “HEFETZ”) is an individual, who at all times relevant is a resident of Clark County, Nevada.

4. That pursuant to NRCP 10(a) and Nurenberger Hercules-Werke GMBH v. Virostek, 107 Nev. 873 (Nev. 1991), the identity of resident and non-resident Designated herein as DOES I-X and ROE CORPORATIONS XXI-XXX, inclusive, are unknown to Counter-Claimants at this present time; however, it is alleged and believed these Defendants were involved in the initiation, approval, support, or execution of the wrongful acts on which this action is premised, or of similar actions directed against Counter-Claimants about which they are presently unaware. As the specific identities of these parties are revealed through the course of discovery, the DOES and ROES will be replaced to identify these parties by their true names and capacities.

5. That jurisdiction and venue are proper in this Court.

## FACTS

6. On or about March 29, 2007, Toluca Lake Vintage, LLC (“Borrower”), entered into a loan agreement with the Herbert Frey Revocable Family Trust dated November 22, 1982 (“Lender”), in an amount of six million dollars (\$6,000,000.00).

7. Said Loan was procured by Borrower for the purpose of developing certain real property located in Los Angeles County, California.

- 1           8.       Counterclaimants signed a personal guarantee to said loan.
- 2           9.       Lender then recorded a deed of trust against Counterclaimants' two Nevada
- 3 properties as collateral to secure the loan. Said properties are located at 905 Domnus Lane, Unit
- 4 202, Las Vegas, Nevada 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.
- 5
- 6           10.      One provision of the loan was if Borrower were to file bankruptcy, the loan would
- 7 default.
- 8           11.      Said Loan was utilized as a down payment for the real estate project to include the
- 9 purchase price for the land, engineering, marketing, and architects.
- 10
- 11          12.      Unbeknownst to Counterclaimants, Counter-Defendant Hefetz had contributed
- 12 two million dollars (\$2,000,000.00) of the \$6,000,000.00 loan from Lender to Borrower, which
- 13 was not disclosed or documented.
- 14
- 15          13.      After eighteen months of construction of the real property project in Los Angeles
- 16 County, California, the bank backing the project ceased funding the loan, halting construction.
- 17          14.      The bank then filed an Ex Parte Motion in April 2009 for a receivership to take
- 18 control of the real estate project.
- 19          15.      Following the filing of said motion, Counterclaimants were contact by Lender and
- 20 Counter-Defendant Hefetz with a strategy: for Counterclaimant to terminate his legal counsel
- 21 and retain Counter-Defendant's attorney to file a Complaint against the bank originally funding
- 22 the loan. In turn, Borrower should then file bankruptcy, but Counterclaimants would be released
- 23 from all obligations and personal guarantees under the loan, and the deeds of trust would be
- 24 released against Counterclaimants' properties.
- 25
- 26 ...
- 27
- 28 ...

1           16.     Lender then appointed Star Management, LLC, as Manager of Toluca Lake  
2 Vintage, LLC, on May 13, 2009. Counter-Defendant Hefetz was Manager of Star Development,  
3 LLC.  
4

5           17.     On May 14, 2009, Counter-Defendant Hefetz, as Manager of Star Development,  
6 LLC, which was Manager of Toluca Lake Vintage, LLC, caused Toluca Lake Vintage, LLC, to  
7 file bankruptcy, causing the loan to default and the \$6,000,000.00 to become due to Lender.  
8

9           18.     Pursuant to prior negotiations with Lender, Counterclaimants were to be released  
10 from all obligations and personal guarantees under the loan after the filing of the bankruptcy, and  
11 the deeds of trust were to be released against Counterclaimants' properties.

12           19.     Bankruptcy proceedings were initiated in the Central District of San Fernando  
13 Valley, California, Case No. 1:09BK15680-GM.  
14

15           20.     Following the bankruptcy proceedings in court, Counter-Defendant Hefetz  
16 reported fraudulent statements to his legal counsel, causing said counsel to file false affidavits  
17 with the court stating that Counterclaimants had reached a global settlement agreement with the  
18 bank funding the loan, when Counterclaimants had never been briefed on the issue and had never  
19 been presented with the purported settlement documents for review.  
20

21           21.     A settlement agreement was not presented to Counterclaimants until  
22 approximately three (3) months after said affidavits were filed and approved by the court for the  
23 bankruptcy proceedings.

24           22.     Upon learning this information, Counterclaimants contacted counsel retained by  
25 Lender on Counterclaimants' behalf and alerted said counsel of the fraudulent actions being  
26 committed by Counter-Defendant Hefetz, as he filed an Ex Parte Motion to finalize the  
27 bankruptcy settlement, the terms of which Counterclaimants had not agreed.  
28

1           23.     Upon reviewing the settlement information, Counterclaimants discovered that  
2 said settlement documents release Counterclaimants from their obligations to the bank, but not  
3 their obligations and personal guarantees to Lender, which had previously been agreed upon.  
4

5           24.     New counsel was retained by Counterclaimants, at which time oppositions to said  
6 bankruptcy proceedings were filed to expose the fraudulent activities that had taken place on the  
7 part of Counter-Defendant Hefetz.

8           25.     Upon the filing of said affidavits, the bankruptcy court issued a Section 363(b)  
9 ruling and stated that good faith dealings had not taken place, and claims were preserved against  
10 Lender, Star Development, LLC, and Counter-Defendant Hefetz.  
11

12           26.     In December 2010, Counterclaimants were contacted by Wayne Krieger, another  
13 Manager of Star Development, LLC, that release documents had been drafted for  
14 Counterclaimants' signature that were to release all claims against Lender, and in turn, released  
15 Counterclaimants of all obligations and personal guarantees from the \$6,000,000.00 loan, as well  
16 as release of the deeds of trust recorded against Counterclaimants' properties.  
17

18           27.     Counterclaimants signed the settlement agreement, and agreed to remit  
19 \$23,000.00 for payment of associated legal fees.  
20

21           28.     In January 2011, Counterclaimant Christopher Beavor proceeded to personally  
22 drop off all settlement documents and payments for legal fees to Lender.

23           29.     Counter-Defendant Hefetz was in Lender's office at the time of  
24 Counterclaimant's arrival, and physically grabbed the settlement agreement from  
25 Counterclaimant and stated that he would not allow Lender to sign the settlement documents  
26 releasing Counterclaimants of all obligations under the loan.  
27

28     ...

1           30.     Counterclaimants then received a call from Counter-Defendant Hefetz stating that  
2 he was going to force Lender to assign him the outstanding debt, to which Counterclaimants  
3 could never be released. The instant litigation ensued.  
4

5                                   **FIRST CLAIM FOR RELIEF**

6                                   **Fraud**

7           31.     Counterclaimants hereby adopt and incorporate by reference Paragraphs 1  
8 through 30 above as though fully set forth herein.  
9

10          32.     Counter-Defendant Hefetz caused, through Star Development as Manager, false  
11 information to be relayed to Star Development's counsel, and the filing of fraudulent affidavits  
12 to be filed with the Central District of San Fernando Valley, Case No. 1:09BK15680-GM, by  
13 Counter-Defendant Hefetz stating that there existed a global settlement agreement that would  
14 have released all parties to the \$6,000,000.00 loan.  
15

16          33.     Specifically, upon reviewing the settlement information, Counterclaimants  
17 discovered that said settlement documents release Counterclaimants from their obligations to the  
18 bank, but not their obligations and personal guarantees to Lender, which had previously been  
19 agreed upon.  
20

21          34.     Counterclaimants were not included in the global settlement as per Counter-  
22 Defendant Hefetz' prior representations, and was excluded from said agreement by the counsel  
23 that Counter-Defendant had provided for Counterclaimants.

24          35.     Counterclaimants justifiably relied on the prior representation of Counter-  
25 Defendant Hefetz that they would be released from their obligations and personal guarantees  
26 under the loan, when in fact, the counsel provided by Counter-Defendant purposefully excluded  
27 Counterclaimants from being released in the settlement documents.  
28

1           36.     As a direct and proximate result of Counter-Defendant's actions,  
2 Counterclaimants have suffered damages in excess of ten thousand dollars (\$10,000.00).

3           37.     As a result of Counter-Defendant's actions, Counterclaimants have suffered an  
4 unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada  
5 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.

6           38.     As a result of Counter-Defendant's actions, Counterclaimants have been forced to  
7 retain an attorney and have incurred attorney's fees and costs.  
8

9  
10                   **SECOND CLAIM FOR RELIEF**

11                   **Fraud in the Inducement**

12           39.     Counterclaimants hereby adopt and incorporate by reference Paragraphs 1  
13 through 38 above as though fully set forth herein.

14           40.     Counter-Defendant Hefetz made a false representation to Counterclaimants when  
15 he presented a strategy to Counterclaimants to terminate their legal counsel and retain Counter-  
16 Defendant's same attorney in order to file a Complaint against the bank originally funding the  
17 loan for the real property to be developed by the parties.  
18

19           41.     Counter-Defendant knew his representations were false when he further stated to  
20 Counterclaimants that Toluca Lake Vintage, LLC ("Borrower") should then file bankruptcy,  
21 thereby releasing Counterclaimants from any and all obligations, personal guarantees and deeds  
22 of trust for their properties held under the loan.  
23

24           42.     Counter-Defendant Hefetz utilized Counterclaimants' desire to be released from  
25 their obligations, personal guarantees, and the release of the deeds of trust for their properties as  
26 a mechanism to induce them to agree to the filing of the bankruptcy, knowing that the loan  
27 payment would default.  
28

1           43.     Counterclaimants justifiably relied upon the representations of Counter-Defendant  
2 Hefetz and followed through with his recommendations, as they were eager to be released from  
3 the prior obligations and guarantees under the terms of the loan.  
4

5           44.     Counterclaimants were not fully informed of all proceedings surrounding the  
6 bankruptcy as Counter-Defendant Hefetz caused fraudulent affidavits to be filed with the Central  
7 District of San Fernando Valley, California, Case No. 1:09BK15680-GM, by Counter-Defendant  
8 Hefetz, stating that there existed a global settlement agreement that would have released all  
9 parties to the \$6,000,000.00 loan, when in fact, Counterclaimants had not been informed of said  
10 agreement at all.  
11

12           45.     Specifically, only upon reviewing the settlement information some three (3)  
13 months following its submission to the Court by Counter-Defendant Hefetz, Counterclaimants  
14 discovered that Counter-Defendant Hefetz never had any intention of releasing Counterclaimants  
15 from their obligations, personal guarantees, or deeds of trust for properties, as all settlement  
16 documents only outlined Counterclaimants' release from obligations to the bank, but not their  
17 obligations and personal guarantees to Lender, which had previously represented to  
18 Counterclaimants.  
19

20           46.     As a direct and proximate result of Counter-Defendant's actions,  
21 Counterclaimants have suffered damages in excess of ten thousand dollars (\$10,000.00).  
22

23           47.     As a result of Counter-Defendant's actions, Counterclaimants have suffered an  
24 unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada  
25 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.  
26

27           48.     As a result of Counter-Defendant's actions, Counterclaimants have been forced to  
28 retain an attorney and have incurred attorney's fees and costs.



1 **THIRD CLAIM FOR RELIEF**

2 **Breach of the Covenant of Good Faith and Fair Dealing**

3 49. Counterclaimants hereby adopt and incorporate by reference Paragraphs 1  
4 through 48 above as though fully set forth herein.  
5

6 50. Every contract contains an implied covenant of good faith and fair dealing.  
7 Counter-Defendant Hefetz breached said Covenant of Good Faith and Fair Dealing when he  
8 misrepresented the terms of the global settlement agreement during the bankruptcy proceedings.  
9

10 51. Counter-Defendant further breached said Covenant of Good Faith and Fair  
11 Dealing when he failed to allow Counterclaimants to be released from their obligations and  
12 personal guarantees under the loan from Lender, holding them personally responsible for all  
13 monies due, as well as holding liens against their properties.  
14

15 52. Counterclaimants suffered damages in excess of ten thousand dollars  
16 (\$10,000.00) as a result of Counter-Defendant's breach of said Covenant of Good Faith and Fair  
17 Dealing.

18 53. As a result of Counter-Defendant's actions, Counterclaimants have suffered an  
19 unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada  
20 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.  
21

22 54. As a result of Counter-Defendant's actions, Counterclaimants have been forced to  
23 retain an attorney and have incurred attorney's fees and costs.

24 **FOURTH CLAIM FOR RELIEF**

25 **Breach of Fiduciary Duty**

26 55. Counterclaimants hereby adopt and incorporate by reference Paragraphs 1  
27 through 54 above as though fully set forth herein.  
28

56. Counter-Defendant Hefetz, as Manager of Star Development, LLC, and Star Development, as Manager of Toluca Lake Vintage, LLC, owed a fiduciary duty to Counterclaimant, owner of Toluca Lake Vintage, LLC.

57. Counter-Defendant Hefetz breached that fiduciary duty when he caused, through Star Development as Manager, false information to be relayed to Star Developments's counsel, causing fraudulent affidavits to be filed with the Central District of San Fernando Valley, Case No. 1:09BK15680-GM, by stating that there existed a global settlement agreement that would have released all parties to the \$6,000,000.00 loan.

58. Counter-Defendant Hefetz further breached that duty when he failed to act for the benefit of Counterclaimants by failing to include Counterclaimants in said settlement agreement to release Counterclaimants from their obligations to and personal guarantees to Lender, which had previously been agreed upon.

59. As a result of Counter-Defendant's actions, Counterclaimants suffered damages in excess of ten thousand dollars (\$10,000.00).

60. As a result of Counter-Defendant's actions, Counterclaimants have suffered an unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.

61. As a result of Counter-Defendant's actions, Counterclaimants have been forced to retain an attorney and have incurred attorney's fees and costs.

## **FIFTH CLAIM FOR RELIEF**

## Tortious Interference with Contractual Relations

62. Counterclaimants hereby adopt and incorporate by reference Paragraphs 1 through 61 above as though fully set forth herein.

63. Counterclaimants entered into a contract with Lender (the Herbert Frey Revocable Family Trust, dated November 22, 1982) for a mutual release and payment agreement regarding the loan for \$6,000,000.00.

64. Counter-Defendant Hefetz physically intercepted the contract to release Counterclaimants from their obligations, personal guarantee, and property liens on said \$6,000,000.00 loan, as it was being delivered to Mr. Frey for signature.

65. Counterclaimant Christopher Beavor presented the signed contract to Lender via personal delivery for signature and finalization of the contract.

66. Counter-Defendant Hefetz purposefully, actively and deliberately withheld said contract from the possession of Lender.

67. As a result of Counter-Defendant's actions, Counterclaimants suffered damages in excess of ten thousand dollars (\$10,000.00).

68. As a result of Counter-Defendant's actions, Counterclaimants have suffered an unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.

69. As a result of Counter-Defendant's actions, Counterclaimants have been forced to retain an attorney and have incurred attorney's fees and costs.

## **SIXTH CLAIM FOR RELIEF**

## Negligence Per Se (Violation of NRS 645B)

70. Counterclaimants hereby adopt and incorporate by reference Paragraphs 1 through 69 above as though fully set forth herein.

71. Counter-Defendant Hefetz acquired the \$6,000,000.00 note unlawfully from Lender in violation of NRS 645B.

1           72.     The Herbert Frey Revocable Family Trust dated November 22, 1982 (Lender) is  
2 an unlicensed mortgage broker who transferred the note to Counter-Defendant Hefetz, also an  
3 unlicensed mortgage broker, in violation of NRS 645B.  
4

5           73.     Counter-Defendant Hefetz and Lender do not meet the exception to the license  
6 requirement as designated in NRS 645B.015, as the transfer of the \$6,000,000.00 note was  
7 secured by Counterclaimants' real property, and was, at all times an unlawful transfer of a  
8 secured transaction.  
9

10          74.     As a result of Counter-Defendant's actions, Counterclaimants suffered damages in  
11 excess of ten thousand dollars (\$10,000.00).  
12

13          75.     As a result of Counter-Defendant's actions, Counterclaimants have suffered an  
14 unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada  
15 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.  
16

17          76.     As a result of Counter-Defendant's actions, Counterclaimants have been forced to  
18 retain an attorney and have incurred attorney's fees and costs.  
19

20 ...

21 ...

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24 ...

25 ...

26 ...

27 ...

28 ...

WHEREFORE, Counterclaimants expressly reserve the right to amend this Counterclaim at time of trial to include all items of damages not yet ascertained, prays for the following relief against Counter-Defendant:

1. For general damages in an amount in excess of ten thousand dollars (\$10,000.00);
2. For special damages in an amount in excess of ten thousand dollars (\$10,000.00);
3. For economic damages in an amount in excess of ten thousand dollars (\$10,000.00);
4. For future damages in an amount in excess of ten thousand dollars (\$10,000.00);
5. For punitive damages in an amount in excess of ten thousand dollars (\$10,000.00);
6. For an award of attorney's fees and costs of suit as provided by Nevada Revised Statutes;
7. For prejudgment interest as provided by law; and
8. For such other and further relief as the Court may deem just or proper.

DATED this 9<sup>th</sup> day of April, 2012.

/s/ MARC A. SAGGESE, ESQ.

**MARC A. SAGGESE, ESQ.**

Nevada Bar No. 7166

**SAGGESE & ASSOCIATES, LTD.**

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Attorney for Defendants/Counterclaimants

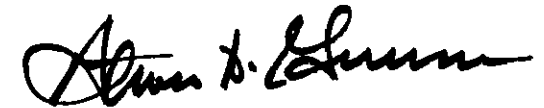
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/s/ Alexis Vardoulis

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Employee of SAGGESE & ASSOCIATES, LTD.



CLERK OF THE COURT

RCCM

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Attorney for Plaintiffs /Counter-Defendants

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

YACOV JACK HEFETZ, an individual, and )  
ALIS COHEN, an individual, )

Plaintiffs, )

vs. )

CHRISTOPHER BEAVOR, an individual, )  
and SAMANTHA BEAVOR, an individual, )  
DOES I – X and ROE ENTITIES I – X, )  
inclusive )

Defendants. )

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CHRISTOPHER BEAVOR, an individual, )  
and SAMANTHA BEAVOR, an individual, )  
DOES I – X and ROE ENTITIES I – X, )  
inclusive )

Counterclaimants, )

vs. )

YACOV JACK HEFETZ, an individual, and )  
ALIS COHEN, an individual, )

Counter-Defendants. )

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

**REPLY TO FIRST AMENDED  
COUNTERCLAIM**

///

Counter-Defendants YACOV JACK HEFETZ and ALIS COHEN (collectively, "Counter-Defendants"), by and through their counsel, Lee Iglody, Esq., hereby reply to the First Amended Counterclaim filed by Counterclaimants CHRISTOPHER BEAVOR and SAMANTHA BEAVOR (the "Counterclaimants") as follows:

1. Answering Paragraph 1 of the First Amended Counterclaim, Counter-Defendants admit the allegations therein.

2. Answering Paragraph 2 of the First Amended Counterclaim, Counter-Defendants admit the allegations therein.

3. Answering Paragraph 3 of the First Amended Counterclaim, Counter-Defendants admit the allegations therein.

4. Answering Paragraph 4 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

5. Answering Paragraph 5 of the First Amended Counterclaim, Counter-Defendants admit the allegations therein.

#### FACTS

6. Answering Paragraph 6 of the First Amended Counterclaim, Counter-Defendants admit the allegations therein.

7. Answering Paragraph 7 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

8. Answering Paragraph 8 of the First Amended Counterclaim, Counter-Defendants admit the allegations therein.

9. Answering Paragraph 9 of the First Amended Counterclaim, Counter-Defendants are without sufficient information upon which to base an answer to the allegations therein and on that basis deny the allegations therein.

10. Answering Paragraph 10 of the First Amended Counterclaim, Counter-Defendants are without sufficient information upon which to base an answer to the allegations therein and on that basis deny the allegations therein.



1           11.     Answering Paragraph 11 of the First Amended Counterclaim, Counter-  
2 Defendants are without sufficient information upon which to base an answer to the allegations  
3 therein and on that basis deny the allegations therein.

4           12.     Answering Paragraph 12 of the First Amended Counterclaim, Counter-  
5 Defendants are without sufficient information upon which to base an answer to the allegations  
6 therein and on that basis deny the allegations therein.

7           13.     Answering Paragraph 13 of the First Amended Counterclaim, Counter-  
8 Defendants are without sufficient information upon which to base an answer to the allegations  
9 therein and on that basis deny the allegations therein.

10          14.     Answering Paragraph 14 of the First Amended Counterclaim, Counter-  
11 Defendants are without sufficient information upon which to base an answer to the allegations  
12 therein and on that basis deny the allegations therein.

13          15.     Answering Paragraph 15 of the First Amended Counterclaim, Counter-  
14 Defendants are without sufficient information upon which to base an answer to the allegations  
15 therein and on that basis deny the allegations therein.

16          16.     Answering Paragraph 16 of the First Amended Counterclaim, Counter-  
17 Defendants deny the allegations therein.

18          17.     Answering Paragraph 17 of the First Amended Counterclaim, Counter-  
19 Defendants deny the allegations therein.

20          18.     Answering Paragraph 18 of the First Amended Counterclaim, Counter-  
21 Defendants deny the allegations therein.

22          19.     Answering Paragraph 19 of the First Amended Counterclaim, Counter-  
23 Defendants admit the allegations therein.

24          20.     Answering Paragraph 20 of the First Amended Counterclaim, Counter-  
25 Defendants deny the allegations therein.

26          21.     Answering Paragraph 21 of the First Amended Counterclaim, Counter-  
27 Defendants deny the allegations therein.

22. Answering Paragraph 22 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

23. Answering Paragraph 23 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

24. Answering Paragraph 24 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

25. Answering Paragraph 25 of the First Amended Counterclaim, Counter-Defendants are without sufficient information upon which to base an answer to the allegations therein and on that basis deny the allegations therein.

26. Answering Paragraph 26 of the First Amended Counterclaim, Counter-Defendants are without sufficient information upon which to base an answer to the allegations therein and on that basis deny the allegations therein.

27. Answering Paragraph 27 of the First Amended Counterclaim, Counter-Defendants are without sufficient information upon which to base an answer to the allegations therein and on that basis deny the allegations therein.

28. Answering Paragraph 28 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

29. Answering Paragraph 29 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

30. Answering Paragraph 30 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

#### **FIRST CLAIM FOR RELIEF**

##### **(Fraud)**

31. Counter-Defendants repeat and incorporate by reference their answers in Paragraphs 1 through 30 as if fully set forth herein.

32. Answering Paragraph 32 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

1           33.    Answering Paragraph 33 of the First Amended Counterclaim, Counter-  
2 Defendants deny the allegations therein.

3           34.    Answering Paragraph 34 of the First Amended Counterclaim, Counter-  
4 Defendants deny the allegations therein.

5           35.    Answering Paragraph 35 of the First Amended Counterclaim, Counter-  
6 Defendants deny the allegations therein.

7           36.    Answering Paragraph 36 of the First Amended Counterclaim, Counter-  
8 Defendants deny the allegations therein.

9           37.    Answering Paragraph 37 of the First Amended Counterclaim, Counter-  
10 Defendants deny the allegations therein.

11           38.    Answering Paragraph 38 of the First Amended Counterclaim, Counter-  
12 Defendants deny the allegations therein.

13                               **SECOND CLAIM FOR RELIEF**

14                               **(Fraud in the Inducement)**

15           39.    Counter-Defendants repeat and incorporate by reference their answers in the  
16 preceding paragraphs as if fully set forth herein.

17           40.    Answering Paragraph 40 of the First Amended Counterclaim, Counter-  
18 Defendants deny the allegations therein.

19           41.    Answering Paragraph 41 of the First Amended Counterclaim, Counter-  
20 Defendants deny the allegations therein.

21           42.    Answering Paragraph 42 of the First Amended Counterclaim, Counter-  
22 Defendants deny the allegations therein.

23           43.    Answering Paragraph 43 of the First Amended Counterclaim, Counter-  
24 Defendants deny the allegations therein.

25           44.    Answering Paragraph 44 of the First Amended Counterclaim, Counter-  
26 Defendants deny the allegations therein.

27           45.    Answering Paragraph 45 of the First Amended Counterclaim, Counter-  
28

Defendants deny the allegations therein.

46. Answering Paragraph 46 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

47. Answering Paragraph 47 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

48. Answering Paragraph 48 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

### **THIRD CLAIM FOR RELIEF**

#### **(Breach of the Covenant of Good Faith and Dealing)**

49. Counter-Defendants repeat and incorporate by reference their answers in the preceding paragraphs as if fully set forth herein.

50. Answering Paragraph 50 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

51. Answering Paragraph 51 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

52. Answering Paragraph 52 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

53. Answering Paragraph 53 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

54. Answering Paragraph 54 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

### **FOURTH CLAIM FOR RELIEF**

#### **(Breach of Fiduciary Duty)**

55. Counter-Defendants repeat and incorporate by reference their answers in the preceding paragraphs as if fully set forth herein.

56. Answering Paragraph 56 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.



Defendants deny the allegations therein.

**SIXTH CLAIM FOR RELIEF**

**(Negligence Per Se)  
(Violation of NRS 645B)**

70. Counter-Defendants repeat and incorporate by reference their answers in the preceding paragraphs as if fully set forth herein.

71. Answering Paragraph 71 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

72. Answering Paragraph 72 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

73. Answering Paragraph 73 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

74. Answering Paragraph 74 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

75. Answering Paragraph 75 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

76. Answering Paragraph 76 of the First Amended Counterclaim, Counter-Defendants deny the allegations therein.

**AFFIRMATIVE DEFENSES**

1. Counterclaimants have failed to state a claim upon which relief can be granted.

2. Counterclaimants' claims are barred by the applicable statute of limitations.

3. The liability, if any, of Counter-Defendants must be reduced by the percentage of fault of others, including Counterclaimants.

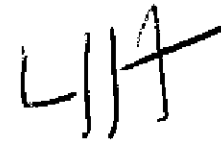
4. Any damages sustained by Counterclaimants were caused by the acts of third parties who were not acting on Counter-Defendants' behalf, such that Counter-Defendants are not liable in any matter toward Counter-Defendants.

- 1           5.       Counter-Defendant Yacov Hefetz is not the real party in interest.
- 2           6.       Counterclaimants' claims are barred by the failure of Counterclaimants to plead
- 3 those claims with particularity.
- 4           7.       Counterclaimants' claims are barred by the doctrines of waiver, estoppel, and
- 5 laches.
- 6           8.       Counter-Defendants assert the defenses of mistake, excused, non-performance by
- 7 Counterclaimants, and failure of consideration.
- 8           9.       Counterclaimants failed to plead fraud with the required particularity under NRCP
- 9 9.
- 10          10.       Counterclaimants' reliance on any of the representations alleged in the
- 11 Counterclaim was not justifiable.
- 12          11.       Counter-Defendants owed no duty to Counterclaimants.
- 13          12.       Counter-Defendants owed no fiduciary duty to Counterclaimants.
- 14          13.       Counterclaimants failed to mitigate any damages they may have suffered.
- 15          14.       Counterclaimants' claim to damages is barred by the Economic Loss Doctrine.
- 16          15.       Counterclaimants' claims were brought without reasonable ground and to harass
- 17 Counter-Defendants.
- 18          16.       It has been necessary for Counter-Defendants to retain the services of attorneys to
- 19 defend this action and Counter-Defendants should be allowed attorneys fees, together with their
- 20 costs incurred in the defense of this action.
- 21          17.       Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have
- 22 been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon
- 23 the filing of the Reply to Counterclaim, and therefore, Counter-Defendants reserve the right to
- 24 amend this answer to allege additional affirmative defenses if subsequent investigation warrants.
- 25
- 26
- 27
- 28

WHEREFORE, Counter-Defendants pray as follows:

1. That Counterclaimants take nothing by way of their Counterclaim;
2. For attorneys fees and costs; and
3. For any such other and further relief as the Court deems just and proper under the circumstances.

Dated this 23<sup>th</sup> day of April, 2012.



---

Lee I. Iglody, Esq.  
Nevada Bar #: 7757  
Email: [Lee@Iglody.com](mailto:Lee@Iglody.com)  
*Attorney for Plaintiffs/Counter-Defendants*



LEE IGLODY, ESQ.  
3960 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
(702) 425-5366 FAX: (702) 446-5148

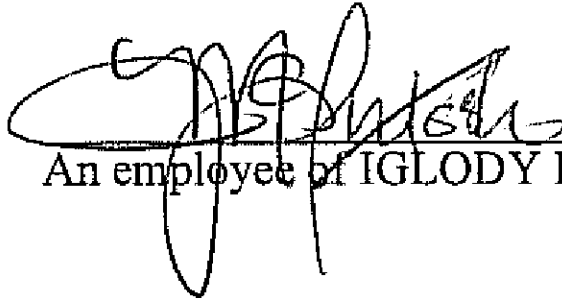
**CERTIFICATE OF SERVICE VIA US MAIL AND FACSIMILE**

The undersigned hereby certifies that on the 23 day of April, 2012, I served a copy of foregoing, by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

**SAGGESE & ASSOCIATES, LTD.**

Marc A. Saggese, Esq.  
732 S. Sixth Street, Suite 201  
Las Vegas, Nevada 89101  
Facsimile (702) 778-8884  
Attorney for Defendants/Counterclaimants

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

  
An employee of IGLODY LAW

LEE IGLODY, ESQ.  
3960 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
(702) 425-5366 FAX: (702) 446-5148

36415

ORIGINAL

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CLERK OF THE COURT

Lee I. Iglody, Esq.  
Nevada Bar #: 7757  
3960 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169  
Tel: (702) 425-5366  
Fax: (702) 446-5148  
Email: [Lee@Iglody.com](mailto:Lee@Iglody.com)  
*Attorney for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

YACOV JACK HEFETZ, an individual, and )  
ALIS COHEN, an individual, )  
Plaintiffs, )

vs. )

CHRISTOPHER BEAVOR, an individual, )  
and SAMANTHA BEAVOR, an individual, )  
DOES I – X and ROE ENTITIES I – X, )  
inclusive )

Defendants. )

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

**STIPULATION AND ORDER TO  
EXTEND DISCOVERY  
DEADLINES**

**(First Request)**

**STIPULATION**

In compliance with EDCR 2.23, YACOV JACK HEFETZ and ALIS COHEN, (collectively, "Plaintiffs"), by and through their undersigned counsel, and CHRISTOPHER BEAVOR and SAMANTHA BEAVOR ("Defendants"), by and through their undersigned counsel, stipulate to a 60 day extension of the discovery deadline as follows:

**I. Summary of Discovery Completed:**

The parties have provided initial disclosures under NRCP 16.1 and supplements thereto. Plaintiffs have served written discovery requests on Defendants to which Defendants have responded. Plaintiffs have also deposed Defendant Christopher Beavor. Defendants have served written discovery requests on Plaintiffs. The time for Plaintiffs to respond to those requests has not yet run. Defendants have also subpoenaed documents from a third party witness.

1 **II. Discovery Remaining to be Completed:**

2 Plaintiffs will timely respond to Defendants' written discovery requests. Also, the parties  
3 will likely take additional depositions, including Defendants' deposition of Plaintiff Yacov  
4 Hefetz.

5 **III. Reason Why Discovery Was Not Completed Within the Limits Set by the Discovery**  
6 **Order**

7 The initial discovery period agreed-to by the parties was only 165 days. As it turns out,  
8 165 days was not enough time to complete discovery given scheduling conflicts that have arisen  
9 and the complexity of the case. The parties have agreed-to an extension of 60 days to complete  
10 discovery.

11 **IV. Proposed Schedule for Completing All Discovery**

12 Discovery Cut-Off Date. The current discovery cut-off date is May 21, 2012. The  
13 parties agree that the current discovery should be extended to **July 23, 2012**. There is good  
14 cause to seek an extension of this date to complete discovery, as set forth above.

15 Amending the Pleadings. The deadline for any party to amend the pleadings has passed.  
16 The parties do not seek an extension of this date.

17 Expert Disclosures. The deadline for initial experts has passed. Neither party disclosed  
18 experts. The parties do not seek an extension of this date.

19 Dispositive Motions. The deadline for filing dispositive motions is currently set for June  
20 20, 2012. The parties agree that the dispositive motion deadline should be extended to **August**  
21 **23, 2012**.

22 **V. Current Trial Date**

23 The current trial date is September 4, 2012 on a five-week stack. The deadline to file  
24 pre-trial motions is July 23, 2012 and hearings on said motions must be set for a date prior to  
25 August 21, 2012. The parties agree the trial date and pre-trial motion deadlines should be  
26 extended around 60 days from the current trial date to allow the parties to complete discovery,  
27 file any dispositive and/or pre-trial motions, and to conduct any settlement negotiations.  
28

DATED this 21<sup>st</sup> day of May, 2012.

DATED this 21<sup>st</sup> day of May, 2012.

LH  
 Lee I. Iglody, Esq.  
 Nevada Bar #: 7757  
 3960 Howard Hughes Parkway, Suite 600  
 Las Vegas, NV 89169  
 Tel: (702) 425-5366  
 Attorney for Plaintiffs

Marc A. Saggese  
 Marc A. Saggese, Esq.  
 Nevada Bar #: 7166  
 732 S. Sixth Street, Suite 201  
 Las Vegas, Nevada 89101  
 Tel: (702) 778-8883  
 Attorney for Defendants

### ORDER

Based upon the foregoing Stipulation, and for good cause show,

IT IS ORDERED that the deadlines for discovery and its related matters be extended as follows:

1. Deadline to Complete Discovery: July 23, 2012
2. Deadline to File Dispositive Motions: August 23, 2012
3. All other discovery deadlines remain unchanged.

IT IS FURTHER ORDERED that the trial date for this matter current set for September 4, 2012 will be vacated and reset in accordance with this stipulation. All current pre-trial motion deadlines are hereby vacated and will be re-set by an Amended Scheduling Order issued by the Court.

IT IS SO ORDERED this 23<sup>rd</sup> day of May, 2012.

TRIAL DATE TO BE SET  
 ON OR AFTER 10/1/12

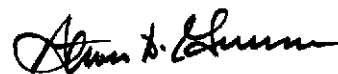
[Signature]  
 DISCOVERY COMMISSIONER

Prepared and Submitted by:

LH  
 Lee I. Iglody, Esq.  
 Nevada Bar #: 7757  
 3960 Howard Hughes Parkway, Suite 600  
 Las Vegas, NV 89169  
 Tel: (702) 425-5366  
 Attorney for Plaintiffs

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CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Case No.: A-11-645353-C

Dept. No.: XXVIII

FILE WITH  
MASTER CALENDAR

ORDER RE-SETTING CIVIL JURY TRIAL

IT IS HEREBY ORDERED THAT:

A. The above-entitled case is set to be tried to a jury on a **five-week stack** to begin on the 13th day of November, 2012, at **1:30 p.m.**

B. A Pre-Trial Conference with the designated attorney and/or parties in proper person will be held on the 22nd day of October, 2012, at **9:30 a.m.**

C. A Calendar Call with the designated attorney and/or parties in proper person will be held on the 5th day of November, 2012, at **9:30 a.m.** You will leave Calendar Call with a FIRM trial date.

D. A Status Check on Referral to a Settlement Conference // Trial Readiness with the designated attorney and/or parties in proper person will be held on the 15th day of August, 2012, at **9:45 a.m.**

E. The Pre-Trial Memorandum must be filed not less than 15 days before the date set for trial, with a courtesy copy delivered to Department XXVIII Chambers. All parties, (attorneys and parties in Proper Person) MUST comply with ALL REQUIREMENTS of E.D.C.R. 2.67, 2.68 and 2.69.

F. All discovery deadlines, deadlines for filing dispositive motions and

MCF

CLERK OF THE COURT

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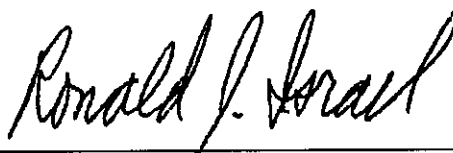
1 motions to amend the pleadings or add parties are controlled by the previously  
2 issued Scheduling Order and/or any Stipulation And Order To Extend Discovery  
3 Deadlines.

4 G. All pre-trial motions MUST be filed at least 45 days before, and heard at  
5 least fourteen days prior to the trial date. ORDERS SHORTENING TIME WILL  
6 NOT BE SIGNED EXCEPT IN EXTREME EMERGENCIES. An upcoming trial  
7 date is not an EXTREME EMERGENCY.  
8

9 Failure of the designated trial attorney or any party appearing in  
10 proper person to appear for any court appearances or to comply with this  
11 Order shall result in any of the following: (1) dismissal of the action; (2)  
12 default judgment; (3) monetary sanctions; (4) vacation of the trial date;  
and/or any other appropriate remedy or sanction.

13 Counsel are required to advise the Court immediately when the case settles or  
14 is otherwise resolved prior to trial. A Stipulation which terminates a case by  
15 dismissal shall also indicate whether a Scheduling Order has been filed and if a trial  
16 date has been set, and the date of that trial. A copy should be provided to  
17 Chambers.

18 DATED this 6th day of June, 2012.

19 

20  
21 RONALD J. ISRAEL  
22 District Court Judge, Dept. XXVIII

23 ///

24 ///

25 ///

26 ///

27 ///

28  
APP0092

1 A-11-645353-C  
2 Yacov Hefetz, Plaintiff(s)  
3 vs.  
4 Christopher Beavor, Defendant(s)  
5 Order Re-Setting Civil Jury Trial

6 **CERTIFICATE OF SERVICE**

7 I hereby certify that on or about the date signed, a copy of this Order was placed in the  
8 attorney's folder in the office of the Clerk of the Court and/or transmitted via facsimile  
9 and/or mailed to the proper party as follows:

10 Marc A. Saggese, Esq. (SAGGESE & ASSOCIATES)  
11 FAX: (702)778-8884

12 Lee I. Iglody, Esq.  
13 FAX: (702)446-5148

14   
15 SANDRA JETER  
16 Judicial Executive Assistant  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TRANSMISSION VERIFICATION REPORT

TIME : 06/06/2012 14:06  
NAME : DDPT 28  
FAX : 7023661407  
TEL : 17026713631  
SER.# : 000K0N596596

DATE, TIME  
FAX NO./NAME  
DURATION  
PAGE(S)  
RESULT  
MODE

06/06 14:05  
7788884  
00:00:48  
03  
OK  
STANDARD  
ECM

0123

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Case No.: A-11-645353-C

Dept. No.: XXVIII

ORDER RE-SETTING CIVIL JURY TRIAL

IT IS HEREBY ORDERED THAT:

A. The above-entitled case is set to be tried to a jury on a **five-week stack** to begin on the 13th day of November, 2012, at 1:30 p.m.

B. A Pre-Trial Conference with the designated attorney and/or parties in proper person will be held on the 22nd day of October, 2012, at 9:30 a.m.

C. A Calendar Call with the designated attorney and/or parties in proper person will be held on the 5th day of November, 2012, at 9:30 a.m. You will

leave Calendar Call with a FIRM trial date

APP0094



TRANSMISSION VERIFICATION REPORT

TIME : 06/06/2012 14:07  
NAME : DDPT 28  
FAX : 7023661407  
TEL : 17026713631  
SER.# : 000K0N596596

DATE, TIME	06/06 14:06
FAX NO./NAME	4465148
DURATION	00:00:48
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RESULT	OK
MODE	STANDARD ECM

1 O123

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Yacov Hefetz, et al, Plaintiff(s),  
7 vs.  
8 Christopher Beavor, et al,  
9 Defendant(s).

Case No.: A-11-645353-C

Dept. No.: XXVIII

10 ORDER RE-SETTING CIVIL JURY TRIAL

11 IT IS HEREBY ORDERED THAT:

12 A. The above-entitled case is set to be tried to a jury on a **five-week stack** to  
13 begin on the **13th day of November, 2012**, at 1:30 p.m.

14  
15 B. A Pre-Trial Conference with the designated attorney and/or parties in  
16 proper person will be held on the **22nd day of October, 2012**, at 9:30 a.m.

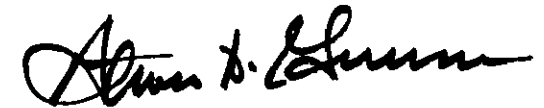
17 C. A Calendar Call with the designated attorney and/or parties in proper  
18 person will be held on the **5th day of November, 2012**, at 9:30 a.m. You will  
19

leave Calendar Call with a FIRM trial date.

APP0095

NEO

Lee I. Iglody, Esq.  
Nevada Bar #: 7757  
3960 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169  
Tel: (702) 425-5366  
Fax: (702) 446-5148  
Email: [Lee@Iglody.com](mailto:Lee@Iglody.com)  
*Attorney for Plaintiff:*  
*Yacov Jack Hefetz*



CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

YACOV JACK HEFETZ, an individual,  
  
Plaintiff,

vs.

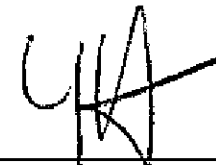
CHRISTOPHER BEAVOR, an  
individual, and SAMANTHA BEAVOR,  
an individual, DOES I – X and ROE  
ENTITIES I – X, inclusive,  
  
Defendant.

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

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order stating Alis Cohen is hereby dismissed from this action and removed from the case caption with the parties to bear their own attorneys' fees and costs as to Cohen's claims against Defendants in this action, a copy of which is attached hereto, was entered in the above-entitled matter on the 26<sup>th</sup> day of June, 2012.

Dated this 28 day of June, 2012.



Lee I. Iglody, Esq.  
Nevada Bar #: 7757  
3960 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169  
Tel: (702) 425-5366  
Fax: (702) 446-5148  
Email: [Lee@Iglody.com](mailto:Lee@Iglody.com)  
*Attorney for Plaintiff*

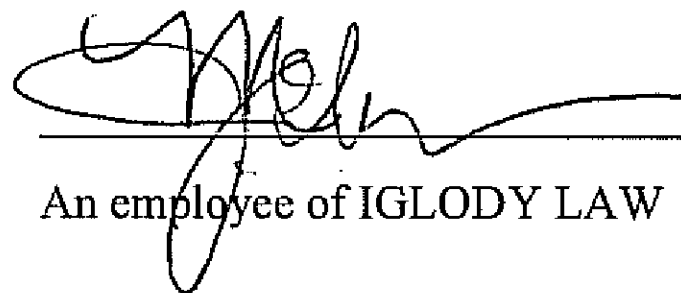
LEE IGLODY, ESQ.  
3960 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
(702) 425-5366 FAX: (702) 446-5148

**CERTIFICATE OF MAILING**

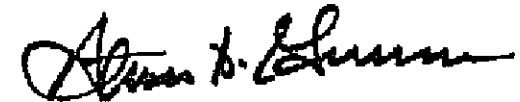
The undersigned hereby certifies that on the 29<sup>th</sup> day of June, 2012, I served a copy of foregoing Notice of Entry of Order, by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

**SAGGESE & ASSOCIATES, LTD.**

Marc A. Saggese, Esq.  
732 S. Sixth Street, Suite 201  
Las Vegas, Nevada 89101  
Tel: (702) 778-8883  
*Attorney for Defendant*

  
An employee of IGLODY LAW

ORIGINAL



CLERK OF THE COURT

Lee I. Iglody, Esq.  
Nevada Bar #: 7757  
3960 Howard Hughes Pkwy, Suite 600  
Las Vegas, NV 89123  
Tel: (702) 425-5366  
Fax: (702) 446-5148  
Email: [Lee@Iglody.com](mailto:Lee@Iglody.com)  
*Attorney for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

YACOV JACK HEFETZ, an individual, and  
ALIS COHEN, an individual,  
  
*Plaintiffs,*

CASE NO: A-10-645353-C  
DEPT NO.: XXVIII

vs.

**STIPULATION AND ORDER**

CHRISTOPHER BEAVOR, an individual,  
and SAMANTHA BEAVOR, an individual,  
DOES I – X and ROE ENTITIES I – X,  
inclusive  
  
*Defendants.*

**STIPULATION**

Plaintiff/Counter-defendant YACOV JACK HEFETZ ("Hefetz") and Plaintiff ALIS COHEN ("Cohen")(collectively, "Plaintiffs"), by and through their undersigned counsel, and Defendants/Counterclaimants CHRISTOPHER BEAVOR and SAMANTHA BEAVOR ("Defendants"), by and through their undersigned counsel, hereby stipulate as follows:

(1) Cohen is hereby dismissed from this action and removed from the case caption with the parties to bear their own attorneys' fees and costs as to Cohen's claims against Defendants in this action; Defendants have not asserted any counterclaims against Cohen.

...

LEE IGLODY, ESQ.  
3960 Howard Hughes Pkwy., Suite 600  
Las Vegas, Nevada 89169  
(702) 425-5366 FAX: (702) 446-5148

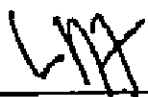
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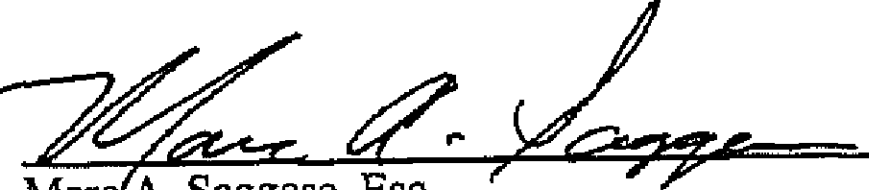
LEE IGLODY, ESQ.  
3960 Howard Hughes Pkwy., Suite 600  
Las Vegas, Nevada 89169  
(702) 425-5366 FAX: (702) 446-5148

(2) Plaintiff Hefetz shall be listed as sole Plaintiff in the caption henceforth.

DATED this \_\_\_\_ day of June, 2012.

DATED this 5 day of June, 2012.

  
\_\_\_\_\_  
Lee I. Iglody, Esq.  
Nevada Bar #: 7757  
3960 Howard Hughes Pkwy, Suite 600  
Las Vegas, NV 89169  
Tel: (702) 425-5366  
Attorney for Plaintiffs

  
\_\_\_\_\_  
Marc A. Saggese, Esq.  
Nevada Bar #: 7166  
732 S. Sixth Street, Suite 201  
Las Vegas, Nevada 89101  
Tel: (702) 778-8883  
Attorney for Defendants

**ORDER**

Based upon the foregoing Stipulation, and for good cause show,

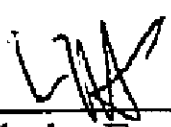
IT IS HEREBY ORDERED that Cohen is hereby dismissed from this action and removed from the case caption with the parties to bear their own attorneys' fees and costs as to Cohen's claims against Defendants in this action.

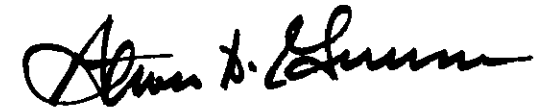
IT IS FURTHER ORDERED that Plaintiff Hefetz shall be listed as sole Plaintiff in the caption henceforth.

IT IS SO ORDERED this 25 day of June, 2012.

  
\_\_\_\_\_  
DISTRICT COURT JUDGE

Prepared and Submitted by:

  
\_\_\_\_\_  
Lee I. Iglody, Esq.  
Nevada Bar #: 7757  
3960 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169  
Tel: (702) 425-5366  
Attorney for Plaintiffs



CLERK OF THE COURT

**NEO**

Lee I. Iglody, Esq.  
Nevada Bar #: 7757  
3960 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169  
Tel: (702) 425-5366  
Fax: (702) 446-5148  
Email: [Lee@Iglody.com](mailto:Lee@Iglody.com)  
*Attorney for Plaintiffs /Counter-Defendants*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

YACOV JACK HEFETZ, an individual,  
and ALIS COHEN, an individual,

Plaintiff,

vs.

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

Defendant.

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

Counterclaimants,

vs.

YACOV JACK HEFETZ, an individual,  
and ALIS COHEN, an individual,

Counter-Defendants.

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

**NOTICE OF ENTRY OF ORDER**

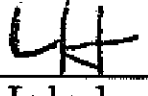
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LEE IGLODY, ESQ.  
3960 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
(702) 425-5366 FAX: (702) 446-5148

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that a Stipulation and Order to Extend Discovery Deadlines, a copy of which is attached hereto, was entered in the above-entitled matter on the 29<sup>th</sup> day of May, 2012.

Dated this 3<sup>rd</sup> day of July, 2012.

  
\_\_\_\_\_  
Lee I. Iglody, Esq.  
Nevada Bar #: 7757  
3960 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169  
Tel: (702) 425-5366  
Fax: (702) 446-5148  
Email: [Lee@Iglody.com](mailto:Lee@Iglody.com)  
*Attorney for Plaintiffs /Counter-Defendants*

LEE IGLODY, ESQ.  
3960 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
(702) 425-5366 FAX: (702) 446-5148

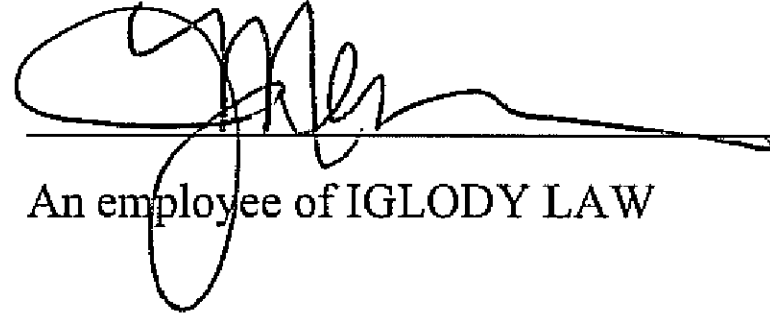
CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 3<sup>rd</sup> day of July, 2012, I served a copy of foregoing, by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

**SAGGESE & ASSOCIATES, LTD.**

Marc A. Saggese, Esq.  
732 S. Sixth Street, Suite 201  
Las Vegas, Nevada 89101  
*Attorney for Defendants/Counterclaimants*

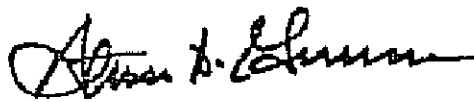
and that there is a regular communication by mail between the place of mailing and the place(s) so addressed.

  
An employee of IGLODY LAW



ORIGINAL

Lee I. Iglody, Esq.  
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Email: [Lee@Iglody.com](mailto:Lee@Iglody.com)  
*Attorney for Plaintiffs*

  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

YACOV JACK HEFETZ, an individual, and )  
ALIS COHEN, an individual, )  
Plaintiffs, )

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

vs. )

STIPULATION AND ORDER TO  
EXTEND DISCOVERY  
DEADLINES

CHRISTOPHER BEAVOR, an individual, )  
and SAMANTHA BEAVOR, an individual, )  
DOES I – X and ROE ENTITIES I – X, )  
inclusive )

(First Request)

Defendants. )

STIPULATION

In compliance with EDCR 2.23, YACOV JACK HEFETZ and ALIS COHEN, (collectively, "Plaintiffs"), by and through their undersigned counsel, and CHRISTOPHER BEAVOR and SAMANTHA BEAVOR ("Defendants"), by and through their undersigned counsel, stipulate to a 60 day extension of the discovery deadline as follows:

**I. Summary of Discovery Completed:**

The parties have provided initial disclosures under NRCP 16.1 and supplements thereto. Plaintiffs have served written discovery requests on Defendants to which Defendants have responded. Plaintiffs have also deposed Defendant Christopher Beavor. Defendants have served written discovery requests on Plaintiffs. The time for Plaintiffs to respond to those requests has not yet run. Defendants have also subpoenaed documents from a third party witness.

LEE IGLODY, ESQ.  
3960 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
(702) 425-5366 FAX: (702) 446-5148

36415

1 **II. Discovery Remaining to be Completed:**

2 Plaintiffs will timely respond to Defendants' written discovery requests. Also, the parties  
3 will likely take additional depositions, including Defendants' deposition of Plaintiff Yacov  
4 Hefetz.

5 **III. Reason Why Discovery Was Not Completed Within the Limits Set by the Discovery**  
6 **Order**

7 The initial discovery period agreed-to by the parties was only 165 days. As it turns out,  
8 165 days was not enough time to complete discovery given scheduling conflicts that have arisen  
9 and the complexity of the case. The parties have agreed-to an extension of 60 days to complete  
10 discovery.

11 **IV. Proposed Schedule for Completing All Discovery**

12 Discovery Cut-Off Date. The current discovery cut-off date is May 21, 2012. The  
13 parties agree that the current discovery should be extended to **July 23, 2012**. There is good  
14 cause to seek an extension of this date to complete discovery, as set forth above.

15 Amending the Pleadings. The deadline for any party to amend the pleadings has passed.  
16 The parties do not seek an extension of this date.

17 Expert Disclosures. The deadline for initial experts has passed. Neither party disclosed  
18 experts. The parties do not seek an extension of this date.

19 Dispositive Motions. The deadline for filing dispositive motions is currently set for June  
20 20, 2012. The parties agree that the dispositive motion deadline should be extended to **August**  
21 **23, 2012**.

22 **V. Current Trial Date**

23 The current trial date is September 4, 2012 on a five-week stack. The deadline to file  
24 pre-trial motions is July 23, 2012 and hearings on said motions must be set for a date prior to  
25 August 21, 2012. The parties agree the trial date and pre-trial motion deadlines should be  
26 extended around 60 days from the current trial date to allow the parties to complete discovery,  
27 file any dispositive and/or pre-trial motions, and to conduct any settlement negotiations.  
28

DATED this 21<sup>st</sup> day of May, 2012.

DATED this 21<sup>st</sup> day of May, 2012.

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 Attorney for Defendants

### ORDER

Based upon the foregoing Stipulation, and for good cause show,

IT IS ORDERED that the deadlines for discovery and its related matters be extended as follows:

1. Deadline to Complete Discovery: July 23, 2012
2. Deadline to File Dispositive Motions: August 23, 2012
3. All other discovery deadlines remain unchanged.

IT IS FURTHER ORDERED that the trial date for this matter current set for September 4, 2012 will be vacated and reset in accordance with this stipulation. All current pre-trial motion deadlines are hereby vacated and will be re-set by an Amended Scheduling Order <sup>will not be</sup> issued by the Court.

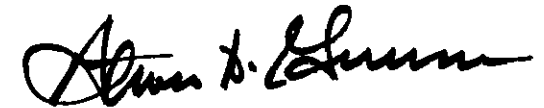
IT IS SO ORDERED this 23<sup>rd</sup> day of May, 2012.

TRIAL DATE TO BE SET  
ON OR AFTER 10/1/12

Prepared and Submitted by:

DISCOVERY COMMISSIONER

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 Lee I. Iglody, Esq.  
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 Attorney for Plaintiffs



CLERK OF THE COURT

**MPSJ**

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

YACOV JACK HEFETZ, an individual,

Plaintiff,

vs.

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

Defendants.

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

**PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT**

CHRISTOPHER BEAVOR, an individual,  
and SAMANTHA BEAVOR, an individual,

Counterclaimants,

vs.

YACOV JACK HEFETZ, an individual, and  
DOES I – X and ROE ENTITIES 1 – 10,  
inclusive

Pursuant to Rule 56 of the Nevada Rules of Civil Procedure ("NRCP"), Plaintiff YACOV JACK HEFETZ ("Hefetz"), hereby moves for partial summary judgment against Defendants CHRISTOPHER BEAVOR ("Beavor") and SAMANTHA BEAVOR (together, "Defendants") on the issue of liability on Hefetz's claim for breach of guarantee, and on Defendants' counterclaims for fraud, fraud in the inducement, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, and negligence per se. Summary judgment is appropriate because Defendants defaulted on their loan guaranty obligations, and because

Defendants' foregoing counterclaims cannot survive as a matter of law given the undisputed facts.

This Motion is made and based on the following Memorandum of Points and Authorities, the attachments thereto, the other papers and pleadings on file herein, and any oral argument the Court may permit at the hearing of this matter.

Dated this 11<sup>th</sup> day of September, 2012.



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*Attorney for Plaintiff*

#### NOTICE OF MOTION

YOU, AND EACH OF YOU, will please take notice that the undersigned will bring the above and foregoing Motion on for hearing before this Court on the 15 day of Oct, 2012 at the hour of 9:00<sup>a</sup> o'clock  of said day, or as soon thereafter as counsel can be heard in Department No. XXVIII.

Dated this 11<sup>th</sup> day of September, 2012.



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*Attorney for Plaintiff*

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**SUMMARY OF THE ARGUMENT**

This matter involves the payment of a guaranty by Defendants as a result of a failed construction project. As detailed in depth below, the Defendants have failed to advance any defense to a finding of liability on the written guaranty. Judgment on the liability should be entered by this Court. Determination of the amount will be made at trial.

As to Defendants counterclaims numbered 1, 2, 3, 4 and 6 fail as a matter of law. The counterclaim number 5 for tortious interference is baseless and will accordingly be refuted at trial; however it is not the subject of this motion.

**II.**

**STATEMENT OF UNDISPUTED FACTS AND RELEVANT PROCEDURAL HISTORY**

**A. The Loan and Defendants' Unconditional Payment Guaranty**

1. On or about March 29, 2007, Toluca Lake Vintage, LLC ("Borrower") 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"). True and correct copies of the Loan Agreement (without exhibits) and the Promissory Note evidencing the Loan are attached hereto as **Exhibits 1** and **2** respectively; see also Defendants' Response to First Request for Admissions, attached hereto as **Exhibit 3**, Responses No. 1-3 (admitting authenticity of agreements and existence of Loan).

2. Hefetz and Alis Cohen participated in the Loan by contributing \$2,214,875.00 toward funding of the Loan ("Participation Amount"). See Deposition Transcript of Hefetz, attached hereto as **Exhibit 4**, 31:21.

3. The purpose for the Loan was to improve and develop certain real property located in Los Angeles County, California, comprised of a 45-unit condominium project in Toluca Lake, California (the "Project"). See Deposition Transcript Beavor, attached hereto as **Exhibit 5**, 9:15-17. The entire Project was estimated to cost around \$26,000,000.00. Ex. 5,

23:6-9. Beavor, who was the head of the project, admits he had very little experience in real estate development when he commenced the Project. Ex. 5, 11:15-12:8.

4. The Loan was benefitted by the Defendants' joint and several, absolute, unconditional and irrevocable personal guarantee of full and prompt payment of the principal and interest due and owing on the Loan. A true copy of the Payment Guaranty evidencing Guarantors' obligations is attached hereto as **Exhibit 6**; see also Ex. 3, Response Nos. 5 - 6 (Defendants admit their guarantee obligations and authenticity of Payment Guaranty).

5. 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. Ex. 6, ¶¶ 2-3. 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. Ex. 6, ¶ 5.

6. The purpose for the Loan was to provide the down payment for a larger construction loan of \$22,000,000.00 for the Project made by Chinatrust Bank to Borrower (the "Chinatrust Loan"). Ex. 5, 19:2-23; see also Defendants' Responses to Interrogatories, attached hereto as **Exhibit 7**, Response No. 5; Amended Counterclaim, on file herein, ¶¶ 11, 13. The Chinatrust Loan was personally guaranteed by Defendants, Lender, and others. See id.

#### **B. The Bankruptcy**

7. The Project fell at least three months behind schedule, which caused the Chinatrust Loan to mature before the Project was complete. Ex. 5, 36:1-23; 38:20-39:1. Chinatrust Bank demanded that the Borrower and guarantors of the Chinatrust Loan, including Defendants and Lender, agree to waive any claims they may have against Chinatrust Bank in return for Chinatrust Bank's agreement to extend the Chinatrust Loan, which release Lender refused to grant given Chinatrust Bank's previous dealings relative to the Project. Ex. 5, 42:5-13.

1           8.       The Chinatrust Loan went into default around April 2009. Id. As a result of the  
2 default, Chinatrust Bank filed an ex parte application for the appointment of a receiver over the  
3 Project in April 2009. See Amended Counterclaim, ¶ 14.

4           9.       Beavor, in his capacity as manager of Borrower, retained counsel in April 2009 to  
5 defend the receivership request and to prepare Borrower for a bankruptcy filing. See  
6 SulmeyerKupetz Agreement for Legal Services, attached hereto as **Exhibit 8** (providing at ¶ 1:  
7 “Finally, we will file a Chapter 11 case for Toluca Lake.”). Thus, Borrower (and Beavor)  
8 intended to file bankruptcy in April 2009.

9           10.      On or about May 14, 2009, Borrower filed a voluntary Chapter 11 petition under  
10 the United States Bankruptcy Code, 11 U.S.C. § 101, et seq. (the “Bankruptcy”). Defendants  
11 were not parties to the Borrower’s bankruptcy. See May 18, 2010 Order Granting Emergency  
12 Ex Parte Motion, attached hereto as **Exhibit 9**.

13           11.      Just prior to the Bankruptcy, Borrower entered into a Resolution of Board of  
14 Directors declaring “it is in the best interest” of the Borrower to commence a Bankruptcy, and  
15 that “Gary M. Frey, Star Development, LLC (‘Star Development’), Manager . . . is authorized  
16 and directed to execute and deliver all documents necessary to perfect the filing of [the  
17 Bankruptcy] . . . and to appear in all bankruptcy proceedings on behalf of [Borrower].” See  
18 Resolution of Board of Directors, attached hereto as **Exhibit 10**; see also Notification of  
19 Replacement of Manager (indicating Defendants’ acceptance of Star Development as manager of  
20 Borrower), attached hereto as **Exhibit 11**; Ex. 5, 32:30-33:2. In addition to Mr. Frey, Wayne  
21 Krieger, one of Star Development’s Managers, also did the majority of the negotiations on behalf  
22 of Star Development. Ex. 5, 56:7-19 (“Everything negotiated was with Wayne, talked to Wayne,  
23 e-mails, that Wayne was a representative of Star Development, an agent.”). Steven Gilmore also  
24 represented Star Development. Ex. 5, 56:20-57:6.

25           12.      Notably, Hefetz had a very minimal role in any interactions with Defendants’ or  
26 Star Development (Ex. 5, 59:2-4), and he had no personal involvement with the Bankruptcy in  
27 any way (Ex. 4, 33:18-22).  
28



1           13. In early 2010, the parties in the Bankruptcy reached a settlement agreement, to  
2 which Defendants objected via a May 13, 2010 filing with the Bankruptcy court. See  
3 Defendants' Objection to Emergency Ex Parte Application for Hearing on Debtor's Motion,  
4 attached hereto as **Exhibit 12**. In Defendants' Objection, Beavor admitted in his declaration that  
5 Chinatrust Bank was the reason the Bankruptcy was commenced when he declared that the  
6 Bankruptcy "was filed after Chinatrust attempted to impose new conditions, including a release  
7 of claims against Chinatrust, in order to effectuate an agreed-upon extension of the [Chinatrust  
8 Loan]." See Declaration of Christopher Beavor, attached hereto as **Exhibit 13**.

9           14. On May 18, 2010, after considered the parties' settlement terms as well as  
10 Defendants' Objection, the Bankruptcy court approved the parties' settlement agreement, but  
11 preserved Defendants' and Lender's right to pursue any additional claims apart from the  
12 Chinatrust Loan. See Ex. 9 (adopting Exhibit 1 to Motion for Order Approving Settlement  
13 Agreement). The Bankruptcy court made no finding of any wrongdoing by the parties as part of  
14 the settlement process. Id.

15           15. As a part of the Bankruptcy settlement, Defendants and Lender were released of  
16 all personal obligations – including personal guarantees – under the Chinatrust Loan. See Ex.  
17 14; see also Motion for Order Approving Settlement Agreement, and Exhibit 1 thereto at ¶ 4,  
18 attached hereto as **Exhibit 14**.

19  
20 **C. Defendants' Default and the Assignments**

21           16. Under the Loan, the appointment of a receiver constituted an event of default. Ex.  
22 1, ¶ 7.1(e). Borrowers' Bankruptcy also constituted an event of default under the Loan. See id.

23           17. Guarantors did not meet their obligations under the Personal Guaranty upon  
24 Borrower's default. Specifically, Defendants have failed and refused to repay the Loan. See Ex.  
25 4, 50:17-51:2; 60:14-23; see generally Amended Counterclaim, on file herein.

26           18. On or about July 6, 2011, the principal of Lender, as Hefetz's partner, assigned  
27 Hefetz and Alis Cohen all of Lender's right, title and interest in and to the Payment Guarantee.  
28 A true copy of the Assignment is attached hereto as **Exhibit 15**; Ex. 4, 32:5-6. Lender assigned

1 the Personal Guaranty (and other Loan documents) to Hefetz because he has cancer and is  
2 getting too old to pursue Defendants. Ex. 4, 50:20-25. Alis Cohen subsequently assigned her  
3 rights under the Payment Guaranty in full to Hefetz. A true copy of the Assignment is attached  
4 hereto as **Exhibit 16**.

5 **D. Procedural History**

6 19. This action commenced on July 21, 2011 with the filing of the Complaint. See  
7 Complaint, on file herein. By way of the Complaint, Hefetz asserts a single claim for Breach of  
8 Guarantee.

9 20. On April 9, 2012, Defendants filed their Amended Counterclaim. See Amended  
10 Counterclaim, on file herein. By way of their Amended Counterclaim, Defendants assert claims  
11 for: Fraud; Fraud in the Inducement; Breach of the Implied Covenant of Good Faith and Fair  
12 Dealing; Breach of Fiduciary Duty; Tortious Interference with Contractual Relations; and  
13 Negligence Per Se (Violation of NRS 645B).  
14

15 21. By way of this Motion, Hefetz seeks partial summary judgment on Defendant's  
16 liability under Hefetz's Breach of Guarantee claim, as well as on Defendants' counterclaims for  
17 Fraud; Fraud in the Inducement; Breach of Fiduciary Duty; and Negligence Per Se (Violation of  
18 NRS 645B).

19 **III.**

20 **SUMMARY JUDGMENT STANDARD**

21 Pursuant to NRCP 56, summary judgment is appropriate where the "pleadings . . . show  
22 that there exists no genuine issue as to any material fact, and that the moving party is entitled to  
23 judgment as a matter of law." Bird v. Casa Royale West, 97 Nev. 67, 69, 624 P.2d 17, 18 (1981)  
24 (emphasis added); NRCP 56(c). The party moving for summary judgment bears the initial  
25 burden of production to show the absence of a genuine issue of material fact. Cuzze v.  
26 University and Community College System of Nevada, 123 Nev. 598, 602, 172 P.3d 131,  
27 134 (2007). If such a showing is made, the party opposing summary judgment then assumes a  
28 burden of production to show the existence of a genuine issue of material fact. Id.

1 Notably, “[s]ummary judgment procedure is properly regarded not as a disfavored  
2 procedural shortcut, but rather as an integral part of the [procedural process] as a whole, which  
3 [is] designed to secure the just, speedy and inexpensive determination of every action.” See  
4 Celotex v. Catrett, 477 U.S. 317, 327 (1986). Summary judgment is necessary in this case in  
5 order “to secure the just, speedy, and inexpensive determination” of this action. See NRCP 1  
6 (admonishing Nevada courts to construe and administer available procedural mechanisms to  
7 secure “just, speedy and inexpensive” adjudication of disputes).

8 IV.

9 **THE COURT SHOULD ENTER PARTIAL SUMMARY JUDGMENT ON PLAINTIFF’S**  
10 **LIABILITY UNDER HEFETZ’S BREACH OF GUARANTY CLAIM**

11 It is a “simple matter of textbook contract law” that a party who signs a contract is bound  
12 by its express terms. Old Republic Ins. Co. v. Jensen, 276 F.Supp.2d 1097, 1101 (D. Nev.  
13 2003); see also Vizcaino v. Microsoft Corp., 120 F.3d 1006, 1021 (9th Cir. 1997) (citations  
14 omitted) (“It is well settled that one is bound by the contract which he voluntarily and knowingly  
15 signs”).

16 The contract at issue in this Motion is the Payment Guaranty executed by Defendants.  
17 Hefetz was assigned all rights under the Payment Guaranty via assignments from the Lender and  
18 Alis Cohen. As assignee, Hefetz takes the place and holds all rights of his predecessors. “An  
19 assignment carries with it all the rights of the assignor. The assignment merely transfers the  
20 interest of the assignor. The assignee ‘stands in the shoes’ of the assignor . . . Once a claim has  
21 been assigned, the assignee is the owner and has the right to sue on it.” Searles Valley Minerals  
22 Operations Inc. v. Ralph M. Parson Serv. Co., 191 Cal. App. 4th 1394, 1402, 120 Cal. Rptr. 3d  
23 487, 492 (2011) (internal citations omitted). As stated by the Nevada Supreme Court, “a  
24 contractual right is assignable unless assignment materially changes the terms of the contract or  
25 the contract expressly precludes assignment.” Easton Bus. Opp. v. Town Executive Suites, 230  
26 P.3d 827, 830 (Nev. 2010) (citing Restatement (Second) of Contracts § 317(2)(a)-(c) (1981)).  
27 Neither of these limitations applies to this case. Accordingly, Hefetz has the right to enforce all  
28 obligations under the Payment Guaranty.

The following are the express terms in the Payment Guaranty that Hefetz seeks to enforce by way of this Motion:

- Defendants agreed to jointly and severally, absolutely, unconditionally and irrevocably personally guarantee the full and prompt payment of the principal and interest due and owing on the Loan.
- Defendants' obligations to repay the Loan were made "regardless of any defense, right of set-off or claims which [Defendants] may have against [the holder of the Loan]." Ex. 6, ¶ 2.
- Defendants also 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. Ex. 6, ¶ 3.
- Defendants also agree 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. Ex. 6, ¶ 5.

It is undisputed that Defendants have failed and refused to meet these express obligations despite Borrower's default under the Loan due to receivership over the Project and Borrower's Bankruptcy. Specifically, upon Borrower's default, Defendants were required to repay the Loan without regard to any defense or excuse, and materially breached that obligation by undisputedly failing and refusing to repay the Loan. Due to Defendants' breach, Defendants are liable for breach of the Payment Guaranty.<sup>1</sup>

Therefore, the Court should enter summary judgment in favor of Hefetz and against Defendants on the issue of Defendants' liability for their breach of the Payment Guaranty. The damages Hefetz has suffered as a result of Defendants' breach of the Payment Guaranty will be

---

<sup>1</sup> A breach of contract is a material failure of performance of a duty arising under or imposed by agreement. See . Bernard v. Rockhill Dev. Co., 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987). The elements of a breach of contract claim require a valid agreement; performance of excuse from performance by Daisy; Charron's failure to perform; and Daisy's suffering of damaged as a result. See Reichert v Gen. Ins. Co. of Amer., 68 Cal. 2d. 822 (1968); see also Calloway v. City of Reno, 116 Nev. 250, 993 P.2d 1259 (2000).

determined at trial.

V.

**THE COURT SHOULD ENTER SUMMARY JUDGMENT IN PLAINTIFF'S FAVOR  
ON DEFENDANTS' COUNTERCLAIMS FOR FRAUD; FRAUD IN THE  
INDUCEMENT; BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND  
FAIR DEALING; BREACH OF FIDUCIARY DUTY; AND NEGLIGENCE PER SE  
(VIOLATION OF NRS 645B)**

**A. Defendants' Counterclaims Against Hefetz Individually Are Improper Because Star Development, LLC – Not Hefetz – Was The Manager Of Borrower Under Defendants' Counterclaims**

Defendants' counterclaims against Hefetz individually for fraud, breach of the implied covenant of good faith and fair dealing, and breach of fiduciary duty are fatally flawed because the real defendant under Defendants' allegations is Star Development, not Hefetz.

Nevada has long treated corporate entities as separate legal entities. The remedy of "piercing the corporate veil" – which is not even alleged here – is only available in *limited circumstances*, and only if it appears there is an *abuse of the corporate form* by the controlling individuals. See LFC Marketing Group, Inc. v. Loomis, 116 Nev. 896, 902, 8 P.3d 841, 845 (2000) (citing McCleary Cattle Co. v. Sewell, 73 Nev. 279, 317 P.2d 957 (1957)). The corporate fiction must be recognized, respected, and enforced, and, given that there is no alter ego claim even alleged by Defendants (and there is certainly no evidence to support such a claim), the foregoing counterclaims against Hefetz individually must be dismissed. As a matter of law, Hefetz cannot be held personally liable for any alleged wrongdoing by Star Development (of which there is no evidence).

Even Defendants' own allegations and admissions during discovery confirm Defendants' counterclaims should be made against Star Development, not Hefetz individually. Specifically, Defendants allege in Paragraph 17 of their Amended Counterclaim: "On May 14, 2009, Counter-Defendant Hefetz, as Manager of Star Development LLC, which was the Manager of Toluca Lake Vintage, LLC, caused Toluca Lake Vintage, LLC to file bankruptcy, causing the loan to default and the \$6,000,000.00 to become due to Lender." Furthermore, Borrower's own Resolution of Board of Directors declares "Gary M. Frey, Star Development, LLC ('Star Development'), Manager . . . is authorized and directed to execute and deliver all documents

1 necessary to perfect the filing of [the Bankruptcy] . . . and to appear in all bankruptcy  
2 proceedings on behalf of [Borrower].” Defendants also admit Wayne Krieger, one of Star  
3 Development’s Managers, did the majority of the negotiations on behalf of Star Development.  
4 Ex. 5, 56:7-19 (“Everything negotiated was with Wayne, talked to Wayne, e-mails, that Wayne  
5 was a representative of Star Development, an agent.”). They also admit Steven Gilmore also  
6 represented Star Development. Ex. 5, 56:20-57:6. Critically, Defendants’ admitted interactions  
7 with Hefetz only constituted approximately 10% of Defendants’ interactions with Star  
8 Development.<sup>2</sup> Ex. 5, 59:2-4.

9 In sum, Defendants recognize that Star Development – not Hefetz – took the *alleged*  
10 *actions* they claim were wrongful, such that there is no basis under Nevada law for Hefetz to be  
11 individually liable for any actions taken by Star Development. Star Development should be the  
12 defendant under Defendants’ allegations, not Hefetz. Therefore, Defendants’ counterclaims  
13 against Hefetz individually (fraud (two claims), breach of the implied covenant of good faith and  
14 fair dealing, and breach of fiduciary duty) should be dismissed as a matter of law on this basis  
15 alone. Those claims could also be dismissed for the other, independent reasons set forth below.

16 **B. Defendants’ Fraud Claims Fail As A Matter Of Law**

17 Defendants assert two fraud claims against Hefetz: fraud and fraud in the inducement.  
18 Both claims fail as a matter of law under the undisputed facts before the Court for the reasons set  
19 forth in the preceding Section V.A., as well as for the following reasons.<sup>3</sup>

20  
21  
22  
23 <sup>2</sup> Defendants also admit Star Development’s actions to be a “collective purpose.” Ex. 5, 61:9-10. And Defendants’  
own counsel even stated during a deposition: “In other words, a corporation can only act through human beings” and  
that “actions taken by Star Development . . . had to be through the management.” Ex. 4, 34:9-15.

24 <sup>3</sup> To succeed on their fraud claims, Defendants must prove: (1) Hefetz made a false representation as to a past or  
25 existing material fact; (2) Hefetz knew the representation was false when he made it; or did not hold sufficient  
26 information to make the representation; (3) Hefetz intended to induce Defendants to rely upon the false  
27 representation and act or to refrain from acting accordingly; (4) Defendants were unaware of the falsity of the  
28 representation; (5) Defendants acted in reliance upon the truth of the representation; and (6) Defendants were  
justified in relying upon the representation; (7) Defendants suffered damages as a result of their reliance on the  
alleged misrepresentation. See Barnett v. Reno Air, Inc., 114 Nev. 441, 446-7, 956 P.2d 1382, 1386 (1998);  
Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 111 825 P.2d 588, 591 (1992).

Defendants' fraud counterclaims are comprised of the following allegations:

- "Hefetz caused, through Star Development as Manager, false information to be relayed to Star Development's counsel, and the filing of false affidavits to be filed with the [California bankruptcy court]." Amended Counterclaim, ¶ 32.
- There was a previous agreement to release Defendants from their guarantee obligations under the Loan. Amended Counterclaim, ¶ 33.
- The settlement documents in the bankruptcy did not include Defendants. Amended Counterclaim, ¶ 34.
- Hefetz presented a strategy to Defendants to terminate their legal counsel and jointly pursue Chinatrust Bank. Amended Counterclaim, ¶ 40.
- Hefetz utilized Defendants' "desire to be released from their obligations, personal guarantees, and the release of the deeds of trust for their properties as a mechanism to induce them to agree to the filing of the bankruptcy." Amended Counterclaim, ¶ 42.
- Defendants were not "fully informed" of the bankruptcy proceedings. Amended Counterclaim, ¶ 44.

To start with, there is no evidence Hefetz was involved at all with Star Development's statements to Star Development's counsel, or that Hefetz made any representations to Defendants. In fact, Defendants admit Star Development's Wayne Krygier and Steven Gilmore – not Hefetz – were the Star Development representatives who made these supposed representations. See Ex. 5, 56:20-57-6. Given that there is no evidence Hefetz was involved in the supposed false representations, Defendants' fraud counterclaims against Hefetz individually cannot survive as a matter of law.

In addition, Defendants' allegation that Hefetz (or Star Development) caused the Bankruptcy is simply not true. Beavor himself admitted to the Bankruptcy court that the Bankruptcy was caused by Chinatrust Bank when "Chinatrust attempted to impose new conditions, including a release of the claims against Chinatrust, in order to effectuate an agreed-upon extension of the [Chinatrust Loan]." See Ex. 13, ¶ 5. In fact, prior to Star Development taking over as manager of Borrower, Beavor, as manager of Beavor, retained bankruptcy counsel on behalf of Borrower with the stated purpose of that representation being to file a Chapter 11 petition. See Ex. 8, SulmeyerKupetz Agreement for Legal Services (providing: "Finally, we will file a Chapter 11 case for Toluca Lake").

1 Thus, Star Development (and certainly not Hefetz) did nothing to cause the Bankruptcy.  
2 By Beavor's own admission the Bankruptcy was caused by Chinatrust Bank's refusal to extend  
3 the Chinatrust Loan and subsequent receivership – not Star Development. This is a key fact  
4 because it entirely discredits Defendants' allegation that the only reason they agreed to the  
5 Bankruptcy was because they were going to be released from their guarantee obligations under  
6 the Loan. There is no evidence to support that allegation; indeed, the opposite is true: Chinatrust  
7 Bank caused the Bankruptcy.

8 Moreover, Defendants' claim they were somehow prejudiced by the parties' settlement  
9 agreement in the Bankruptcy is also simply not true as a matter of law. Defendants were not  
10 even parties in the Bankruptcy, so the Bankruptcy could have settled on the terms agreed by the  
11 parties and approved by the Bankruptcy court. Nonetheless, the Bankruptcy court still  
12 considered Defendants' Objection to the parties' settlement terms, and even preserved any  
13 claims Lender and Defendants may have had under the Loan. The settlement was approved by  
14 the Bankruptcy court following consideration of Defendants' Objection; the Bankruptcy court  
15 found no fraud of the kind alleged by Defendants in their Objection. All told, the factual  
16 underpinnings of Defendants' fraud allegation are not supported by any evidence, let alone the  
17 clear and convincing evidence they must establish to prevail on their fraud claims.

18 A final failing of Defendants' fraud claim is that Defendants have not suffered damages  
19 under their fraud counterclaims. Defendants allege they suffered an "unlawful lien" on certain  
20 property as a result of Hefetz's ostensible fraud. See Amended Counterclaim, ¶¶ 37, 47. There  
21 is no evidence to support this naked allegation. Any liens on Defendants' property were caused  
22 by Defendants' and Borrower's agreed-to obligations under the Loan, which were agreed-to long  
23 before the Bankruptcy. Hefetz's supposed actions had no effect on the liens. Accordingly,  
24 Defendants' allegations of Hefetz's fraud are not only unprovable because they are not true, but  
25 Defendants also have not suffered any damages. As such, Defendants' fraud claims should be  
26 dismissed.  
27

28 ///



**C. Defendants' Breach of the Implied Covenant of Good Faith and Fair Dealing Claim Fails As A Matter Of Law**

Defendants allege Hefetz breached the implied covenant of good faith and fair dealing by "misrepresenting the terms of the global settlement during the bankruptcy proceedings" and "failing to allow Counterclaimants to be released from their obligation and personal guarantees under the loan from Lender, holding them personally responsible for all monies due, as well as holding liens against their properties." Amended Counterclaim, ¶¶ 50-51. Defendants cannot prevail on this claim as a matter of law.<sup>4</sup>

Defendants' allegations of Hefetz's supposed wrongdoing do not constitute a breach of the implied covenant of good faith and fair dealing. Foremost, there is no evidence of any misrepresentation by Hefetz (or Star Development) to the Bankruptcy court. Defendants had an opportunity to raise their allegations of wrongdoing in their Objection lodged with the Bankruptcy court, and there is no evidence the Bankruptcy court made any finding of wrongdoing or misrepresentation regarding the settlement terms by any party – let alone Hefetz, who had no involvement in the Bankruptcy. In fact, the Bankruptcy court approved the settlement terms, under which Defendants were granted a full release of their personal guarantee obligations under the \$22 million Chinatrust Loan.

Defendants' second allegation – that Hefetz breached the implied covenant of good faith and fair dealing by actually requiring Defendants to meet their obligations under the Payment Guaranty – is untenable. How could it possibly be a breach of the implied covenant of good faith and fair dealing for Hefetz to hold Defendants responsible to their agreed-upon contractual

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<sup>4</sup> A party's justified expectations are to be "determined by the various factors and special circumstances that shape these expectations." Hilton Hotels, 107 Nev. at 234, 808 P.2d at 924. The implied covenant of good faith and fair dealing "prohibits arbitrary or unfair acts by one party that work to the disadvantage of the other" under contracts in Nevada. Nelson v. Heer, 123 Nev. 217, 226, 163 P.3d 420, 427 (2007). To prevail on their breach of the implied covenant of good faith and fair dealing claim, Defendants must prove that (1) Hefetz and Defendants entered into a valid and existing contract; (2) Hefetz owed a duty of good faith and fair dealing to Defendants; (3) Hefetz breached the covenant by performing in a manner unfaithful to the purpose of the contract; and, (4) that Defendants' justified expectations were denied as a result of the breach. See Perry v. Jordan, 111 Nev. 943, 948, 900 P.2d 335, 338 (1995); see also Hilton Hotels v. Butch Lewis Productions, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991).

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## TABLE OF CONTENTS

<u>Tab No.</u>	<u>Page No.</u>	<u>Date</u>	<u>Document</u>
<b><u>VOLUME I</u></b>			
1	001	7/21/2011	Verified Complaint
2	0029	10/21/2011	Defendants' Answer to Complaint and Counterclaim
3	0045	11/01/2011	Reply to Counterclaim
4	0055	12/28/2011	Scheduling Order
5	0058	12/30/2011	Order Setting Jury Trial
6	0063	4/09/2012	First Amended Counterclaim
7	0077	4/23/2012	Reply to First Amended Counterclaim
8	0088	5/29/2012	Stipulation and Order to Extend Discovery Deadlines
9	0091	6/08/2012	Order Re-Setting Civil Jury Trial
10	0096	6/29/2012	Notice of Order Re: Dismissal of Alis Cohen
11	0100	7/03/2012	Notice of Order Re: Stipulation and Order to Extend Discovery Deadlines
12	0106	9/11/2012	Plaintiff's Motion for Partial Summary Judgment
<b><u>VOLUME II</u></b>			
12 (Cont.)	246	9/11/2012	Plaintiff's Motion for Partial Summary Judgment
13	0319	10/09/2012	Defendants' / Counterclaimants' Opposition to Motion for Partial Summary Judgment
14	0396	10/16/2012	Plaintiff's Reply in Support of Motion for Partial Summary Judgment
15	0407	10/19/2012	Supplement to Defendants' / Counterclaimants' Opposition to Motion for Partial Summary Judgment
16	0415	10/19/2012	Defendants'/Counterclaimants' Response to Plaintiff's Reply to Opposition to Motion for Partial Summary Judgment
17	0421	11/12/2012	Notice of Entry of Order Re: Order Denying Motion for Partial Summary Judgment and Granting Motion to Strike

18	0426	11/21/2012	Order Re-Setting Civil Jury Trial
19	0431	3/01/2013	Court Minutes Re: Jury Trial
20	0434	3/01/2013	Verdict Form
21	0435	3/06/2013	Plaintiff's NRCP 50(a) Motion for Judgment as a Matter of Law on Defendants' Counterclaims
22	0451	5/15/2013	Court Minutes Re: Status Check for Settlement Documents for Dismissal of Samantha Beavor
23	0453	5/21/2013	Judgment
24	0457	5/21/2013	Notice of Entry of Judgment
<b><u>VOLUME III</u></b>			
25	0463	6/10/2013	Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV)
<b><u>VOLUME IV</u></b>			
25 (Cont.)	0700	6/10/2013	Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV)
26	0789	6/20/2013	Defendant Christopher Beavor's Opposition to Plaintiff's Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV)
27	0795	7/02/2013	Reply to Defendant Christopher Beavor's Opposition to Plaintiff's Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV)
28	0802	9/04/2013	Order Setting Civil Jury Trial
29	0805	9/09/2013	Notice of Entry of Order Re: Motion for New Trial or Alternatively Motion for Judgment Notwithstanding Verdict (JNOV)
30	0809	9/26/2013	Transcript of Proceedings Re: Defendant's Motion for Reconsideration of Motion for Attorney Fees
31	0822	12/03/2014	Order Setting Civil Jury Trial
32	0825	1/27/2015	Order Re-Setting Civil Jury Trial
33	0829	4/07/2015	Order Re-Setting Civil Jury Trial
<b><u>VOLUME V</u></b>			
34	0833	5/07/2015	Defendant's Motion to Dismiss Pursuant to NRS 40.435

35	0858	5/08/2015	Defendant Christopher Beavor's Motion to Reopen Dispositive Motion Deadline
36	0948	5/19/2015	Plaintiff's Opposition to Defendant's Motion to Dismiss Pursuant to NRS § 40.435
37	0995	5/20/2015	Plaintiff's Opposition to Defendant's Motion to Reopen Dispositive Motion Deadline
38	1007	6/02/2015	Defendant's Reply in Support of Motion to Dismiss Pursuant to NRS 40.435
39	1014	6/2/2015	Defendant Christopher Beavor's Reply in Support Motion to Reopen Dispositive Motion Deadline
40	1029	6/09/2015	Transcript of Proceedings: Defendant's Motion to Dismiss Pursuant to NRS 40.435 and Motion to Reopen Dispositive Motion Deadline
41	1035	6/18/2015	Notice of Entry of Order Re: Motion to Dismiss Pursuant to NRS 40.435 and Motion to Reopen Dispositive Motion Deadline
42	1040	6/19/2015	Plaintiff's Motion to Re-Open the Case and for Reconsideration of an Order of Dismissal Without Prejudice
43	1049	6/25/2015	Memorandum of Costs and Disbursements
44	1060	7/07/2015	Defendant's Opposition to Plaintiff's Motion to Re-Open the Case and for Reconsideration of an Order of Dismissal without Prejudice
<b><u>VOLUME VI</u></b>			
45	1070	7/8/2015	Defendant Christopher Beavor's Motion for Attorneys' Fees and Costs
46	1098	7/14/2015	Notice of Appeal
47	1109	7/14/2015	Plaintiff's Reply in Support Of The Motion To Re-Open The Case And For Reconsideration Of An Order Of Dismissal Without Prejudice
48	1120	7/16/2015	Plaintiff's Opposition to Defendant's Motion for Leave to Strike Reply; or, in the alternative, Motion to File Sur-Reply
49	1131	7/18/2015	Plaintiff's Opposition to Defendant's Motion For An Award Of Attorneys' Fees and Costs
50	1149	7/21/2015	Plaintiff's Opposition to Defendant's Motion for Leave to Strike Reply; or, in the alternative, Motion to File Sur-Reply
51	1155	7/24/2015	Notice of Entry of Order Re: Motion to Re-Open and Motion or Reconsideration

52	1162	8/12/2015	Defendant Christopher Beavor's Reply in Support of Motion for Attorneys' Fees and Costs
53	1171	8/17/2015	Defendant Christopher Beavor's Supplement to Reply in Support of Motion for Attorneys' Fees and Costs
54	1186	8/19/2015	Court Minutes Re: Motion for Attorney's Fees and Costs
55	1188	9/03/2015	Notice of Entry of Order Re: Motion for Attorneys' Fees and Costs
56	1192	9/15/2015	Notice of Appeal
57	1202	4/21/2016	Notice of Entry of Order Granting Plaintiff's Rule 50(a) Motion
58	1211	4/29/2016	Notice of Appeal