

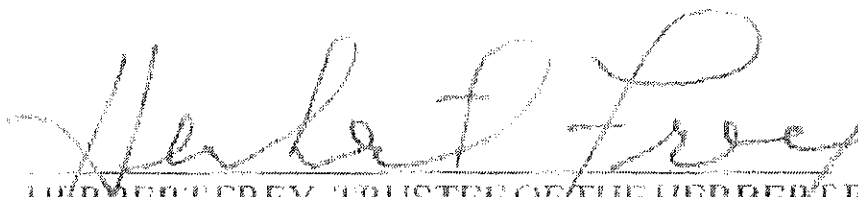
EXHIBIT 2-E

APP00933

ALLONGE

This Allonge, dated and effective as of July 6, 2011, is attached to and is intended to be made a part of that certain Promissory Note dated August 23, 2007, in the original principal amount of SIX MILLION AND NO/100 DOLLARS (\$6,000,000.00), made by TOLUCA LAKE VINTAGE, LLC, a California limited-liability company ("Borrower"), payable by Borrower to the order of HERBERT FREY, TRUSTEE OF THE HERBERT FREY REVOCABLE FAMILY TRUST DATED NOVEMBER 22, 1982 ("Lender/Assignor").

Pay to the order of YAKOV JACK HEFETZ AND ALIS COHEN (collectively, "Assignee"), without recourse, warranty or representation of any kind, except as expressly set forth in that certain Loan and Note Assignment Agreement of even date herewith by and between Lender/Assignor and Assignee, or in any documents executed in connection therewith.


HERBERT FREY, TRUSTEE OF THE HERBERT FREY
REVOCABLE FAMILY TRUST DATED NOVEMBER
22, 1982

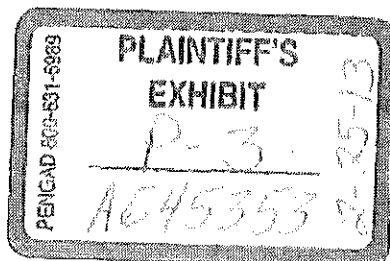
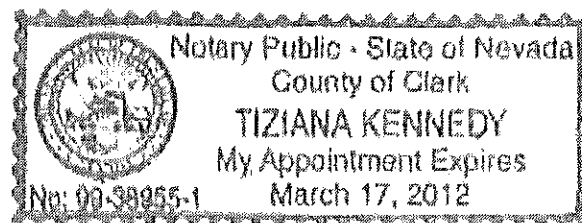
STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

On this 6 day of JULY, 2011, before me personally appeared HERBERT FREY, acting as TRUSTEE OF THE HERBERT FREY REVOCABLE FAMILY TRUST DATED NOVEMBER 22, 1982, to me personally know, who, being by me duly sworn, and he/she acknowledged said instruction to be his/her free act and deed and the free act and deed of said entity.


Notary Public
My Commission Expires:



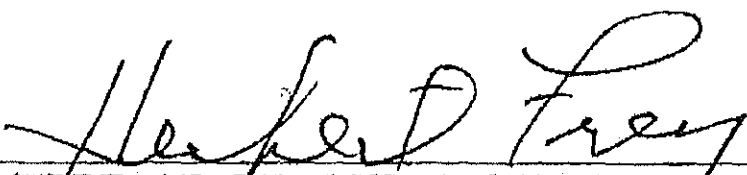
Hefetz Toluca Lake-001

APP00934

ALLONGE

This Allonge, dated and effective as of July 6, 2011, is attached to and is intended to be made a part of that certain Promissory Note dated February 28, 2008, in the original principal amount of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00), made by TOLUCA LAKE VINTAGE, LLC, a California limited-liability company ("Borrower"), payable by Borrower to the order of HERBERT FREY, TRUSTEE OF THE HERBERT FREY REVOCABLE FAMILY TRUST DATED NOVEMBER 22, 1982 ("Lender/Assignor").

Pay to the order of YAKOV JACK HEFETZ AND ALIS COHEN (collectively, "Assignee"), without recourse, warranty or representation of any kind, except as expressly set forth in that certain Loan and Note Assignment Agreement of even date herewith by and between Lender/Assignor and Assignee, or in any documents executed in connection therewith.

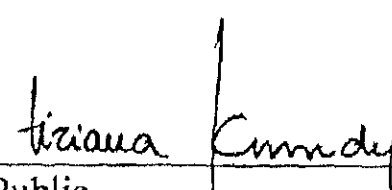

HERBERT FREY, TRUSTEE OF THE HERBERT FREY
REVOCABLE FAMILY TRUST DATED NOVEMBER
22, 1982

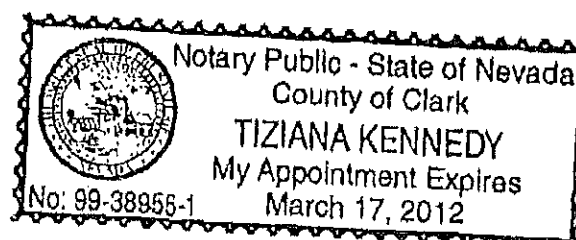
STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

On this 6 day of JULY 2011, before me personally appeared HERBERT FREY, acting as TRUSTEE OF THE HERBERT FREY REVOCABLE FAMILY TRUST DATED NOVEMBER 22, 1982, to me personally know, who, being by me duly sworn, and he/she acknowledged said instruction to be his/her free act and deed and the free act and deed of said entity.


Notary Public
My Commission Expires:




Hefetz Toluca Lake-002

APP00935

ALLONGE

This Allonge, dated and effective as of July 6, 2011, is attached to and is intended to be made a part of that certain Promissory Note dated February 28, 2008, in the original principal amount of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00), made by TOLUCA LAKE VINTAGE, LLC, a California limited-liability company ("**Borrower**"), payable by Borrower to the order of HERBERT FREY, TRUSTEE OF THE HERBERT FREY REVOCABLE FAMILY TRUST DATED NOVEMBER 22, 1982 ("**Lender/Assignor**").

Pay to the order of YAKOV JACK HEFETZ AND ALIS COHEN (collectively, "**Assignee**"), without recourse, warranty or representation of any kind, except as expressly set forth in that certain Loan and Note Assignment Agreement of even date herewith by and between Lender/Assignor and Assignee, or in any documents executed in connection therewith.

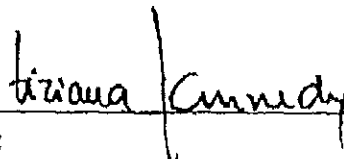

HERBERT FREY, TRUSTEE OF THE HERBERT FREY
REVOCABLE FAMILY TRUST DATED NOVEMBER
22, 1982

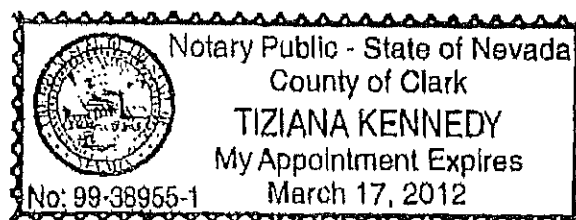
STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

On this 6 day of July 2011, before me personally appeared HERBERT FREY, acting as TRUSTEE OF THE HERBERT FREY REVOCABLE FAMILY TRUST DATED NOVEMBER 22, 1982, to me personally know, who, being by me duly sworn, and he/she acknowledged said instruction to be his/her free act and deed and the free act and deed of said entity.


Notary Public
My Commission Expires:



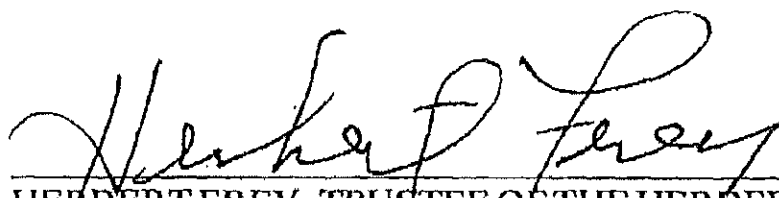
Hefetz Toluca Lake-003

APP00936

ALLONGE

This Allonge, dated and effective as of July 6, 2011, is attached to and is intended to be made a part of that certain Promissory Note dated March 29, 2007, in the original principal amount of TWO MILLION TWO HUNDRED NINETY-ONE THOUSAND FOUR HUNDRED NINETY AND NO/100 DOLLARS (\$2,291,490.00), made by TOLUCA LAKE VINTAGE, LLC, a California limited-liability company ("Borrower"), payable by Borrower to the order of HERBERT FREY, TRUSTEE OF THE HERBERT FREY REVOCABLE FAMILY TRUST DATED NOVEMBER 22, 1982 ("Lender/Assignor").

Pay to the order of YACOV JACK HEFETZ AND ALIS COHEN (collectively, "Assignee"), without recourse, warranty or representation of any kind, except as expressly set forth in that certain Loan and Note Assignment Agreement of even date herewith by and between Lender/Assignor and Assignee, or in any documents executed in connection therewith.



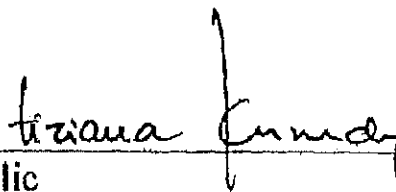
HERBERT FREY, TRUSTEE OF THE HERBERT FREY
REVOCABLE FAMILY TRUST DATED NOVEMBER
22, 1982

STATE OF NEVADA)

) ss.

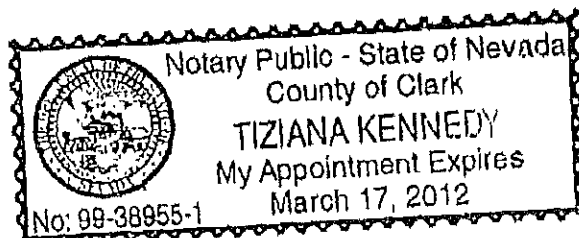
COUNTY OF CLARK)

On this 6 day of July 2011, before me personally appeared HERBERT FREY, acting as TRUSTEE OF THE HERBERT FREY REVOCABLE FAMILY TRUST DATED NOVEMBER 22, 1982, to me personally know, who, being by me duly sworn, and he/she acknowledged said instruction to be his/her free act and deed and the free act and deed of said entity.



Notary Public

My Commission Expires:



Hefetz Toluca Lake-004

APP00937

(The undersigned certifies that this document does not include any personal information as referenced in NRS Section 239.030.)

When Recorded Mail to:

Yakov J. Hefetz
3555 Las Vegas Blvd. South
Las Vegas, NV 89109

ASSIGNMENT

THIS ASSIGNMENT ("Assignment") is made as of the 6 day of July, 2011, by HERBERT FREY, TRUSTEE OF THE HERBERT FREY REVOCABLE FAMILY TRUST DATED NOVEMBER 22, 1982 ("Assignor" or "Lender") for the benefit of YACOV JACK HEFETZ and ALIS COHEN (collectively "Assignee").

WHEREAS, on or about March 29, 2007, the Assignor made a loan ("Loan") to Toluca Lake Vintage, LLC, a California limited-liability company ("Borrower"). The Loan is evidenced by the terms of the following Promissory Notes (collectively the "Notes"): (1) Promissory Note dated August 23, 2007 in the amount of \$6,000,000.00, (2) Promissory Note dated March 29, 2007 in the amount of \$2,291,490.00, and (3) Promissory Note dated February 28, 2008 in the amount of \$500,000.00. The Loan is secured by the following Deeds of Trust (collectively, the "Deeds of Trust"): (1) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by Christopher Beavor and Samantha Beavor (collectively, the "Beavors"), dated March 29, 2007, and recorded on _____, as instrument number _____ in the official records of Clark County, Nevada ("Nevada A DOT") (2) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by C&S Holdings, LLC ("C&S"), dated July 1, 2007, and recorded on _____, as instrument number _____ in the official records of Clark County, NV ("Nevada B DOT"); (3) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by Borrower, dated August 23, 2007, and recorded on _____, as instrument number _____ in the official records of Clark County, NV ("Nevada C DOT"); (4) Deed of Trust executed by C&S, dated March 29, 2007, and recorded on _____, as instrument number _____ in the official records of Iron County, Utah; and (5) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by Borrower, dated February 28, 2008, and recorded on _____, as instrument number _____ in the official records of Los Angeles County, CA. The Notes, the Deed of Trust, and all other documents evidencing, securing, guaranteeing or otherwise executed in connection with the Loan being hereinafter referred to collectively as the "Loan Documents"; and

WHEREAS, The Nevada A DOT, the Nevada B DOT and the Nevada C DOT encumber certain property located in Clark County, Nevada ("NV Property"), which Property is legally described in Exhibit B attached hereto; and

WHEREAS, pursuant to a certain Loan and Note Assignment Agreement ("Agreement"), of even date herewith by and between Assignor and Assignee, Assignor has agreed to assign, sell, transfer and convey to Assignee, and Assignee has agreed to acquire from Assignor, all of Assignor's right, title and interest in and to the Loan and the Loan Documents, upon the terms and conditions set forth therein and in the documents executed in connection therewith;

NOW, THEREFORE, in consideration of Ten Dollars (\$10) in hand paid to Assignor by Assignee and for other good and valuable consideration, the receipt and sufficiency of which are hereby

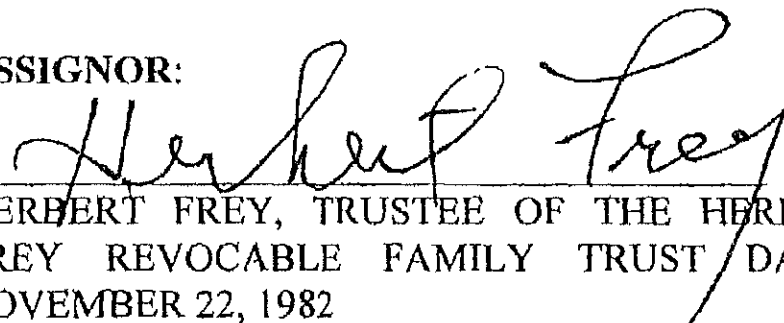
Hefetz Toluca Lake-005

APP00938

acknowledged, Assignor hereby **ASSIGNS, SELLS, TRANSFERS** and **CONVEYS** unto Assignee, and Assignee hereby purchases and acquires from Assignor, all of Assignor's right, title and interest in, to and under (a) the Loan, (b) the Loan Documents, including, without limitation, the Notes, Deeds of Trust, and all other Loan Documents described in Exhibit A attached hereto, (c) the Property and all other collateral for the Loan, including, without limitation, all escrow accounts and other accounts with respect to the Loan, including, without limitation, tax, insurance and security deposit escrow account, if any, together with interest thereon, if any (collectively, with the Property, the "Collateral"), (d) all non-proprietary written information and documentation that Assignor has in its possession relative to the Loan, the Loan Documents, Borrower or the Collateral (all such documentation and information being referred to herein as the "Loan File"), including, without limitation, all appraisals, environmental reports, inspection reports, plans, specifications, surveys, correspondence, title insurance policies and title guarantees, casualty and liability insurance policies, legal opinions, leases, contracts, estoppel certificates and other documents pertaining to the Property, histories of the Loan showing all payments made by Borrower with respect to the Loan and the application thereof to the principal, interest and other charges with respect to the Loan and an accounting with respect to all escrow and other accounts, and (e) all rights of Assignor with respect to any of the foregoing.

TO HAVE AND TO HOLD the Loan, the Loan Documents, the Collateral and the Loan File unto Assignee and its successors and assigns forever.

ASSIGNOR:

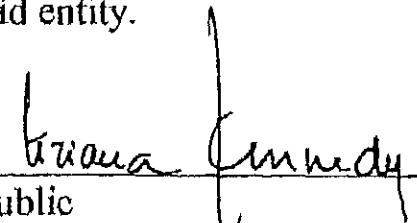

HERBERT FREY, TRUSTEE OF THE HERBERT
FREY REVOCABLE FAMILY TRUST DATED
NOVEMBER 22, 1982

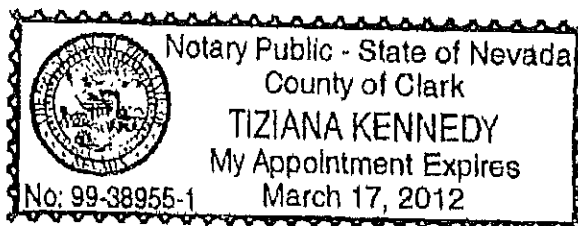
STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

On this 6 day of July 2011, before me personally appeared HERBERT FREY, acting as TRUSTEE OF THE HERBERT FREY REVOCABLE FAMILY TRUST DATED NOVEMBER 22, 1982, to me personally know, who, being by me duly sworn, and he/she acknowledged said instruction to be his/her free act and deed and the free act and deed of said entity.


Notary Public
My Commission Expires:



Hefetz Toluca Lake-006

APP00939

EXHIBIT "A"

On or about March 29, 2007, the Assignor made a loan ("**Loan**") to Toluca Lake Vintage, LLC, a California limited-liability company ("**Borrower**"). The Loan is evidenced by the terms of the following Promissory Notes (collectively the "**Notes**"): (1) Promissory Note dated August 23, 2007 in the amount of \$6,000,000.00, (2) Promissory Note dated March 29, 2007 in the amount of \$2,291,490.00, and (3) Promissory Note dated February 28, 2008 in the amount of \$500,000.00 ("**\$500,000 Note**"). As security for the payment of the Notes, Borrower and/or its affiliates executed the following Deeds of Trust (collectively, the "**Deeds of Trust**"): (1) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by Christopher Beavor and Samantha Beavor (collectively, the "**Beavors**"), dated March 29, 2007, and recorded on _____, as instrument number _____ in the official records of Clark County, Nevada, (2) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by C&S Holdings, LLC ("**C&S**"), dated July 1, 2007, and recorded on _____, as instrument number _____ in the official records of Clark County, NV; (3) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by Borrower, dated August 23, 2007, and recorded on _____, as instrument number _____ in the official records of Clark County, NV; (4) Deed of Trust executed by C&S, dated March 29, 2007, and recorded on _____, as instrument number _____ in the official records of Iron County, Utah; and (5) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by Borrower, dated February 28, 2008, and recorded on _____, as instrument number _____ in the official records of Los Angeles County, CA (as security for the payment of the \$500,000 Note). In addition, the Loan is governed, evidenced and secured, respectively, by the following documents (collectively, along with the Note, the Deeds of Trust, and all other documents that govern, evidence and/or secure the Loan, the "**Loan Documents**"):

- i. Loan Agreement, dated March 29, 2007, executed by the Borrower and the Lender;
- ii. First Amendment to Loan Agreement dated May 24, 2007, executed by the Borrower and Lender;
- iii. Second Amendment to Loan Agreement dated August 21, 2007, executed by Borrower and Lender;
- iv. Policy of Title Insurance, issued by First American Title Insurance Company dated _____;
- v. Payment Guaranty dated March 29, 2007, executed by Brian Head Lofts, LLC ("**Brian Head**");
- vi. Payment Guaranty dated March 29, 2007, executed by C&S;
- vii. Payment Guaranty dated March 29, 2007, executed by the Beavors (the Beavors, together with Brian Head and C&S, the "**Guarantors**") (each of the Payment Guaranty set forth in sub-section v, vi, and vii, collectively, the "**Payment Guaranties**"); and
- viii. Security Agreement and Assignment of Membership Interest executed March 29, 2007 by C&S, Rocket Construction, Inc. and Essential Investments, LLC in favor of Lender.

EXHIBIT "B"

[Attach Legal Descriptions]

Hefetz Toluca Lake-008

APP00941

LOAN AND NOTE ASSIGNMENT AGREEMENT

THIS LOAN AND NOTE ASSIGNMENT AGREEMENT ("**Agreement**") is entered into by and among HERBERT FREY, TRUSTEE OF THE HERBERT FREY REVOCABLE FAMILY TRUST DATED NOVEMBER 22, 1982 ("**Assignor**" or "**Lender**") and YACOV JACK HEFETZ and ALIS COHEN (collectively, the "**Assignee**") as of July __, 2011 (individually, "**Party**" and collectively, the "**Parties**").

RECITALS

A. On or about March 29, 2007, the Assignor made a loan ("**Loan**") to Toluca Lake Vintage, LLC, a California limited-liability company ("**Borrower**"). The Loan is evidenced by the terms of the following Promissory Notes (collectively the "**Notes**"): (1) Promissory Note dated August 23, 2007 in the amount of \$6,000,000.00, (2) Promissory Note dated March 29, 2007 in the amount of \$2,291,490.00, and (3) Promissory Note dated February 28, 2008 in the amount of \$500,000.00 ("**\$500,000 Note**"). As security for the payment of the Notes, Borrower and/or its affiliates executed the following Deeds of Trust (collectively, the "**Deeds of Trust**"): (1) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by Christopher Beavor and Samantha Beavor (collectively, the "**Beavors**"), dated March 29, 2007, and recorded on _____, as instrument number _____ in the official records of Clark County, Nevada, (2) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by C&S Holdings, LLC ("**C&S**"), dated July 1, 2007, and recorded on _____, as instrument number _____ in the official records of Clark County, NV; (3) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by Borrower, dated August 23, 2007, and recorded on _____, as instrument number _____ in the official records of Clark County, NV; (4) Deed of Trust executed by C&S, dated March 29, 2007, and recorded on _____, as instrument number _____ in the official records of Iron County, Utah; and (5) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by Borrower, dated February 28, 2008, and recorded on _____, as instrument number _____ in the official records of Los Angeles County, CA (as security for the payment of the \$500,000 Note). In addition, the Loan is governed, evidenced and secured, respectively, by the following documents (collectively, along with the Notes, the Deeds of Trust, and all other documents that govern, evidence and/or secure the Loan, the "**Loan Documents**"):

- i. Loan Agreement, dated March 29, 2007, executed by the Borrower and the Lender;
- ii. First Amendment to Loan Agreement dated May 24, 2007, executed by the Borrower and Lender;
- iii. Second Amendment to Loan Agreement dated August 21, 2007, executed by Borrower and Lender;
- iv. Policy of Title Insurance, issued by First American Title Insurance Company dated _____;
- v. Payment Guaranty dated March 29, 2007, executed by Brian Head Lofts, LLC ("**Brian Head**");
- vi. Payment Guaranty dated March 29, 2007, executed by C&S;
- vii. Payment Guaranty dated March 29, 2007, executed by the Beavors (the Beavors, together with Brian Head and C&S, the "**Guarantors**") (each of the Payment Guaranty set forth in sub-section v, vi, and vii, collectively, the "**Payment Guaranties**"); and
- viii. Security Agreement and Assignment of Membership Interest executed March 29, 2007 by C&S, Rocket Construction, Inc. and Essential Investments, LLC in favor of Lender.

B. Assignor and Assignee entered into that certain Agreement dated January 14, 2008 ("**Participation Agreement**") whereby Assignee participated in the Loan with Assignor by funding Two Million Two Hundred Fourteen Thousand Eight Hundred and Seventy Five Dollars (\$2,214,875.00) with the guaranty of a certain interest rate and other amounts due and payable to Assignee as more specifically described therein (collectively, the "**Participation Amount**").

C. Borrower and Guarantors are in default under the Loan and the Loan Documents.

D. Assignee has not received any repayment for its Participation Amount from Assignor, Borrower or Guarantors.

E. Assignor desires to assign, and Assignee desires to assume, all of Assignor's right title and interest in and to the Loan, the Notes, the Deeds of Trust, and the other Loan Documents, as more fully set forth below.

NOW THEREFORE, FOR VALUABLE CONSIDERATION, the Parties incorporate the Recitals above set forth as a part of this Agreement and not as recitals only, and agree as follows:

1. As consideration for Assignee's funding of the Participation Amount, Assignor hereby assigns to Assignee of all of Assignor's right, title and interest in and under: (i) the Loan; (ii) the Notes; (iii) the Deeds of Trust (including any related title insurance policies and endorsements); (iv) the Payment Guaranties; (v) the other Loan Documents, and (vi) all right to payment and collection rights and rights to collateral expressed in any of the Notes, the Payment Guaranties, the Deeds of Trust, and the other Loan Documents.

2. Assignor shall deliver to Assignee the originals of the Loan Documents in its possession or subject to its control, and Assignor will execute, acknowledge and deliver to Assignee such other documents and instruments as Assignee or its counsel may reasonably deem necessary or appropriate in order to confer upon Assignee the full benefit of all of the Loan Documents and Assignor's rights and interest with respect to the Loan (including, without limitation, an allonge to the Notes under which the Assignors' right, title and interest in and to the Notes is unconditionally transferred to Assignee). The foregoing obligations shall survive the completion of the transactions contemplated hereby.

3. Assignor hereby represents and warrants to Assignee that:

- a. Assignor has the power and authority to execute this Agreement and perform the transactions hereunder.
- b. Assignor is a "United States person" within the meaning of Section 7701 (a)(30) of the Internal Revenue Code of 1986, as amended.
- c. Assignor has not assigned, transferred or hypothecated to any party any portion of its interest in the Loan, the Notes, the Deeds of Trust or any other Loan Documents, and Assignor has not granted to any party, other than Assignee, any option, contract, or other agreement with respect to the assignment of the Notes, Deeds of Trust or any other Loan Documents.
- d. Other than the Petition filed in Federal Bankruptcy Court by Borrower via Case No. 1:09-bk-15680-GM ("**Borrower Bankruptcy Petition**"), there is no litigation, administrative proceeding (including without limitation condemnation or similar proceedings or special assessments),

arbitration proceeding, judgment, consent decree or governmental investigation outstanding, pending or, to Assignor's knowledge, threatened against, or relating to, the properties related to the Loan (collectively, the "**Property**") or the transactions contemplated hereby, including, without limitation, with respect to enforcement by Assignor of the guaranty obligations pursuant to the Payment Guaranties dated March 29, 2007 executed by the Guarantors in favor of Assignor.

- e. Notwithstanding the draft Mutual Release and Payment Agreements contained in the Loan File between Beavor, Brian Head; Borrower, C&S and Lender, Assignor has not released or waived any rights and remedies under the Loan Documents or the Payment Guaranties, and such release agreements are not effective and have never been executed by the parties listed therein. The Guarantors are fully liable for the Loan under the Loan Documents.
- f. The execution of this Agreement and the consummation of the transactions contemplated hereby will not result in a breach of any term or provision or constitute a default under any contract, agreement, instrument, understanding, judgment or decree to which Assignor is a party or by which Assignor is bound.
- g. Assignor shall, promptly upon receiving notice of any actual or threatened claims or proceedings (i) for the condemnation of the Property, or any portion thereof, (ii) arising out of injury or damage to or upon the Property, or any portion thereof, (iii) related to the leases at the Property, arising out of any violation or threatened violation of applicable laws or regulations relating to or affecting the Property or any portion thereof, including, but not limited to, any violation of an environmental law, or which may result in the liability of the owner or a successor owner of any interest in the Property, or any portion thereof, (iv) arising out of the imposition of any special assessment, levy or tax, or (v) relating to the potential formation of any taxing authority affecting the Property, or any portion thereof, notify Assignee in writing thereof.
- h. Assignor has delivered all information, documents, notices, correspondence and materials, including without limitation, the Loan File (as defined in that certain Assignment between Assignor and Assignee dated as of the date hereof), related to the Loan, to Assignee.

The representations of Assignor as set forth in this Section shall survive the assignment transaction contemplated hereunder.

- 4. Assignee hereby warrants and represents to Assignor that:
 - a. Assignee has the authority to enter into this Agreement.
 - b. Assignee is a "United States person" within the meaning of Section 7701 (a)(30) of the Internal Revenue Code of 1986, as amended.

The representations of Assignee set forth in this Section shall survive the assignment transaction contemplated hereunder.

- 5. This transaction shall be closed on a date mutually agreed upon between the Parties ("**Closing Date**"). On or before the Closing Date, each of the Parties shall deliver such instructions and documents as are required by this Agreement or are customary in similar transactions in Clark County,

Nevada, and they shall do all other things reasonably necessary to close this transaction and carry out the purpose and intent of this Agreement.

6. The Parties will, from and after the completion of the transactions contemplated hereby, execute and deliver such documents and information, and shall cooperate and/or take such other actions as may be reasonably necessary to better carry out the intent of this Agreement; provided however, that the Party to be benefited by the delivery of any such document or the taking of any such action shall be responsible for the costs thereof.

7. This Agreement may not be modified except in writing and executed by the Parties.

8. In the event of a breach of this Agreement by either Party, the non-breaching Party shall be entitled to enforce this Agreement. In such event, in addition to any other legal or equitable remedy, the breaching Party shall pay all reasonable attorneys' fees and legal expenses incurred by the non-breaching Party in connection with the enforcement of the Agreement. Fees and legal expenses include reasonable attorneys' fees and legal expenses, whether or not there is a lawsuit.

9. This Agreement shall be governed by the laws of the State of Nevada and the Parties agree that the appropriate venue for any legal proceeding relating to this Agreement shall be in the State of Nevada, County of Clark.

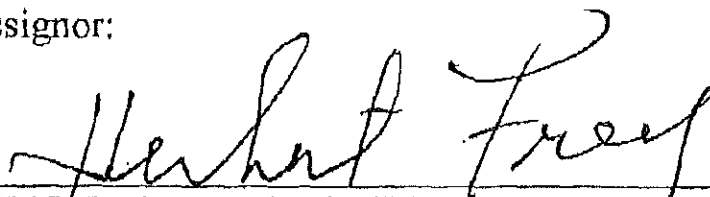
10. The terms and conditions of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. The Parties acknowledge that each of them has reviewed this Agreement and has had the opportunity to have it reviewed by their attorneys and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, including its exhibits or any amendments. The Parties further agree that prior drafts of this Agreement shall not be relevant or considered in connection with the construction or interpretation of this Agreement, or to vary, modify or contradict any of the terms or provisions of this Agreement.

11. Assignor represents and warrants to Assignee that it has not dealt with any broker, agent or similar person in connection with this transaction. Assignee represents and warrants to Assignor that it has not dealt with any broker, agent or similar person in connection with this transaction. Assignor agrees to indemnify and hold harmless the Assignee from and against any and all claims and expenses, including reasonable attorneys' fees, for any brokerage or agent commission or fee arising out of this transaction by any broker or agent with whom the Assignor has dealt. Both Parties shall have the right, however, to participate in the defense of any action brought by such agent or broker. The provisions of this paragraph shall survive the closing of the subject transaction.

(Remainder of Page Left Intentionally Blank)

Dated and effective as of the date first above written:

Assignor:


HERBERT FREY, TRUSTEE OF THE HERBERT
FREY REVOCABLE FAMILY TRUST DATED
NOVEMBER 22, 1982

Assignee:


~~YACOV JACK HEFETZ~~

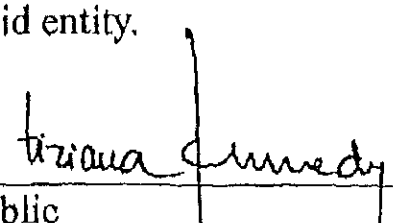
ALIS COHEN
BY YACOV JACK HEFETZ, ATTORNEY IN FACT

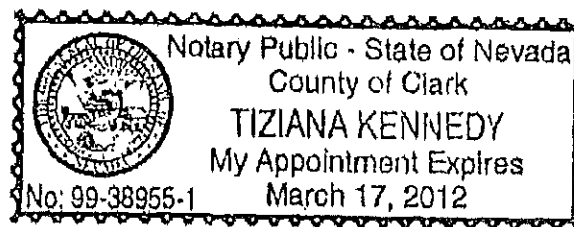
STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

On this 6 day of July 2011, before me personally appeared HERBERT FREY, acting
as TRUSTEE OF THE HERBERT FREY REVOCABLE FAMILY TRUST DATED NOVEMBER 22,
1982, to me personally know, who, being by me duly sworn, and he/she acknowledged said instruction to
be his/her free act and deed and the free act and deed of said entity.


Notary Public
My Commission Expires:



NON-FOREIGN AFFIDAVIT

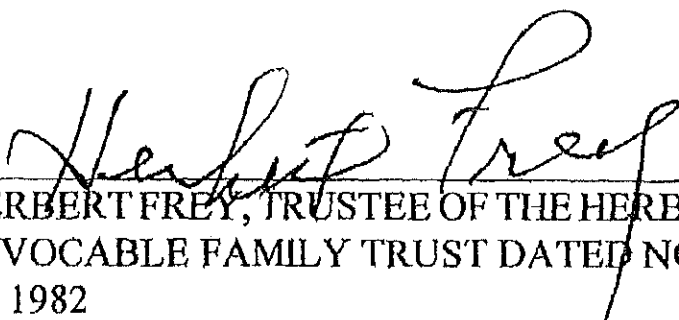
Section 1445 of the Internal Revenue Code of 1986, as amended ("Code"), provides that a transferee of a U. S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U. S. real property interest by HERBERT FREY, TRUSTEE OF THE HERBERT FREY REVOCABLE FAMILY TRUST DATED NOVEMBER 22, 1982 ("Transferor") the undersigned hereby certifies the following:

1. The Transferor is not a "foreign person" (as that term is defined in the Code and the regulations promulgated pursuant thereto).
2. The Transferor's United States taxpayer identification number is _____.
3. The Transferor's address is 2747 Paradise Road, #3401, Las Vegas, NV 89109.

The Transferor understands and acknowledged that this affidavit may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalty of perjury, the Transferor declares that the Transferor has examined this affidavit and that it is true, correct and complete.

Dated and effective as of July 6, 2011.

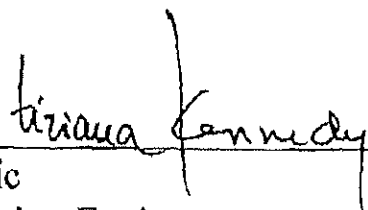

HERBERT FREY, TRUSTEE OF THE HERBERT FREY
REVOCABLE FAMILY TRUST DATED NOVEMBER
22, 1982

STATE OF NEVADA)

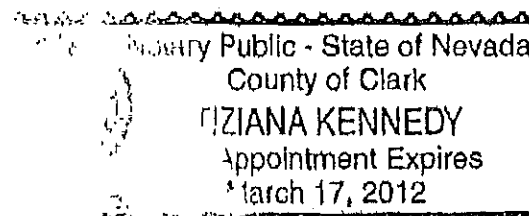
) ss.

COUNTY OF CLARK)

On this 6 day of July 2011, before me personally appeared HERBERT FREY, acting as TRUSTEE OF THE HERBERT FREY REVOCABLE FAMILY TRUST DATED NOVEMBER 22, 1982, to me personally know, who, being by me duly sworn, and he/she acknowledged said instruction to be his/her free act and deed and the free act and deed of said entity.

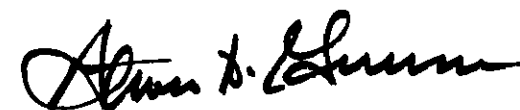


Notary Public
My Commission Expires:



COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

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CLERK OF THE COURT

1 **OMD**
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14 *Attorneys for Jack Hefetz*

15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 YACOV JACK HEFETZ,

18 Plaintiff,

19 vs.

20 CHRISTOPHER BEAVOR,

21 Defendant.

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

22 **PLAINTIFF'S OPPOSITION TO DEFENDANT'S**
23 **MOTION TO DISMISS PURSUANT TO NRS § 40.435**

24 COMES NOW, Plaintiff, Yacov Jack Hefetz (hereinafter referred to as "Hefetz"), by and
25 through his counsel of record, H. Stan Johnson, Esq. and Michael V. Hughes, Esq. of the law
26 firm of Cohen-Johnson, LLC, and hereby files this Opposition To Defendant's Motion To
27 Dismiss Pursuant To NRS § 40.435.

28 ...

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1 This Opposition is based upon the following Memorandum of Points and Authorities, the
2 complaint filed in the above-captioned proceedings, and any evidence and oral argument which
3 is allowed at the time of hearing on the Defendant's Motion To Dismiss Pursuant To
4 NRS § 40.435.

5 Dated this 18th day of May, 2015.

6 COHEN-JOHNSON, LLC

7
8 By: Michael Hughes
9 H. Stan Johnson, Esq.
10 Nevada Bar No. 00265
11 Michael V. Hughes, Esq.
12 Nevada Bar No. 13154
13 Suite 100
14 255 East Warm Springs Road
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18 *Attorneys for Jack Hefetz*
19
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Christopher Beavor (“Beavor”) has filed Defendant’s Motion to Dismiss Pursuant To NRS 40.435 (“Beavor’s Motion”) in an effort to dismiss on the basis of the “One-Action Rule” the sole claim set forth in the Verified Complaint filed by Hefetz. Hefetz opposes Beavor’s motion on the following five grounds:

1. The Court cannot consider Beavor’s Motion in light of Beavor’s failure to satisfy a condition precedent to the filing of that motion, namely the raising in the pleadings of the affirmative defense of the “One-Action Rule”;
2. The Court cannot consider Beavor’s Motion in light of Beavor’s failure to establish good cause and excusable neglect for the untimely assertion of the affirmative defense of the “One-Action Rule”;
3. NRCP 12(b) bars the assertion of an affirmative defense through a motion if an answer has already been filed in a case;
4. The “One-Action Rule” does not apply here because the loan underlying the transactions at issue here is not secured by a mortgage or lien on real estate; and
5. Hefetz should be afforded a continuance to consider certain issues necessary for amending the Verified Complaint into a proceeding in compliance with the “One-Action Rule.”

For the reasons stated below, Beavor’s Motion should be denied in its entirety.

II. FACTUAL ALLEGATIONS

1. On or about March 29, 2007, Toluca Lake Vintage, LLC (hereinafter referred to as “Toluca”) entered into a Loan Agreement (hereinafter referred to as the “Loan”) with the Herbert Frey Revocable Family Trust (hereinafter referred to as “Frey’s Family Trust”).

2. The Loan was secured by deeds of trust placed on more than ten parcels of real estate located in California, Nevada, and Utah.

1 3. One of the parcels of Nevada real estate that secured the Loan was and upon
2 information and belief still is the personal residence of Christopher Beavor (hereinafter referred
3 to as "Beavor's Home").

4 4. Upon information and belief, there is not more than one residential structure on
5 Beavor's Home.

6 5. Upon information and belief, only one family resides at Beavor's Home. That
7 family is Beavor's family.

8 6. Upon information and belief, Beavor owns Beavor's Home.

9 7. Besides providing the real estate collateral to secure the Loan, Beavor executed
10 an unsecured Payment Guaranty in connection with the Loan.

11 8. After the execution of the Loan and its related documents, Toluca defaulted on the
12 Loan in or around February 2009 and commenced proceedings under Chapter 11 of the U.S.
13 Bankruptcy Code.

14 9. On or about July 6, 2011, Frey's Family Trust assigned to Hefetz its rights under
15 the Loan and the Payment Guaranty.

16 10. On or about July 21, 2011, Hefetz filed a Verified Complaint in order to
17 commence the above-captioned proceedings. The Verified Complaint alleged that Beavor and
18 his now former wife failed to meet their joint and several obligations under the Payment
19 Guaranty.

20 11. On October 21, 2011, Beavor and his now former wife filed their answer and
21 counterclaim (hereinafter referred to as the "Answer") and then on April 9, 2012 filed their First
22 Amended Counterclaim (hereinafter referred to as the "Amended Counterclaim").

23 12. Neither the Answer nor the Amended Counterclaim alleged as an affirmative
24 defense the "One-Action Rule."

25 13. To date, Hefetz has not taken any action to foreclose on the deed of trust which
26 encumbers the real estate occupied by Beavor. He has not done so to date in light of the fact that
27 his investigation to date indicates the following: (a) the fair market value of Beavor's Home
28 presently has a fair market value ranging from \$384,794.00 to \$512,446.00 based on a review of

1 publicly available information; (b) Beavor's Home has three deeds of trust based on a review of
2 publicly available information; (c) the first deed of trust has a purported value of \$518,000.00;
3 (d) the second deed of trust has a purported value of \$1,350,000; and (e) the third deed of trust,
4 which is held by Hefetz, has an unknown value associated with it. In short, Beavor's Home is
5 underwater by an amount in excess of eight hundred thousand dollars even without considering
6 the Loan and third deed of trust held by Hefetz.

7 14. Notwithstanding the complete lack of value to secure the Loan to Beavor's Home,
8 Defendant filed his Motion To Dismiss Pursuant to NRS § 40.435 (hereinafter referred to as
9 "Beavor's Motion"). Hefetz is now compelled to file this Opposition to Beavor's Motion.

10 **III. LEGAL STANDARD**

11 The law in Nevada is clear regarding the standard for review of dismissal motions
12 pursuant to Nevada Rule of Civil Procedure 12(b)(5). The court must recognize all factual
13 allegations set forth in the complaint as true and must draw all factual inferences in favor of the
14 nonmoving party. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670,
15 672 (2008). The court cannot dismiss a complaint unless it appears beyond a doubt that the
16 nonmoving party can prove no set of facts, which, if true, would entitle the nonmoving party to
17 relief. *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672.

18 **IV. LEGAL ARGUMENT**

19 **A. NRS § 40.435(2) PRECLUDES THE COURT FROM HEARING** 20 **BEAVOR'S MOTION TO DISMISS PURSUANT TO** 21 **NRS § 40.430 BECAUSE BEAVOR HAS NOT PREVIOUSLY** 22 **INTERPOSED THE AFFIRMATIVE DEFENSE OF THE ONE-** 23 **ACTION RULE**

24 NRS § 40.435(2) governs Beavor's Motion. That statute states in pertinent part that "[i]f
25 the provisions of NRS § 40.430 are timely interposed as an affirmative defense in such a judicial
26 proceeding, upon the motion of any party to the proceeding the court shall: (a) dismiss the
27 proceeding without prejudice; or (b) grant a continuance and order the amendment of the
28 pleadings to convert the proceeding into an action which does not violate NRS § 40.430." NRS
§ 40.435(2). Accordingly, NRS § 40.435(2) establishes a condition precedent to the filing of

1 Beavor's Motion: the timely *interposition* of the affirmative defense of the "One-Action Rule.
2 (Emphasis Added). In this case, Beavor has never raised in his Answer or his Amended
3 Counterclaim the affirmative defense of the "One-Action Rule." See Answer attached hereto as
4 Exhibit 1 and Amended Counterclaim attached hereto as Exhibit 2. Accordingly, Beavor cannot
5 presently pursue his motion since he has not previously interposed the "One-Action Rule" as an
6 affirmative defense.

7 **B. EVEN IF BEAVOR NOW INTERPOSES THE AFFIRMATIVE**
8 **DEFENSE OF THE ONE-ACTION RULE, NRS § 40.435(2)**
9 **PRECLUDES THE COURT FROM HEARING BEAVOR'S**
10 **MOTION TO DISMISS PURSUANT TO NRS § 40.430**
11 **BECAUSE BEAVOR HAS NOT AND CANNOT TIMELY**
12 **INTERPOSE THE AFFIRMATIVE DEFENSE OF THE ONE-**
13 **ACTION RULE**

14 Beavor cannot presently pursue his motion because he has not *timely* interposed and
15 cannot *timely* interpose the affirmative defense of the "One Action Rule." See NRS § 40.435(2).
16 The Court set February 21, 2012 as the deadline date for Hefetz and Beavor to amend their
17 respective pleadings. See Scheduling Order attached hereto as Exhibit 3. That deadline date has
18 come and long ago passed and, as a consequence, it can only be changed pursuant to the
19 provisions of NRCP 6(b). NRCP 6(b) provides in pertinent part that:

20 When by these rules or by a notice given thereunder or by order of
21 court an act is required or allowed to be done at or within a
22 specified time, the parties, by written stipulation of counsel filed in
23 the action, may enlarge the period, or the court for cause shown
24 may at any time in its discretion (1) with or without motion or
25 notice order the period enlarged if request therefor is made before
26 the expiration of the period originally prescribed or as extended by
27 a previous order, or (2) upon motion made after the expiration of
28 the specified period permit the act to be done where the failure to
act was the result of excusable neglect.

NRCP 6(b). As NRCP 6(b) makes clear, the Court may only extend the time to amend pleadings
to include a new affirmative defense if good cause is shown and, in certain cases such as this
one, excusable neglect exists. See NRCP 6(b). In this case, Beavor has made absolutely no
showing that good cause and excusable neglect existed for his failure to raise for more than three
years after the passing of the deadline date for amending pleadings the affirmative defense of the

1 “One-Action Rule.” Accordingly, Beavor has not yet met his burden for showing the timely
2 assertion of the affirmative defense of the “One-Action Rule.”

3 Beavor cannot even make such a showing in light of the standard set for excusable
4 neglect under *Moseley v. Eighth Judicial District Court*, 124 Nev.654, 665-668, 188 P.3d 1136,
5 1144-1146 (2008). In *Moseley*, the Nevada Supreme Court articulated four factors to define
6 “excusable neglect” under NRCP 6(b). *Moseley*, 124 Nev. at 665-668, 188 P.3d at 1144-1146.
7 Those factors were: (a) whether the movant acted in good faith; (b) whether the movant acted
8 with due diligence; (c) whether there was a reasonable basis for not complying; and (d) whether
9 the nonmoving party would suffer prejudice. *Moseley*, 124 Nev. at 665-668, 188 P.3d at 1144-
10 1146.

11 When applied to this case, the factors set forth in *Moseley* indicate that Beavor cannot
12 demonstrate excusable neglect. Beavor is not acting in good faith. Beavor knows full well that
13 the third deed of trust held by Hefetz will in never be paid off since, as previously discussed, the
14 amounts owed on the first and second deeds of trust exceed the fair market value of the collateral
15 by more than eight hundred thousand dollars.

16 Beavor has not acted with due diligence. Beavor has allowed more than three years to
17 pass since the expiration of the deadline date for the amending of pleadings and still has not
18 moved to amend the Answer to include the affirmative defense of the “One-Action Rule.”

19 Beavor has not offered and cannot offer a plausible explanation for his substantial delay
20 of more than three years in not amending the pleadings to include the affirmative defense of the
21 “One-Action Rule.”

22 Finally, Hefetz is being unfairly prejudiced as a result of Beavor’s Motion. All Beavor
23 seeks in his motion is to subject Hefetz to additional legal fees in pursuing litigation that will
24 only result in the foreclosure of real estate that is worth substantially less than the first and
25 second deeds of trust on the property and thus completely wipe out the third deed of trust
26 currently held by Hefetz.

27 In summary, Beavor cannot timely interpose the affirmative defense of the “One-Action
28 Rule” in light of his failure to establish through a motion the existence of good cause and

excusable neglect for Beavor's failure to amend his pleadings to include the affirmative defense of the "One-Action Rule."

C. BEAVOR IS BARRED FROM RAISING THE AFFIRMATIVE DEFENSE OF THE "ONE-ACTION RULE" IN A MOTION TO DISMISS BECAUSE HE FAILED TO RAISE THAT DEFENSE PRIOR TO FILING HIS ANSWER

NRCP 12(b) bars Beavor from asserting the affirmative defense of the "One-Action Rule" since he failed to raise that defense prior to filing his Answer.

NRCP 12(b) provides in pertinent part as follows:

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) insufficiency of process, (4) insufficiency of service of process, (5) failure to state a claim upon which relief can be granted, (6) failure to join a party under Rule 19. *A motion making any of these defenses shall be made before pleading if a further pleading is permitted.*

NRCP 12(b) (Emphasis Added). Here Beavor filed his affirmative defense of the "One-Action Rule" nearly four years after filing his Answer. Accordingly, he is barred from now raising that defense by virtue of NRCP 12(b).

D. EVEN IF THE COURT FINDS THAT BEAVOR HAS RAISED THE AFFIRMATIVE DEFENSE OF THE ONE-ACTION RULE, THAT DEFENSE DOES NOT APPLY HERE BECAUSE THE DEBT AT ISSUE HERE IS NOT SECURED BY A MORTGAGE OR OTHER LIEN UPON REAL ESTATE.

NRS § 40.430(1) only creates the "One-Action Rule" for the recovery of any debt . . . secured by a mortgage or lien upon real estate." Here, Hefetz holds a third deed of trust on the Beavor Home. As previously discussed, the debt underlying that deed of trust is completely unsecured since the amounts of the claims underlying the first and second deeds of trust are

1 believed to exceed by more than eight hundred thousand dollars the fair market value of
2 Beavor's Home. Accordingly, the "One-Action Rule" does not apply here because the Loan
3 underlying the third deed of trust, which is held by Hefetz, is not secured by a mortgage or lien
4 on real estate.

5 **E. EVEN IF THE COURT CONSIDERS BEAVOR'S IMPROPERLY**
6 **FILED MOTION, THE COURT MAY IN LIEU OF DISMISSING THE**
7 **ABOVE-CAPTIONED CASE WITH PREJUDICE GRANT A**
8 **CONTINUANCE AND ENTER AN ORDER TO AUTHORIZE THE**
9 **AMENDMENT OF THE PLEADINGS TO CONVERT THE**
10 **PROCEEDING INTO AN ACTION THAT DOES NOT VIOLATE THE**
11 **"ONE-ACTION RULE"**

12 Beavor construes NRS § 40.435 as requiring the dismissal of the above-captioned
13 proceedings without prejudice. That construction misreads the plain meaning of the text behind
14 NRS § 40.435. As NRS § 40.435 indicates:

- 15 1. The commencement of or participation in a judicial
16 proceeding in violation of NRS 40.430 does not forfeit any
17 of the rights of a secured creditor in any real or personal
18 collateral, or impair the ability of the creditor to realize
19 upon any real or personal collateral, if the judicial
20 proceeding is:
 - 21 (a) Stayed or dismissed before entry of a final
22 judgment; *or*
 - 23 (b) Converted into an action which does not violate
24 NRS 40.430.
- 25 2. If the provisions of NRS § 40.430 are timely interposed as
26 an affirmative defense in such a judicial proceeding, upon
27 the motion of any party to the proceeding the court shall:
 - 28 (a) Dismiss the proceeding without prejudice; *or*
 - (b) Grant a continuance and order the amendment of the
pleadings to convert the proceeding into an action which
does not violate NRS § 40.430.

25 NRS § 40.435(2)(Emphasis Added). Accordingly, NRS § 40.435(2) does not compel the
26 dismissal without prejudice of the above-captioned proceedings. Instead, it allows the Court to
27 grant a continuance and order the amendment of the pleadings to convert the proceeding into an
28 action which does not violate the "One-Action Rule."

1 In light of the clear statutory text of NRS 40.435(2), Hefetz requests for the reasons set
2 forth below that the Court grant to him a continuance in order to amend the pleadings to convert
3 the proceedings into an action that does not violate the "One-Action Rule." Hefetz seeks a
4 continuance in order to assure that: (1) Beavor cannot raise the defense of the statute of
5 limitations in another proceeding since more than six years have passed since Toluca breached
6 the Loan and Beavor initially breached the Payment Guaranty; (2) Hefetz has time to evaluate
7 whether or not to waive his legal right to the collateral related to the Loan; (3) Hefetz has time to
8 perform discovery on the value of Beavor's Home and the deeds of trust and other assets
9 secured to it; and (4) Hefetz receives judicial relief in connection with a claim that first arose for
10 more than six years ago has been actively prosecuted by Hefetz for nearly four years.

11 **V. CONCLUSION**

12 Wherefore, the Plaintiff respectfully requests that this Court deny
13 Beavor's Motion in its entirety.

14 Dated this 18th day of May, 2015.

COHEN-JOHNSON, LLC

By:



H. Stan Johnson, Esq.

Nevada Bar No. 00265

Michael V. Hughes, Esq.

Nevada Bar No. 13154

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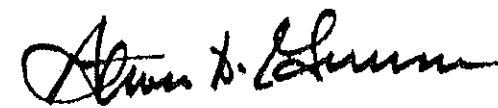
CERTIFICATE OF SERVICE

The undersigned certifies that, on the 19th day of May, 2015, a true and correct copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PURSUANT TO NRS § 40.435** was served upon the following person pursuant to NRCP 5(b)(2)(D) and EDCR 8.05 via the Odyssey E-Filing system and via U.S. First-Class Postage-Prepaid Mail:

Joel Z. Schwarz, Esq.
Gordon Silver
Ninth Floor
3960 Howard Hughes Parkway
Las Vegas, Nevada 89169
Email: jschwarz@gordonsilver.com
Attorney for Christopher Beaver


An Employee of Cohen-Johnson, LLC

EXHIBIT 1



CLERK OF THE COURT

1 ACN
2 MARC A. SAGGESE, ESQ.
Nevada Bar No. 7166
3 SAGGESE & ASSOCIATES, LTD.
732 S. Sixth Street, Suite 201
4 Las Vegas, Nevada 89101
5 Telephone 702.778.8883
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
11 ALIS COHEN, an individual,

12 Plaintiffs,

13 vs.

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

16 Defendants.

Case No.: A-10-645353-C
Dept. No.: XI

DEFENDANTS' ANSWER TO
COMPLAINT AND COUNTERCLAIM

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 ...

27 ...

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
8 2. In answering Paragraph 2 of Plaintiffs' Complaint, Defendants admit the
9 allegations contained therein.
10
11 3. In answering Paragraph 3 of Plaintiffs' Complaint, Defendants are without
12 sufficient knowledge or information to form a belief as to the allegations contained therein and
13 therefore deny each allegation contained therein.
14
15 4. In answering Paragraphs 4 and 5 of Plaintiffs' Complaint, Defendants admit the
16 allegations contained therein.
17
18 6. In answering Paragraph 6 of Plaintiffs' Complaint, Defendants deny the
19 allegations contained therein.
20
21 7. In answering Paragraph 7 of Plaintiffs' Complaint, Defendants only admit that
22 jurisdiction and venue are proper in Las Vegas, Clark County, Nevada, and deny every other
23 allegation contained therein.
24
25 8. In answering Paragraph 8 of Plaintiffs' Complaint, Defendants make special note
26 that the correct name of Lender is the Herbert Frey Revocable Family Trust, dated November 22,
27 1982, and admits the allegations contained therein.
28
9. In answering Paragraph 9 of Plaintiffs' Complaint, Defendants only admit that the
purpose of the Loan was to improve and develop certain real property located in Los Angeles,
California, and deny every other allegation contained therein.

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 **AFFIRMATIVE DEFENSES**

19
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 4. Plaintiffs have failed to mitigate their damages.

25 5. Some or all of Plaintiffs' claims for relief are barred by Plaintiffs' own acts,
26 omissions and/or negligence.
27
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 21st day of October, 2011.

/s/ MARC A. SAGGESE, ESQ.

MARC A. SAGGESE, ESQ.

Nevada Bar No. 7166

SAGGESE & ASSOCIATES, LTD.

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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 ...

28 ...

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.

8. Counterclaimants signed a personal guarantee to said loan.

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.

10. One provision of the loan was if Borrower were to file bankruptcy, the loan would default.

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.

12. Unbeknownst to Counterclaimants, Counter-Defendant Hefetz had contributed two million dollars (\$2,000,000.00) of the \$6,000,000.00 loan from Lender to Borrower, which was not disclosed or documented.

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.

14. The bank then filed an Ex Parte Motion in April 2009 for a receivership to take control of the real estate project.

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
5 43. 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 44. 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.

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 46. Counter-Defendant Hefetz, as Manager of Star Development, LLC, and Star
16 Development, as Manager of Toluca Lake Vintage, LLC, owed a fiduciary duty to
17 Counterclaimant, owner of Toluca Lake Vintage, LLC.

18
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.

1 57. As a result of Counter-Defendant's actions, Counterclaimants suffered damages in
2 excess of ten thousand dollars (\$10,000.00).

3 58. 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 59. 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 **FOURTH CLAIM FOR RELIEF**

11 **Negligence Per Se**
12 **(Violation of NRS 645B)**

13 60. Counterclaimants hereby adopt and incorporate by reference Paragraphs 1
14 through 59 above as though fully set forth herein.

15 61. Counter-Defendant Hefetz acquired the \$6,000,000.00 note unlawfully from
16 Lender in violation of NRS 645B.

17 62. The Herbert Frey Revocable Family Trust dated November 22, 1982 (Lender) is
18 an unlicensed mortgage broker who transferred the note to Counter-Defendant Hefetz, also an
19 unlicensed mortgage broker, in violation of NRS 645B.
20

21 63. Counter-Defendant Hefetz and Lender do not meet the exception to the license
22 requirement as designated in NRS 645B.015, as the transfer of the \$6,000,000.00 note was
23 secured by Counterclaimants' real property, and was, at all times an unlawful transfer of a
24 secured transaction.
25

26 64. As a result of Counter-Defendant's actions, Counterclaimants suffered damages in
27 excess of ten thousand dollars (\$10,000.00).
28

1 65. As a result of Counter-Defendant's actions, Counterclaimants have suffered an
2 unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada
3 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.
4

5 66. As a result of Counter-Defendant's actions, Counterclaimants have been forced to
6 retain an attorney and have incurred attorney's fees and costs.

7 WHEREFORE, Counter-Claimants expressly reserve the right to amend this
8 Counterclaim at time of trial to include all items of damages not yet ascertained, prays for the
9 following relief against Counter-Defendant:
10

- 11 1. For general damages in an amount in excess of ten thousand dollars (\$10,000.00);
- 12 2. For special damages in an amount in excess of ten thousand dollars (\$10,000.00);
- 13 3. For economic damages in an amount in excess of ten thousand dollars (\$10,000.00);
- 14 4. For future damages in an amount in excess of ten thousand dollars (\$10,000.00);
- 15 5. For punitive damages in an amount in excess of ten thousand dollars (\$10,000.00);
- 16 6. For an award of attorney's fees and costs of suit as provided by Nevada Revised
 Statutes;
- 17 7. For prejudgment interest as provided by law; and
- 18 8. For such other and further relief as the Court may deem just or proper.

19 DATED this 21st day of October, 2011.

20 /s/ MARC A. SAGGESE, ESQ.

21

MARC A. SAGGESE, ESQ.

22 Nevada Bar No. 7166

23 **SAGGESE & ASSOCIATES, LTD.**

24 732 S. Sixth Street, Suite 201

25 Las Vegas, Nevada 89101

26 Telephone 702.778.8883

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28 marc@maxlawny.com

 Attorney for Defendants/Counterclaimants

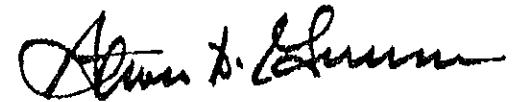
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Lee I. Iglody, Esq.
9555 S. Eastern Avenue, Suite 280
Las Vegas, NV 89123
702.446.5366
Attorney for Plaintiffs/Counter-Defendant Hefetz

/s/ Alexis Vardoulis

Employee of SAGGESE & ASSOCIATES, LTD.

EXHIBIT 2


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
11 ALIS COHEN, an individual,

12 Plaintiffs,

13 vs.

14 CHRISTOPHER BEAVOR, an individual;
15 SAMANTHA BEAVOR, an individual; DOES I
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
3 9. Lender then recorded a deed of trust against Counterclaimants' two Nevada
4 properties as collateral to secure the loan. Said properties are located at 905 Domnus Lane, Unit
5 202, Las Vegas, Nevada 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.
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 17. On May 14, 2009, Counter-Defendant Hefetz, as Manager of Star Development,
5 LLC, which was Manager of Toluca Lake Vintage, LLC, caused Toluca Lake Vintage, LLC, to
6 file bankruptcy, causing the loan to default and the \$6,000,000.00 to become due to Lender.
7

8 18. Pursuant to prior negotiations with Lender, Counterclaimants were to be released
9 from all obligations and personal guarantees under the loan after the filing of the bankruptcy, and
10 the deeds of trust were to be released against Counterclaimants' properties.
11

12 19. Bankruptcy proceedings were initiated in the Central District of San Fernando
13 Valley, California, Case No. 1:09BK15680-GM.

14 20. Following the bankruptcy proceedings in court, Counter-Defendant Hefetz
15 reported fraudulent statements to his legal counsel, causing said counsel to file false affidavits
16 with the court stating that Counterclaimants had reached a global settlement agreement with the
17 bank funding the loan, when Counterclaimants had never been briefed on the issue and had never
18 been presented with the purported settlement documents for review.
19

20 21. A settlement agreement was not presented to Counterclaimants until
21 approximately three (3) months after said affidavits were filed and approved by the court for the
22 bankruptcy proceedings.
23

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 ...

30. Counterclaimants then received a call from Counter-Defendant Hefetz stating that he was going to force Lender to assign him the outstanding debt, to which Counterclaimants could never be released. The instant litigation ensued.

FIRST CLAIM FOR RELIEF

Fraud

31. Counterclaimants hereby adopt and incorporate by reference Paragraphs 1 through 30 above as though fully set forth herein.

32. Counter-Defendant Hefetz caused, through Star Development as Manager, false information to be relayed to Star Development's counsel, and the filing of fraudulent affidavits to be filed with the Central District of San Fernando Valley, Case No. 1:09BK15680-GM, by Counter-Defendant Hefetz stating that there existed a global settlement agreement that would have released all parties to the \$6,000,000.00 loan.

33. Specifically, upon reviewing the settlement information, Counterclaimants discovered that said settlement documents release Counterclaimants from their obligations to the bank, but not their obligations and personal guarantees to Lender, which had previously been agreed upon.

34. Counterclaimants were not included in the global settlement as per Counter-Defendant Hefetz' prior representations, and was excluded from said agreement by the counsel that Counter-Defendant had provided for Counterclaimants.

35. Counterclaimants justifiably relied on the prior representation of Counter-Defendant Hefetz that they would be released from their obligations and personal guarantees under the loan, when in fact, the counsel provided by Counter-Defendant purposefully excluded Counterclaimants from being released in the settlement documents.

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

7 38. 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 **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

15 40. Counter-Defendant Hefetz made a false representation to Counterclaimants when
16 he presented a strategy to Counterclaimants to terminate their legal counsel and retain Counter-
17 Defendant's same attorney in order to file a Complaint against the bank originally funding the
18 loan for the real property to be developed by the parties.

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.

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1 56. Counter-Defendant Hefetz, as Manager of Star Development, LLC, and Star
2 Development, as Manager of Toluca Lake Vintage, LLC, owed a fiduciary duty to
3 Counterclaimant, owner of Toluca Lake Vintage, LLC.
4

5 57. Counter-Defendant Hefetz breached that fiduciary duty when he caused, through
6 Star Development as Manager, false information to be relayed to Star Developments's counsel,
7 causing fraudulent affidavits to be filed with the Central District of San Fernando Valley, Case
8 No. 1:09BK15680-GM, by stating that there existed a global settlement agreement that would
9 have released all parties to the \$6,000,000.00 loan.
10

11 58. Counter-Defendant Hefetz further breached that duty when he failed to act for the
12 benefit of Counterclaimants by failing to include Counterclaimants in said settlement agreement
13 to release Counterclaimants from their obligations to and personal guarantees to Lender, which
14 had previously been agreed upon.
15

16 59. As a result of Counter-Defendant's actions, Counterclaimants suffered damages in
17 excess of ten thousand dollars (\$10,000.00).
18

19 60. As a result of Counter-Defendant's actions, Counterclaimants have suffered an
20 unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada
21 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.
22

23 61. As a result of Counter-Defendant's actions, Counterclaimants have been forced to
24 retain an attorney and have incurred attorney's fees and costs.
25

26 **FIFTH CLAIM FOR RELIEF**

27 **Tortious Interference with Contractual Relations**

28 62. Counterclaimants hereby adopt and incorporate by reference Paragraphs 1
through 61 above as though fully set forth herein.

1 63. Counterclaimants entered into a contract with Lender (the Herbert Frey Revocable
2 Family Trust, dated November 22, 1982) for a mutual release and payment agreement regarding
3 the loan for \$6,000,000.00.
4

5 64. Counter-Defendant Hefetz physically intercepted the contract to release
6 Counterclaimants from their obligations, personal guarantee, and property liens on said
7 \$6,000,000.00 loan, as it was being delivered to Mr. Frey for signature.
8

9 65. Counterclaimant Christopher Beavor presented the signed contract to Lender via
10 personal delivery for signature and finalization of the contract.

11 66. Counter-Defendant Hefetz purposefully, actively and deliberately withheld said
12 contract from the possession of Lender.

13 67. As a result of Counter-Defendant's actions, Counterclaimants suffered damages in
14 excess of ten thousand dollars (\$10,000.00).
15

16 68. As a result of Counter-Defendant's actions, Counterclaimants have suffered an
17 unlawful lien on their properties located at 905 Domnus Lane, Unit 202, Las Vegas, Nevada
18 89144, and 60 Chapman Heights, Las Vegas, Nevada 89138.

19 69. As a result of Counter-Defendant's actions, Counterclaimants have been forced to
20 retain an attorney and have incurred attorney's fees and costs.
21

22 SIXTH CLAIM FOR RELIEF

23 Negligence Per Se 24 (Violation of NRS 645B)

25 70. Counterclaimants hereby adopt and incorporate by reference Paragraphs 1
26 through 69 above as though fully set forth herein.

27 71. Counter-Defendant Hefetz acquired the \$6,000,000.00 note unlawfully from
28 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.
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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 9th day of April, 2012.

/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

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CERTIFICATE OF MAILING

THIS IS TO CERTIFY that on the 9th day of April, 2012, a copy of the foregoing **FIRST AMENDED COUNTERCLAIM** was sent via facsimile and in a sealed envelope via US Mail, with postage fully pre-paid thereon, to the following counsel of record,

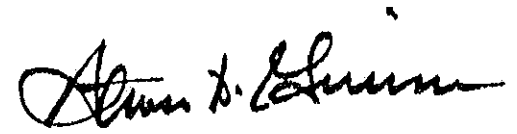
Lee I. Iglody, Esq.
Iglody Law
3960 Howard Hughes Pkwy., Suite 600
Las Vegas, NV 89169
702.446.5148

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

/s/ Alexis Vardoulis

Employee of SAGGESE & ASSOCIATES, LTD.

EXHIBIT 3



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

1 DSO

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5
6 YACOV JACK HEFETZ, an
7 individual, and ALIS COHEN, an
8 individual,

9 Plaintiffs,

CASE NO. A645353
DEPT NO. XXVIII

10 v.

11 CHRISTOPHER BEAVOR, an
12 individual, and SAMANTHA BEAVOR,
13 an individual, DOES I-X and ROE
14 ENTITIES I-X, inclusive,

15 Defendants.

16 AND RELATED COUNTERCLAIM.

17 SCHEDULING ORDER

18 (Discovery/Dispositive Motions/Motions to Amend or Add Parties)

19 NATURE OF ACTION: Breach of guarantee

20 DATE OF FILING JOINT CASE CONFERENCE REPORT(S): 12/12/11

21 TIME REQUIRED FOR TRIAL: 3 days

22 Counsel for Plaintiffs:

23 Lee I. Iglody, Esq.

24 ~~Counsel for Defendants:~~

25 Marc A. Saggese, Esq., Saggese & Associates

26 Counsel representing all parties have been heard and
27 after consideration by the Discovery Commissioner,

28 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

APP00992

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 Certain dates from your case conference report(s) may
10 have been changed to bring them into compliance with N.R.C.P.
11 16.1.

12 Within 60 days from the date of this Scheduling Order,
13 the Court shall notify counsel for the parties as to the date
14 of trial, as well as any further pretrial requirements in
15 addition to those set forth above.

16 Unless otherwise directed by the court, all pretrial
17 disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at
18 least 30 days before trial.

19 Motions for extensions of discovery shall be made to the
20 Discovery Commissioner in strict accordance with E.D.C.R.
21 2.35. Discovery is completed on the day responses are due or
22 the day a deposition begins.

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**DISCOVERY
COMMISSIONER**

EIGHTH JUDICIAL
DISTRICT COURT

APP00993

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

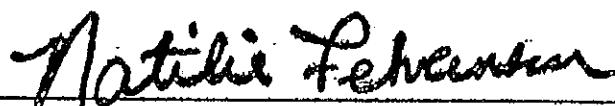
5 Dated this 28 day of December, 2011.

6
7 
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)
in the Clerk's office or mailed as follows:

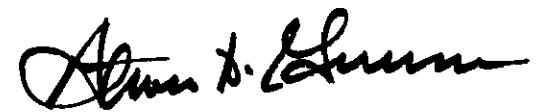
12 Lee I. Iglody, Esq.
13 Marc A. Saggese, Esq.

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15 COMMISSIONER DESIGNEE
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DISCOVERY
COMMISSIONER

EIGHTH JUDICIAL
DISTRICT COURT

APP00004



CLERK OF THE COURT

1 OMD
2 COHEN-JOHNSON, LLC
3 H. STAN JOHNSON, ESQ.
4 Nevada Bar No. 00265
5 sjohnson@cohenjohnson.com
6 MICHAEL V. HUGHES, ESQ.
7 Nevada Bar No. 13154
8 mhughes@cohenjohnson.com
9 Suite 100
10 225 East Warm Springs Road
11 Las Vegas, Nevada 89119
12 Telephone No. (702) 823-3500
13 Facsimile No. (702) 823-3400
14 *Attorneys for Jack Hefetz*

15 EIGHTH JUDICIAL DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 YACOV JACK HEFETZ,

18 Plaintiff,

19 vs.

20 CHRISTOPHER BEAVOR,

21 Defendant.

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

22 **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION**
23 **TO REOPEN DISPOSITIVE MOTION DEADLINE**

24 COMES NOW, Plaintiff, Yacov Jack Hefetz (hereinafter referred to as "Hefetz"),
25 by and through its counsel of record, H. Stan Johnson, Esq. and Michael V. Hughes, Esq.
26 of the law firm of Cohen-Johnson, LLC, and hereby files this Opposition To Defendant's
27 Motion To Reopen Dispositive Motion Deadline.

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1 This Opposition is based upon the following Memorandum of Points and
2 Authorities, the pleadings, orders, and other papers on file in the above-captioned
3 proceedings, and any evidence and oral argument which is allowed at the time of hearing
4 on Defendant's Motion To Reopen Dispositive Motion Deadline.

5 Dated this 20th day of May, 2015.

6 COHEN-JOHNSON, LLC

7
8 By: Michael Hughes
9 H. Stan Johnson, Esq.
10 Nevada Bar No. 00265
11 Michael V. Hughes, Esq.
12 Nevada Bar No. 13154
13 Suite 100
14 255 East Warm Springs Road
15 Las Vegas, Nevada 89119
16 Telephone: (702) 823-3500
17 Facsimile: (702) 823-3400
18 *Attorneys for Jack Hefetz*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Christopher Beavor (hereinafter referred to as “Beavor”) has filed Defendant Christopher Beavor’s Motion To Reopen Dispositive Motion Deadline (hereinafter referred to as “Beavor’s Motion”). Beavor’s Motion requests the reopening of the deadline for dispositive motions on the grounds that good cause and excusable neglect exist to justify the entry of an order reopening that deadline. Beavor alleges that good cause exists because the entry of the aforementioned order would avoid the necessity of a second trial. Beavor alleges that excusable neglect exists because his prior attorney negligently failed to move for summary judgment in the above-captioned proceedings. Notwithstanding Beavor’s aforementioned assertions, this Court should not grant Beavor’s Motion unless Beavor can demonstrate the existence of good cause and excusable neglect. For the reasons stated below, Beavor cannot meet that standard and, as a result, Beavor’s Motion must be denied.

II. FACTUAL ALLEGATIONS

On March 29, 2007, Toluca Lake Vintage, LLC (hereinafter referred to as “Toluca”) entered into a Loan Agreement (hereinafter referred to as the “Loan”) with the Herbert Frey Revocable Family Trust (hereinafter referred to as “Frey’s Trust”). The proceeds of the Loan were intended to be used for the development of real estate in California, Nevada and Utah.

The Loan was secured by deeds of trust placed on more than ten parcels of real estate located in California, Nevada, and Utah. Beavor also executed an unsecured Payment Guaranty in connection with the Loan. That Payment Guaranty ran from Beavor to Frey’s Trust.

The Loan was only part of Toluca’s funding for the development of real estate in Toluca Lake. The remainder of the funding was provided by virtue of a loan from China Trust Bank. The loan from China Trust Bank was secured by the Toluca Lake development project. After eighteen months of construction at Toluca Lake, China Trust

1 Bank ceased funding its loan and, as a consequence, all construction halted at the Toluca
2 Lake development project.

3 On or about May 14, 2009, Frey's Trust appointed Star Development, LLC
4 (hereinafter referred to as "Star Development") to be the manager of Toluca. On or about
5 the following day, Toluca filed a petition for relief under Chapter 11 of the U.S.
6 Bankruptcy Code and, as a result, defaulted on the Loan. Shortly thereafter, Beavor
7 defaulted on the Payment Guaranty.

8 On or about July 6, 2011, Hefetz and his sister acquired from Frey's Trust all
9 rights, title, and interest of Frey's Trust in the Loan and the Payment Guaranty.

10 On July 21, 2011, Hefetz filed a Verified Complaint in the above-captioned action
11 and thereby commenced the above-captioned proceedings. The Verified Complaint
12 alleged that the Beavor and his now former wife failed to meet their joint and several
13 obligation as guarantors of the Loan.

14 On October 21, 2011, Beavor responded to the Verified Complaint by filing his
15 answer and counterclaim. He subsequently amended that response on or about April 9,
16 2012 by filing an amended counterclaim. The amended counterclaim contained six
17 counterclaims against Hefetz: (1) fraud; (2) fraud in the inducement; (3) breach of the
18 implied covenant of good faith and fair dealing; (4) breach of fiduciary duty; (5) tortious
19 interference with contractual relations; and (6) negligence per se for violations of
20 Nevada's mortgage brokerage statute.
21

22 From February 25, 2013 to March 1, 2013, the Court conducted a trial of the
23 claim asserted by Hefetz and the defenses and counterclaims asserted by Beavor. During
24 the trial, the Court dismissed the counterclaims asserted by Beavor and, thereafter,
25 permitted the jury to consider only the issues surrounding the claim of Hefetz and the
26 defenses of Beavor to such claims. The jury rendered a verdict in the amount of zero
27
28

1 dollars in favor of Beavor. On May 21, 2013, the Court entered a judgment on the jury
2 verdict.

3 On June 10, 2013, Hefetz moved for a new trial. The Court granted that motion
4 and the Nevada Supreme Court affirmed the granting of that motion. As a consequence,
5 a new trial has been set in the above-captioned proceedings in connection with the claim
6 alleged by Hefetz and the defenses and counterclaims alleged by Beavor.
7

8 During the course of his preparation for the second trial, Beavor filed Beavor's
9 Motion. Beavor's Motion requests the reopening of the deadline for dispositive motions
10 on the grounds that good cause and excusable neglect exist to justify the entry of an order
11 reopening that deadline. Beavor alleges that good cause exists because the entry of the
12 aforementioned order would avoid the necessity of a second trial. Beavor alleges that
13 excusable neglect exists because his prior attorney negligently failed to move for
14 summary judgment in the above-captioned proceedings. Beavor's Motion is flawed for the
15 reasons stated below and, as a result, Plaintiff is compelled to file this Opposition to
16 Beavor's Motion.

17 **III. LEGAL STANDARD**

18 Rule 6(b) of the Nevada Rules of Civil Procedure (hereinafter referred to as "Rule
19 6(b)"), Rule 2.25 of the Eighth Judicial District Court Rules (hereinafter referred to as
20 "Rule 2.25"), and Rule 2.35 of the Eighth Judicial District Court Rules (hereinafter
21 referred to as "Rule 2.35") govern Beavor's Motion. Beavor's Motion must demonstrate
22 good cause and excusable neglect in light of Rule 6(b), which provides in pertinent part
23 that:

24
25 When by these rules or by a notice given thereunder or by order of
26 court an act is required or allowed to be done at or within a specified
27 time, the parties, by written stipulation of counsel filed in the action,
28 may enlarge the period, or the court for cause shown may at any time
in its discretion (1) with or without motion or notice order the period
enlarged if request therefor is made before the expiration of the period
originally prescribed or as extended by a previous order, or (2) upon

1 motion made after the expiration of the specified period permit the act
2 to be done where the failure to act was the result of excusable neglect .
3 ...

4 NRCP 6(b).

5 Beavor's Motion must also demonstrate good cause and excusable neglect in light
6 of Rule 2.25, which provides in pertinent part that:

7 Every motion or stipulation to extend time shall inform the
8 court of any previous extensions granted and state the reasons
9 for the extension requested. A request for extension made after
10 the expiration of the specified period shall not be granted
11 unless the moving party, attorney or other person demonstrates
12 that the failure to act was the result of excusable neglect.

13 EDCR 2.25.

14 Finally, Beavor's Motion must demonstrate good cause and excusable neglect in
15 light of Rule 2.35, which provides in pertinent part that:

16 Stipulations or motions to extend any date set by the discovery
17 scheduling order must be in writing and supported by a
18 showing of good cause for the extension and be received by the
19 discovery commissioner within 20 days before the discovery
20 cut-off date or any extension thereof. A request made beyond
21 the period specified above shall not be granted unless the
22 moving party, attorney or other person demonstrates that the
23 failure to act was the result of excusable neglect.

24 EDCR 2.35.

25 The Nevada Supreme Court has never issued a published opinion concerning the
26 concepts of good cause and excusable neglect under EDCR 2.25 and EDCR 2.35. It has,
27 however, previously held that a party seeking relief under Rule 6(b) on the grounds of good
28 cause and "excusable neglect" bears the burden of proof for demonstrating the following
facts: (1) the movant acted in good faith; (2) the movant exercised due diligence; (3) the
movant has a reasonable basis for not complying within the specified time; and (4) the
nonmovant will not suffer prejudice. *Moseley v. Eighth Judicial District Court*, 124 Nev.
654, 665-668, 188 P.3d 1136, 1144-1146 (2008). As will be shown below, Beavor cannot
meet that burden.

1 **IV. LEGAL DISCUSSION**

2 **A. GOOD CAUSE DOES NOT SUPPORT THE REOPENING**
3 **OF THE DISPOSITIVE MOTION DEADLINE**

4 Beavor's Motion asserts that good cause exists because the consideration of
5 Beavor's motion for summary judgment will alleviate the necessity of conducting a
6 second trial. Beavor's contention, however, is flawed because genuine issues of material
7 fact abound in connection with the alleged legal issues raised by Beavor and, as a result,
8 the reopening of the dispositive motion deadline will require an additional expenditure of
9 judicial resources without resolving the claim at issue in the above-captioned case.

10 Beavor initially asserts that Hefetz lacks standing as a matter of law allegedly
11 because the Loan was satisfied during the bankruptcy proceedings involving Toluca.
12 Nothing could be further from the truth. Beavor submits absolutely no evidence that the
13 U.S. Bankruptcy Court entered made a finding regarding or entered an order ruling upon
14 the allegation that Toluca satisfied the Loan. In fact, all the evidence in the above-
15 referenced case will indicate that Toluca never repaid the Loan. Accordingly, Hefetz
16 does have standing to pursue judicial relief for his injury.

17 Beavor next claims that Hefetz cannot recover on the Loan and the Payment
18 Guaranty since Herbert Frey conducted mortgage banking activities in violation of NRS
19 645E and, as a result, Beavor has the right to void the Loan and the Payment Guaranty.
20 Beavor's contentions regarding mortgage banking activities are flawed for at least the
21 following five reasons. First, there is a genuine issue of material fact about whether or
22 not Herbert Frey was "holding himself out" as being able to make loans secured by liens
23 on real property. *See* NRS 645E.100(1)(a)(1). Second, there is a genuine issue of
24 material fact about whether or not Herbert Frey was using "his . . . own money" in
25 connection with a transaction between Frey's Trust and Toluca. *See* NRS
26
27
28

1 645E.100(1)(a)(1). Third, there is a genuine issue of material fact if Herbert Frey is
2 exempted from the mortgage banker regulations by virtue of the fact that Frey's Trust and
3 then Hefetz acquired ownership of or a beneficial interest in the Loan. *See* NRS
4 645E.100(2). Fourth, there is a genuine issue of material fact concerning whether or not
5 an unsecured Payment Guaranty constitutes a mortgage transaction. Fifth, there is a
6 genuine issue of material fact concerning whether or not a Beavor can void the Loan and
7 the Payment Guaranty in light of the fact that Toluca, and not Beavor, was the other party
8 to the Loan. *See* NRS 645E.920.¹

9
10 In light of the preceding analysis, good cause does not exist to support the
11 reopening of the deadline for filing dispositive motions.

12 **B. EXCUSABLE NEGLECT DOES NOT SUPPORT THE**
13 **REOPENING OF THE DISPOSITIVE MOTION DEADLINE**

14 **1. Beavor has not been diligent in filing his motion for summary**
15 **judgment**

16 Beavor has not been diligent in filing his motion for summary judgment. The
17 Court originally set June 20, 2012 to be the deadline for filing dispositive motions. That
18 deadline has long ago passed and Beavor has still not yet filed any motion for summary
19 judgment. In fact, Beavor filed Beavor's Motion nearly three years after the expiration of
20 the original dispositive motion deadline. Accordingly, Beavor's Motion must be denied
21 because of his lack of diligence in filing a summary judgment motion.
22

23
24
25 ¹ Beavor's contention that he may void the Loan and Payment Guaranty is puzzling in light of the fact that
26 Toluca filed for a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. As soon as that
27 filing occurred, the right, if any existed, to void the Loan rested exclusively with the Toluca's Chapter 11
28 bankruptcy estate. As a consequence, Beavor's current efforts to void the Loan and Payment Guaranty
outside the context of Toluca's bankruptcy proceedings may be construed as an effort to realize value of an
asset not scheduled in the Toluca bankruptcy proceedings. That form of activity could be viewed as a form
of bankruptcy fraud for which Beavor may face criminal liability.

1 **2. Beavor cannot proffer a reasonable explanation for his failure to**
2 **be diligent in filing his motion for summary judgment**

3 Beavor's Motion asserts that excusable neglect exists because Beavor's prior legal
4 counsel negligently failed to obtain the resolution of the claim asserted by Hefetz through
5 the process of summary judgment. Beavor's assertion plainly lacks merit. Beavor's prior
6 counsel clearly chose a strategy with respect to whether or not Beavor should file a
7 summary judgment motion or proceed with a trial. He obviously chose to forego
8 summary judgment in favor of a trial. That strategy was clearly successful: Beavor won
9 the first trial. Accordingly, Beavor's assertions that Beavor's prior counsel negligently
10 failed to obtain the resolution of the claim asserted by Hefetz through the process of
11 summary judgment completely lacks merit.

12 Beavor's Motion also asserts that excusable neglect exists because Beavor's prior
13 legal counsel negligently failed to dispose of the claim asserted by Hefetz by raising the
14 following alleged defenses: (1) the Double Recovery Doctrine; (2) Mortgage Banker
15 Law Violations arising under NRS 645E; and (3) Damage Limitations arising from NRS
16 40.459(1)(c). Once again, Beavor's Motion fails to establish excusable neglect. As
17 previously noted, the claim by Hefetz is not barred by the Double Recovery Doctrine
18 because the Loan was not fully satisfied in Toluca's bankruptcy proceedings. Similarly,
19 as previously discussed, genuine issues of material fact abound on whether or not Herbert
20 Frey violated the provisions of NRS 645E. Finally, the claim by Hefetz is not subject to
21 the damage-limitation provisions of NRS 40.459(1)(c) in light of the Nevada Supreme
22 Court's recent opinion in *First Financial Bank v. Lane*, 130 Nev. Adv. Op. 96 at 11-12,
23 339 P.3d 1289, 1293-1294 (2014) and, as a consequence, this case still involves a multi-
24 million-dollar claim.

1 In light of the forgoing analysis, it readily appears that Beavor's prior counsel did
2 not negligently fail to pursue the resolution of the claim asserted by Hefetz by raising the
3 aforementioned three defenses. He simply chose a strategy to forego the filing of a
4 summary judgment motion in favor of a strategy of resolving factual and legal issues in a
5 trial. That strategy obviously succeeded at the first trial and, more significantly here,
6 undercuts any effort by Beavor to proffer a reasonable explanation to justify his lack of
7 diligence in pursuing a summary judgment motion.
8

9 **3. Hefetz and the Court will suffer prejudice**

10 Beavor's Motion, if granted, will unfairly prejudice Hefetz. As previously
11 discussed, the three bases for summary judgment proffered by Beavor will not dispose of
12 the claim asserted by Hefetz. Instead, Hefetz and this Court will be forced to divert
13 valuable resources and time away from preparing for a trial set to occur in October
14 without resolving any factual or legal issues. That prejudice merits a denial of Beavor's
15 Motion for failing to establish the existence of excusable neglect.
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1 **V. CONCLUSION**

2 Wherefore, Hefetz respectfully requests that this Court deny Beavor's Motion in
3 its entirety.

4 Dated this 20th day of May, 2015.

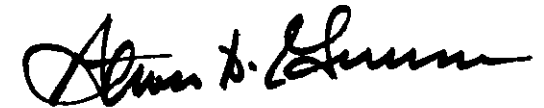
5 COHEN-JOHNSON, LLC

6 By: Michael Hughes
7 H. Stan Johnson, Esq.
8 Nevada Bar No. 00265
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10 Nevada Bar No. 13154
11 Suite 100
12 255 East Warm Springs Road
13 Las Vegas, Nevada 89119
14 Telephone: (702) 823-3500
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16 Attorneys for Jack Hefetz

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Joel Z. Schwarz, Esq.
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Ninth Floor
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Las Vegas, Nevada 89169
Email: jschwarz@gordonsilver.com
Attorney for Christopher Beaver

An Employee of Cohen-Johnson, LLC



CLERK OF THE COURT

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Attorneys for Christopher Beavor

DISTRICT COURT

CLARK COUNTY, NEVADA

YACOV JACK HEFETZ,

Plaintiff,

vs.

CHRISTOPHER BEAVOR,

Defendant.

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

**DEFENDANT'S REPLY IN SUPPORT OF
MOTION TO DISMISS PURSUANT TO
NRS 40.435**

**Date of Hearing: June 9, 2015
Time of Hearing: 9:00 a.m.**

Defendant Christopher Beavor ("Beavor"), by and through his counsel of record, hereby files this reply in support of his motion for an order dismissing Plaintiff Yacov Hefetz's ("Hefetz") claim for breach of guaranty.

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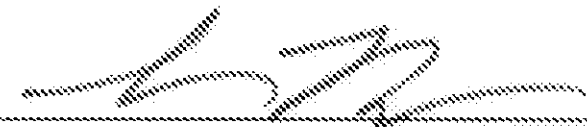
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1 This Reply is made and based on the following Memorandum of Points and Authorities,
2 the papers and pleadings already on file herein, and any oral argument the Court may permit at
3 the hearing of this matter.

4 Dated this 24 day of June 2015.

5 GORDON SILVER

6
7 
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15 Fax: (702) 369-2666
16 Attorneys for Christopher Beavor

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19 Hefetz spills much ink misdirecting this Court's attention from the undisputed fact that he
20 is pursuing this *action* in violation of the one action rule. Despite pages of irrelevant argument
21 regarding excusable neglect and Rule 12(b), not once does Hefetz dispute: (1) that he failed to
22 foreclose on the Beavor Property¹ prior to pursuing the breach of guaranty action or (2) that
23 Beavor could not waive the one action rule as a matter of law.² These central facts dictate that
24 the Court must dismiss Hefetz's claim pursuant to NRS 40.435. Furthermore, the Court must
25 reject Hefetz's plea for a continuance. Any foreclosure Hefetz attempts to conduct would
26 constitute a wrongful foreclosure and any amendment to the complaint will be futile unless Hefetz
27 foregoes his security interest in the Beavor Property.³ Thus, the Court should grant Beavor's
28 Motion to Dismiss without granting Hefetz any continuance.

...

¹ All capitalized terms herein shall have the meaning ascribed to them in the initial Motion to Dismiss.

² Hefetz admits that Beavor meets the criteria necessary to establish exemption under NRS 40.495(5)(d). See Opposition at 4:1-8.

³ Hefetz has made no indication that he intends to foreclose on the Beavor Property.

II. LEGAL ARGUMENT

A. Beavor is Entitled to Present a Defense Under NRS 40.430

Contrary to Hefetz's assertion, Beavor has not waived his right to present a defense pursuant to the one action rule. The one action rule simply must be presented prior to entry of final judgment in order to avoid waiver. *See* NRS 40.435(3). This conclusion is dictated by the express provisions of the statute. "Statutes should be given their plain meaning and 'must be construed as a whole and not be read in a way that would render words or phrases superfluous or make a provision nugatory.'" *Mangarella v. State*, 117 Nev. 130, 133, 17 P.3d 989, 991 (2001) (citing *Charlie Brown Constr. Co. v. Boulder City*, 106 Nev. 497, 502, 797 P.2d 946, 949 (1990)). As such, "there is a presumption that every word, phrase, and provision in the enactment has meaning." *Id.*

Here, the relevant statute provides:

The failure to interpose, before the entry of a final judgment, the provisions of NRS 40.430 as an affirmative defense in such a proceeding waives the defense in that proceeding. Such a failure does not affect the validity of the final judgment, but entry of the final judgment releases and discharges the mortgage or other lien.

NRS40.435(3).

The clause regarding entry of final judgment cannot be ignored. Instead, it must be given meaning and its inclusion suggests that the legislature contemplated that the defense could be raised as late as trial (i.e. by conforming the pleadings to the evidence under NRCP 15(b)) because it simply must be done prior to entry of final judgment to avoid waiver. Therefore, the Court must find that Beavor has not waived the one action defense.

Similarly, the fact that the statute provides the one action defense must be raised as an affirmative defense is equally remedied by conforming the pleadings to the evidence. Rule 15(b) provides that a Court may allow a party to amend their pleadings to conform to the evidence and "shall do so freely." NRCP 15(b). Here, Hefetz has introduced evidence to support his breach of guaranty action, which necessarily evidences his failure to comply with the one action rule. In order to prove the breach of guaranty, Hefetz has introduced evidence of the underlying loan which was secured by the Beavor Property. Hefetz, however, has never initiated foreclosure

1 proceedings on the real property securing the debt and therefore is in clear violation of the one
2 action rule. The Court therefore can, and *must*, allow Beavor to amend his pleading to assert an
3 affirmative defense of the one action rule because it will best allow this matter to be decided on
4 its merits and in accordance with the legislature's mandates.

5 **B. Hefetz's Argument Relating to NRCP 6(b) is Misplaced and Meritless**

6 Hefetz's arguments regarding NRCP 6(b) must be rejected. As illustrated above, Beavor
7 need not prove excusable neglect given the effective language of NRS 40.435 and NRCP 15(b).
8 Even if he did, however, excusable neglect still exists given prior counsel's failure to recognize
9 such an obvious defense. The term excusable neglect is a failure "because of some unexpected or
10 unavoidable hindrance or accident *or because of reliance on the care and vigilance of the party's*
11 *counsel* or on a promise made by the adverse party." Black's Law Dictionary 1133 (9th ed. 2009)
12 (emphasis added). The Nevada Supreme Court has specifically held that "[c]ounsel's failure to
13 meet his professional obligations constitutes excusable neglect." *Passarelli v. J-Mar*
14 *Development, Inc.*, 102 Nev. 283, 286, 720 P.2d 1221, 1224 (1986). Here, Beavor's prior
15 counsel failed to meet his professional obligations when he did not plead the one action rule as
16 an affirmative defense. This issue was readily apparent and should have been identified and
17 pursued by Beavor's prior counsel. Failure to do so constituted excusable neglect which justifies
18 allowing Beavor to pursue his instant motion relating to the one action defense.

19 **C. NRCP 12(b) Has No Bearing on this Matter**

20 Hefetz incorrectly claims that NRCP 12(b) precludes Beavor's one action rule defense.
21 This argument is irrelevant because this is not an issue which must be presented in a Rule 12(b)
22 motion. The text of NRCP 12(b) clearly establishes the limited subset of defenses that may be
23 made by motion prior to any responsive pleading. A defense premised on the one-action rule is
24 not included in this narrow group of defenses. This conclusion is further buttressed by the fact
25 that the instant motion was brought pursuant to NRS 40.435 rather than NRCP 12. Therefore,
26 NRCP 12 does not preclude Beavor from pursuing his one action rule defense.

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1 **D. Hefetz's Speculation Regarding the Beavor Property Must be Given No Weight**

2 Hefetz next asserts that the one action rule cannot apply because the value of the ouse
3 provides no security for the debt. Hefetz's argument regarding security must be rejected
4 summarily. He does not present a shred of evidence regarding the value of the Beavor Property.
5 Instead, Hefetz relies solely on his counsel's unsupported and undocumented argument that the
6 Beavor Property has a supposed value of somewhere between \$384,794.00 and \$512,446.00 and
7 that there are two other deeds of trust on the Beavor Property worth \$518,000.00 and
8 \$1,350,000.00. This is irrelevant and wholly insufficient to allege that the one-action rule is
9 inapplicable to this matter. Furthermore, Hefetz effectively waived this argument in his
10 statement of facts when he admitted that Beavor provided "the real estate collateral to secure the
11 Loan." Opposition at 4:9. Thus, the Court must reject Hefetz's unsupported claim that the debt
12 is unsecured and not subject to the one action rule.

13 **E. Hefetz Should Not Receive a Continuance Because it Would be Futile**

14 Hefetz lastly requests that the Court grant him a continuance rather than dismiss the
15 action. The problem here, though, is that it would be futile to grant Hefetz a continuance to
16 pursue foreclosure or amend his pleading. The purpose of NRS NRS 40.435(2)(b) is to allow a
17 party time to conduct a foreclosure or amend its pleading to avoid violating one action rule.
18 Here, neither option is viable and thus the only remedy is dismissal.

19 First, any foreclosure Hefetz seeks to institute would be a wrongful foreclosure. As
20 outlined more fully in Beavor's pending Motion to Reopen Dispositive Motion Deadline, Hefetz
21 lacks standing to foreclose on the Beaver Property because the debt obligation was already
22 satisfied prior to Hefetz obtaining his interest in the guaranty. Additionally, due to Herbert
23 Frey's violation of Nevada's mortgage banking regulations, Beavor has the right to void the
24 guaranty. In doing so, he would render any foreclosure attempt wrongful. As such, Hefetz is
25 unable to foreclose on the Beavor Property and any continuance to allow Hefetz the opportunity
26 to foreclose therefore would be futile.

27 Similarly, there is no amendment Hefetz can make to survive the one action defense so a
28 continuance for that purpose would be equally futile. NRS 40.435(2)(b) is not intended to give a

1 party time to get a valuation of the subject property (without any intent to actually conduct a
2 foreclosure), examine possible statute of limitation issues, or ensure the plaintiff receives relief.

3 Even if any of Hefetz's unauthorized requests for a continuance were considered, they
4 still must be rejected. Hefetz's request for more time to consider whether to waive Hefetz's right
5 to enforce the deed of trust appears somewhat disingenuous given how adamant Hefetz is that
6 the Beavor Property is worthless to him and supposedly does not constitute security at all.
7 Similarly, the request for time to conduct discovery relating to the value of the Beavor Property
8 also reveals that Hefetz has no evidence to support its hollow claim that the Beavor Property
9 provides no security for the guaranty.⁴

10 Thus, this Court must reject Hefetz's baseless request for a continuance in this matter.

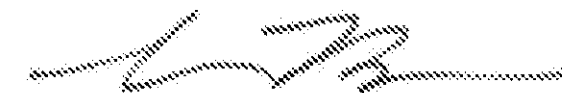
11 **III.**

12 **CONCLUSION**

13 Based on the foregoing, and the reasons already identified in Beavor's Motion, Beavor
14 respectfully requests that this Court enter an order dismissing Hefetz's Complaint without
15 prejudice.

16 Dated this 22 day of June 2015.

17 GORDON SILVER

18 

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Attorneys for Christopher Beavor

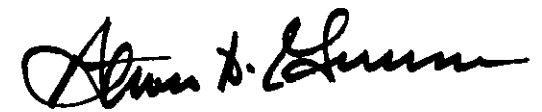
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27 ⁴ It is interesting to note that Hefetz would like to reopen discovery but is opposing Beavor's request to reopen the
28 dispositive motion deadline.

CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the 27 day of June 2015, s/he caused a copy of the foregoing **DEFENDANT'S REPLY IN SUPPORT OF MOTION TO DISMISS** by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve system addressed to:

H. Stan Johnson, Esq.
Michael V. Hughes, Esq.
Cohen-Johnson, LLC
255 East Warm Springs Road, Suite 100
Las Vegas, NV 89119


An employee of GORDON SILVER



CLERK OF THE COURT

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Attorneys for Christopher Beavor

DISTRICT COURT
CLARK COUNTY, NEVADA

YACOV JACK HEFETZ,

Plaintiff,

vs.

CHRISTOPHER BEAVOR,

Defendant.

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

**DEFENDANT CHRISTOPHER
BEAVOR'S REPLY IN SUPPORT OF
MOTION TO REOPEN DISPOSITIVE
MOTION DEADLINE**

Date of Hearing: June 9, 2015
Time of Hearing: 9:00AM

Defendant Christopher Beavor ("Beavor"), by and through his counsel of record, the law firm of Gordon Silver, hereby files his Reply to Plaintiff's Opposition to Motion to Reopen Dispositive Motion Deadline (the "Opposition").¹ In support of this Reply is the Declaration of Gabriel A. Blumberg, appended hereto as Exhibit 1.

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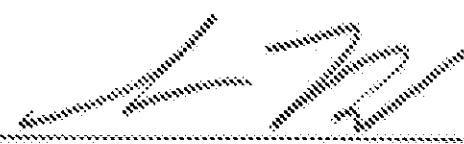
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¹ Beavor's Motion to Reopen Dispositive Motion Deadline will be referred to herein as the "Motion."

1 This Reply is made and based on the following Memorandum of Points and Authorities;
2 the papers and pleadings already on file herein; and any oral argument the Court may permit at
3 the hearing of this matter.

4 Dated this 2nd day of June, 2015.

5 GORDON SILVER

6
7 
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GABRIEL A. BLUMBERG

Nevada Bar 12332

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Las Vegas, Nevada 89169

Tel: (702) 796-5555

Attorneys for Christopher Beavor

11
12
13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14
15 **I.**

16 **INTRODUCTION**

17 Rather than address the merits of the pending Motion, Hefetz curiously elects to defend
18 against Beavor's proposed summary judgment motion. Given this inappropriate tactic, the Court
19 must reject Hefetz's hollow argument that he will be prejudiced and forced to expend precious
20 resources in having to defend against the proposed summary judgment motion if the dispositive
21 motion deadline is reopened. Hefetz has voluntarily drafted an opposition to summary judgment
22 and thus cannot suffer any prejudice if Beavor is permitted to move for summary judgment.

23 Additionally, despite spending pages defending against summary judgment, Hefetz
24 barely finds space to actually argue against the pending Motion. In fact, his only defense
25 pertaining to good cause is pure conjecture regarding the motives of Beavor's prior counsel. As
26 explained below, it is untenable for Hefetz to claim that failing to move for summary judgment
27 on clear issues of law was a calculated strategy. Summary judgment and trial are not mutually
28 exclusive, and it would be contrary to well established ethics principles to purposely fail to move

1 for summary judgment on valid grounds in order to ensure the case would go to trial. Thus, for
2 these reasons and those that follow, the Court should reopen the dispositive motion deadline
3 because Hefetz has failed to rebut that Beavor has established good cause and excusable neglect.

4 II.

5 LEGAL ARGUMENT

6 A. Hefetz Mistakenly Argues Against the Proposed Motion for Summary 7 Judgment Rather than Opposing the Motion

8 The sole question before this Court is whether excusable neglect and good cause exist to
9 reopen the dispositive motion deadline. Instead of addressing this issue, Hefetz improperly uses
10 his Opposition to defend against the summary judgment arguments rather than addressing the
11 actual Motion. For instance, Hefetz contends there are multiple questions of material fact
12 precluding the Court from entering summary judgment on Beavor's claims relating to mortgage
13 banking.² It is not the Court's duty, however, to rule on the merits of the summary judgment
14 motion at this time. Rather, the Court is simply tasked with determining whether there are
15 grounds to extend the dispositive motion deadline based on prior counsel's failure to raise
16 obvious issues of law such as lack of standing. It is this fault of prior counsel, as detailed in
17 Beavor's Motion, which gives rise to good cause and excusable neglect justifying reopening the
18 dispositive motion deadline.

19 Hefetz's only defense to Beavor's analysis of good cause is that Beavor's prior counsel
20 failed to move for summary judgment as part of a strategy to go to trial. Hefetz's arguments on
21 this issue are misguided and must be rejected. First, Hefetz is incorrect in presenting the issue in
22 a manner that makes it appear that Beavor had to choose either between moving for summary
23 judgment or going to trial. These options are not mutually exclusive. Beavor's prior counsel,
24 had he recognized the pertinent legal issues, could have moved for summary judgment on them.
25 Had he done so, there would have been two possible outcomes: (1) Beavor would have prevailed
26 on summary judgment and the matter would have been resolved or (2) Beavor would have lost

27 ² Although Hefetz presents argument against summary judgment, his opposition falls short of complying with the
28 requirements of NRCP 56(e).

1 summary judgment and would have gone to trial where he could pursue the same legal theories.
2 Thus, prior counsel need not have foregone summary judgment as a “strategy” to go to trial. As
3 such, Hefetz’s argument on this issue must be dismissed.

4 **B. Beavor has Established Excusable Neglect**

5 Hefetz relies solely on *Moseley v. District Court*, 124 Nev. 654, 188 P.3d 1136 (2008) in
6 support of his argument regarding the proper excusable neglect standard.³ The problem in doing
7 so, however, is that *Moseley* dealt specifically NRCP 6(b)’s application to NRCP 25. *See*
8 *Moseley*, 124 Nev. at 667-68 (“we hold that a party seeking relief from NRCP 25(a)(1) under
9 NRCP 6(b)(2) is required to demonstrate . . .”). Thus, it is unlikely that Hefetz’s proposed
10 standard even applies to the instant situation, where Beavor is simply seeking to extend a
11 discovery deadline pursuant to EDCR 2.35.

12 Instead, Beavor believes the only requirement to establishing excusable neglect under
13 EDCR 2.35 is similar to that under NRCP 60(b)(1). Under that standard, the Nevada Supreme
14 Court has held that “[c]ounsel’s failure to meet his professional obligations constitutes excusable
15 neglect.” *Passarelli v. J-Mar Development, Inc.*, 102 Nev. 283, 286, 720 P.2d 1221, 1224
16 (1986). This standard is similar to the definition of excusable neglect contained in Black’s Law
17 Dictionary, wherein “reliance on the care and vigilance of the party’s counsel” constitutes
18 excusable neglect. Black’s Law Dictionary 1133 (9th ed. 2009). As explained in the Motion,
19 Beavor relied on the care and vigilance of his prior counsel, but his prior counsel failed to meet
20 his professional obligations by not moving for summary judgment on the issues briefed in the
21 Motion.

22 Alternatively, even if Hefetz’s proposed *Moseley* standard applied, Beavor still is entitled
23 to have the dispositive motion deadline reopened.

24 ...

25
26 ³ Hefetz likely makes a point of stating there is no published case addressing the standard for excusable neglect
27 under EDCR 2.35 because he located *Clark v. Coast Hotels & Casinos, Inc.*, 2014 WL 3784262, at *3 (Nev. July
28 30, 2014) (unpublished).

1 **1. Beavor Seeks to File a Motion for Summary Judgment in Good Faith**

2 By not addressing the first factor, Hefetz concedes that Beavor is acting in good faith
3 seeking to file a motion for summary judgment. Additionally, Beavor's good faith is
4 demonstrated by seeking to relieve this Court of an unnecessary second trial and alleviate its
5 heavy docket. The issues of pure law presented by Beavor in his motion for summary judgment
6 are case dispositive and should result in an early resolution which would promote judicial
7 efficiency.

8 **2. There has Been No Lack of Diligence and Beavor Reasonably Did Not File**
9 **the Motion Until Now**

10 Beavor's current counsel substituted in on January 21, 2015. *See* Notice of Appearance,
11 on file herein. In the brief three to four months with the file, Beavor's instant counsel quickly
12 realized the obvious legal defenses which prior counsel failed to present. Upon recognizing
13 these valid defenses, Beavor filed the instant motion in addition to a motion to dismiss. This
14 rapid response by Beavor's current counsel illustrates Beavor's diligence and is sufficient
15 grounds to allow him to move for summary judgment now.

16 **3. Hefetz Will Suffer No Undue Prejudice**

17 Hefetz argues that he will be prejudiced if Beavor is allowed to move for summary
18 judgment because it will "divert valuable resources and time away from preparing for a trial set
19 to occur in October without resolving any factual or legal issues." *See* Opposition 10:12. This
20 flawed logic is untenable. First, the motion for summary judgment may be granted, thereby
21 resolving the entire matter and conserving the Court's and the parties' resources in avoiding
22 preparing for—and conducting—a costly second trial. Second, even if the motion for summary
23 judgment is denied, it will have saved resources that would necessarily be expended in preparing
24 for trial because the parties will have fully briefed three issues that will almost certainly be raised
25 at trial in this matter. Whether those resources need to be expended now or in October does not
26 offer any reason to believe Hefetz will be prejudiced by reopening the dispositive motion
27 deadline. Instead, all the facts marshal one conclusion: the summary judgment motion will
28 conserve both the Court's and the parties' resources.

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CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the 27 day of June, 2015, she caused a copy of the foregoing **Defendant's Reply to Opposition to Motion to Reopen Dispositive Motion Deadline**, by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve system addressed to:

H. STAN JOHNSON
BRIAN A. MORRIS
COHEN-JOHNSON, LLC
255 East Warm Springs Road, Suite 100
Las Vegas, NV 89119
sjohnson@cohenjohnson.com
bam@cohenjohnson.com



Bobbye Donaldson, an employee of
GORDON SILVER

EXHIBIT 1

1 **DECL**
2 GORDON SILVER
3 JOEL Z. SCHWARZ
4 Nevada Bar No. 9181
5 Email: jschwarz@gordonsilver.com
6 GABRIEL A. BLUMBERG
7 Nevada Bar No. 12332
8 3960 Howard Hughes Pkwy., 9th Floor
9 Las Vegas, Nevada 89169
10 Tel: (702) 796-5555
11 Fax: (702) 369-2666
12 *Attorneys for Christopher Beavor*

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 YACOV JACK HEFETZ,

16 Plaintiff,

17 vs.

18 CHRISTOPHER BEAVOR,

19 Defendant.

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

**DECLARATION OF GABRIEL A.
BLUMBERG, ESQ. IN SUPPORT OF
DEFENDANT CHRISTOPHER
BEAVOR'S REPLY IN SUPPORT OF
MOTION TO REOPEN DISPOSITIVE
MOTION DEADLINE**

20 I, Gabriel A. Blumberg, make this declaration as provided in support of Defendant
21 Christopher Beavor's Reply in Support of Motion to Reopen Dispositive Motion Deadline.

22 1. I am an attorney licensed to practice law in the state of Nevada and I am an
23 associate with the law firm of Gordon Silver, attorneys for Defendant Christopher Beavor in the
24 above-captioned matter.

25 2. I am competent to testify to the matters asserted herein. I have personal
26 knowledge of such matters, except as to those stated upon information and belief. As to those
27 matters stated upon information and belief, I believe them to be true based upon a review of
28 documents and other tangible items in my investigation of the facts and circumstances at issue in
the instant case.

...

...

1 3. During the Tolaca bankruptcy, the Bankruptcy Court entered its Order Granting
2 Motion for Final Decree Closing Chapter 11 Case (the "Order"). A true and correct copy of the
3 Order is attached hereto as Exhibit 1-A.

4 I declare under penalty of perjury under the laws of the United States and the State of
5 Nevada that the foregoing is true and correct.

6 Executed this 2nd day of June, 2015.

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9 _____
10 GABRIEL A. BLUMBERG
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EXHIBIT 1-A

1 Victor A. Sahn (CA Bar No. 97299)
vsahn@sulmeyerlaw.com
2 **SulmeyerKupetz**
A Professional Corporation
3 333 South Hope Street, Thirty-Fifth Floor
Los Angeles, California 90071-1406
4 Telephone: 213.626.2311
Facsimile: 213.629.4520
5
6 Attorneys for Reorganized Debtor
Toluca Lake Vintage, LLC

FILED & ENTERED

MAY 29 2012

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY remy DEPUTY CLERK

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, SAN FERNANDO VALLEY DIVISION**

10
11 In re
12 TOLUCA LAKE VINTAGE, LLC,
13 Reorganized Debtor.

Case No. 1:09-bk-15680-GM

Chapter 11

**ORDER GRANTING MOTION FOR
FINAL DECREE CLOSING CHAPTER 11
CASE**

[Relates to Docket No. 112]

Date: [NO HEARING REQUESTED]
Time: [NO HEARING REQUESTED]
Place: Courtroom 303
United States Bankruptcy Court
21041 Burbank Boulevard
Woodland Hills, CA 91367

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19
20 The Court, having considered the *Notice of Motion and Motion for Final*
21 *Decree Closing Chapter 11 Case* [Dkt. No. 112] (the "Motion"), and the separately and
22 concurrently filed declaration of Victor A. Sahn attesting to the lack of any opposition or
23 request for hearing in connection thereof, and after finding that no opposition or request
24 for hearing to the Motion was timely filed by any creditor or party in interest, and for good
25 cause appearing therefor,

26
27 ///
28

SulmeyerKupetz, A Professional Corporation
333 SOUTH HOPE STREET, THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1406
TEL. 213.626.2311 • FAX 213.629.4520

IT IS HEREBY ORDERED ADJUDGED AND DECREED as follows:

1. The Motion is granted;
2. This Order shall constitute a final decree in the above-captioned case (Case No. 1:09-bk-15680-GM) (the "Case");
3. The Case is hereby closed;
4. This Court shall retain jurisdiction to enforce the terms of the Debtor's confirmed Debtor's Second Amended Liquidating Chapter 11 Plan Of Reorganization, and to enforce any of the orders the Court entered in the Case.

###

SulmeyerKupetz, A Professional Corporation
333 SOUTH HOPE STREET, THIRTY-FIFTH FLOOR
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TEL. 213.626.2311 • FAX 213.629.4520

DATED: May 29, 2012


United States Bankruptcy Judge

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on a CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
333 South Hope Street, Thirty-Fifth Floor, Los Angeles, California 90071-1406

A true and correct copy of the foregoing document described as ORDER GRANTING MOTION FOR ORDER CLOSING CASE will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d), and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On _____ I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the e-mail address indicated below:

☐ Service Information continued on attached page.

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On May 24, 2012 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follow. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Geraldine Mund
United States Bankruptcy Court
Central District of California
21041 Burbank Boulevard, Suite 342
Courtroom 303
Woodland Hills, CA 91367

U.S. Trustee
United States Trustee (SV)
21051 Warner Center Lane, Suite 115
Woodland Hills, CA 91367

☐ Service Information continued on attached page.

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P.5 and/or controlling LBR, on I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method) by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service Information continued on attached page.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

May 24, 2012	Maria R. Viramontes	/s/ Maria R. Viramontes
<i>Date</i>	<i>Type Name</i>	<i>Signature</i>

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

August 2010

F 9013-3.1.PROOF.SERVICE

APP001027

NOTE TO USERS OF THIS FORM:

1. Attach this form to the last page of a proposed Order or Judgment. Do not file as a separate document.
2. The title of the judgment or order and all service information must be filled in by the party lodging the order.
3. **Category I.** below: The United States trustee and case trustee (if any) will always be in this category.
4. **Category II.** below: List **ONLY** addresses for debtor (and attorney), movant (or attorney) and person/entity (or attorney) who filed an opposition to the requested relief. **DO NOT** list an address if person/entity is listed in category I.

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled **ORDER GRANTING MOTION FOR FINAL DECREE CLOSING CHAPTER 11 CASE** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of May 24, 2012, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below:

Bernard R Given on behalf of Creditor Chinatrust Bank (U.S.A.)
bgiven@loeb.com

David R Haberbush on behalf of Interested Party Christopher Beavor
dhaberbush@lbinsolvency.com

S Margaux Ross on behalf of U.S. Trustee United States Trustee (SV)
margaux.ross@usdoj.gov

Victor A Sahn on behalf of Debtor Toluca Lake Vintage, LLC
vsahn@sulmeyerlaw.com, agonzalez@sulmeyerlaw.com, mrichardson@sulmeyerlaw.com

William D Schuster on behalf of Creditor HD Supply Construction Supply LTD
bills@allieschuster.org

United States Trustee (SV)
ustregion16.wh.ecf@usdoj.gov

☐ Service Information continued on attached page.

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

☐ Service Information continued on attached page.

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s) and/or email address(es) indicated below:

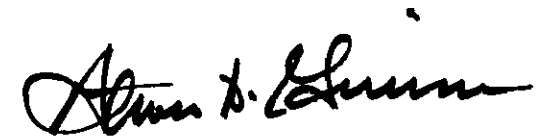
☐ Service Information continued on attached page.

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

August 2010

F 9021-1.1.NOTICE.ENTERED.ORDER

APP001028



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

YACOV HEFETZ,

Plaintiff,

vs.

CHRISTOPHER BEAVOR,

Defendant.

CASE NO. A645353

DEPT. XXVIII

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE
TUESDAY, JUNE 9, 2015

TRANSCRIPT OF PROCEEDINGS
DEFENDANT'S MOTION TO DISMISS PURSUANT TO NRS 40.435
DEFENDANT CHRISTOPHER BEAVOR'S
MOTION TO REOPEN DISPOSITIVE MOTION DEADLINE

APPEARANCES:

For the Plaintiff:

MICHAEL V. HUGHES, ESQ.

For the Defendant:

JOEL Z. SCHWARZ, ESQ.

RECORDED BY: JUDY CHAPPELL, COURT RECORDER

1
2 TUESDAY, JUNE 9, 2015 AT 8:57 A.M.
3

4 THE CLERK: Case Number A645353, Hefetz versus Beavor.

5 MR. SCHWARZ: Good morning, Your Honor, Joel Schwarz, now of
6 Dickinson Wright on behalf of Defendant, Christopher Beavor.

7 MR. HUGHES: Michael Hughes on behalf of Yacov Hefetz with the law firm
8 of Cohen and Johnson

9 THE COURT: Good morning. Defendant's Motion to Dismiss, 40.435. Do
10 you have anything to add to this?

11 MR. SCHWARZ: Your Honor, I think we – I think we briefed it fairly well. I
12 think we're all in agreement that you can't waive the one-form-of-action rule when
13 you have a principal residence securing the underlying indebtedness. And we all
14 agree that there is a home that secured the underlying indebtedness here. And it is
15 the principal residence of Mr. Beavor.

16 NRS 40.435 provides two options. You can either dismiss the action or you
17 can stay it so they can convert it to an action that doesn't violate the
18 one-form-of-action rule. But the problem we have here is that that second option
19 isn't really viable. There's not going to be a form of action that doesn't violate the
20 one-action rule. They can't foreclose. It would be a wrongful foreclosure. But as a
21 practical matter, I don't know why they'd want to foreclose because they're in third
22 place behind two other loans that are significantly more than the value of the
23 property.

24 So what we're left with is a situation where we have plaintiff just wanting
25 to hold this third-place deed of trust over the head of my client for as long as

1 possible. But we're now at a point where he can't do this anymore and it's time for
2 them to make the decision they should have made a long time ago which is to
3 release the security but as set forth in their opposition, they don't really want to do
4 that. So that really gives Your Honor not much of a choice but to dismiss unless
5 they want to agree to release the security. So that's where we are.

6 THE COURT: Plaintiffs. Do you have anything to add?

7 MR. HUGHES: We've extensively – extensively briefed the matter, Your
8 Honor. In terms of the security interest as defense counsel analogues [sic], it's
9 completely under water. It's technically just a lien, as a matter of law, but certainly
10 it's not securing anything of value whatsoever.

11 Secondly, you know, you need to plead your affirmative defenses in a
12 timely fashion and unfortunately it hasn't been pled yet and it's after the close of
13 Discovery.

14 And third, we believe that you could grant a continuance to amend the
15 complaint if you deem it appropriate to convert the action. Because, you know, we
16 obviously have a concern about the statute of limitations. This original breach
17 happened over six years ago and that statute of limitation has expired. So if you
18 dismiss it right now, we're in serious problems.

19 We would like the opportunity to consider whether to release the
20 collateral. I have to talk to Mr. Hefetz about it and we're waiting your ruling on this
21 motion before doing that. And that's all I have to say in addition to what I've said in
22 the brief on the Motion to Dismiss.

23 THE COURT: Counsel, approach.

24 [Bench conference begins]

25 THE COURT: I know that really neither of you were involved in this, but this

1 A) should have settled especially after the trial. But – or maybe A) should have
2 been and should have settled a long, long time ago. And this is recorded so I'll say
3 that, to my mind, the argument made that there may have been less than adequate
4 representation on both sides is going to be out there, I guess. And that's for some
5 other court some other time. But this was, as I said, at the last, I think, hearing
6 before –

7 MR. SCHWARZ: Yeah.

8 MR. HUGHES: The last term.

9 THE COURT: -- why there was a settlement agreement and, as I said, the
10 Defendants never brought that up. Signed by one side after being sent or drafted by
11 the plaintiff, plaintiff's –

12 MR. HUGHES: Plaintiffs --

13 THE COURT: -- plaintiff's counsel?

14 MR. HUGHES: [indiscernible] predecessor in interest.

15 THE COURT: There's just so many potential malpractice issues in this, but
16 anyway. I wanted to put that on the record. So anyway. All right. I'll give you my
17 decision.

18 MR. SCHWARZ: It's not lost on Your Honor. Thank you.

19 THE COURT: Both sides, hey it's – there was so much. I'll tell you
20 afterwards. No, no, no. I mean – I mean at some other late or date, we'll – if you
21 want to, I'll give you my take on all of that.

22 MR. SCHWARZ: The problem, the problem we have, quite frankly, Your
23 Honor, is there's an end of 2014 Nevada Supreme Court case that talked about
24 litigation malpractice. It talks about the fact that the claims aren't even right. Until
25 there's been a complete litigation of the issues.

1 THE COURT: I understand that.

2 MR. SCHWARZ: So, you know –

3 THE COURT: I understand. I think it's time to --

4 MR. SCHWARZ: -- we're a long time away from having the right malpractice
5 claim.

6 THE COURT: Yeah. Okay. Thank you.

7 [Bench conference ends]

8 THE COURT: Okay. So this case has had a tortured past. However, now
9 after five years that the Defendant's motion is appropriate, it should have been
10 brought, as I said, I think four years ago. But there was problems. In any event, I
11 don't – I think it's, it meets the requirements and therefore I'm granting Defendant's
12 Motion to Dismiss pursuant to 40.435. It's without prejudice but I don't see, at this
13 time, especially given that so much time has gone by that the plaintiff isn't even, I
14 guess, whatever, ready to, or hasn't agreed upon the course of action regarding
15 amending the complaint, et cetera. And I'm talking the plaintiff's themselves, not
16 plaintiff's counsel. Not plaintiff's current counsel. In any event, the one-action rule
17 applies and this is exactly what it's regarding so I'm granting the motion.

18 Defendants to prepare the order and pass it by the plaintiffs.

19 THE CLERK: Okay. What about the Motion to Reopen Dispositive Motion is
20 off? Is moot?

21 THE COURT: It's moot.

22 MR. SCHWARZ: Yeah, I think that that – that's now moot.

23 THE COURT: It's moot.

24 THE CLERK: And then the trial dates are?

25 THE COURT: Vacated. This – that closes the case –

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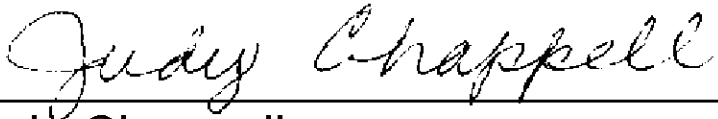
THE CLERK: Case closed.

THE COURT: -- so they will – they'll have their right to appeal. Okay. Thank you.

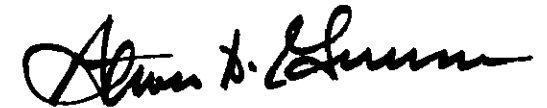
MR. SCHWARZ: Thank you, Your Honor.

[Proceeding concluded at 9:05 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual recording in the above-entitled case.



Judy Chappell
Court Recorder



CLERK OF THE COURT

1 NEOJ
2 DICKINSON WRIGHT PLLC
3 JOEL Z. SCHWARZ
4 Nevada Bar No. 9181
5 Email: jschwarz@dickinsonwright.com
6 GABRIEL A. BLUMBERG
7 Nevada Bar No. 12332
8 Email: gblumberg@dickinsonwright.com
9 8383 West Sunset Road, Suite 200
10 Las Vegas, Nevada 89113
11 Tel: (702) 382-4002
12 Fax: (702) 382-1661
13 *Attorneys for Christopher Beavor*

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 YACOV JACK HEFETZ,

11 Plaintiff,

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

12 vs.

13 CHRISTOPHER BEAVOR,

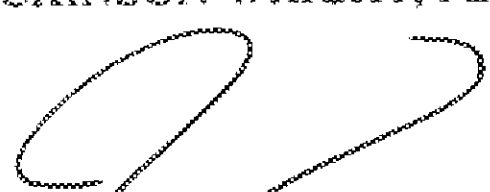
14 Defendant.
15

16 NOTICE OF ENTRY OF ORDER

17 PLEASE TAKE NOTICE that an Order: (1) Granting Defendant's Motion to Dismiss
18 Pursuant to NRS 40.435; and (2) Vacating as Moot Defendant's Motion for Leave to Reopen
19 Dispositive Motion Deadline was entered by the Court on June 17, 2015. A copy of the order is
20 attached hereto.

21 DATED this 18th day of June 2015.


22 DICKINSON WRIGHT, PLLC

23
24 
25 JOEL Z. SCHWARZ, Nevada Bar No. 9181
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Attorneys for Christopher Beavor

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COHEN-JOHNSON, LLC
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Attorneys for Yacov Hefetz

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CLERK OF THE COURT

ORD
DICKINSON WRIGHT PLLC
JOEL Z. SCHWARZ
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Email: jschwarz@dickinsonwright.com
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Tel: (702) 382-4002
Fax: (702) 382-1661
Attorneys for Christopher Beavor

DISTRICT COURT
CLARK COUNTY, NEVADA

YACOV JACK HEFETZ,

Plaintiff,

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

vs.

CHRISTOPHER BEAVOR,

Defendant.

ORDER: (1) GRANTING DEFENDANT'S MOTION TO DISMISS PURSUANT TO NRS
40.435; AND (2) VACATING AS MOOT DEFENDANT'S MOTION FOR
LEAVE TO REOPEN DISPOSITIVE MOTION DEADLINE

The Court, having reviewed and considered Defendant's Motion to Dismiss Pursuant to
NRS 40.435 (the "Motion to Dismiss") and Defendant Christopher Beavor's Motion for Leave to
Reopen Dispositive Motion Deadline (the "Motion to Reopen") filed by Defendant Christopher
Beavor ("Defendant"), the Opposition to the Motion to Dismiss and the Opposition to the
Motion to Reopen filed by Plaintiff Yacov Hefetz ("Plaintiff"), and Defendant's Reply in
support of the Motion to Dismiss and Reply in support of the Motion to Reopen; having heard
hearing argument from counsel for Plaintiff and Defendant at the June 9, 2015 hearing on the
foregoing filings, and good cause appearing therefore, the Court HEREBY FINDS AND
CONCLUDES:

(1) The Motion to Dismiss is appropriate and timely pursuant to Nevada Revised
Statutes ("NRS") 40.435;

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Defendant	<input type="checkbox"/> Judgment of Arbitration

1 (2) Proceeding solely with a claim for breach of guaranty against Defendant violates
2 Nevada's one-action rule;

3 (3) Pursuant to NRS 40.495(5)(d), there can be no waiver of the one action rule by
4 Defendant where his principal residence secures the underlying indebtedness upon which
5 Plaintiff seeks to recover pursuant to his claim for breach of guaranty;

6 (4) Plaintiff has not released or re-conveyed his purported security interest in
7 Plaintiff's principal residence, thereby warranting dismissal of Plaintiff's claim for breach of
8 guaranty pursuant to NRS 40.435.

9 Accordingly, the Court HEREBY ORDERS that based upon the foregoing, and for the
10 reasons stated on the record at the June 9, 2015 hearing, Defendant's Motion to Dismiss is
11 GRANTED and Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE. The current
12 trial date and all other dates scheduled in this matter are vacated. In addition, Defendant's
13 Motion to Reopen is DENIED AS MOOT.

14 IT IS SO ORDERED this 17 day of June 2015

15 
16 DISTRICT COURT JUDGE

17 Prepared by:

18 DICKINSON WRIGHT, PLLC

19 
20
21 JOEL Z. SCHWARZ

22 Nevada Bar No. 9181

23 Email: jschwarz@dickinsonwright.com

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Attorneys for Christopher Beavor

1 Approved as to form and content:

2 COHEN-JOHNSON, LLC

3 

4 H. STAN JOHNSON, ESQ.

5 Nevada Bar No. 00265

6 Email: sjohnson@cohenjohnson.com

7 MICHAEL V. HUGHES, ESQ.

8 Nevada Bar No. 13154

9 Email: mhughes@cohenjohnson.com

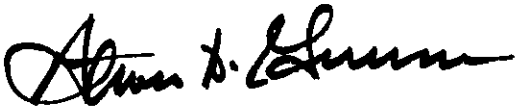
10 255 East Warm Springs Road, Suite 100

11 Las Vegas, NV 89119

12 *Attorneys for Yacov Hefetz*

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LVEGAS 98968-2830 22872v2


CLERK OF THE COURT

MOT
COHEN-JOHNSON, LLC
H. STAN JOHNSON, ESQ.
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Telephone No. (702) 823-3500
Facsimile No. (702) 823-3400
Attorneys for Jack Hefetz

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

YACOV JACK HEFETZ,

Plaintiff,

vs.

CHRISTOPHER BEAVOR,

Defendant.

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

**PLAINTIFF'S MOTION TO RE-OPEN THE CASE AND FOR RECONSIDERATION
OF AN ORDER OF DISMISSAL WITHOUT PREJUDICE**

COMES NOW, Plaintiff, Yacov Jack Hefetz (hereinafter referred to as "Hefetz"), by and through his counsel of record, H. Stan Johnson, Esq. and Michael V. Hughes, Esq. of the law firm of Cohen-Johnson, LLC, and hereby moves this Court to reopen the above-captioned case in order to permit Hefetz to present a motion for reconsideration.

...

...

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...

...

1 This Motion is based upon the following Memorandum of Points and Authorities, the
2 pleadings and papers on file in the above-captioned proceedings, and any evidence and oral
3 argument that may be entertained at a hearing on this Motion.

4 Dated this 19th day of June, 2015.

5 COHEN-JOHNSON, LLC

6 By: Michael Hughes
7 H. Stan Johnson, Esq.
8 Nevada Bar No. 00265
9 Michael V. Hughes, Esq.
10 Nevada Bar No. 13154
11 Suite 100
12 255 East Warm Springs Road
13 Las Vegas, Nevada 89119
14 Telephone: (702) 823-3500
15 Facsimile: (702) 823-3400
16 *Attorneys for Jack Hefetz*

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES and THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that counsel for the Plaintiff, Yacov Jack Hefetz, will bring
PLAINTIFF'S MOTION TO RE-OPEN THE CASE AND FOR RECONSIDERATION OF AN
ORDER OF DISMISSAL WITHOUT PREJUDICE for hearing before the above entitled Court
on the 21 day of JULY, 2015, at the hour of 9:00A a.m./p.m., or as
soon thereafter as counsel may be heard.

Dated this 19th day of June, 2015.

COHEN-JOHNSON, LLC

By: Michael Hughes
H. Stan Johnson, Esq.
Nevada Bar No. 00265
Michael V. Hughes, Esq.
Nevada Bar No. 13154
Suite 100
255 East Warm Springs Road
Las Vegas, Nevada 89119
Telephone: (702) 823-3500
Facsimile: (702) 823-3400
Attorneys for Jack Hefetz

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

On May 7, 2015 Christopher Beavor ("Beavor") filed Defendant's Motion to Dismiss Pursuant To NRS 40.435 ("Beavor's Motion") in order to dismiss the above-captioned action on the basis of the NRS 40.435 (hereinafter referred to as the "One Action Rule"). On May 19, 2015 Hefetz opposed Beavor's motion on the five grounds. One of those grounds was for the Court to grant Hefetz a continuance in order that he may convert the above-captioned case into one which was in compliance with the One Action Rule.

On June 9, 2015, there was a hearing on Beavor's Motion. At the conclusion of the hearing, the Court granted Beavor's Motion and dismissed the above-captioned case without prejudice. In granting the dismissal without prejudice, the Court did not articulate the legal standard used to grant the remedy of a dismissal without prejudice over the remedy of a continuance with a right to convert the above-captioned case into one in compliance with the One Action Rule. It also did not explain how it applied the facts present in the above-captioned case to the pertinent legal standard.

On June 10, 2015 the Court closed the case and filed a Civil Order To Statistically Close the Case. Hefetz is now compelled to file this motion.

II. LEGAL ARGUMENT

A. THE COURT MUST SET FORTH ITS LEGAL STANDARD WHEN MAKING A DECISION TO DISMISS OTHERWISE IT HAS ABUSED ITS DISCRETION

NRS 40.435 governs the facts set forth in the above-captioned case. That statute provides in pertinent part as follows:

1. The commencement of or participation in a judicial proceeding in violation of NRS 40.430 does not forfeit any of the rights of a secured creditor in any real or personal collateral, or impair the ability of the creditor to realize upon any real or personal collateral, if the judicial proceeding is:

- (a) Stayed or dismissed before entry of a final judgment; *or*

(b) Converted into an action which does not violate NRS 40.430.

2. If the provisions of NRS § 40.430 are timely interposed as an affirmative defense in such a judicial proceeding, upon the motion of any party to the proceeding the court shall:

(a) Dismiss the proceeding without prejudice; *or*

(b) Grant a continuance and order the amendment of the pleadings to convert the proceeding into an action which does not violate NRS § 40.430.

NRS 40.435 (emphasis added).

Notwithstanding its applicability, NRS 40.435 is silent about the standard to be used by the Court in evaluating between the remedy of dismissal without prejudice and the remedy of a continuance with the order to amend pleadings to convert a case into one in compliance with the One Action Rule. Additionally, Hefetz has not located any Nevada Supreme Court decision that articulates the standard to be applied in evaluating between the two aforementioned remedies. As a consequence, Nevada district courts are provided with very little guidance about the relevant standard. Nonetheless, district courts must articulate on the record the standard applied by them in dismissing a case. Otherwise, they are abusing their discretion.

Here the Court did not articulate a legal standard when it elected the remedy to dismiss without prejudice the above-captioned case over the remedy to grant a continuance in order to convert that case. That failure is an abuse of discretion. Accordingly, Hefetz requests that the Court articulate the legal standard applied by it when electing the remedy of dismissal without prejudice the above-captioned case over the remedy of a continuance with an order to amend pleadings.

B. THE COURT MUST APPLY THE FACTS OF THE CASE TO THE RELEVANT LEGAL STANDARD WHEN MAKING A DECISION TO DISMISS OTHERWISE IT HAS ABUSED ITS DISCRETION

The Court must apply the facts of the case to the relevant legal standard when making a decision to dismiss otherwise it has abused its discretion. Here, the Court only found that the One Action Rule applied to the facts present in the above-captioned case. It did not make any findings to justify its selection of the remedy of dismissal without prejudice over the remedy of conversion of the above-captioned case. Accordingly, it has abused its discretion. *See Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 528, 96 P.3d 756, 760 (2004) (“A decision that lacks support in the form of substantial evidence is arbitrary or capricious and, therefore, an abuse of discretion.”)

C. THE CASE SHOULD BE CONVERTED AND NOT DISMISSED WITHOUT PREJUDICE IN LIGHT OF HEFETZ’S GOOD FAITH IN PURSUING THE CLAIMS, THE COURT’S INTERESTS OF JUDICIAL ECONOMY, AND THE ABSENCE OF UNFAIR PREJUDICE TO BEAVOR

Though no legal standard appears to have ever been articulated by Nevada statutes or the Nevada courts, Hefetz respectfully submits that at least the following two factors, among others, should be explicitly considered when choosing between the remedy of dismissal without prejudice and the remedy of continuance with the order to convert: (1) the good faith of the plaintiff; (2) the interests of judicial economy; and (3) the absence of unfair prejudice to the defendant. As will be discussed below, the application of the aforementioned factors here suggests that the Court should elect the remedy of a continuance with an order to convert the above-captioned action over the remedy of a dismissal without prejudice of the above-captioned action.

1 Hefetz has acted in good faith. He has not pursued the claim at issue here
2 with a fraudulent intent. He has not pursued the claim at issue here with a desire
3 to harass Beavor. He has not pursued an improper purpose in connection with his
4 claim. He has instead consistently pursued the above-captioned action for nearly
5 four years in an effort to obtain judicial relief on a personal guaranty claim in
6 excess of four million dollars. Accordingly, the case should not be dismissed
7 without prejudice, but should be converted into one that is compliant with the One
8 Action Rule.

9 Judicial economy will also be advanced by the conversion of the case.
10 Only one district court judge has presided over the above-captioned case for the
11 past four years. That judge has already conducted one trial in the above-captioned
12 case and has ruled on numerous motions, including one motion for summary
13 judgment. That judge has considerable knowledge about the facts in the above-
14 captioned case. In short, that judge's continued presence in a converted case will
15 advance the interests of judicial economy. Accordingly, the interest in judicial
16 economy favors the remedy of conversion of the above-captioned case into one in
17 compliance with the One Action Rule over the remedy of dismissal without
18 prejudice of the above-captioned case since it assures that the same judge shall
19 preside over the case.

20 Finally, there is no unfair prejudice to Beavor if the above-captioned case
21 is converted into one in compliance with the One Action Rule. In particular,
22 Beavor has raised the affirmative defense of the One Action Rule and, therefore,
23 he can legitimately expect to have a foreclosure proceedings pursued against his
24 homestead.

1 **III. CONCLUSION**

2 Based upon the foregoing, Hefetz respectfully requests that this Court grant this motion
3 in its entirety.

4 Dated this 19th day of June, 2015.

5 **COHEN-JOHNSON, LLC**

6 By: Michael Hughes
7 H. Stan Johnson, Esq.
8 Nevada Bar No. 00265
9 Michael V. Hughes, Esq.
10 Nevada Bar No. 13154
11 Suite 100
12 255 East Warm Springs Road
13 Las Vegas, Nevada 89119
14 Telephone: (702) 823-3500
15 Facsimile: (702) 823-3400
16 Attorneys for Jack Hefetz

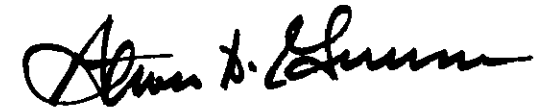
COHEN-JOHNSON, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

CERTIFICATE OF SERVICE

The undersigned certifies that, on the 19th day of June, 2015, a true and correct copy of the foregoing **PLAINTIFF'S MOTION TO RE-OPEN THE CASE AND FOR RECONSIDERATION OF AN ORDER OF DISMISSAL WITHOUT PREJUDICE** was served upon the following person pursuant to NRCP 5(b)(2)(D) and EDCR 8.05 via the Odyssey E-Filing system and via U.S. First-Class Postage-Prepaid Mail:

Joel Z. Schwarz, Esq.
Dickinson Wright PLLC
Suite 200
8383 West Sunset road
Las Vegas, Nevada 89113
jschwarz@dickinsonwright.com
Attorney for Christopher Beaver


An Employee of Cohen-Johnson, LLC



CLERK OF THE COURT

DICKINSON WRIGHT PLLC
JOEL Z. SCHWARZ
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Attorneys for Christopher Beavor

DISTRICT COURT
CLARK COUNTY, NEVADA

YACOV JACK HEFETZ,

Plaintiff,

vs.

CHRISTOPHER BEAVOR,

Defendant.

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

MEMORANDUM OF COSTS AND
DISBURSEMENTS

Category of Charge	Nature of Charge	Amount	Authority for Award
Taxable Costs	Filing fees ¹	\$10.50	NRS 18.005(1)
Taxable Costs	Photocopies ²	\$61.50	NRS 18.005(12)
Taxable Costs	Messenger Service ³	\$40.00	NRS 18.005(17)
Taxable Costs	Postage ⁴	\$0.48	NRS 18.005(14)
Taxable Costs	Parking ⁵	\$28.00	NRS 18.005(17)
Taxable Costs	Computerized Legal Research ⁶	\$198.00	NRS 18.005(17)
TOTAL COSTS		\$338.48	

¹ See Transactions Fees & Costs at Component: COST, a true and correct copy of which is attached hereto as Exhibit 1.

² See Exhibit 1 at Component: SC and Component: PC.

³ See Exhibit 1 at Component: MS.

⁴ See Exhibit 1 at Component: PS.

⁵ See Exhibit 1 at Component: COST; *see also* parking receipt from hearing on June 9, 2015, a true and correct copy of which is attached hereto as Exhibit 2.

⁶ See Computerized Legal Research Cost Bill, a true and correct copy of which is attached hereto as Exhibit 3.

1 STATE OF NEVADA)
2) ss:
3 COUNTY OF CLARK)

4 Joel Z. Schwarz, Esq., being duly sworn, states: that affiant is the attorney for the
5 Defendant and has personal knowledge of the above costs and disbursements expended; that the
6 items contained in the above memorandum are true and correct to the best of this affiant's
7 knowledge and belief; and that the said disbursements have been necessarily incurred and paid in
8 this action.

9 AFFIANT FURTHER SAYETH NAUGHT.

10
11 
12 _____
13 JOEL Z. SCHWARZ
14 Nevada Bar No. 9181
15
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DICKINSON WRIGHT LLC

8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113-2210

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CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 25th day of June 2015, she caused a copy of the foregoing *MEMORANDUM OF COSTS AND DISBURSEMENTS*, to be served by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve system, and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

H. Stan Johnson, Esq.
Email: sjohnson@cohenjohnson.com
Michael V. Hughes, Esq.
Email: mhughes@cohenjohnson.com
COHEN-JOHNSON, LLC
255 East Warm Springs Road, Suite 100
Las Vegas, NV 89119
Attorneys for Yacov Hefetz

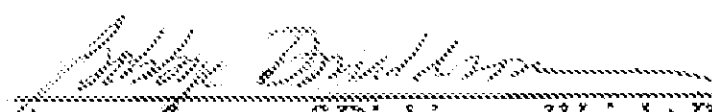

An employee of Dickinson Wright PLLC

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

Transactions Fees & Costs

matter id = '101236-003' and date between 04/03/15 and 06/05/15

Date	Initials	Matter ID	Units	Price	Ext Amt	Narrative
------	----------	-----------	-------	-------	---------	-----------

Matter ID: 101236-003

Component: COST

4/6/2015		101236-003	1.00	3.50	3.50	Wiznet charges to file Notice of Disassociation of Counsel
5/6/2015		101236-003	1.00	20.00	20.00	Parking 5/14/15
5/7/2015		101236-003	1.00	3.50	3.50	Wiznet charges to file defendant's motion to dismiss pursuant to NRS 40.435
5/8/2015		101236-003	1.00	3.50	3.50	Wiznet charges to file defendant Christopher Beavors' motion to reopen dispositive motion deadline

Component: COST			<u>4.00</u>		<u>30.50</u>	
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Component: F

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

6/10/2015 8:18:21 AM

APP001053

matter id = '101236-003' and date between 04/03/15 and 06/05/15

Component: MS

Component: MS	4.00	40.00
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Component: PC	3.00	0.75
---------------	------	------

Component: PS	1.00	0.48
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Transactions Fees & Costs

matter id = '101236-003' and date between 04/03/15 and 06/05/15

Date	Initials	Matter ID	Units	Price	Ext Amt	Narrative
Component: SC						
5/8/2015		101236-003	59.00	0.25	14.75	Scanning/Photocopy Charges
5/11/2015		101236-003	124.00	0.25	31.00	Scanning/Photocopy Charges
5/26/2015		101236-003	59.00	0.25	14.75	Scanning/Photocopy Charges
6/3/2015		101236-003	1.00	0.25	0.25	Scanning/Photocopy Charges
Component: SC			<u>243.00</u>		<u>60.75</u>	
Matter ID: 101236-003			<u>312.30</u>		<u>18,295.98</u>	
Grand Total			312.30		18,295.98	

6/10/2015 8:18:21 AM

APP001055

EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

LEWIS DONALD CASARE
321 DASHMONT LANE NW
LAS VEGAS, NV

10/14 1174
 01/09/15 09:08 174 00 1 1-00 1030
 01/09/15 09:08 10 01/09/15 09:08 00
 1000 54127
 USA \$ 0.00-
 XXXXXXXXXXXXXXX-4
 account No. 174
 Reference No. 00000015
 PLEASE CALL FOR NEARLY 1000
 BULKY PACKING
 (002) 30-7007

UNCLASSIFIED

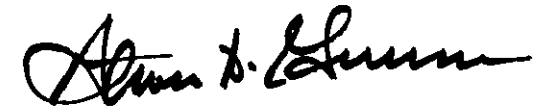
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EXHIBIT 3

EXHIBIT 3

EXHIBIT 3

Cost Code	Date	Initials	Name	Quantity	Rate	Amount	Description	Cost Index	Image
93	6/18/2015	0999	COST	1.00	198.00	198.00	COMPUTERIZED LGL RESEARCH SLUMBERG GABRIEL A	3351187	
			GRAND TOTAL	1.00		198.00			



CLERK OF THE COURT

1 **OPPS**
2 **DICKINSON WRIGHT PLLC**
3 **JOEL Z. SCHWARZ**
4 Nevada Bar No. 9181
5 Email: jschwarz@dickinsonwright.com
6 **GABRIEL A. BLUMBERG**
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11 Tel: (702) 382-4002
12 Fax: (702) 382-1661
13 *Attorneys for Christopher Beavor*

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

11 **YACOV JACK HEFETZ,**

12 Plaintiff,

13 vs.

14 **CHRISTOPHER BEAVOR,**

15 Defendant.

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

**DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION TO RE-OPEN
THE CASE AND FOR
RECONSIDERATION OF AN ORDER OF
DISMISSAL WITHOUT PREJUDICE**

Date of Hearing: July 22, 2015
Time of Hearing: In Chambers

17
18 Defendant Christopher Beavor ("Defendant"), by and through his counsel, the law firm of
19 Dickinson Wright, PLLC, hereby files his Opposition ("Opposition") to Plaintiff's Motion to Re-
20 Open the Case and for Reconsideration of an Order of Dismissal Without Prejudice (the
21 "Motion").

22 This Opposition is made and based on the following Memorandum of Points and
23 Authorities and the papers and pleadings on file herein.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I.**

26 **Introduction**

27 Hefetz, a plaintiff who violated the One Action Rule and the legislative policy behind it,
28 cannot come before this Court and ask to be rewarded for his disregard of the Nevada Revised

1 Statutes. In his Motion, Hefetz argues that this Court should reverse its prior decision dismissing
2 his breach of guaranty claim without prejudice because the Court somehow abused its discretion
3 by “failing to articulate the standard to be applied” when selecting one of the two alternative
4 remedies expressly provided in NRS 40.435 to rectify Hefetz’s undisputed statutory violation.
5 Hefetz, however, fails to provide a shred of authority in support of his untenable position that
6 this Court abused its discretion by implementing a statutorily-authorized remedy. Instead, he
7 readily admits that there is, in fact, no governing standard for the Court to have applied in in
8 making its decision. **In short, Hefetz comes to the mistaken conclusion that this Court**
9 **should overturn its prior decision because it should have applied a standard Hefetz has**
10 **created from wholecloth and presented for the first time in his Motion.** This is not how the
11 civil legal system operates. Rather, a sound decision applying a statutory remedy to undisputed
12 facts which fall squarely within Nevada’s statutory protections of guarantors (protections which
13 Hefetz concedes apply to this action) should never be reconsidered. As such, this Court’s order
14 dismissing Hefetz’s breach of guaranty claims without prejudice should not be reconsidered and
15 the Motion must be denied.

16 II.

17 LEGAL ARGUMENT

18 **A. Legal Standard Governing Reconsideration**

19 Eighth Judicial Court Rule (“EDCR”) 2.24 provides that the Court may reconsider a
20 matter upon motion by a party filed and served within ten days of the entry of order. EDCR
21 2.24. A rehearing is not appropriate unless “substantially different evidence is subsequently
22 introduced or the decision was clearly erroneous.” *Masonry & Tile Contractors Ass’n of S. Nev.*
23 *v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 742, 941 P.2d 486, 489 (1997). Granting a motion
24 for reconsideration is only suitable “in very rare instances in which new issues of fact or law are
25 raised supporting a ruling contrary to the ruling already reached.” *Moore v. City of Las Vegas*, 92
26 Nev. 402, 405, 551 P.2d 246 (1976). Finally, points or contentions not raised in the original
27 hearing cannot be maintained or considered on rehearing.” *Achrem v. Expressway Plaza Ltd.*
28 *P’ship*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996).

1 **B. Hefetz Fails to Identify Any Valid Basis for Reconsideration**

2 Hefetz spends more time making up a hypothetical standard for the application of NRS
3 40.435 than he does applying the relevant reconsideration standard. In fact, Hefetz fails to even
4 mention the required standard for a motion for reconsideration, which he is nowhere close to
5 satisfying.

6 **1. Hefetz Does Not Introduce Substantially Different Evidence**

7 Hefetz does not identify any evidence, let alone substantial evidence, that this Court
8 overlooked in its initial decision. In fact, Hefetz effectively stipulated to all the relevant facts.
9 He agreed that Beavor satisfied all the requisite criteria for protection under NRS 40.430 and
10 exemption from waiver under NRS 40.495(5)(d), and reaffirms this position in his Motion, thus
11 admitting that the One Action Rule applied to the facts. (*See* Motion at 6:6-7). Therefore,
12 Hefetz cannot argue that the Order should be reconsidered on the grounds that there is
13 substantially different evidence.

14 **2. The Court's Decision Was Not Clearly Erroneous**

15 The Court elected to implement a statutory remedy and therefore its decision was not
16 clearly erroneous. After properly identifying that the One Action Rule applied to this matter, the
17 Court imposed the statutory remedy of dismissal without prejudice. NRS 40.435(2)(a)
18 (providing that a court may dismiss an action without prejudice if it violates the One Action
19 Rule). As Hefetz recognizes, there is no legal standard for the Court to implement in electing
20 between the two statutorily-authorized remedies provided in NRS 40.435(2). (*See* Motion at 5:9-
21 16). Yet, despite this acknowledgment, Hefetz somehow claims that this Court abused its
22 discretion by selecting dismissal without prejudice rather than granting Hefetz a continuance.
23 Unsurprisingly, Hefetz provides no authority for this flawed proposition. By failing to do so,
24 Hefetz necessarily falls short of his high burden for reconsideration. Quite simply, Hefetz has
25 not argued nor demonstrated that the Court's decision was clearly erroneous. As such, he cannot
26 be entitled to reconsideration of the order dismissing his claim without prejudice.

27 ...

28 ...

1 **C. Even Under the Irrelevant Abuse of Discretion Standard, the Court Still has No**
2 **Grounds for Reconsideration Because it Did Not Abuse its Discretion**

3 The Court did not abuse its discretion by applying a remedy in accordance with the
4 statutory scheme enacted by the Nevada Legislature. In support of his argument to the contrary,
5 Hefetz cites to a single case: *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523,
6 528, 96 P.3d 756, 760 (2004). In *Stratosphere*, the Supreme Court noted that a district court
7 abuses its discretion when it makes a decision that lacks support by substantial evidence. *Id.*
8 Substantial evidence, however, is “that which ‘a reasonable mind might accept as adequate to
9 support a conclusion.’” *Id.* (quoting *State, Emp. Security v. Hilton Hotels*, 102 Nev. 606, 608,
10 729 P.2d 497, 498 (1986)).

11 Here, it is undeniable that the Court based its ruling on substantial evidence. Pursuant to
12 Nevada's One Action Rule, a creditor is required to foreclose on real property collateral before
13 bringing an action to enforce a promissory note or guaranty agreement. See Nev. Rev. Stat. §
14 40.430(1) (“[T]here may be but one action for the recovery of any debt, or for the enforcement of
15 any right secured by a mortgage or other lien upon real estate.”); see also *McDonald v. P.P.*
16 *Alexander*, 121 Nev. 812, 816, 123 P.3d 748, 750 (2005) (“The one-action rule also applies to a
17 guarantor or surety of a debt on a mortgage or other contract secured by an interest in real
18 property.”) (citing *First Interstate Bank v. Shields*, 102 Nev. 616, 618–20, 730 P.2d 429, 430–32
19 (1986)).

20 Although the One Action Rule may generally be waived by guarantors, NRS 40.495(5)
21 enumerates specific circumstances in which it cannot be waived as a matter of law:

22 5. The provisions of NRS 40.430 may not be waived by a guarantor, surety or other
23 obligor if the mortgage or lien:

24 ...
25 **(d) Is secured by real property upon which:**

26 **(1) The owner maintains the owner's principal residence;**

27 **(2) There is not more than one residential structure; and**

28 **(3) Not more than four families reside.**

 NRS 40.495(5)(d) (emphasis added).

 Here, Hefetz concedes that Beavor qualifies for exemption under NRS 40.495 and even
 agrees that the Court “found that the One Action Rule applied to the facts present in the above-

1 captioned case.” (Motion at 6:6-7). The Legislature very clearly delineated the parameters of
2 the One Action Rule and when it could not be waived. Here, based on the undisputed evidence,
3 the Court found that the facts in this case fit squarely within constraints of the One Action Rule.
4 See Order at ¶¶ 2-4. This finding, and the Court’s ruling based upon this accurate finding
5 supported by substantial evidence, is not an abuse of discretion.

6 **D. The Motion is Rendered Moot Regardless Because Hefetz Cannot Legally Foreclose**
7 **on the Property**

8 Even assuming *arguendo* Hefetz has presented a colorable argument in his Motion, the
9 Motion still is rendered moot given that Hefetz cannot legally foreclose on the subject property.
10 As such, the Court did not abuse its discretion, commit clear error, mis-apply the statute, or make
11 any mistake in deciding to dismiss Hefetz’s breach of guaranty claim without prejudice, rather
12 than staying the action to allow Hefetz to convert his case into an action that did not violate the
13 One Action Rule when **such a conversion was not possible**.

14 **1. The Transactions are Voidable Pursuant to NRS 645E.920**

15 Nevada has very stringent rules regarding the practice of mortgage banking. A mortgage
16 banker is any person who holds himself out as being able to make loans secured by liens on real
17 property using his own money. NRS 645E.100(1)(a). “It is unlawful for any person to offer or
18 provide any of the services of a mortgage banker . . . without first obtaining a license as a
19 mortgage banker pursuant to this chapter.” NRS 645E.900. If a person violates NRS 645E.900,
20 “any contracts entered into by that person for the mortgage transaction are voidable by the other
21 party to the contract.” NRS 645E.920.

22 Here, Hefetz’s predecessor-in-interest Herb Frey (“Frey”) performed acts which rendered
23 him a mortgage banker. In March 2007, he made a loan to Toluca Vintage using his own money
24 which was secured by a lien on real property. This Loan was secured by, *inter alia*, a deed of
25 trust encumbering the Toluca Lake Property and deeds of trust encumbering certain residential
26 real property owned by Beavor. In addition, Beavor entered into a contract with Frey in the form
27 of a guaranty.¹ The guaranty was executed in conjunction with the Loan and therefore was part

28 ¹ It is this very contract which underlies Hefetz’s sole cause of action in this matter.

1 of Frey's mortgage banker activity. It is undisputed that at the time Frey made the Loan, though,
2 he was not licensed as a mortgage banker. Thus, by making the Loan in 2007, Frey violated
3 NRS 645E.900 because he engaged in mortgage banking activities without the necessary license.

4 As successor-in-interest to Frey, Hefetz cannot claim an exemption from mortgage
5 banker licensing under the statutory guidelines. A party may be exempt from licensing if he
6 provides money for investment in loans secured by a lien on real property, on his own account.
7 NRS 645E.150. The party loses the ability to claim this exemption, however, if he assigns any
8 part of his interest in the loan to another person within 3 years of the loan origination. *Id.* Here,
9 Frey lost his exempt status when he entered into a participation agreement with Hefetz in
10 January 2008 (within one year of the loan origination in March 2007). The participation by
11 Hefetz in January 2008 is undisputed and was evidenced by Hefetz's own trial exhibits. *See*
12 Exhibit 2-A to Exhibit 3 to Defendant Christopher Beavor's Motion to Reopen Dispositive
13 Motion Deadline

14 Thus, Frey violated NRS 645E.900 by partaking in mortgage banking activities without a
15 license. Under NRS 645E.920, **all transactions** entered into by Frey, including Beavor's
16 guaranty, are voidable. The covered transactions also include the assignment of the guaranty
17 from Frey to Hefetz in July 2011. As the time of the assignment, Frey remained unlicensed to
18 engage in mortgage banking transactions and thus the transaction is voidable pursuant to NRS
19 645E.920. Beavor would void all the relevant transactions pursuant to this provision, including
20 his guaranty, and therefore Hefetz could not foreclose on the subject property.

21 **2. Hefetz Had No Standing to Bring a Claim Because the Claim was Already**
22 **Satisfied in the Toluca Vintage Bankruptcy**

23 A plaintiff can only have one recovery of damages for an injury. *Elyousef v. O'Reilly &*
24 *Ferrario, LLC*, 126 Nev. Adv. Op. 43, 245 P.3d 547, 549 (2010) (citing 25 C.J.S. Damages § 5
25 (2002)). "Thus, satisfaction of the plaintiff's damages for an injury bars further recovery for that
26 injury." *Id.*

27 Here, Frey allegedly was injured when he failed to receive repayment on his Loan to
28 Toluca Vintage which was guaranteed by Beavor. Toluca Vintage filed for voluntary chapter 11

1 bankruptcy in May 2009. In the bankruptcy, Frey was included as a Class 6 secured creditor and
2 ultimately his claim “was satisfied pursuant to the Confirmed Plan.” *See* Exhibit 2-D to Exhibit
3 3 to Defendant Christopher Beavor’s Motion to Reopen Dispositive Motion Deadline. Thus,
4 Frey’s claim for damages arising out of the Loan previously was satisfied in the Toluca Vintage
5 bankruptcy and he (or any of his successors or assigns such as Hefetz) can no longer pursue
6 further recovery. Thus, Hefetz is barred under the double recovery doctrine from pursuing the
7 instant claim against Beavor and is unable to legally foreclose on the subject property.

8 **E. Even Utilizing Hefetz’s Fabricated Standard, the Motion Should Still be Denied**

9 Lastly, even if this Court were to arbitrarily and capriciously accept Hefetz’s invented
10 standard, there still would be no grounds for reversing the dismissal order. Hefetz requests, with
11 absolutely no basis, that this Court analyze the following factors when deciding whether to
12 dismiss a case under NRS 40.435: (1) the good faith of the plaintiff; (2) the interest of judicial
13 economy; and (3) the absence of unfair prejudice to the defendant.²

14 **1. Hefetz Has Not Exhibited Good Faith**

15 First, Hefetz’s conduct belies any claim that he has acted in good faith. This case is
16 nearly four years old now and entails Hefetz pursuing Beavor for a guaranty he executed more
17 than eight years ago. These stale claims have already been tried to a jury, wherein Beavor
18 completed defended Hefetz’s meritless claim. Had it not been for a very fortunate series of
19 events due to prior counsel’s errors, Hefetz would not even be in a position to pursue the instant
20 claim. Furthermore, Hefetz clearly demonstrated his bad faith when he refused to foreclose on
21 the subject property at any point during the duration of this matter. This improper behavior was
22 then magnified during the proceedings on Beavor’s motion to dismiss, wherein Hefetz’s counsel
23 was told point blank that he could resolve this issue by releasing the security. Yet, despite
24 arguing that the subject property was extremely under water and that there were two substantial
25 creditors with priority interests, Hefetz refused to release the security. These actions reveal a
26

27 ² This also hypothetically assumes that the Court could consider this concocted standard for the first time on a
28 motion for reconsideration. *See Achrem v. Expressway Plaza Ltd. P’ship*, 112 Nev. 737, 742, 917 P.2d 447, 450
(1996) (noting that points or contentions not raised at the hearing are improper for reconsideration).

1 lack of good faith and mandate that this Court not reconsider its prior order.

2 **2. Judicial Economy is Best Served by Keeping a Meritless Case Closed**

3 Hefetz's claims regarding judicial economy are similarly misplaced. Hefetz argues that
4 by granting a continuance, rather than dismissing the matter, it will ensure this Court's continued
5 presence in this matter which will thereby conserve judicial resources.³ This hollow assertion
6 ignores the reality of the situation: judicial economy is always best served by dismissing claims
7 which have no chance of success.

8 Here, the Court has disposed of a four year-old matter that had been needlessly draining
9 its resources. This Court has already endured multiple pretrial motions and a full jury trial
10 wherein Hefetz recovered nothing. Following this result, the Court then was bogged down with
11 post-trial motions and now has been enlisted to hear the case all over again. The problem for
12 Hefetz, of course, is that the facts have not changed since he first filed his case in July 2011. As
13 such, the Court will needlessly endure continued motion practice and another jury trial in a
14 matter where, as explained above, Hefetz has practically no chance of prevailing. Therefore, the
15 Court has best conserved judicial resources by implementing a statutorily authorized remedy for
16 Hefetz's violation of the One Action Rule.

17 **3. Defendant Would be Unduly Prejudiced if this Matter were Reopened**

18 Lastly, Hefetz is incorrect in asserting that Beavor would suffer no prejudice from this
19 case being converted into compliance with the One Action Rule. Anything short of dismissal
20 would needlessly cause Beavor to incur even more legal fees. Beavor has already had to endure
21 the legal fees associated with four years of litigating this matter. It would be unduly prejudicial
22 to force Beavor to incur the legal fees necessary to prepare for and conduct a second trial. This
23 is especially true in this matter, where Hefetz has had more than four years to foreclose on the
24 subject property, but intentionally waited until the Court ultimately held him accountable for his
25 delay to give lip service to the One Action Rule. Hefetz's bad faith should not result in Beavor
26 having to incur additional legal fees. Any reconsideration of dismissal would do exactly that,

27 ³ This flawed argument also overlooks the fact that this Court could be reassigned to this case again if Hefetz
28 somehow were able to refile it.

1 and therefore would unduly prejudice Beavor.


2 III.

3 CONCLUSION

4 Based on the foregoing, Beavor respectfully requests that this Court deny the Motion in
5 its entirety.

6 DATED this 6th day of July, 2015.


7 DICKINSON WRIGHT PLLC

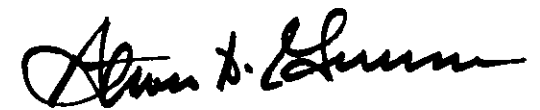
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9 _____
10 JOEL Z. SCHWARZ
11 Nevada Bar No. 9181
12 GABRIEL A. BLUMBERG
13 Nevada Bar No. 12332
14 8363 West Sunset Road, Suite 200
15 Las Vegas, Nevada 89113-2210
16 Tel: (702) 382-4002
17 *Attorneys for Christopher Beavor*

CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 7th day of July 2015, she caused a copy of **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO RE-OPEN THE CASE AND FOR RECONSIDERATION OF AN ORDER OF DISMISSAL WITHOUT PREJUDICE**, to be served by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey E-File & Serve** system, and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

H. Stan Johnson, Esq.
Email: sjohnson@cohenjohnson.com
Michael V. Hughes, Esq.
Email: mhughes@cohenjohnson.com
COHEN-JOHNSON, LLC
255 East Warm Springs Road, Suite 100
Las Vegas, NV 89119
Attorneys for Yacov Hefetz


Bobbye Donaldson, an employee of
Dickinson Wright PLLC



CLERK OF THE COURT

1 MDSM
GORDON SILVER
2 JOEL Z. SCHWARZ
Nevada Bar No. 9181
3 Email: jschwarz@gordonsilver.com
3960 Howard Hughes Pkwy., 9th Floor
4 Las Vegas, Nevada 89169
Tel: (702) 796-5555
5 Fax: (702) 369-2666
Attorneys for Christopher Beavor

DISTRICT COURT

CLARK COUNTY, NEVADA

8 YACOV JACK HEFETZ,

Plaintiff,

10 vs.

11 CHRISTOPHER BEAVOR,

Defendant.

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

**DEFENDANT'S MOTION TO DISMISS
PURSUANT TO NRS 40.435**

Date of Hearing:
Time of Hearing:

14 Pursuant to Nevada Revised Statutes ("NRS") 40.435, Defendant Christopher Beavor,
15 ("Beavor"), by and through his counsel of record, hereby moves the Court for an order
16 dismissing Plaintiff Yacov Hefetz's ("Plaintiff") claim for breach of guaranty -- the sole claim of
17 Plaintiff's Complaint -- because:

18 (1) Proceeding solely with a claim for breach of guaranty against Beavor violates
19 Nevada's one-action rule;

20 (2) Pursuant to NRS 40.495(5)(d), there can be no waiver of the one action rule by
21 Beavor where, as is the case here, his principal residence secures the underlying indebtedness
22 upon which Plaintiff improperly seeks to collect;

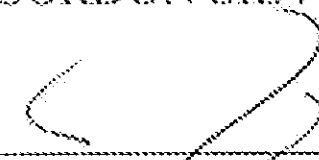
23 (3) A violation of the one-action rule is a defense that may be raised at any point
24 before entry of final judgment; and

25 (4) Pursuant to NRS 40.435, Plaintiff's violation of the one-action rule requires the
26 dismissal of Plaintiff's Complaint without prejudice.

1 This Motion is made and based on the following Memorandum of Points and Authorities,
2 the Declaration of Chris Beavor (the "Beavor Decl.") attached hereto as **Exhibit A**; the papers
3 and pleadings already on file herein, judicial notice of which is hereby requested; and any oral
4 argument the Court may permit at the hearing of this matter.

5 Dated this 24 day of May, 2015.

6 GORDON SILVER

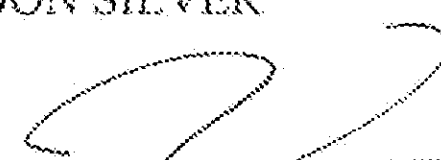
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8 
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14 Fax: (702) 369-2666
15 *Attorneys for Christopher Beavor*

16 **NOTICE OF MOTION**

17 YOU, AND EACH OF YOU, will please take notice that the undersigned will bring the
18 above and foregoing Motion on for hearing before this Court on the 09 ^{JUNE} day of May, 2015, at the
19 hour of 9:00A o'clock a.m., of said day, or as soon thereafter as counsel can be heard in
20 Department No. XXVIII.

21 Dated this 24 day of May, 2015.

22 GORDON SILVER

23 
24 JOEL Z. SCHWARZ
25 Nevada Bar No. 9181
26 3960 Howard Hughes Pkwy., 9th Floor
27 Las Vegas, Nevada 89169
28 Tel: (702) 796-5555
Fax: (702) 369-2666
Attorneys for Christopher Beavor

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF RELEVANT FACTS¹**

4 1. On or about March 29, 2007, Toluca Lake Vintage, LLC ("Borrower") entered
5 into a Loan Agreement and Promissory Note (together, the "Loan") with the Herbert Frey
6 Revocable Family Trust ("Lender"). (See Complaint, already on file herein, at Exhibits 1 (Loan
7 Agreement) and 2 (Note)).

8 2. The purpose of the Loan was for Borrower to acquire certain real property in
9 Toluca Lake, California (the "Toluca Lake Property"), which Borrower intended to develop and
10 sell. (See Loan Agreement at Section 2).

11 3. The Loan was secured by, *inter alia*, a deed of trust encumbering the Toluca Lake
12 Property, deeds of trust encumbering certain residential real property owned by Beavor, and a
13 payment guaranty executed by Beavor in favor of Lender. (See *id.* at Section 4; see also Beavor
14 Guaranty, already on file herein as Exhibit 3 to Plaintiff's Complaint).

15 4. Among the properties for which lender obtained a deed of trust was residential
16 real property located in Clark County, Nevada, Assessor's Parcel Number 137-26-318-9013,
17 commonly known as 60 Chapman Heights Street, Las Vegas, Nevada, 89138 (the "Beavor
18 Property"). (See Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing, a
19 true and correct copy of which is filed herewith as Exhibit A-1).

20 5. The Beavor Property is, and at all times relevant herein has been, owned by
21 Beavor and is Beavor's principal residence. (Beavor Decl., ¶ 6).

22 6. There is not more than one residential structure on the Beavor Property. (*Id.* at ¶
23 7).

24 7. Only one family resides at the Beavor Property. (*Id.* at ¶ 8).

25 8. In or around February 2009, Borrower defaulted on its repayment obligation

26 ¹ Except where otherwise noted, the facts set forth herein have already been made part of the record in this case, and
27 are therefore subject to judicial notice. See Nev. Rev. Stat. §§ 47.130, 47.150; see also *United States v. Ritchie*, 342
28 F.3d 903, 908 (9th Cir. 2003) (In addressing a motion to dismiss, a court may consider documents attached to the
complaint, documents incorporated by reference in the complaint, or matters of judicial notice).

1 under the Loan. (See Note at ¶ 3).

2 9. On or about July 6, 2011, Lender assigned any remaining rights under the Loan
3 and the Guaranty to Plaintiff Yacov Hefetz ("Plaintiff"). (See Complaint, already on file herein,
4 at ¶ 15).

5 10. On July 21, 2011, Plaintiff commenced the instant action by filing a Complaint
6 containing a single claim for relief alleging breach of the Guaranty (See generally Complaint).

7 11. To date, neither Lender nor Plaintiff has taken any action on the deed of trust
8 encumbering the Beavor Property. (Beavor Decl., ¶ 12).

9 II.

10 LEGAL ARGUMENT

11 A. PLAINTIFF'S BREACH OF GUARANTY CLAIM VIOLATES THE ONE- 12 ACTION RULE, AND NRS 40.495(5)(d) PRECLUDES WAIVER.

13 Pursuant to Nevada's one-action rule, a creditor is required to foreclose on real property
14 collateral before bringing an action to enforce a promissory note or guaranty agreement. See
15 Nev. Rev. Stat. § 40.430(1) ("[T]here may be but one action for the recovery of any debt, or for
16 the enforcement of any right secured by a mortgage or other lien upon real estate."); see also
17 *McDonald v. P.P. Alexander*, 121 Nev. 812, 816, 123 P.3d 748, 750 (2005) ("The one-action
18 rule also applies to a guarantor or surety of a debt on a mortgage or other contract secured by an
19 interest in real property.") (citing *First Interstate Bank v. Shields*, 102 Nev. 616, 618--20, 730
20 P.2d 429, 430--32 (1986)).

21 While the one-action may generally be waived by guarantors, NRS 40.495(5) enumerates
22 specific circumstances in which the one-action rule cannot be waived as a matter of law:

23 40.495. Waiver of rights; separate action to enforce obligation; limitation on 24 amount of judgment; available defenses

25 2. Except as otherwise provided in subsection 5, a guarantor, surety or other
26 obligor, other than the mortgagor or grantor of a deed of trust, may waive the
27 provisions of NRS 40.430. If a guarantor, surety or other obligor waives the
28 provisions of NRS 40.430, an action for the enforcement of that person's
obligation to pay, satisfy or purchase all or part of an indebtedness or obligation
secured by a mortgage or lien upon real property may be maintained separately
and independently from:

- 1 (a) An action on the debt;
- 2 (b) The exercise of any power of sale;
- 3 (c) Any action to foreclose or otherwise enforce a mortgage or lien and the
- 4 indebtedness or obligations secured thereby; and
- 5 (d) Any other proceeding against a mortgagor or grantor of a deed of trust.
- 6 ...

7 5. The provisions of NRS 40.430 may not be waived by a guarantor, surety or

8 other obligor if the mortgage or lien:

- 9 ...
- 10 (d) Is secured by real property upon which:

11 (1) The owner maintains the owner's principal residence;

12 (2) There is not more than one residential structure; and

13 (3) Not more than four families reside.

14 *Id.* (emphasis added).

15 Here, as set forth above, the indebtedness upon which Plaintiff seeks to collect arises

16 from the Loan between Plaintiff's predecessor-in-interest (Lender) and Toluca Vintage, LLC

17 (Borrower). The Loan was secured by, *inter alia*, the Beavor Property, which is Beavor's

18 principal residence, is not comprised of more than one residential structure, and is not the

19 residence for more than four families. As such, regardless of any language in the Guaranty

20 between Beavor and Plaintiff's predecessor-in-interest, as a matter of law Beavor cannot have

21 waived the one-action rule and Plaintiff cannot prosecute a stand-alone breach of guaranty claim

22 against Beavor without violating the one-action rule.

23 **B. NRS 40.435 REQUIRES DISMISSAL WITHOUT PREJUDICE.**

24 A violation of the one-action rule may be raised at any time before entry of final

25 judgment. *See Nev. Rev. Stat. §§ 40.435(1), (2).*

26 Here, it is unquestionable that Plaintiff's breach of guaranty claim is a violation of the

27 one-action rule, which as a matter of law Beavor cannot have waived. This violation triggers the

28 remedy set forth in NRS 40.435: **dismissal of the action without prejudice.** *See Nev. Rev.*

1 Stat. §§ 40.435(1)(a), (2)(a).


2 III.

3 CONCLUSION

4 Based on the foregoing, Beavor respectfully requests an order dismissing Plaintiff's
5 Complaint without prejudice.

6 Dated this 7th day of May, 2015.

7 GORDON SILVER

8 

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14 Fax: (702) 369-2666
15 *Attorneys for Christopher Beavor*

CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the 7th day of May, 2015, she caused a copy of the foregoing **DEFENDANT'S MOTION TO DISMISS** by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve system addressed to:

H. Stan Johnson, Esq.
Michael V. Hughes, Esq.
Cohen-Johnson, LLC
255 East Warm Springs Road, Suite 100
Las Vegas, NV 89119


An employee of GORDON SILVER

EXHIBIT A

1 **DECL**
2 **GORDON SILVER**
3 **JOEL Z. SCHWARZ**
4 Nevada Bar No. 9181
5 Email: jschwarz@gordonsilver.com
6 3960 Howard Hughes Pkwy., 9th Floor
7 Las Vegas, Nevada 89169
8 Tel: (702) 796-5555
9 Fax: (702) 369-2666
10 *Attorneys for Christopher Beavor*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **YACOV JACK HEFETZ,**

14 Plaintiff,

15 vs.

16 **CHRISTOPHER BEAVOR,**

17 Defendant.

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

**DECLARATION OF CHRISTOPHER
BEAVOR IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS
PURSUANT TO NRS 40.435**

18 I, Christopher Beavor, make this declaration as provided in support of the Motion to
19 Dismiss Pursuant to NRS 40.435.

20 1. I am the defendant in the above-referenced matter. I am competent to testify
21 regarding the following facts, as I have personal knowledge and/or have been provided
22 information such that I believe the facts to be true.

23 2. On or about March 29, 2007, Toluca Lake Vintage, LLC ("Borrower") entered
24 into a Loan Agreement and Promissory Note (together, the "Loan") with the Herbert Frey
25 Revocable Family Trust ("Lender").

26 3. The purpose of the Loan was for Borrower to acquire certain real property in
27 Toluca Lake, California (the "Toluca Lake Property"), which Borrower intended to develop and
28 sell.

4. The Loan was secured by, *inter alia*, a deed of trust encumbering the Toluca Lake
Property, deeds of trust encumbering certain residential real property owned by me, and a

1 payment guaranty (the "Guaranty") executed by me in favor of Lender.

2 5. Among the properties for which Lender obtained a deed of trust was my house
3 located at 60 Chapman Heights Street, Las Vegas, Nevada, 89138 (the "Beavor Property"). (See
4 Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing, a true and correct
5 copy of which is attached hereto as **Exhibit A-1**).

6 6. The Beavor Property is owned by me and has been my principal residence since
7 approximately 2005.

8 7. There is not more than one residential structure on the Beavor Property.

9 8. Only one family resides at the Beavor Property.

10 9. In or around February 2009, Borrower defaulted on its repayment obligation
11 under the Loan. (See Note at ¶ 3).

12 10. I am informed and therefore believe that on or about July 6, 2011, Lender
13 assigned any remaining rights under the Loan and my Guaranty to Plaintiff Yacov Hefetz
14 ("Plaintiff"). (See Complaint, already on file herein, at ¶ 15).

15 11. On July 21, 2011, Plaintiff commenced the instant action by filing a Complaint
16 containing a single claim for relief alleging breach of my Guaranty (See generally Complaint).

17 12. To date, neither Lender nor Plaintiff has taken any action on the deed of trust
18 encumbering the Beavor Property.

19 I declare under penalty of perjury under the laws of the United States and the State of
20 Nevada that the foregoing is true and correct.

21 Executed this 6 day of April, 2015.

22
23 
24 CHRISTOPHER BEAVOR, DECLARANT

EXHIBIT A-1

**DEED OF TRUST
ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND
FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is made as of March 29, 2007 by Christopher Beavor and Samantha Beavor, each an individual ("Grantor"), whose address is 1930 Village Center Drive, Suite 3-231, Las Vegas, Nevada 89134, in favor of First American Title Company ("Trustee") whose address is 3960 Howard Hughes Parkway, Suite 380, Las Vegas, Nevada 89169, for the benefit of Herbert Frey, Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982 ("Beneficiary"), whose address is 157 E. Warm Springs Road, Las Vegas, Nevada 89119.

1. Grant and Secured Obligations.

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 below, Grantor hereby irrevocably and unconditionally grants, bargains, sells, conveys, mortgages and warrants to Trustee and Beneficiary, with power of sale and with right of entry and possession, all estate, right, title and interest which Grantor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property"):

(a) The real property located in the County of Clark, State of Nevada, as described in Exhibit A, together with all existing and future easements and rights affording access to it (the "Premises"); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Premises (the "Improvements"); together with

(c) All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements; together with

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions ("Leases") relating to the use and enjoyment of all or any part of the Premises and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of such leases; together with

(e) All real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in Exhibit A or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements; together with

(f) All goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises and Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; together with

(g) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Premises or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements; together with

(h) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("Books and Records"); together with

(i) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

Capitalized terms used above and elsewhere in this Deed of Trust without definition have the meanings given them in the Loan Agreement referred to in Subsection 1.2(a)(1) below.

1.2 Secured Obligations.

(a) Grantor makes the grant, conveyance, and mortgage set forth in Section 1.1 above, and grants the security interest set forth in Section 3 below for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Beneficiary may choose:

(i) Payment and performance of all obligations of Toluca Lake Vintage, LLC, a California limited liability company ("Borrower"), under a certain Loan Agreement bearing even date herewith between Borrower as "Borrower" and Beneficiary as "Lender" (the "Loan Agreement"); and payment of all obligations at any time owing under the Notes (as defined in the Loan Agreement) payable by Borrower as maker to the order of Beneficiary; and payment and performance of any obligations of Borrower under any Loan Documents which are executed by Borrower; and

(ii) Payment and performance of all obligations of Grantor under this Deed of Trust; and

(iii) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Notes or the Loan Agreement

which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

2. Assignment of Rents.

2.1 Assignment. Grantor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary all rents, royalties, issues, profits, revenue, income, accounts, proceeds and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits (some or all collectively, as the context may require, "Rents"). This is an absolute assignment, not an assignment for security only.

2.2 Grant of License. Beneficiary hereby confers upon Grantor a license ("License") to collect, use, and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Section 6.1 below, shall exist and be continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Grantor, and without regard to the adequacy of Beneficiary's security under this Deed of Trust.

2.3 Collection and Application of Rents. Subject to the License granted to Grantor under Section 2.2 above, Beneficiary has the right, power and authority to collect any and all Rents. Grantor hereby appoints Beneficiary its attorney-in-fact to perform any and all of the following acts, if and at the times when Beneficiary in its reasonable discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents; or
- (b) Give receipts, releases and satisfactions for any and all Rents; or
- (c) Sue either in the name of Grantor or in the name of Beneficiary for any and all Rents.

3. Grant of Security Interest.

The parties intend for this Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents, all in favor of Beneficiary. The parties acknowledge that some of the Property and some or all of the Rents may be determined under applicable law to be personal property or fixtures. To the extent that any Property or Rents may be or be determined to be personal property, Grantor as debtor hereby grants Beneficiary and Trustee as secured parties a security interest in all such Property and Rents, to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the Uniform Commercial Code of the State in which the Property is located, covering all such Property and Rents.

4. Fixture Filing.

This Deed of Trust constitutes a financing statement filed as a fixture filing under Article 9 of the Uniform Commercial Code in the State in which the Property is located, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Premises or Improvements. For this purpose, the respective addresses of Grantor, as debtor, and Beneficiary and Trustee, as secured parties, are as set forth in the preambles of this Deed of Trust.

5. Rights and Duties of the Parties.

5.1 Representations and Warranties. Grantor represents and warrants that:

- (a) Grantor lawfully possesses and holds fee simple title to all of the Premises and Improvements;
- (b) Grantor has or will have good title to all Property other than the Premises and Improvements;
- (c) Grantor has the full and unlimited power, right and authority to encumber the Property and assign the Rents;
- (d) This Deed of Trust creates a second and subordinate lien on the Property;
- (e) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements; and
- (f) Grantor's place of business, or its chief executive office if it has more than one place of business, is located at the address specified below.

5.2 Taxes, and Assessments. Grantor shall pay prior to delinquency all taxes, levies, charges and assessments, in accordance with Section 6.3 of the Loan Agreement.

5.3 Maintenance and Preservation of Property.

- (a) Grantor shall insure the Property as required by the Loan Agreement and keep the Property in good condition and repair.
- (b) Grantor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change or variance in any zoning or other Premises use classification which affects the Property or any part of it, except as permitted or required by the Loan Agreement or with Beneficiary's express prior written consent in each instance.
- (c) Grantor shall not commit or allow waste of the Property.

5.4 Release. When all of the Secured Obligations have been paid in full and all fees and other sums owed by Grantor under this Deed of Trust and by Borrower under the other Loan Documents have been received, Beneficiary and Trustee shall release this Deed of Trust, the lien created thereby, and all notes and instruments evidencing the Secured Obligations. Grantor shall pay any costs of preparation and recordation of such release.

5.5 Defense and Notice of Claims and Actions. At Grantor's sole expense, Grantor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Deed of Trust and the rights and powers of Beneficiary created under it, against all adverse claims. Grantor shall give Beneficiary prompt notice in writing if any claim is asserted which

does or could affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

6. Default and Remedies.

6.1 Events of Default. Grantor will be in default under this Deed of Trust upon the occurrence of anyone or more of the following events (some or all collectively, "Events of Default"; any one singly, an "Event of Default").

(a) Failure of Grantor to perform any of the covenants or conditions by Grantor to be performed under the terms of this Deed of Trust concerning the payment of money for a period of five (5) days after written notice from Beneficiary that the same is due and payable; or to observe or perform any non-monetary covenant or condition contained in this Deed of Trust for a period of thirty (30) days after written notice from Beneficiary; provided that if any such failure concerning a non-monetary covenant or condition is susceptible to cure but cannot reasonably be cured within said thirty (30) day period, then Grantor shall have an additional sixty (60) day period to cure such failure and no Event of Default shall be deemed to exist hereunder so long as (x) Grantor commences such cure within the initial thirty (30) day period and diligently and in good faith pursues such cure to completion within such resulting ninety (90) day period from the date of Beneficiary's notice, and (y) the existence of such uncured default will not result in any tenant under a Lease having the right to terminate such Lease due to such uncured default; or

(b) An "Event of Default" occurs as defined in the Loan Agreement.

6.2 Remedies. At any time after an Event of Default, Beneficiary shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Beneficiary at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Acceleration. Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately.

(b) Cure; Protection of Security. Beneficiary may cure any breach or default of Grantor, and if it chooses to do so in connection with any such cure, Beneficiary may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or to be conclusive as among the parties to this Deed of Trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary. Beneficiary may take any of the actions permitted under this Subsection 6.3(b) either with or without giving notice to any person. Any amounts expended by Beneficiary under this Subsection 6.3(b) shall be secured by this Deed of Trust.

(c) Foreclosure; Lawsuits. Beneficiary shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law. Beneficiary or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Beneficiary's successful bid shall be credited on the Secured Obligations. Without limiting the foregoing, Beneficiary may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction.

(d) Other Remedies. Beneficiary may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Grantor or any other person or entity in favor of Beneficiary in connection with the Secured Obligations or any part thereof, without prejudice to the right of Beneficiary thereafter to enforce any appropriate remedy against Grantor. Beneficiary shall have the right to pursue all remedies afforded to a Beneficiary under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof.

(e) Single or Multiple Foreclosure Sales. If the Property consists of more than one lot, parcel or item of property, Beneficiary and/or Trustee, as required by applicable law, may:

(i) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Beneficiary may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale"; and any two or more, "Foreclosure Sales").

If Beneficiary chooses to have more than one Foreclosure Sale, Beneficiary at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Beneficiary may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Deed of Trust on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full.

6.3 Credit Bids. At any Foreclosure Sale, any person, including Grantor or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) First, the portion of the Secured Obligations attributable to the expenses of sale and the costs of any action; and

(b) Second, all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.

6.4 Application of Foreclosure Sale Proceeds. Beneficiary shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale and the costs of any action;

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Beneficiary under the terms of this Deed of Trust which then remain unpaid;

(c) Third, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

6.5 Application of Rents and Other Sums. Beneficiary shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Beneficiary may receive or collect under Section 6.2 above, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Beneficiary or any receiver;

(b) Second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Beneficiary shall have no liability for any funds which it does not actually receive.

7. The Trustee.

7.1 Certain Rights. With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ and consult with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his or her agents or attorneys, (iii) to select and employ, in and about the execution of his or her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee (and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith), and (iv) any and all other lawful action that Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers

herein granted to Trustee, upon the Premises for debts contracted for or liability or damages incurred in the management or operation of the Premises. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Grantor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save and hold Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

7.2 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, and shall be segregated from any other moneys of Trustee.

7.3 Successor Trustees. Trustee may resign by the giving of notice of such resignation in writing to Beneficiary. If Trustee shall die, resign or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary, in Beneficiary's sole discretion and with or without cause, shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforementioned Trustee, Beneficiary shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees) in succession who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed on its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Grantor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his or her successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute trustees are appointed, each of such multiple substitute trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Deed of Trust or applicable law. Any prior election to act jointly or severally shall not prevent either or both of such multiple substitute Trustees from subsequently executing, jointly or severally, any or all of the provisions hereof.

7.4 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

7.5 Succession Instruments. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its, his or her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in such Trustee's place.

7.6 No Representation by Trustee or Beneficiary. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

8. Miscellaneous Provisions.

8.1 Merger. No merger shall occur as a result of Beneficiary's acquiring any other estate in or any other lien on the Property unless Beneficiary consents to a merger in writing.

8.2 Applicable Law. The creation, perfection and enforcement of the lien of this Deed of Trust shall be governed by the law of the State in which the property is located. Subject to the foregoing, in all other respects, this Deed of Trust shall be governed by the substantive laws of the State of Nevada.

8.3 Severability. If any provision of this Deed of Trust should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Deed of Trust except that if such provision relates to the payment of any monetary sum, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

8.4 Notices. 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:

Grantor:

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

Trustee:

First American Title Company
3960 Howard Hughes Parkway, Suite 380
Las Vegas, Nevada 89169
Telephone: (702) 732-3278
Facsimile: (866) 241-9402

Beneficiary:

Herbert Frey, Trustee of the Herbert Frey
Revocable Family Trust dated
November 22, 1982
157 E. Warm Springs Road
Las Vegas, Nevada 89119
Telephone: (702) _____
Facsimile: (702) _____

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.


Any notice or demand delivered to the person or entity named above to accept notices and demands for Grantor shall constitute notice or demand duly delivered to Grantor, even if delivery is refused.

8.5 Inconsistencies.

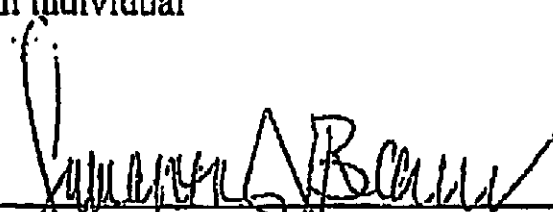
In the event of any inconsistency between this Deed of Trust and the Loan Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid security interest upon the Property, otherwise the provisions of the Loan Agreement shall be controlling.

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of the date first set forth above.

GRANTOR:



CHRISTOPHER BEAVOR
An individual



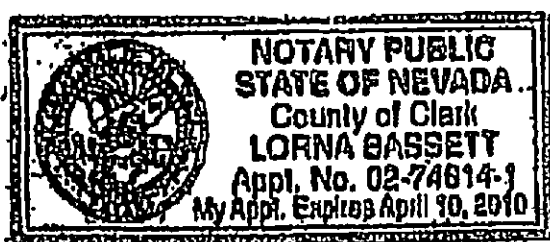
SAMANTHA BEAVOR
An individual

STATE OF NEVADA)

)ss.

COUNTY OF CLARK)

This instrument was acknowledged before me on 3-28, 2007, by Christopher Beavor and Samantha Beavor.



Lorna Bassett

Notary Public

My Appointment Expires on:

April 10, 2010

EXHIBIT A

LEGAL DESCRIPTION

All that land situated in the County of Clark, State of Nevada, more particularly described as follows:

PARCEL 1:

Lot Seventy-Four (74) in Block "A" of SOMERSET UNIT 2, as shown by map thereof on file in Book 107 of Plats, Page 81, in the Office of the County Recorder of Clark County, Nevada.

PARCEL 2:

Lot Forty (40) in Block One (1) of VILLAGE 20 - SUMMERLIN PARCEL T&U UNIT 5 as shown by map thereof on file in Book 110 of Plats, Page 22, in the Office of the County Recorder of Clark County, Nevada.

PARCEL 3:

Lot One Hundred Twenty-Three (123) in Block Three (3) of PORTOFINO PHASE 2 as shown by map thereof on file in Book 100 of Plats, Page 96, in the Office of the County Recorder of Clark County, Nevada.

PARCEL 4:

Lot Seven (7) in Block One (1) of PORTOFINO PHASE 1 as shown by map thereof on file in Book 99 of Plats, Page 81, in the Office of the County Recorder of Clark County, Nevada.

PARCEL 5:

Parcel A:

Unit Two Hundred Two (202) in Building Seventeen (17) of NORTH HALF OF PARCEL H - VILLAGE 3, a common interest ownership (condominium) subdivision, as shown by map thereof on file in Book 78 of Plats, Page 65, recorded March 21, 1997 in Book 970321 as Document No. 01106 and as amended by map thereof in Book 81 of Plats, Page 41 recorded September 26, 1997 in Book 970926 as Document No. 01154 and amended by that certain Certificate of Amendment Recorded June 16, 1998, in Book 980616, as Document No. 01254, and as established in the Covenants, Conditions and Restrictions and Reservations of Easements, recorded September 29, 1997 in Book 970929, as Document No. 02017, and any amendments thereto, hereinafter referred to as "The Declaration".

Parcel B:

One (1) "Allocated Interest", as set forth in Section 1.2 of "The Declaration".

Parcel C:

Garage Unit Thirty Three (33) as shown by the above referenced Plat of said subdivision.

PARCEL 6:

Parcel A:

Lot One Hundred Thirty-Three (133) in Block Five (5) of MARIPOSA AT THE PASEOS - UNIT 1, as shown by map thereof on file in Book 112 of Plats, Page 10, in the Office of the County Recorder of Clark County, Nevada and amended by Certificate of Amendment recorded November 10, 2003 in Book 20031110 as Document No. 03211.

Parcel B:

An easement for ingress and egress over Private Streets and Common Areas as shown and delineated on said map.

PARCEL 7:

Parcel A:

Lot Twenty-Three (23) in Block Two (2) of MARIPOSA AT THE PASEOS - UNIT 1, as shown by map thereof on file in Book 112 of Plats, Page 10, in the Office of the County Recorder of Clark County, Nevada and amended by Certificate of Amendment recorded November 10, 2003 in Book 20031110 as Document No. 03211.

Parcel B:

An easement for ingress and egress over Private Streets and Common Areas as shown and delineated on said map.

PARCEL 8:

Parcel A:

Lot One Hundred Thirty-Seven (137) in Block Four (4) of MARIPOSA AT THE PASEOS - UNIT 1, as shown by map thereof on file in Book 112 of Plats, Page 10, in the Office of the County Recorder of Clark County, Nevada and amended by Certificate of Amendment recorded November 10, 2003 in Book 20031110 as Document No. 03211.

Parcel B:

An easement for ingress and egress over Private Streets and Common Areas as shown and delineated on said map.

PARCEL 9:

Parcel A:

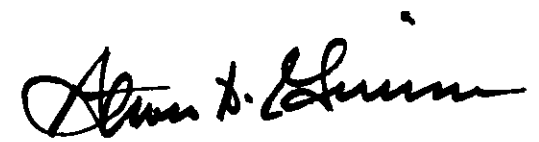
Lot Forty (40) in Block "B" of SYCAMORE RIDGE UNIT 2, as shown by map thereof on file in Book 70 of Plats, Page 93, in the Office of the County Recorder of Clark County, Nevada.

Parcel B:

A non-exclusive easement for ingress/egress, use and enjoyment over those portions of said subdivision delineated as "Common Area" upon said map.

PARCEL 10:

Lot Seventy-Five (75) in Block A of SOMERSET UNIT 2, as shown by map thereof on file in Book 107 of Plats, Page 81, in the Office of the County Recorder of Clark County, Nevada.



CLERK OF THE COURT

MOT
GORDON SILVER
JOEL Z. SCHWARZ
Nevada Bar No. 9181
Email: jschwarz@gordonsilver.com
GABRIEL A. BLUMBERG
Nevada Bar No. 12332
Email: gblumberg@gordonsilver.com
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
Tel: (702) 796-5555
Fax: (702) 369-2666
Attorneys for Christopher Beavor

DISTRICT COURT

CLARK COUNTY, NEVADA

YACOV JACK HEFETZ,

Plaintiff,

vs.

CHRISTOPHER BEAVOR,

Defendant.

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

**DEFENDANT CHRISTOPHER
BEAVOR'S MOTION TO REOPEN
DISPOSITIVE MOTION DEADLINE**

Date of Hearing:
Time of Hearing:

Defendant Christopher Beavor ("Beavor"), by and through his counsel of record, the law firm of Gordon Silver, hereby moves the Court to reopen the dispositive motion deadline due to Beavor's prior counsel's excusable neglect in failing to file a motion for summary judgment relating to dispositive issues of law which would have precluded the first trial in this action and which will eliminate the need for a second trial.

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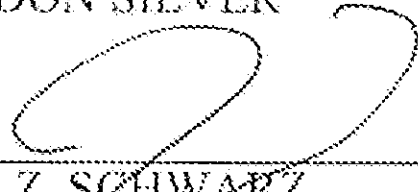
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1 This Motion is made and based on the following Memorandum of Points and Authorities;
2 the declaration of Christopher Beavor attached hereto as Exhibit 1, the declaration of Joel Z.
3 Schwarz attached hereto as Exhibit 2 and the exhibits attached thereto; Beavor's proposed
4 motion for summary judgment attached hereto as Exhibit 3; the papers and pleadings already on
5 file herein; and any oral argument the Court may permit at the hearing of this matter.

6 Dated this 8th day of May, 2015.

7 GORDON SILVER


8
9 
10 JOEL Z. SCHWARZ
11 Nevada Bar No. 9181
12 GABRIEL A. BLUMBERG
13 Nevada Bar 12332
14 3960 Howard Hughes Pkwy., 9th Floor
15 Las Vegas, Nevada 89169
16 Tel: (702) 796-5555
17 Fax: (702) 369-2666
18 Attorneys for Christopher Beavor

19 **NOTICE OF MOTION**

20 YOU, AND EACH OF YOU, will please take notice that the undersigned will bring the
21 above and foregoing Motion on for hearing before this Court on the 9 day of JUNE
22 2015, at the hour of 9:00 AM o'clock a.m., of said day, or as soon thereafter as counsel can be
23 heard in Department No. XXVIII.

24 Dated this 8th day of May, 2015.

25 GORDON SILVER

26 
27 JOEL Z. SCHWARZ
28 Nevada Bar No. 9181
GABRIEL A. BLUMBERG
Nevada Bar No. 12332
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
Tel: (702) 796-5555
Fax: (702) 369-2666
Attorneys for Christopher Beavor

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This Court should reopen the dispositive motion deadline in order to avoid wasting its precious resources on a second needless trial. Beavor's prior counsel failed to meet his professional obligations, thereby constituting excusable neglect sufficient to form good cause to reopen the deadline, when he failed to move for summary judgment on any grounds. More specifically, two clear issues were ripe for determination prior to the last trial and, but for Beavor's prior counsel's failure to raise them, would have obviated the need for even the first trial.

The first issue is that Plaintiff Yacov Jack Hefetz ("Plaintiff") is absolutely barred from recovering under the doctrine of double recovery. Court documents reveal that the Herbert Frey Revocable Family Trust dated November 22, 1982 ("Lender"), who assigned the subject guaranty to Plaintiff, had previously had his claim against Beavor satisfied in the Toluca Lake Vintage, LLC ("Toluca Vintage" or "Borrower") bankruptcy. As a result, any recovery by Plaintiff against Beavor on this same guaranty would constitute an impermissible double recovery.

Second, even if Plaintiff was not seeking a double recovery, he still would be precluded from recovering on the guaranty because Beavor has the option to declare the guaranty void due to Lender's violation of Nevada's mortgage banking statutes. Lender conducted activities which rendered him a mortgage banker under Nevada law, but Lender was not a licensed mortgage banker. Under NRS 645E.920, a party subject to a transaction with an unlicensed mortgage broker has the right to declare any agreements void. Here, Beavor entered into a guaranty with Lender in conjunction with Lender's mortgage banking activities and therefore Beavor has the right to declare the guaranty void.

Lastly, the provisions of NRS 40.459(1)(c) clearly limit Plaintiff's maximum recovery to ten dollars in this matter. This law, in effect at the time of the first trial, limits Plaintiff's

1 recovery on the Beavor guaranty to the amount of consideration he paid to obtain the right to
2 pursue Beavor. The uncontroverted evidence demonstrates that Plaintiff only paid ten dollars to
3 obtain the right to sue Beavor on his guaranty. Thus, Plaintiff's maximum recovery at trial is
4 only ten dollars.

5 Based on these reasons, and as further detailed below, Beavor requests that this Court
6 reopen the dispositive motion deadline to allow him to file the attached motion for summary
7 judgment.

8 II.

9 STATEMENT OF RELEVANT FACTS

10 A. Background

11 On March 29, 2007, Toluca Vintage entered into a loan agreement with the Lender, in the
12 principal amount of \$4.4 million (the "Loan"). *See* Complaint at ¶ 8. Proceeds of the Loan were
13 used to purchase real property in Los Angeles County, California, as well as, engineering,
14 marketing and architectural services for a planned development of the property. *See* Beavor
15 Declaration at ¶ 3.

16 Beavor personally guaranteed repayment of the Loan and an additional \$1.6 million (a
17 total of \$6 million). *See id.* at ¶ 4. Lender, however, fully understood that Beavor did not have
18 \$6 million and the only way it would be possible for Borrower to repay the Loan or Beavor to
19 pay on his guaranty was if the development of the property was successful. *See id.* at ¶ 5.

20 The Loan was only part of Borrower's funding for development of the Toluca Lake real
21 estate project, with a significantly larger loan coming from Chinatrust Bank, secured by the
22 project. *See id.* at ¶ 6. After eighteen months of construction on the project, Herbert Frey
23 refused to execute an option to further fund the Loan, and Chinatrust Bank ceased funding its
24 larger loan, which halted all construction. *See id.* at ¶ 7.

25 On May 13, 2009, Lender appointed Star Development, LLC ("Star Development"), of
26 which Plaintiff was Manager and co-owner, as Manager of Toluca Vintage. *See id.* at ¶ 8. The
27 following day, Star Development caused Toluca Vintage to file a Chapter 11 bankruptcy
28 petition, which in turn caused Toluca Vintage to default on the Loan, which thus became

1 immediately due and payable to Lender. *See id.* However, as set forth above, based on prior
2 discussions with Lender and Plaintiff's agents, Beavor understood this was all part of the plan in
3 dealing with Toluca Vintage's liability to Chinatrust Bank, and that he would be released from
4 all obligations and personal guarantees under the Loan after the filing of the bankruptcy. *See id.*
5 at ¶ 9.

6 In the Toluca Village bankruptcy proceedings, Toluca Vintage filed affidavits with the
7 bankruptcy court stating that Beavor had reached a global settlement agreement with Chinatrust
8 Bank, when Beavor had never been briefed on the issue and had never been presented with the
9 purported settlement documents for review. *See id.* at ¶ 10. Upon learning this information,
10 Beavor contacted the counsel retained by Lender on his behalf and advised counsel of the false
11 affidavits. *See id.* Moreover, upon reviewing the documents regarding the "global settlement"
12 to which Beavor was purportedly a party, Beavor discovered that the settlement documents
13 released him from obligations to Chinatrust Bank, but not his personal guarantee to Lender,
14 contrary to his prior agreement with Lender. *See id.*

15 In December 2010, Beavor was contacted by Wayne Krygier, another Manager of Star
16 Development, and advised that settlement release documents had been drafted by Lender's legal
17 counsel to release all potential claims by Beavor against Lender, and in exchange releasing
18 Beavor from his guaranty of the Loan. *See id.* at ¶ 11. Beavor reviewed and signed the
19 settlement agreement and release documents, pursuant to which he agreed to pay twenty three
20 thousand dollars (\$23,000.00) for payment of associated legal fees. *See id.*

21 In January 2011, Beavor personally delivered all executed settlement and release
22 documents and tendered payment of the \$23,000.00 for legal fees to Lender. *See id.* at ¶ 12.
23 Plaintiff was in Lender's office at the time of Beavor's arrival, and took the settlement agreement
24 from Beavor and stated that he would not allow Lender to sign the settlement documents. *See id.*
25 Beavor then received a call from Plaintiff, during which Plaintiff stated that he was going to
26 force Lender to assign him the outstanding debt under the Loan, from which Beavor would never
27 be released. *See id.*

28 ...

1 **B. Procedural History**

2 On or about July 6, 2011, in exchange for a payment of \$10.00, Plaintiff and his sister
3 Alis Cohen were purportedly assigned Lender's rights under Beavor's guaranty of the Loan. On
4 July 21, 2011, Plaintiff commenced the instant action by filing a complaint with a single claim
5 for breach of guaranty.

6 In response to Plaintiff's complaint, Beavor filed an answer and counterclaims. At no
7 time, however, did Beavor's previous counsel file a summary judgment motion on any issue.
8 This is especially troubling given the current state of the law regarding deficiency actions at the
9 time of trial in this matter. Assembly Bill 273 had already been passed and in effect for more
10 than a year before the initial deadline to file dispositive motions. Assembly Bill 273
11 substantially altered the rights of debtors in matters where the right to pursue them had been sold
12 and severely limited their liability. Given the dramatic changes to NRS 40.459(1)(c), Beavor's
13 prior counsel failed in his duties by not moving for relief based on the newly enacted limitations.

14 The parties' claims were tried to a jury from February 25, 2013 through March 1, 2013.
15 *See* Exhibit 2 at ¶ 3. The parties stipulated to the admissibility of all trial exhibits. One of the
16 stipulated trial exhibits was a Notice of Motion and Motion for Final Decree Closing Chapter 11
17 Case; Memorandum of Points and Authorities and Declaration of Victor A. Sahn in Support
18 Thereof [11 U.S.C. § 350(a); Fed. R. Bankr. P. 3022 and Loc. Bankr. R. 3020-1(d)] ("Exhibit
19 D15"). *See id.* at ¶ 4. In Exhibit D15, it was clearly revealed that Frey's "claim was satisfied
20 pursuant to the Confirmed Plan" as a result of the Settlement Agreement. *See* Exhibit 2-A at
21 4:11-15. Despite this exhibit being stipulated into evidence by the parties, Beavor's prior
22 counsel failed to move for judgment as a matter of law on the basis that Frey's claim, and
23 therefore Plaintiff's instant claim, had previously been satisfied and could not be pursued. *See*
24 Exhibit 2 at ¶ 6. This was yet another clear issue which Beavor's prior counsel failed to address
25 but which could have resolved this matter in its entirety.

26 Ultimately, Plaintiff's breach of guaranty claim was submitted to the jury and the jury
27 returned a verdict in favor of Beavor. On May 21, 2013, the Court entered a judgment on the
28 jury verdict.

1 On June 10, 2013, Plaintiff filed a Motion for New Trial, which Beavor's then-counsel
2 failed to substantively oppose, resulting in the Court ordering a new trial. Beavor's then-counsel
3 then failed to properly appeal the granting of a new trial, instead filing a writ petition which was
4 denied by the Nevada Supreme Court. Plaintiff's breach of guaranty claim is now once again
5 scheduled for trial—a trial which can, and should, be obviated by a motion for summary
6 judgment.

7 III.

8 LEGAL ARGUMENT

9 A. Legal Standard

10 A request to extend discovery deadlines may be granted if the moving party demonstrates
11 that the failure to act was the result of excusable neglect. EDCR 2.35. The term excusable
12 neglect is a failure “because of some unexpected or unavoidable hindrance or accident *or*
13 *because of reliance on the care and vigilance of the party's counsel* or on a promise made by the
14 adverse party.” Black's Law Dictionary 1133 (9th ed. 2009) (emphasis added). The Nevada
15 Supreme Court has specifically held that “[c]ounsel's failure to meet his professional obligations
16 constitutes excusable neglect.” *Passarelli v. J-Mar Development, Inc.*, 102 Nev. 283, 286, 720
17 P.2d 1221, 1224 (1986).

18 B. Good Cause

19 Good cause exists to reopen the dispositive motion deadline because multiple clear issues
20 of law preclude Plaintiff from being able to prevail at trial. First, it is apparent that Plaintiff
21 lacks standing to bring the instant claim. As evidenced by the bankruptcy records, Lender's
22 claim against Beavor was satisfied during the Toluca Vintage bankruptcy. Therefore, Plaintiff
23 has no standing to bring the current claim because he is unlawfully seeking double recovery. *See*
24 *Elyousef v. O'Reilly & Ferrario, LLC*, 126 Nev. Adv. Op. 43, 245 P.3d 547, 549 (2010)
25 (“satisfaction of the plaintiff's damages for an injury bars further recovery for that injury”).

26 Second, even if Plaintiff did have standing to pursue this matter, Beavor has the statutory
27 right to void the guaranty because Frey conducted mortgage banking activities in violation of
28 NRS 645E. Nevada has very stringent rules regarding the practice of mortgage banking. A

1 mortgage banker is any person who holds himself out as being able to make loans secured by
2 liens on real property using his own money. NRS 645E.100(1)(a). "It is unlawful for any person
3 to offer or provide any of the services of a mortgage banker . . . without first obtaining a license
4 as a mortgage banker pursuant to this chapter." NRS 645E.900. If a person violates NRS
5 645E.900, "any contracts entered into by that person for the mortgage transaction are voidable by
6 the other party to the contract." NRS 645E.920.

7 Here, Frey performed acts which rendered him a mortgage banker. In March 2007, he
8 made a loan to Toluca Vintage using his own money which was secured by a lien on real
9 property. This Loan was secured by, *inter alia*, a deed of trust encumbering the Toluca Lake
10 Property and deeds of trust encumbering certain residential real property owned by Beavor. In
11 addition, Beavor entered into a contract with Frey in the form of a guaranty.¹ The guaranty was
12 executed in conjunction with the Loan and therefore was part of Frey's mortgage banker activity.
13 It is undisputed that at the time Frey made the Loan, though, he was not licensed as a mortgage
14 banker. Thus, by making the Loan in 2007 and entering into the guarantee with Beavor, Frey
15 violated NRS 645E.900 because he engaged in mortgage banking activities without the
16 necessary license. Beavor is thus entitled to void the guaranty pursuant to NRS 645E.920 and
17 obviate the need for a trial in this matter.

18 C. Excusable Neglect

19 Here, Beavor's prior counsel failed to meet his professional obligations when he did not
20 move for summary judgment on Plaintiff's instant breach of guaranty claim. As evidenced
21 above, Beavor's prior counsel had multiple grounds on which to have this case decided at the
22 summary judgment stage as a matter of law. Instead of vigilantly pursuing Beavor's defense and
23 meeting his obligations to expedite the litigation, Beavor's prior counsel failed to move for
24 summary judgment on any of the above issues. See NRPC 3.2(a) ("A lawyer shall make
25 reasonable efforts to expedite litigation consistent with the interests of the client"). As a result,
26 Beavor had to endure not only one trial, but now likely two trials, unless the dispositive motion

27
28 ¹ It is this very contract which underlies Plaintiff's sole cause of action in this matter.

1 deadline is reopened.

2 The double recovery issue presented by satisfaction of Lender's claim, and thus the debt
3 upon which Plaintiff's claim is based, was clearly recognized in the bankruptcy proceedings. It
4 was these very same bankruptcy proceedings which the parties' stipulated to admitting into
5 evidence at trial and which clearly should have alerted Beavor's prior counsel that Plaintiff had
6 no basis to bring the breach of guaranty action. Beavor's prior counsel's failure to move for
7 summary judgment or judgment as a matter of law on this basis alone constituted a failure to
8 meet his professional obligations. As the Nevada Supreme Court has recognized, this type of
9 failure equates to excusable neglect and justifies this Court's reopening of the dispositive motion
10 deadline to conserve judicial resources and avoid an unnecessary trial wherein Plaintiff simply
11 cannot prevail as a matter of law.

12 Similarly, Beavor's prior counsel failed to meet his obligations by failing to articulate
13 that the subject transactions are voidable as a matter of law because Frey was engaging in the
14 practice of mortgage banking without a license. It was inexcusable for Beavor's prior counsel
15 not to move for summary judgment on these grounds because Beavor is entitled as a matter of
16 law to void the relevant transactions which allegedly give rise to Plaintiff's claim for liability.

17 Alternatively, the dispositive motion deadline should be reopened because although
18 Assembly Bill 273 had been implemented by the time of trial, the implications of NRS
19 40.459(1)(c) were not fully appreciated until the Nevada Supreme Court issued its decision in
20 *Sandpointe Apts. v. Eighth Jud. Dist. Ct.*, 129 Nev. Adv. Op. 87, 313 P.3d 849 (2013). The
21 *Sandpointe* decision, which was issued following the dispositive motion deadline here, clarified
22 that Plaintiff's damages will be severely limited in this second trial. It is now clear that Plaintiff
23 will be limited to a maximum potential recovery of ten dollars if he has any basis to proceed with
24 his claims. The evidence in the record reveals that Plaintiff paid only ten dollars to obtain the
25 rights to pursue Beavor for breach of contract. Therefore, even assuming the fair market value of
26 the property securing the loan is zero, the maximum amount Plaintiff can recover in this action is
27 ten dollars. See NRS 40.459(1)(c). Thus, the Court should reopen the dispositive motion
28 deadline to avoid wasting its precious resources in analyzing damages in a second trial where

1 damages are now clearly limited to such a miniscule amount.

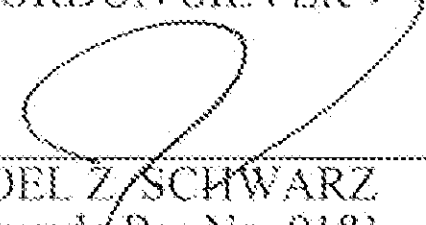
2 IV.

3 CONCLUSION

4 Based on the foregoing, Beavor respectfully requests that this Court reopen the
5 dispositive motion deadline in order to allow him to file the attached motion for summary
6 judgment.

7 Dated this 8th day of May, 2015.

8 GORDON SILVER

9
10 
11 JOEL Z. SCHWARZ
12 Nevada Bar No. 9181
13 GABRIEL A. BLUMBERG
14 Nevada Bar No. 12332
15 3960 Howard Hughes Pkwy., 9th Floor
16 Las Vegas, Nevada 89169
17 Tel: (702) 796-5555
18 Fax: (702) 369-2666
19 Attorneys for Christopher Beavor
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the 24 day of May, 2015, she caused a copy of the foregoing **Defendant's Motion to Reopen Dispositive Motion Deadline**, by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve system addressed to:

H. STAN JOHNSON
BRIAN A. MORRIS
COHEN-JOHNSON, LLC
255 East Warm Springs Road, Suite 100
Las Vegas, NV 89119
sjohnson@cohenjohnson.com
bam@cohenjohnson.com

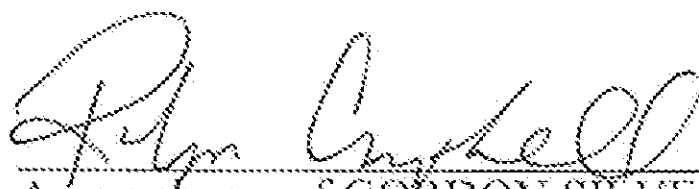

An employee of GORDON SILVER

EXHIBIT 1

1 **DECL**
2 GORDON SILVER
3 JOEL Z. SCHWARZ
4 Nevada Bar No. 9181
5 Email: jschwarz@gordonsilver.com
6 3960 Howard Hughes Pkwy., 9th Floor
7 Las Vegas, Nevada 89169
8 Tel: (702) 796-5555
9 Fax: (702) 369-2666
10 *Attorneys for Christopher Beavor*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 YACOV JACK HEFETZ,

14 Plaintiff,

15 vs.

16 CHRISTOPHER BEAVOR,

17 Defendant.

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

**DECLARATION OF CHRISTOPHER
BEAVOR IN SUPPORT OF DEFENDANT
CHRISTOPHER BEAVOR'S MOTION
TO REOPEN DISPOSITIVE MOTION
DEADLINE**

18 I, Christopher Beavor, make this declaration as provided in support of the Motion to
19 Reopen Dispositive Motion Deadline.

20 1. I am the defendant in the above-referenced matter. I am competent to testify
21 regarding the following facts, as I have personal knowledge and/or have been provided
22 information such that I believe the facts to be true.

23 2. On March 29, 2007, Toluca Lake Vintage, LLC ("Toluca Vintage" or
24 "Borrower"), entered into a loan agreement with the Herbert Frey Revocable Family Trust dated
25 November 22, 1982 ("Lender"), in the principal amount of \$4.4 million (the "Loan").

26 3. Proceeds of the Loan were used to purchase real property in Toluca Lake,
27 California (the "Toluca Lake Property"), as well as, engineering, marketing and architectural
28 services for a planned development of the property.

4. The Loan was secured by, *inter alia*, a deed of trust encumbering the Toluca Lake

1 Property, deeds of trust encumbering certain residential real property owned by me, and a
2 payment guaranty (the "Guaranty") I executed in favor of Lender. I personally guaranteed
3 repayment of the Loan and an additional \$1.6 million (a total of \$6 million). A true and correct
4 copy of the guaranty is attached hereto as Exhibit 1-A.

5
6 5. Lender, however, fully understood that I did not have \$6 million and the only way
7 it would be possible for Borrower to repay the Loan or me to pay on my guaranty was if the
8 development of the property was successful.

9 6. The Loan was only part of Borrower's funding for development of the Toluca
10 Lake real estate project, with a significantly larger loan coming from Chinatrust Bank, secured
11 by the project.

12 7. After eighteen months of construction on the project, Herbert Frey ("Frey")
13 refused to execute an option to further fund the Loan, and Chinatrust Bank ceased funding its
14 larger loan, which halted all construction.

15
16 8. On May 13, 2009, Lender appointed Star Development, LLC ("Star
17 Development"), of which Hefetz was Manager and co-owner, as Manager of Toluca Vintage.
18 The following day, Star Development caused Toluca Vintage to file a Chapter 11 bankruptcy
19 petition, which in turn caused Toluca Vintage to default on the Loan, which thus became
20 immediately due and payable to Lender.

21 9. However, as set forth above, based on prior discussions with Lender and
22 Plaintiff's agents, I understood this was all part of the plan in dealing with Toluca Vintage's
23 liability to Chinatrust Bank, and that I would be released from all obligations and personal
24 guarantees under the Loan after the filing of the bankruptcy.

25 10. In the Toluca Village bankruptcy proceedings, Toluca Vintage filed affidavits
26 with the bankruptcy court stating that I had reached a global settlement agreement with
27 Chinatrust Bank, when I had never been briefed on the issue and had never been presented with
28 the purported settlement documents for review. Upon learning this information, I contacted the

1 counsel retained by Lender on his behalf and advised counsel of the false affidavits. Moreover,
2 upon reviewing the documents regarding the "global settlement" to which I was purportedly a
3 party, I discovered that the settlement documents released me from obligations to Chinatrust
4 Bank, but not my personal guarantee to Lender, contrary to my prior agreement with Lender.

5 11. In December 2010, I was contacted by Wayne Krygier, another Manager of Star
6 Development, and advised that settlement release documents had been drafted by Lender's legal
7 counsel to release all potential claims by me against Lender, and in exchange releasing me from
8 my guaranty of the Loan. I reviewed and signed the settlement agreement and release
9 documents, pursuant to which I agreed to pay twenty three thousand dollars (\$23,000.00) for
10 payment of associated legal fees.

11 12. In January 2011, I personally delivered all executed settlement and release
12 documents and tendered payment of the \$23,000.00 for legal fees to Lender. Plaintiff was in
13 Lender's office at the time of my arrival, and took the settlement agreement from me and stated
14 that he would not allow Lender to sign the settlement documents. I then received a call from
15 Plaintiff, during which Plaintiff stated that he was going to force Lender to assign him the
16 outstanding debt under the Loan, from which I would never be released.

17 I declare under penalty of perjury under the laws of the State of Nevada that the
18 foregoing is true and correct.

19 Executed this 7 day of May, 2015.

20
21 
22 _____
CHRISTOPHER BEAVOR

EXHIBIT 1-A

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

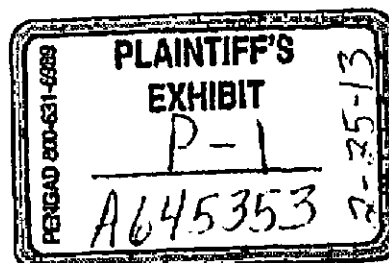
NOW, THEREFORE, intending to be legally bound, Guarantor, in consideration of the matters described in the foregoing Recitals, which Recitals are incorporated herein and made a part hereof, and for other good and valuable consideration the receipt and sufficiency of which are acknowledged, hereby covenants 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

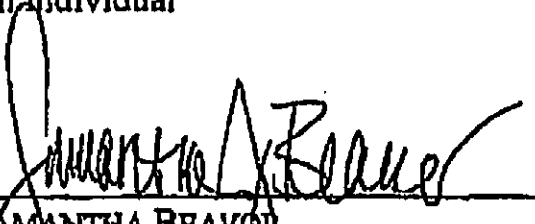

3/28/07
SAMANTHA BEAVOR
An individual

EXHIBIT 2

1 **DECL**
2 GORDON SILVER
3 JOEL Z. SCHWARZ
4 Nevada Bar No. 9181
5 Email: jschwarz@gordonsilver.com
6 3960 Howard Hughes Pkwy., 9th Floor
7 Las Vegas, Nevada 89169
8 Tel: (702) 796-5555
9 Fax: (702) 369-2666
10 *Attorneys for Christopher Beavor*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 YACOV JACK HEFETZ,

14 Plaintiff,

15 vs.

16 CHRISTOPHER BEAVOR,

17 Defendant.

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

**DECLARATION OF JOEL Z. SCHWARZ,
ESQ. IN SUPPORT OF DEFENDANT'S
MOTION TO REOPEN DISPOSITIVE
MOTION DEADLINE**

18 I, Joel Z. Schwarz, make this declaration as provided in support of the Motion to Reopen
19 Dispositive Motion Deadline.

20 1. I am an attorney licensed to practice law in the state of Nevada and I am Senior
21 Counsel with the law firm of Gordon Silver, attorneys for Defendant Christopher Beavor in the
22 above-captioned matter.

23 2. I am competent to testify to the matters asserted herein. I have personal
24 knowledge of such matters, except as to those stated upon information and belief. As to those
25 matters stated upon information and belief, I believe them to be true based upon a review of
26 documents and other tangible items in my investigation of the facts and circumstances at issue in
27 the instant case.

28 3. The claim at issue in this matter was previously tried in a jury trial from February
29 25, 2013 through March 1, 2013.

4. During this trial, the parties stipulated to Notice of Motion and Motion for Final
Decree Closing Chapter 11 Case; Memorandum of Points and Authorities and Declaration of

1 Victor A. Sahn in Support Thereof [11 U.S.C. § 350(a); Fed. R. Bankr. P. 3022 and Loc. Bankr.
2 R. 3020-1(d)] ("Exhibit D15"). A true and correct copy of Exhibit D15 is attached hereto as
3 Exhibit 2-A.

4 5. Exhibit D15 clearly revealed that Frey's "claim was satisfied pursuant to the
5 Confirmed Plan" as a result of the Settlement Agreement.

6 6. Despite this exhibit being stipulated into evidence by the parties, Beavor's prior
7 counsel failed to move for judgment as a matter of law on the basis that Frey's claim.

8 I declare under penalty of perjury under the laws of the United States and the State of
9 Nevada that the foregoing is true and correct.

10 Executed this 8th day of May, 2015.

11 
12 _____
13 JOEL Z. SCHWARZ

EXHIBIT 2-A

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Attorneys for Reorganized Debtor
Possession, Taluca Lake Vintage

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA, SAN FERNANDO VALLEY DIVISION

Case No. 1:09-bk-15520-GM

Chapter 11

NOTICE OF MOTION AND MOTION FOR
FINAL DECREE CLOSING CHAPTER 11
CASE; MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION OF
VICTOR A. SAHN IN SUPPORT THEREOF
11 U.S.C. § 3012(a); Fed. R. Bankr. P. 3022
and Loc. Bankr. R. 3020-1(c)

Date: [NO HEARING REQUESTED]
Time: [NO HEARING REQUESTED]
Place: Courtroom 303
United States Bankruptcy Court
21241 Burbank Boulevard
Woodland Hills, CA 91367

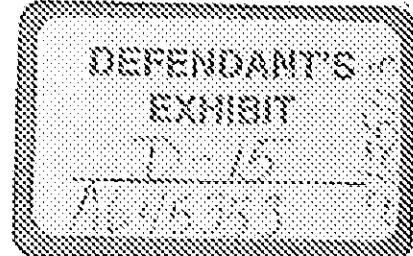
TO THE HONORABLE GERALDINE MUNO, UNITED STATES BANKRUPTCY
JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND ALL PARTIES IN
INTEREST:

PLEASE TAKE NOTICE that Taluca Lake Vintage, LLC (the "Debtor"), the
reorganized debtor in the above captioned case, do and hereby does move this Court
(the "Motion"), pursuant to § 350(a) of Title 11 of the United States Code (the
"Bankruptcy Code"), for a final decree closing this chapter 11 case (the "Case") on the
grounds that Debtor's estate has been fully administered.

PLEASE TAKE FURTHER NOTICE that this Motion is brought in accordance with
Federal Rule of Bankruptcy Procedure 3022 and Local Bankruptcy Rule 3013-1. This
Motion is brought pursuant to § 355 of Title 11 of the United States Code (the
"Bankruptcy Code") and is based on the Notice of Motion and Motion, the attached
Memorandum of Points and Authorities, the supporting exhibits attached hereto, the
record in these Cases, and any further evidence or argument that may be presented to
the Court prior to or at any hearing on this Motion.

PLEASE TAKE FURTHER NOTICE that this Motion is being brought upon notice
and opportunity to request a hearing pursuant to Local Bankruptcy Rules 3020-1(c) and
3013-1(h)(1). Local Bankruptcy Rule 3013-1(h)(1) provides that any response and
request for hearing must be filed with the Court and served on the Debtor's counsel (at
the address listed on the top left of the first page of this Motion), and on the United States
Trustee within 14 days after the date of the service of notice of this Motion. This Motion
is based upon this Motion, the following Memorandum of Points and Authorities, the
accompanying declaration of Victor A. Sahn (the "Sahn Declaration"), and the record in
this Case.

PLEASE TAKE FURTHER NOTICE that, pursuant to Local Bankruptcy Rule
3013-1(h), the failure to timely file and serve an opposition to the Motion may be deemed
by the Court to be consent to the relief requested in the Motion.



1 WHEREFORE, the Debtor respectfully requests that the Court enter an Order
2 granting this Motion, enter a Final Decree closing the Debtor's bankruptcy case, and
3 granting such other and further relief as the Court deems just and proper.

4
5 DATED: April 4, 2012

6 Respectfully submitted,
7 SulmeyerKupetz
8 A Professional Corporation

9 By: /s/ Victor A. Sahn
10 Victor A. Sahn
11 Attorneys for Toluca Lake Vintage, Inc.,
12 Reorganized Debtor

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

BACKGROUND

A. The Bankruptcy Petition and the Debtor's Plan

On May 14, 2009 (the "Petition Date"), the Debtor filed a voluntary chapter 11 petition, commencing the instant bankruptcy case. On January 10, 2011, this Court entered its Order (Docket No. 89) (the "Confirmation Order") confirming Debtor's Second Amended Liquidating Chapter 11 Plan of Reorganization (Docket No. 79) (the "Confirmed Plan").

The Debtor's Plan has been substantially consummated. The Plan is based upon a pre-confirmation Court approved settlement agreement by and between the Debtor, Chinatrust Bank, and others (the "Settlement Agreement") which resulted in the sale of the Debtor's sole asset, a partially completed condominium project in Toluca Lake, California located at 10639-10660 Woodbridge Street in Toluca Lake, California (the "Property"). The Settlement Agreement was approved by Order of this Court (Docket No. 64) entered on May 18, 2010.

Generally, pursuant to the Settlement Agreement CityView LA Urban Fund I, L.P., or an affiliate thereof, (the "Financier") was obligated to pay all obligations due by the Debtor to the Debtor's secured creditor, Chinatrust Bank. The Financier was additionally obligated to effectuate the completion of the construction of the condominium project (the "Project") at the Property. In exchange, the Financier received a deed in lieu of foreclosure for the Project and the Property.

Pursuant to the Settlement Agreement, the Debtor was entitled to a subordinated distribution from the proceeds realized from the sale of individual condominium units. The Confirmed Plan provided to the remaining unsecured creditors the Debtor's residual

¹ All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the foregoing Motion.

1 interest in the Project. The Settlement Agreement further provided for the payment in full
2 of many prepetition creditors holding mechanic's lien. There are remaining unsecured
3 creditors in this Case; those creditors will be paid from the distributions resulting from the
4 sale of the individual condominium units, as set forth in the Confirmed Plan.

5 **B. Unclassified Claims**

6 Certain types of claims are unclassified. They were not considered impaired and
7 they did not vote on the Plan because they were automatically entitled to specific
8 treatment provided for them in the Bankruptcy Code.

9 **1. Administrative Expenses**

10 Administrative expenses have been paid in full.

11 **2. Professional Fees**

12 On January 11, 2011, the Debtor filed its Notice to Professionals to File Final
13 Applications for Compensation for Services Rendered and Reimbursement of Expenses
14 Incurred [Docket No. 90] (the "Final Fee Notice"). The Final Fee Notice provided that all
15 professional seeking payment in this Case must file Final Fee Applications with the Court
16 by February 8, 2011. The Final Fee Notice further provided that a hearing on all Final
17 Fee Applications was to be held on March 1, 2011 before this Court.

18 The Debtor's counsel was the only professional to file its Final Fee Application
19 [Docket No. 93]. A hearing was held and the Debtor's counsel's fees were approved by
20 Order of this Court [Docket No. 106] entered on July 1, 2011.

21 **3. Priority Tax Claims**

22 Priority tax claims have been paid in full.

23 **C. Classified Claims**

24 The Confirmed Plan designated 15 different classes of claims and interests
25 entitled to vote. Of those 15 classes, 11 classes (Classes 1, 2, 3, 4, 7, 8, 9, 10, 11, 12,
26 13) (the "Mechanic's Lien Classes") were designated for assorted claimants holding
27 mechanic's liens on the Property. The plan provided that votes which come from
28 mechanic's lien claimants (the "Mechanic's Lien Claimants") whose claims are satisfied in

1 full prior to plan confirmation will not be counted in connection with voting on the Plan.
2 See, Plan, p. 4, ln. 1. As a result of the Settlement Agreement, as set forth above, all
3 Mechanic's Lien Claimants were paid in full prior to the confirmation of the Confirmed
4 Plan.

5 The Confirmed Plan provides for the following treatment of the remaining four
6 classes:²

7 **1. Secured Claim of China Trust Bank (Class 5)**

8 The sole Class 5 creditor was China Trust Bank on account of scheduled secured
9 claim. China Trust Bank was paid in accordance with the Settlement Agreement and,
10 accordingly, its claim was satisfied pursuant to the Confirmed Plan.

11 **2. Secured Claim of Insider Herbert Frey, Trustee of the Herbert**
12 **Frey Revocable Family Trust (Class 6)**

13 Herbert Frey was the sole Class 6 creditor. Frey consented to the Settlement
14 Agreement which resulted in the reconveyance of the Trust Deed on the Project, and
15 accordingly, his claim was satisfied pursuant to the Confirmed Plan.

16 **3. General Unsecured Claims (Class 14)**

17 Allowed general unsecured claims shall receive distributions on a pro rata basis
18 from the subordinated distributions received by the Debtor from the proceeds from the
19 sale of individual condominium units.

20 **4. Insider Interest Holders (Class 15)**

21 All remaining proceeds after payment of all general unsecured claims will be paid
22 to the insider interest holders based on their ownership interests.

23 **D. Administration of the Estate**

24 The Settlement Agreement provided the Debtor with a subordinated interest in the
25 proceeds realized from the construction and sale of the condominium units of the

26
27 ² Except as otherwise defined herein, capitalized terms shall have the meanings given
28 them in the Confirmed Plan.

1 Debtor's real estate project. This subordinated interest would be paid if the sales
2 proceeds of all of the condominium units were sufficient to repay the purchaser's capital
3 investment in the project plus an agreed-upon return for that investment. To date, there
4 have not been any distributions received by the Debtor on account of its subordinated
5 interest in the sale proceeds realized from the condominium project's development.
6 However, not all of the condominium units have been sold and accordingly, it remains to
7 be seen whether there will be future distributions which the Debtor can then pass on to
8 creditors.

9 IL.

10 THE COURT SHOULD ENTER A FINAL DECREE CLOSING THE CASE

11 Bankruptcy Code section 350 provides that "after an estate is fully administered
12 and the court has discharged the trustee, the court shall close the case." 11 U.S.C.
13 § 350. The procedure for closing a chapter 11 case, in particular, is governed by Federal
14 Rule of Bankruptcy Procedure 3022, which provides that "after an estate is fully
15 administered in a chapter 11 reorganization case, the court, on its own motion or on
16 motion of a party in interest, shall enter a final decree closing the case." Fed. R. Bankr.
17 P. 3022.

18 The phrase "fully administered" is not defined in the Bankruptcy Code or the
19 Federal Rules of Bankruptcy Procedure. E.g., Albert v. Almont Service, Inc. (In re Ground
20 Systems, Inc.), 213 B.R. 1016, 1018 (9th Cir. B.A.P. 1997). However, such phrase does
21 not have the same meaning as "substantial consummation" (id. at 1019), and does not
22 mean that all payments required by the Plan must be completed. See Fed. R. Bankr. P.
23 3022 Advisory Committee Note (1991) ("Entry of a final decree closing a chapter 11 case
24 should not be delayed solely because the payments required by the plan have not been
25 completed."). Factors that a court should consider in determining whether the estate has
26 been fully administered include:

- 27 (a) whether the order confirming the plan has become final,
28 (b) whether deposits required by the plan have been distributed.

7

- 1 (c) whether the property proposed by the plan to be transferred has been
2 transferred,
3 (d) whether the debtor or the successor of the debtor under the plan has
4 assumed the business of the management of the property dealt with by the plan,
5 (e) whether payments under the plan have commenced, and
6 (f) whether all motions, contested matters and adversary proceedings have
7 been finally resolved.

8 Fed. R. Bankr. P. 3022 Advisory Committee Note (1991).

9 Not all of the above factors need to exist before a court may enter a final decree.
10 In re Mold Makers, Inc., 124 B.R. 766, 768 (Bank. N.D. Ill. 1990). Instead, such factors
11 "merely serve as a guide in assisting the Court in its decision to close a case." Id.
12 Furthermore, "[t]he court should not keep the case open only because of the possibility
13 that the court's jurisdiction may be invoked in the future." Fed. R. Bankr. P. 3022
14 Advisory Committee Note (1991).

15 Each of the aforementioned factors has been satisfied in this case — (1) the
16 January 10, 2011 Order confirming the Plan has become final; (2) no deposits were
17 required by the Plan; (3) the property proposed by the Plan to be transferred (i.e. funds)
18 has been transferred; (4) the project has been built/developed and the condominium units
19 are now being sold which will hopefully lead to some distribution on account of the
20 Debtor's subordinated interest in the sale proceeds which distributions can then be
21 passed on to creditors as provided in the confirmed Plan, and (5) all motions and
22 contested matters other than the instant motion have been finally resolved, and no
23 litigation, adversary actions or contested claims exist in this matter. Thus, the Debtor's
24 estate has been fully administered, and the Court should therefore enter a final decree
25 closing this case.

8

III.

CONCLUSION

For the reasons set forth above, the Debtor respectfully requests that the Court enter an Order granting this Motion, enter a Final Decree closing the Debtor's bankruptcy case, and granting such other and further relief as the Court deems just and proper.

DATED: April 4, 2012

Respectfully submitted,

SulmeyerKupetz
A Professional Corporation

By: /s/ Victor A. Sahn

Victor A. Sahn
Attorneys for Toluca Lake Vintage, Inc.,
Reorganized Debtor

DECLARATION OF VICTOR A. SAHN³

I, Victor A. Sahn, declare:

1. I am a member of SulmeyerKupetz, attorneys for reorganized debtor Toluca Lake Vintage (the "Debtor") in the above-captioned chapter 11 case (the "Case"). I submit this declaration in support of the Debtor's Motion for Final Decree Closing Chapter 11 Case.³ (the "Motion"). I submit this declaration based upon my own personal knowledge and belief and, if called as a witness, I would testify completely to each of the matters stated herein under the penalty of perjury.

2. The Debtor's estate (the "Estate") has been fully administered as the Debtor's Plan has been substantially consummated. The Plan is based upon a pre-confirmation Court approved settlement agreement by and between the Debtor, Chinatrust Bank, and others (the "Settlement Agreement") which resulted in the sale of the Debtor's sole asset, a partially completed condominium project in Toluca Lake, California located at 10539-10560 Woodbridge Street in Toluca Lake, California (the "Property"). The Settlement Agreement was approved by Order of this Court [Docket No. 64] entered on May 18, 2010.

3. Generally, pursuant to the Settlement Agreement CityView LA Urban Fund I, L.P., or an affiliate thereof, (the "Financier") was obligated to pay all obligations due by the Debtor to the Debtor's secured creditor, Chinatrust Bank. The Financier was additionally obligated to effectuate the completion of the construction of the condominium project (the "Project") at the Property. In exchange, the Financier received a deed in lieu of foreclosure for the Project and the Property.

4. Pursuant to the Settlement Agreement, the Debtor was entitled to a subordinated distribution from the proceeds realized from the sale of individual condominium units. The Confirmed Plan provided to the remaining unsecured creditors

³ All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Motion.

1 the Debtor's residual interest in the Project. The Settlement Agreement further provided
2 for the payment in full of many prepetition creditors holding mechanic's lien. There are
3 remaining unsecured creditors. In this case, those creditors will be paid from the
4 distributions resulting from the sale of the individual condominium units, as set forth in the
5 Confirmed Plan.

6 5. Administrative expenses have been paid in full.

7 6. The Debtor's counsel was the only professional to file its Final Fee

8 Application (Docket No. 93). A hearing was held and the Debtor's counsel's fees were
9 approved by Order of this Court (Docket No. 106) entered on July 1, 2011.

10 7. Priority tax claims have been paid in full.

11 8. As a result of the Settlement Agreement, as set forth above, all Mechanic's
12 Lien Claimants were paid in full prior to the confirmation of the Confirmed Plan.

13 9. China Trust Bank was paid in accordance with the Settlement Agreement
14 and, accordingly, its claim was satisfied pursuant to the Confirmed Plan.

15 10. Frey consented to the Settlement Agreement which resulted in the
16 reconveyance of the Trust Deed on the Project, and accordingly, his claim was satisfied
17 pursuant to the Confirmed Plan.

18 11. Allowed general unsecured claims shall receive distributions on a pro rata
19 basis from the subordinated distributions received by the Debtor from the proceeds from
20 the sale of individual condominium units.

21 12. All remaining proceeds after payment of all general unsecured claims will
22 be paid to the insider interest holders based on their ownership interests.

23 13. The sale agreement provided the Debtor with a subordinated interest in the
24 proceeds realized from the construction and sale of the condominium units of the
25 Debtor's real estate project. This subordinated interest would be paid if the sales
26 proceeds of all of the condominium units were sufficient to repay the purchaser's capital
27 investment in the project plus an agreed-upon return for that investment. To date, there
28 have not been any distributions received by the Debtor on account of its subordinated

1 interest in the sale proceeds realized from the condominium project's development.
2 However, not all of the condominium units have been sold and accordingly, it remains to
3 be seen whether there will be future distributions which the Debtor can then pass on to
4 creditors.

5 14. The following factors support the finding that the Estate has been fully
6 administered: (a) the January 10, 2011 Order confirming the Plan has become final; (b)
7 no deposits were required by the Plan; (c) the property proposed by the Plan to be
8 transferred (i.e. funds) has been transferred; (d) the project has been built/developed and
9 the condominium units are now being sold which will hopefully lead to some distribution
10 on account of the Debtor's subordinated interest in the sale proceeds which distributions
11 can then be passed on to creditors as provided in the confirmed Plan, and (e) all motions
12 and contested matters other than the instant motion have been finally resolved, and no
13 litigation, adversary actions or contested claims exist in this matter. Thus, the Debtor's
14 estate has been fully administered, and the Court should therefore enter a final decree
15 closing this case.

16 I declare under penalty of perjury under the laws of the United States of America
17 that the foregoing is true and correct.

18 Executed this 4th day of April, 2012, at Los Angeles, California.

19
20 /s/ Victor A. Sahn
Victor A. Sahn

EXHIBIT 3

1 **MSJD**
GORDON SILVER
2 JOEL Z. SCHWARZ
Nevada Bar No. 9181
3 Email: jschwarz@gordonsilver.com
3960 Howard Hughes Pkwy., 9th Floor
4 Las Vegas, Nevada 89169
Tel: (702) 796-5555
5 Fax: (702) 369-2666
Attorneys for Christopher Beavor

6
7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 YACOV JACK HEFETZ,

Plaintiff,

10 vs.

11 CHRISTOPHER BEAVOR,

Defendant.

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

**DEFENDANT CHRISTOPHER
BEAVOR'S MOTION FOR SUMMARY
JUDGMENT**


Date of Hearing:
Time of Hearing:

14 Defendant Christopher Beavor ("Beavor"), by and counsel, the law firm of Gordon
15 Silver, hereby moves the Court to enter summary judgment in his favor on Plaintiff Yacov Jack
16 Hefetz's ("Hefetz") claim for breach of guaranty: the sole claim of Hefetz's complaint.

17 This Motion is made and based on the following Memorandum of Points and Authorities,
18 the declarations of Christopher Beavor and Joel Schwarz and the exhibits attached thereto, and
19 any oral argument the Court may permit at the hearing of this matter.

20 Dated this 8th day of May, 2015.

21 GORDON SILVER


22
23 
24 JOEL Z. SCHWARZ
Nevada Bar No. 9181
3960 Howard Hughes Pkwy., 9th Floor
25 Las Vegas, Nevada 89169
Tel: (702) 796-5555
26 Fax: (702) 369-2666
Attorneys for Christopher Beavor

1 **NOTICE OF MOTION**

2 YOU, AND EACH OF YOU, will please take notice that the undersigned will bring the
3 above and foregoing Motion on for hearing before this Court on the ____ day of _____,
4 2015, at the hour of _____ o'clock a.m., of said day, or as soon thereafter as counsel can be
5 heard in Department No. XXVIII.

6 Dated this 8th day of May, 2015.

7 GORDON SILVER

8 
9 JOEL Z. SCHWARZ
10 Nevada Bar No. 9181
11 3960 Howard Hughes Pkwy., 9th Floor
12 Las Vegas, Nevada 89169
13 Tel: (702) 796-5555
14 Fax: (702) 369-2666
15 Attorneys for Christopher Beavor

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I.**
18 **INTRODUCTION**

19 Presently, a second trial in this matter is scheduled for October 2015. Such a trial will be
20 a waste of this Court's resources given that, as a matter of law, Hefetz is precluded from
21 obtaining a judgment against Beavor or, at most, is entitled to recover ten dollars.

22 As set forth herein, Beavor has the statutory right to void the guaranty which underlies
23 this entire action. At the time Beavor entered into the guaranty with Herbert Frey ("Frey"), Frey
24 was engaging in mortgage banking activities. Frey was not a licensed mortgage banker, though,
25 and lost any claim to an exemption when he entered into a participation agreement with Hefetz.
26 Under NRS 645E.920, Beavor is therefore entitled to void the guaranty at issue in this matter.

27 In addition, Hefetz is barred from pursuing this action under the double recovery
28 doctrine. Frey, who assigned his rights in the Beavor guaranty to Hefetz, previously had his
claim against Beavor's guaranty satisfied in the Toluca Lake Vintage, LLC ("Toluca Vintage" or
"Borrower") bankruptcy. Thus, the law precludes Beavor from being subjected to liability for

1 the same obligation which was previously satisfied and summary judgment must be granted in
2 Beavor's favor on the breach of guaranty claim.

3 Lastly, even if this Court were to find that the guaranty was not voidable nor did the
4 doctrine of double recovery preclude the instant action, the Court must find that Hefetz's
5 damages are limited to ten dollars. In Nevada, a party who purchases a debt secured by real
6 property can only recover up to the amount it paid to obtain the debt, even in proceedings against
7 a guarantor. Here, the undisputed evidence reveals that Hefetz only paid ten dollars to obtain the
8 right to pursue the Beavor guaranty. Thus, Hefetz's maximum recovery at trial in this matter
9 must be limited to ten dollars.

10 II. 11 STATEMENT OF UNDISPUTED MATERIAL FACTS

12 On March 29, 2007, Toluca Lake Vintage, LLC ("Toluca Vintage" or "Borrower"),
13 entered into a loan agreement with the Herbert Frey Revocable Family Trust dated November
14 22, 1982 ("Lender"), in the principal amount of \$4.4 million (the "Loan"). *See* Complaint at ¶ 8.
15 Lender made the loan using his own money. *See id.* Proceeds of the Loan were used to purchase
16 real property in Toluca Lake, California (the "Toluca Lake Property"), as well as, engineering,
17 marketing and architectural services for a planned development of the property. *See* Beavor
18 Declaration at ¶ 3. The Loan was secured by, *inter alia*, a deed of trust encumbering the Toluca
19 Lake Property, deeds of trust encumbering certain residential real property owned by Beavor,
20 and a payment guaranty (the "Guaranty") executed by Beavor in favor of Lender. *See id.* at ¶ 4;
21 *see also* Exhibit 1-A.

22 Beavor personally guaranteed repayment of the Loan to Lender and an additional \$1.6
23 million (a total of \$6 million). *See id.* at ¶ 4. Lender, however, fully understood that Beavor did
24 not have \$6 million and the only way it would be possible for Borrower to repay the Loan or
25 Beavor to pay on his guaranty was if the development of the property was successful. *See id.* at
26 ¶ 5. The Loan was only part of Borrower's funding for development of the Toluca Lake real
27 estate project, with a significantly larger loan coming from Chinatrust Bank, secured by the
28 project. *See id.* at ¶ 6.

1 In January 2008, nearly a year after the Loan was issued, Frey entered into a participation
2 agreement with Hefetz. See Exhibit 2-A. Hefetz contributed \$2,214,875.00 to acquire an
3 interest in the Loan under the participation agreement. See Complaint at ¶ 10.

4 After eighteen months of construction on the project, Herbert Frey (“Frey”) refused to
5 execute an option to further fund the Loan, and Chinatrust Bank ceased funding its larger loan,
6 which halted all construction. See Beavor Declaration at ¶ 7. On May 13, 2009, Lender
7 appointed Star Development, LLC (“Star Development”), of which Hefetz was Manager and co-
8 owner, as Manager of Toluca Vintage. See *id.* at ¶ 8; see also Exhibit 2-B. The following day,
9 Star Development caused Toluca Vintage to file a Chapter 11 bankruptcy petition, which in turn
10 caused Toluca Vintage to default on the Loan, which thus became immediately due and payable
11 to Lender. See *id.* at ¶ 9; see also Exhibit 2-C.

12 In the Toluca Village bankruptcy proceedings, Toluca Vintage filed a Notice of Motion
13 and Motion for Final Decree Closing Chapter 11 Case; Memorandum of Points and Authorities
14 and Declaration of Victor A. Sahn in Support Thereof [11 U.S.C. § 350(a); Fed. R. Bankr. P.
15 3022 and Loc. Bankr. R. 3020-1(d)] (“Exhibit D15”). See Exhibit 2-D. In Exhibit D15, it was
16 clearly revealed that Frey’s “claim was satisfied pursuant to the Confirmed Plan” as a result of
17 the Settlement Agreement. See *id.* at 4:11-15.¹

18 On or about July 6, 2011, in exchange for a payment of \$10.00, Hefetz and his sister Alis
19 Cohen were purportedly assigned Lender’s rights under Beavor’s guaranty of the Loan. See
20 Exhibit 2-E. On July 21, 2011, Hefetz commenced the instant action by filing a complaint with a
21 single claim for breach of guaranty. See generally Complaint. The parties’ claims were tried to
22 a jury from February 25, 2013 through March 1, 2013. Ultimately, Hefetz’s breach of guaranty
23 claim was submitted to the jury and the jury returned a verdict in favor of Beavor. On May 21,
24 2013, the Court entered a judgment on the jury verdict. See Judgment, on file herein.

25 On June 10, 2013, Hefetz filed a Motion for New Trial, which Beavor’s then-counsel
26

27 ¹ Despite this exhibit being stipulated into evidence by the parties at the first trial in this matter, Beavor’s prior
28 counsel failed to move for judgment as a matter of law on the basis that Frey’s claim, and therefore Hefetz’s instant
claim, had previously been satisfied and could not be pursued.

1 failed to substantively oppose, resulting in the Court ordering a new trial. Beavor's then-counsel
2 then failed to properly appeal the granting of a new trial, instead filing a writ petition which was
3 denied by the Nevada Supreme Court. Hefetz's breach of guaranty claim is now once again
4 scheduled for trial—a trial which can, and should, be obviated by this motion for summary
5 judgment.

6 III.

7 LEGAL ARGUMENT

8 A. The Transactions are Voidable Pursuant to NRS 645E.920

9 Nevada has very stringent rules regarding the practice of mortgage banking. A mortgage
10 banker is any person who holds himself out as being able to make loans secured by liens on real
11 property using his own money. NRS 645E.100(1)(a). "It is unlawful for any person to offer or
12 provide any of the services of a mortgage banker . . . without first obtaining a license as a
13 mortgage banker pursuant to this chapter." NRS 645E.900. If a person violates NRS 645E.900,
14 "any contracts entered into by that person for the mortgage transaction are voidable by the other
15 party to the contract." NRS 645E.920.

16 Here, Frey performed acts which rendered him a mortgage banker. In March 2007, he
17 made a loan to Toluca Vintage using his own money which was secured by a lien on real
18 property. This Loan was secured by, *inter alia*, a deed of trust encumbering the Toluca Lake
19 Property and deeds of trust encumbering certain residential real property owned by Beavor. In
20 addition, Beavor entered into a contract with Frey in the form of a guaranty.² The guaranty was
21 executed in conjunction with the Loan and therefore was part of Frey's mortgage banker activity.
22 It is undisputed that at the time Frey made the Loan, though, he was not licensed as a mortgage
23 banker. Thus, by making the Loan in 2007, Frey violated NRS 645E.900 because he engaged in
24 mortgage banking activities without the necessary license.

25 Frey cannot claim an exemption from licensing under the statutory guidelines. A party
26 may be exempt from licensing if he provides money for investment in loans secured by a lien on
27

28 ² It is this very contract which underlies Hefetz's sole cause of action in this matter.

1 real property, on his own account. NRS 645E.150. The party loses the ability to claim this
2 exemption, however, if he assigns any part of his interest in the loan to another person within 3
3 years of the loan origination. *Id.* Here, Frey lost his exempt status when he entered into the
4 participation agreement with Hefetz in January 2008 (within one year of the loan origination in
5 March 2007). The participation by Hefetz in January 2008 is undisputed and was evidenced at
6 trial by Hefetz's own exhibit. *See* Exhibit 2-A (Hefetz's bank statements showing transfers in
7 January 2008).

8 Thus, Frey violated NRS 645E.900 by partaking in mortgage banking activities without a
9 license. Under NRS 645E.920, **all transactions** entered into by Frey, including Beavor's
10 guaranty, are voidable. The covered transactions also include the assignment of the guaranty
11 from Frey to Hefetz in July 2011. As the time of the assignment, Frey remained unlicensed to
12 engage in mortgage banking transactions and thus the transaction is voidable pursuant to NRS
13 645E.920. Beavor hereby elects to void all the relevant transactions pursuant to this provision,
14 including his guaranty, and therefore requests that summary judgment be granted in his favor on
15 Hefetz's current claim for breach of guaranty.

16 **B. Hefetz Has No Standing to Bring the Instant Claim Because the Claim was Already**
17 **Satisfied in the Toluca Vintage Bankruptcy**

18 A plaintiff can only have one recovery of damages for an injury. *Elyousef v. O'Reilly &*
19 *Ferrario, LLC*, 126 Nev. Adv. Op. 43, 245 P.3d 547, 549 (2010) (citing 25 C.J.S. Damages § 5
20 (2002)). "Thus, satisfaction of the plaintiff's damages for an injury bars further recovery for that
21 injury." *Id.*

22 Here, Frey allegedly was injured when he failed to receive repayment on his Loan to
23 Toluca Vintage which was guaranteed by Beavor. Toluca Vintage filed for voluntary chapter 11
24 bankruptcy in May 2009. In the bankruptcy, Frey was included as a Class 6 secured creditor.
25 *See* Exhibit 2-E. Ultimately, Frey's claim "was satisfied pursuant to the Confirmed Plan." *See*
26 Exhibit 2-D. Thus, Frey's claim for damages arising out of the Loan previously was satisfied in
27 the Toluca Vintage bankruptcy and he (or any of his successors or assigns such as Hefetz) can no
28 longer pursue further recovery. Thus, Hefetz is barred under the double recovery doctrine from

1 pursuing the instant claim against Beavor and summary judgment must be entered in Beavor's
2 favor.

3 **C. Hefetz Can Only Recover Damages Equal to the Consideration He Paid to Obtain**
4 **the Right to Pursue the Debt**

5 A party who obtains the right to pursue a debt secured by real property may only recover
6 up to the amount that the consideration paid for the right exceeds the fair market value of the
7 property at the time of foreclosure or the amount for which the property was actually sold. NRS
8 40.459. This provision applies equally to borrowers and guarantors. *See Sandpointe Apts. v.*
9 *District Court*, 129 Nev. Adv. Op. 87, 313 P.3d 849, 855 (2013) ("guarantors are now afforded
10 the same protections as borrowers when the right to obtain a judgment has been sold to a
11 successor"). In *Sandpointe*, the Nevada Supreme Court specifically held that guarantors are now
12 "protected by [] consideration-amount limit in the factors used to determine indebtedness." *Id.*

13 Here, Hefetz paid ten dollars to obtain the rights to pursue Beavor for breach of contract.
14 *See* Exhibit 2-E. Therefore, even assuming the fair market value of the property securing the
15 loan guaranteed by Beavor is zero, the maximum amount Hefetz can recover in this action is ten
16 dollars. It would be immensely unreasonable, and an unjustifiable strain on this Court's precious
17 resources, to engage in a second trial where the maximum recovery is ten dollars.

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IV.

CONCLUSION

Based on the foregoing, Beavor respectfully requests that this Court enter summary judgment in his favor either because the transactions are voidable pursuant to NRS 645E.920 or because the doctrine of double recovery bars Hefetz from pursuing the instant claim which was previously satisfied in the Toluca Vintage bankruptcy. Alternatively, even if the Court does not grant summary judgment on those two grounds, Beavor requests that this Court find that Hefetz's damages are limited to a maximum of ten dollars at trial.

Dated this 6th day of May, 2015.

GORDON SILVER



JOEL Z. SCHWARZ
Nevada Bar No. 9181
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
Tel: (702) 796-5555
Fax: (702) 369-2666
Attorneys for Christopher Beavor

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CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the _____ day of May, 2015, she caused a copy of the foregoing **Defendant's Motion for Summary Judgment**, by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey E-File & Serve** system addressed to:

H. STAN JOHNSON
BRIAN A. MORRIS
COHEN-JOHNSON, LLC
255 East Warm Springs Road, Suite 100
Las Vegas, NV 89119
sjohnson@cohenjohnson.com
bam@cohenjohnson.com

An employee of GORDON SILVER

EXHIBIT 1

1 **DECL**
2 GORDON SILVER
3 JOEL Z. SCHWARZ
4 Nevada Bar No. 9181
5 Email: jschwarz@gordonsilver.com
6 3960 Howard Hughes Pkwy., 9th Floor
7 Las Vegas, Nevada 89169
8 Tel: (702) 796-5555
9 Fax: (702) 369-2666
10 *Attorneys for Christopher Beavor*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 YACOV JACK HEFETZ,
14
15 Plaintiff,
16
17 vs.
18 CHRISTOPHER BEAVOR,
19
20 Defendant.

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

**DECLARATION OF CHRISTOPHER
BEAVOR IN SUPPORT OF DEFENDANT
CHRISTOPHER BEAVOR'S MOTION
TO REOPEN DISPOSITIVE MOTION
DEADLINE**

21 I, Christopher Beavor, make this declaration as provided in support of the Motion to
22 Reopen Dispositive Motion Deadline.

23 1. I am the defendant in the above-referenced matter. I am competent to testify
24 regarding the following facts, as I have personal knowledge and/or have been provided
25 information such that I believe the facts to be true.

26 2. On March 29, 2007, Toluca Lake Vintage, LLC ("Toluca Vintage" or
27 "Borrower"), entered into a loan agreement with the Herbert Frey Revocable Family Trust dated
28 November 22, 1982 ("Lender"), in the principal amount of \$4.4 million (the "Loan").

3. Proceeds of the Loan were used to purchase real property in Toluca Lake,
California (the "Toluca Lake Property"), as well as, engineering, marketing and architectural
services for a planned development of the property.

4. The Loan was secured by, *inter alia*, a deed of trust encumbering the Toluca Lake

1 Property, deeds of trust encumbering certain residential real property owned by me, and a
2 payment guaranty (the "Guaranty") I executed in favor of Lender. I personally guaranteed
3 repayment of the Loan and an additional \$1.6 million (a total of \$6 million). A true and correct
4 copy of the guaranty is attached hereto as Exhibit 1-A.

5
6 5. Lender, however, fully understood that I did not have \$6 million and the only way
7 it would be possible for Borrower to repay the Loan or me to pay on my guaranty was if the
8 development of the property was successful.

9 6. The Loan was only part of Borrower's funding for development of the Toluca
10 Lake real estate project, with a significantly larger loan coming from Chinatrust Bank, secured
11 by the project.

12 7. After eighteen months of construction on the project, Herbert Frey ("Frey")
13 refused to execute an option to further fund the Loan, and Chinatrust Bank ceased funding its
14 larger loan, which halted all construction.

15
16 8. On May 13, 2009, Lender appointed Star Development, LLC ("Star
17 Development"), of which Hefetz was Manager and co-owner, as Manager of Toluca Vintage.
18 The following day, Star Development caused Toluca Vintage to file a Chapter 11 bankruptcy
19 petition, which in turn caused Toluca Vintage to default on the Loan, which thus became
20 immediately due and payable to Lender.

21 9. However, as set forth above, based on prior discussions with Lender and
22 Plaintiff's agents, I understood this was all part of the plan in dealing with Toluca Vintage's
23 liability to Chinatrust Bank, and that I would be released from all obligations and personal
24 guarantees under the Loan after the filing of the bankruptcy.

25 10. In the Toluca Village bankruptcy proceedings, Toluca Vintage filed affidavits
26 with the bankruptcy court stating that I had reached a global settlement agreement with
27 Chinatrust Bank, when I had never been briefed on the issue and had never been presented with
28 the purported settlement documents for review. Upon learning this information, I contacted the

1 counsel retained by Lender on his behalf and advised counsel of the false affidavits. Moreover,
2 upon reviewing the documents regarding the "global settlement" to which I was purportedly a
3 party, I discovered that the settlement documents released me from obligations to Chinatrust
4 Bank, but not my personal guarantee to Lender, contrary to my prior agreement with Lender.

5 11. In December 2010, I was contacted by Wayne Krygier, another Manager of Star
6 Development, and advised that settlement release documents had been drafted by Lender's legal
7 counsel to release all potential claims by me against Lender, and in exchange releasing me from
8 my guaranty of the Loan. I reviewed and signed the settlement agreement and release
9 documents, pursuant to which I agreed to pay twenty three thousand dollars (\$23,000.00) for
10 payment of associated legal fees.

11 12. In January 2011, I personally delivered all executed settlement and release
12 documents and tendered payment of the \$23,000.00 for legal fees to Lender. Plaintiff was in
13 Lender's office at the time of my arrival, and took the settlement agreement from me and stated
14 that he would not allow Lender to sign the settlement documents. I then received a call from
15 Plaintiff, during which Plaintiff stated that he was going to force Lender to assign him the
16 outstanding debt under the Loan, from which I would never be released.

17 I declare under penalty of perjury under the laws of the State of Nevada that the
18 foregoing is true and correct.

19 Executed this 7 day of May, 2015.


20
21 
22 _____
CHRISTOPHER BEAVOR

EXHIBIT 1-A

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

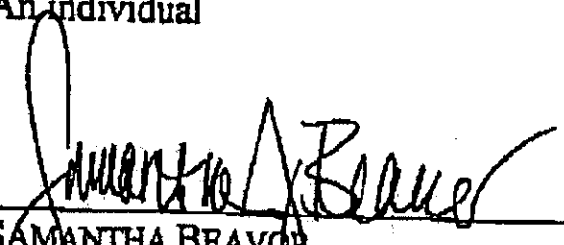

3/28/07
SAMANTHA BEAVOR
An individual

EXHIBIT 2

1 **DECL**
2 GORDON SILVER
3 JOEL Z. SCHWARZ
4 Nevada Bar No. 9181
5 Email: jschwarz@gordonsilver.com
6 3960 Howard Hughes Pkwy., 9th Floor
7 Las Vegas, Nevada 89169
8 Tel: (702) 796-5555
9 Fax: (702) 369-2666
10 *Attorneys for Christopher Beavor*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 YACOV JACK HEFETZ,

14 Plaintiff,

15 vs.

16 CHRISTOPHER BEAVOR,

17 Defendant.

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

**DECLARATION OF JOEL Z. SCHWARZ,
ESQ. IN SUPPORT OF DEFENDANT
CHRISTOPHER BEAVOR'S
MOTION FOR SUMMARY JUDGMENT**

18 I, Joel Z. Schwarz, make this declaration in support of Defendant Christopher Beavor's
19 Motion for Summary Judgment.

20 1. I am an attorney licensed to practice law in the state of Nevada and I am Senior
21 Counsel with the law firm of Gordon Silver, attorneys for Defendant Christopher Beavor in the
22 above-captioned matter.

23 2. I am competent to testify to the matters asserted herein. I have personal
24 knowledge of such matters, except as to those stated upon information and belief. As to those
25 matters stated upon information and belief, I believe them to be true based upon a review of
26 documents and other tangible items in my investigation of the facts and circumstances at issue in
27 the instant case.

28 3. A true and correct copy of Plaintiff's Trial Exhibit 7 is attached hereto as Exhibit
29 2-A.

30 4. A true and correct copy of the Secretary of State listing for Star Development
31 LLC is attached hereto as Exhibit 2-B.

EXHIBIT 2-A

001 00001 01

PAGE: 1

ACCOUNT:

01/31/2008

DOCUMENTS:

0

ALIA COHEN
JAKOV HEFETZ
8510 W MESA VISTA AVE
LAS VEGAS NV 89149-4611

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Per Federal regulation and our Deposit Agreement, there is a limit of six transfers per statement period, with a maximum of three withdrawals by check, draft, POS, Internet transfer, or similar order. Fees may apply if these limits are exceeded. See our Schedule of Fees for details.
Happy Holidays! Our new Grand Central Parkway Office is now Open!
The office is located at 100 City Parkway, Suite 120, Las Vegas, NV 89106 in the new Molasky Corporate Center.
Telephone: (702) 696-6700.

PERSONAL MONEY MARKET ACCOUNT 110077512

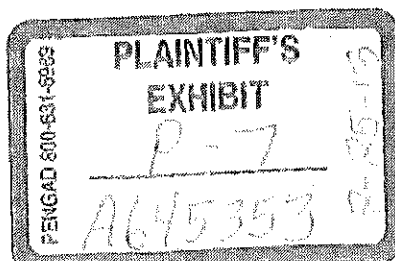
DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT			12/31/07	
WIRE/OUT-200801000397;BNF HERBERT FRED TROST	1200,000.00		01/14/08	
INTEREST			01/31/08	
BALANCE THIS STATEMENT			01/31/08	
TOTAL CREDITS (1)				
TOTAL DEBITS (1)	1,200,000.00			

INTEREST

AVERAGE LEDGER BALANCE:		INTEREST EARNED:	
AVERAGE AVAILABLE BALANCE:		DAYS IN PERIOD:	31
INTEREST PAID THIS PERIOD:		ANNUAL PERCENTAGE YIELD EARNED:	3.07%
INTEREST PAID 2008:			
INTEREST PAID 2007:			

ITEMIZATION OF NSF PAID AND RETURNED ITEM FEES

	THIS PERIOD	YEAR TO DATE
NSF PAID ITEM FEE:	.00	.00
NSF RETURNED ITEM FEE:	.00	.00
OVERDRAFT FEES:	.00	.00



Hefetz Bnk 001

APP00913

TROPICANA OFFICE
4813 S EASTERN AVE.
LAS VEGAS NV 89119 800-488-2265

00265

PAGE 1 OF 2

STATEMENT PERIOD
12/14/07 THROUGH 01/14/08

YAKOV HEFETZ 2002 REVOCABLE TRUST
YAKOV JACK HEFETZ
3575 SHELONE CT
LAS VEGAS NV 89121-3960

7895

0 ITEMS ENCLOSED

THANK YOU FOR DOING BUSINESS WITH US.
WE LOOK FORWARD TO CONTINUING TO
SERVE ALL YOUR BANKING NEEDS.

MONEY MARKET SELECT PERSONAL ACCOUNT NUMBER 265-037895
INTEREST PAID IN 2007 WAS \$22,990.84

BEGINNING BALANCE.....		AVERAGE DAILY BALANCE.....	
4 DEPOSITS.....		LOW BALANCE.....	
2 CREDITS.....		YEAR-TO-DATE INTEREST PAID.....	
3 WITHDRAWALS.....		YEAR-TO-DATE TAX WITHHELD.....	
0 CHECKS.....		ANNUAL PERCENTAGE YIELD EARNED.....	
ENDING BALANCE.....		INTEREST ACCRUED THIS STATEMENT.....	

DEPOSITS

DATE.....AMOUNT.....TRANSACTION DESCRIPTION

12/31 INCOMING WIRE REFERENCE # 071231001830 WIRE CREDIT
SENDING BANK REFERENCE # NONREF

01/10 INTEREST PAID

DATE.....	AMOUNT.....
12/27	
01/04	

DATE.....	AMOUNT.....
01/04	

DATE.....	AMOUNT.....
01/09	

WITHDRAWALS

DATE.....AMOUNT.....TRANSACTION DESCRIPTION

12/31 WIRE IN FEE REFERENCE # 071231001830 WIRE FEES
SENDING BANK REFERENCE # NONREF

01/09 MONEY MARKET WDR

01/14 1070,000.00 MONEY MARKET WDR

Hefetz Bnk 002

APP00914

BANK OF THE WEST MONEY MARKET WITHDRAWAL

DATE 1/14/08

BRANCH NAME/NUMBER TEO 265

ONE Million Seventy Dollars

SIGNATURE (For your signature, please sign in presence of teller.) [Signature] 7895

OFFSET Transfer \$ 1,070,000.00
(Bank Use Only)

00571 59

Account: 265037095 Check#: 0 Amount: \$1,070,000.00 Sequence: 270375200 CaptureSequence: - Deposited
Account: 262009410 Date: 01/14/2008

0270375280 01/14/2008 99
Bank of the West >121100762<
353 057

Hefetz Bnk 003

APP00915

TROPICANA OFFICE
4813 S EASTERN AVE.
LAS VEGAS NV 89119 000-488-2263

00265

PAGE 1 OF 3

STATEMENT PERIOD
01/11/08 THROUGH 02/11/08

YAKOV JACK HEFETZ
MARIA MIA HEFETZ
3575 SHELOME CT
LAS VEGAS NV 89121 3960

9418

0 ITEMS ENCLOSED

THANK YOU FOR DOING BUSINESS WITH US.
WE LOOK FORWARD TO CONTINUING TO
SERVE ALL YOUR BANKING NEEDS.

CHECKING PLUS INT - SAVINGS ACCOUNT NUMBER 262-009418
INTEREST PAID IN 2007 WAS

BEGINNING BALANCE.....		AVERAGE DAILY BALANCE.....	
3 DEPOSITS.....		LOW BALANCE.....	
4 CREDITS.....		YEAR-TO-DATE INTEREST PAID.....	
7 WITHDRAWALS.....		YEAR-TO-DATE TAX WITHHELD.....	
3 CHECKS.....		ANNUAL PERCENTAGE YIELD EARNED.....	
ENDING BALANCE.....		INTEREST ACCRUED THIS STATEMENT.....	

DEPOSITS

DATE.....AMOUNT.....TRANSACTION DESCRIPTION

01/11		ELECTRONIC DEP	BESIDE THE BAR L PAYROLL	011108
01/25		ELECTRONIC DEP	BESIDE THE BAR L PAYROLL	012508
02/08		ELECTRONIC DEP	BESIDE THE BAR L PAYROLL	020808
02/11		INTEREST PAID		

DATE.....AMOUNT	
01/14	70,000.00

DATE.....AMOUNT	
01/29	

DATE.....AMOUNT	
01/31	

WITHDRAWALS

DATE.....AMOUNT.....TRANSACTION DESCRIPTION

01/14	70,000.00	OUTGOING WIRE	REFERENCE # 080114004104 WIRE DEBIT
			SENDING BANK REFERENCE # NONREF
01/14		WIRE OUT FEE	REFERENCE # 080114004104 WIRE FEES
			SENDING BANK REFERENCE # NONREF
01/18		ELECTRONIC DBT	TA OCCIDENTAL INSPAYMENT 011808
01/24	14,875.00	MONEY TRANSFER	TO CHECKING ACCT # 1743
01/25		ELECTRONIC DBT	NEVADA POWER COM NPC PYMT 012508
02/08		ELECTRONIC DBT	TA OCCIDENTAL INSPAYMENT 020808
02/11		CHECKSCAN STMT FEE	

CHECKS

NUMBER...DATE.....AMOUNT	NUMBER...DATE.....AMOUNT	NUMBER...DATE.....AMOUNT
1354 02/04	9043* 01/31	9065* 01/29

* REPRESENTS A GAP IN CHECK NUMBERS

Hefetz Bnk 00

APP00916

BANK OF THE WEST OF THE WEST **CHECKING DEPOSIT**
Deposits may not be available for immediate withdrawal.

NAME Herbert Frey
 BRANCH NAME IVan DATE 11/14/08

SIGN HERE FOR LESS CASH IN TELLER'S PRESENCE

CURRENCY	1
COIN	from
	78.95
TOTAL FROM OTHER SIDE	
LESS CASH RECEIVED	
TOTAL	

ACCOUNT NUMBER
 * 1743

AMOUNT DEPOSITED
 \$ 1,000.00

00 & 51

Account: 265001743 Check#: 0 Amount: \$1,000.00 Sequence: 270375275 CaptureSequence: - Deposited
 Account: 262009410 Date: 01/14/2008

Please list each check separately by Bank number, 13 507308
 Checks must be properly endorsed

CHECKS (Bank No.)	Dollars	Cents
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
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0270375275 01/14/2008 7
 Bank of the West
 353 057 11 14 08 270375275 1007824

Hefetz Bnk 006

APP00918

EXHIBIT 2-B

STAR DEVELOPMENT LLC

Business Entity Information

Status:	Dissolved	File Date:	5/16/2008
Type:	Domestic Limited-Liability Company	Entity Number:	E0330722008-7
Qualifying State:	NV	List of Officers Due:	5/31/2013
Managed By:	Managing Members	Expiration Date:	
NV Business ID:	NV20081458442	Business License Exp:	5/31/2013

Additional Information

Central Index Key:	
--------------------	--

Registered Agent Information

Name:	YAKOV JACK HEFETZ	Address 1:	3575 SHELOME CRT
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89121
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

Financial Information

No Par Share Count:	0	Capital Amount:	\$ 0
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No stock records found for this company

— Officers

☐ Include Inactive Officers

Manager - GARY M FREY

Address 1:	870 SEVEN HILLS DRIVE	Address 2:	SUITE 201
City:	HENDERSON	State:	NV
Zip Code:	89052	Country:	USA
Status:	Active	Email:	

— Actions\Amendments

Action Type:	Articles of Organization		
Document Number:	20080336485-49	# of Pages:	2
File Date:	5/16/2008	Effective Date:	

(No notes for this action)

Action Type:	Initial List		
Document Number:	20080546909-23	# of Pages:	1
File Date:	8/15/2008	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20090265679-96	# of Pages:	1
File Date:	3/16/2009	Effective Date:	
09/10			
Action Type:	Amended List		
Document Number:	20090389056-82	# of Pages:	1
File Date:	5/5/2009	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20100383978-41	# of Pages:	1
File Date:	5/28/2010	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20110351335-24	# of Pages:	1
File Date:	5/10/2011	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20120376324-30	# of Pages:	1
File Date:	5/29/2012	Effective Date:	
(No notes for this action)			
Action Type:	Dissolution		
Document Number:	20130002497-28	# of Pages:	1
File Date:	1/2/2013	Effective Date:	
(No notes for this action)			

EXHIBIT 2-C

United States Bankruptcy Court Central District of California-SFV Division		Voluntary Petition
Name of Debtor (if individual, enter Last, First, Middle): TOLUCA LAKE VINTAGE, LLC		Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Social Security or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all): 36-4602244		Last four digits of Social Security or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all):
Street Address of Debtor (No. & Street, City, and State): 10639-10648 Woodbridge Toluca Lake, CA <div style="border: 1px solid black; padding: 2px; display: inline-block;">ZIP CODE 91062</div>		Street Address of Joint Debtor (No. & Street, City, and State): <div style="border: 1px solid black; padding: 2px; display: inline-block;">ZIP CODE</div>
County of Residence or of the Principal Place of Business: Los Angeles		County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address): 1930 Village Center Circle Suite 3-231 Las Vegas, NV <div style="border: 1px solid black; padding: 2px; display: inline-block;">ZIP CODE 89134</div>		Mailing Address of Joint Debtor (if different from street address): <div style="border: 1px solid black; padding: 2px; display: inline-block;">ZIP CODE</div>
Location of Principal Assets of Business Debtor (if different from street address above):		
Type of Debtor (Form of Organization) (Check one box.) <input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input checked="" type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)	Nature of Business (Check one box.) <input type="checkbox"/> Health Care Business <input checked="" type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51B)* <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Other * Motion will be filed by Debtor to determine nature of business Tax-Exempt Entity (Check box, if applicable.) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).	Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding Nature of Debts (Check one box) <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input checked="" type="checkbox"/> Debts are primarily business debts.
Filing Fee (Check one box.) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (Applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		Chapter 11 Debtors Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input checked="" type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,190,000 Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
Statistical/Administrative Information <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors. Estimated Number of Creditors <input type="checkbox"/> 1-49 <input checked="" type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000- 5,000 <input type="checkbox"/> 5,001- 10,000 <input type="checkbox"/> 10,001- 25,000 <input type="checkbox"/> 25,001- 50,000 <input type="checkbox"/> 50,001- 100,000 <input type="checkbox"/> OVER 100,000 Estimated Assets <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input checked="" type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion Estimated Debts <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input checked="" type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion		THIS SPACE IS FOR COURT USE ONLY

 DEFENDANT'S
EXHIBIT

 D-7
A645353

Voluntary Petition <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s): TOLUCA LAKE VINTAGE, LLC	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)			
Location Where Filed: - None -	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)			
Name of Debtor: - None -		Case Number:	Date Filed:
District:	Relationship:	Judge:	
Exhibit A (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.) <input type="checkbox"/> Exhibit A is attached and made a part of this petition.		Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts.) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. § 342(b). X _____ Signature of Attorney for Debtor(s) Date	
Exhibit C Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? <input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input checked="" type="checkbox"/> No			
Exhibit D (To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.) <input type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition. If this is a joint petition: <input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
Information Regarding the Debtor - Venue (Check any applicable box) <input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. <input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
Certification by a Debtor Who Resides as a Tenant of Residential Property <i>Check all applicable boxes.</i> <input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.) <div style="margin-left: 40px;"> _____ (Name of landlord that obtained judgment) _____ (Address of landlord) </div> <input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and <input type="checkbox"/> Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. <input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(f)).			

Voluntary Petition

(This page must be completed and filed in every case)

Name of Debtor(s):

TOLUCA LAKE VINTAGE, LLC

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.

(If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7) I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

(If no attorney represents me and no bankruptcy petition preparer signs the petition) I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X

Signature of Debtor

X

Signature of Joint Debtor

Telephone Number (if not represented by attorney)

Date

Signature of Attorney*

X

Signature of Attorney for Debtor(s)

Victor A. Sahn (State Bar No. 97299)

Printed Name of Attorney for Debtor(s)

SulmeyerKupetz, APC

Firm Name

333 South Hope Street

35th Floor

Los Angeles, CA 90071-1406

Address

213.626.2311 Fax: 213.629.4520

Telephone Number

May 17, 2009

Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X

Signature of Authorized Individual

Star Development, LLC/Gary M. Frey

Printed Name of Authorized Individual

Manager

Title of Authorized Individual

May 18, 2009

Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.

☐ Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X

Signature of Foreign Representative

Printed Name of Foreign Representative

Date

Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: 1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; 2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, 3) If rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official form 19 is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

X

Date

Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose social security number is provided above.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156.

EXHIBIT 2-D

Victor A. Sahn (CA Bar No. 97299)
vsahn@suhmeyerlaw.com
A Professional Corporation
333 South Hope Street, Thirty-Fifth Floor
Los Angeles, California 90071-1406
Telephone: 213.626.2311
Facsimile: 213.626.4520
Attorneys for Reorganized Debtor
Possession, Toluca Lake Vintage

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA, SAN FERNANDO VALLEY DIVISION

Case No. 1:09-bk-15680-GM
Chapter 11
NOTICE OF MOTION AND MOTION FOR
FINAL DECREE CLOSING CHAPTER 11
CASE; MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION OF
VICTOR A. SAHN IN SUPPORT THEREOF
[11 U.S.C. § 350(a); Fed. R. Bankr. P. 3022
and Loc. Bankr. R. 3020-1(d)]

Date: [NO HEARING REQUESTED]
Time: [NO HEARING REQUESTED]
Place: Courtroom 303
United States Bankruptcy Court
21041 Burbank Boulevard
Woodland Hills, CA 91367

TO THE HONORABLE GERALDINE MUND, UNITED STATES BANKRUPTCY
JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND ALL PARTIES IN
INTEREST:

PLEASE TAKE NOTICE that Toluca Lake Vintage, LLC (the "Debtor"), the
reorganized debtor in the above captioned case, will and hereby does move this Court
(the "Motion"), pursuant to § 350(a) of Title 11 of the United States Code (the
"Bankruptcy Code"), for a final decree closing this chapter 11 case (the "Case") on the
grounds that Debtor's estate has been fully administered.

PLEASE TAKE FURTHER NOTICE that this Motion is brought in accordance with
Federal Rule of Bankruptcy Procedure 3022 and Local Bankruptcy Rule 9013-1. This
Motion is brought pursuant to § 365 of Title 11 of the United States Code (the
"Bankruptcy Code") and is based on this Notice of Motion and Motion, the attached
Memorandum of Points and Authorities, the supporting exhibit(s) attached thereto, the
record in these Cases, and any further evidence or argument that may be presented to
the Court prior to or at any hearing on this Motion.

PLEASE TAKE FURTHER NOTICE that this Motion is being brought upon notice
and opportunity to request a hearing pursuant to Local Bankruptcy Rules 3020-1(d) and
9013-1(o)(1). Local Bankruptcy Rule 9013-1(o)(1) provides that any response and
request for hearing must be filed with the Court and served on the Debtor's counsel (at
the address listed on the top left of the first page of this Motion), and on the United States
Trustee within 14 days after the date of the service of notice of this Motion. This Motion
is based upon this Motion, the following Memorandum of Points and Authorities, the
accompanying declaration of Victor A. Sahn (the "Sahn Declaration"), and the record in
this Case.

PLEASE TAKE FURTHER NOTICE that, pursuant to Local Bankruptcy Rule
9013-1(h), the failure to timely file and serve an opposition to the Motion may be deemed
by the Court to be consent to the relief requested in the Motion.

DEFENDANT'S
EXHIBIT

D-15
AL45353

APP00927

1 WHEREFORE, the Debtor respectfully requests that the Court enter an Order
2 granting this Motion, enter a Final Decree closing the Debtor's bankruptcy case, and
3 granting such other and further relief as the Court deems just and proper.

4
5 DATED: April 4, 2012

6 Respectfully submitted,
7 SulmeyerKupetz
8 A Professional Corporation

9 By: /s/ Victor A. Sahn
10 Victor A. Sahn
11 Attorneys for Toluca Lake Vintage, Inc.,
12 Reorganized Debtor

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MEMORANDUM OF POINTS AND AUTHORITIES¹

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BACKGROUND

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A. The Bankruptcy Petition and the Debtor's Plan

1 On May 14, 2009 (the "Petition Date"), the Debtor filed a voluntary chapter 11
2 petition, commencing the instant bankruptcy case. On January 10, 2011, this Court
3 entered its Order [Docket No. 89] (the "Confirmation Order") confirming Debtor's Second
4 Amended Liquidating Chapter 11 Plan of Reorganization [Docket No. 79] (the "Confirmed
5 Plan").

6 The Debtor's Plan has been substantially consummated. The Plan is based upon
7 a pre-confirmation Court approved settlement agreement by and between the Debtor,
8 Chinatrust Bank, and others (the "Settlement Agreement") which resulted in the sale of
9 the Debtor's sole asset, a partially completed condominium project in Toluca Lake,
10 California located at 10639-10660 Woodbridge Street in Toluca Lake, California (the
11 "Property"). The Settlement Agreement was approved by Order of this Court [Docket No.
12 64] entered on May 18, 2010.

13 Generally, pursuant to the Settlement Agreement CityView LA Urban Fund I, L.P.,
14 or an affiliate thereof, (the "Financier") was obligated to pay all obligations due by the
15 Debtor to the Debtor's secured creditor, Chinatrust Bank. The Financier was additionally
16 obligated to effectuate the completion of the construction of the condominium project (the
17 "Project") at the Property. In exchange, the Financier received a deed in lieu of
18 foreclosure for the Project and the Property.

19 Pursuant to the Settlement Agreement, the Debtor was entitled to a subordinated
20 distribution from the proceeds realized from the sale of individual condominium units.
21 The Confirmed Plan provided to the remaining unsecured creditors the Debtor's residual

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¹ All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the
foregoing Motion.

1 interest in the Project. The Settlement Agreement further provided for the payment in full
2 of many prepetition creditors holding mechanic's lien. There are remaining unsecured
3 creditors in this Case; those creditors will be paid from the distributions resulting from the
4 sale of the individual condominium units, as set forth in the Confirmed Plan.

5 B. Unclassified Claims

6 Certain types of claims are unclassified. They were not considered impaired and
7 they did not vote on the Plan because they were automatically entitled to specific
8 treatment provided for them in the Bankruptcy Code.

9 1. Administrative Expenses

10 Administrative expenses have been paid in full.

11 2. Professional Fees

12 On January 11, 2011, the Debtor filed its Notice to Professionals to File Final
13 Applications for Compensation for Services Rendered and Reimbursement of Expenses
14 Incurred [Docket No. 90] (the "Final Fee Notice"). The Final Fee Notice provided that all
15 professional seeking payment in this Case must file Final Fee Applications with the Court
16 by February 8, 2011. The Final Fee Notice further provided that a hearing on all Final
17 Fee Applications was to be held on March 1, 2011 before this Court.

18 The Debtor's counsel was the only professional to file its Final Fee Application
19 [Docket No. 93]. A hearing was held and the Debtor's counsel's fees were approved by
20 Order of this Court [Docket No. 106] entered on July 1, 2011.

21 3. Priority Tax Claims

22 Priority tax claims have been paid in full.

23 C. Classified Claims

24 The Confirmed Plan designated 15 different classes of claims and interests
25 entitled to vote. Of those 15 classes, 11 classes (Classes 1, 2, 3, 4, 7, 8, 9, 10, 11, 12,
26 13) (the "Mechanic's Lien Classes") were designated for assorted claimants holding
27 mechanic's liens on the Property. The plan provided that votes which come from
28 mechanic's lien claimants (the "Mechanic's Lien Claimants") whose claims are satisfied in

1 full prior to plan confirmation will not be counted in connection with voting on the Plan.
2 See, Plan, p. 4, in. 1. As a result of the Settlement Agreement, as set forth above, all
3 Mechanic's Lien Claimants were paid in full prior to the confirmation of the Confirmed
4 Plan.

5 The Confirmed Plan provides for the following treatment of the remaining four
6 classes:²

7 1. Secured Claim of China Trust Bank (Class 5)

8 The sole Class 5 creditor was China Trust Bank on account of scheduled secured
9 claim. China Trust Bank was paid in accordance with the Settlement Agreement and,
10 accordingly, its claim was satisfied pursuant to the Confirmed Plan.

11 2. Secured Claim of Insider Herbert Frey, Trustee of the Herbert
12 Frey Revocable Family Trust (Class 6)

13 Herbert Frey was the sole Class 6 creditor. Frey consented to the Settlement
14 Agreement which resulted in the reconveyance of the Trust Deed on the Project, and
15 accordingly, his claim was satisfied pursuant to the Confirmed Plan.

16 3. General Unsecured Claims (Class 14)

17 Allowed general unsecured claims shall receive distributions on a pro rata basis
18 from the subordinated distributions received by the Debtor from the proceeds from the
19 sale of individual condominium units.

20 4. Insider Interest Holders (Class 15)

21 All remaining proceeds after payment of all general unsecured claims will be paid
22 to the insider interest holders based on their ownership interests.

23 D. Administration of the Estate

24 The Settlement Agreement provided the Debtor with a subordinated interest in the
25 proceeds realized from the construction and sale of the condominium units of the

26 ² Except as otherwise defined herein, capitalized terms shall have the meanings given
27 them in the Confirmed Plan.
28

1 Debtor's real estate project. This subordinated interest would be paid if the sales
2 proceeds of all of the condominium units were sufficient to repay the purchaser's capital
3 investment in the project plus an agreed-upon return for that investment. To date, there
4 have not been any distributions received by the Debtor on account of its subordinated
5 interest in the sale proceeds realized from the condominium project's development.
6 However, not all of the condominium units have been sold and accordingly, it remains to
7 be seen whether there will be future distributions which the Debtor can then pass on to
8 creditors.

9 **II.**

10 **THE COURT SHOULD ENTER A FINAL DECREE CLOSING THE CASE**

11 Bankruptcy Code section 350 provides that "[a]fter an estate is fully administered
12 and the court has discharged the trustee, the court shall close the case." 11 U.S.C.
13 § 350. The procedure for closing a chapter 11 case, in particular, is governed by Federal
14 Rule of Bankruptcy Procedure 3022, which provides that "[a]fter an estate is fully
15 administered in a chapter 11 reorganization case, the court, on its own motion or on
16 motion of a party in interest, shall enter a final decree closing the case." Fed. R. Bankr.
17 P. 3022.

18 The phrase "fully administered" is not defined in the Bankruptcy Code or the
19 Federal Rules of Bankruptcy Procedure. E.g., Albert v. Airport Service, Inc. (In re Ground
20 Systems, Inc.), 213 B.R. 1016, 1018 (9th Cir. B.A.P. 1997). However, such phrase does
21 not have the same meaning as "substantial consummation" (id. at 1019), and does not
22 mean that all payments required by the Plan must be completed. See Fed. R. Bankr. P.
23 3022 Advisory Committee Note (1991) ("Entry of a final decree closing a chapter 11 case
24 should not be delayed solely because the payments required by the plan have not been
25 completed."). Factors that a court should consider in determining whether the estate has
26 been fully administered include:

- 27 (a) whether the order confirming the plan has become final,
28 (b) whether deposits required by the plan have been distributed,

- 1 (c) whether the property proposed by the plan to be transferred has been
2 transferred,
3 (d) whether the debtor or the successor of the debtor under the plan has
4 assumed the business of the management of the property dealt with by the plan,
5 (e) whether payments under the plan have commenced, and
6 (f) whether all motions, contested matters and adversary proceedings have
7 been finally resolved.

8 Fed. R. Bankr. P. 3022 Advisory Committee Note (1991).

9 Not all of the above factors need to exist before a court may enter a final decree.
10 In re Mold Makers, Inc., 124 B.R. 766, 768 (Bank. N.D. Ill. 1990). Instead, such factors
11 "merely serve as a guide in assisting the Court in its decision to close a case." Id.
12 Furthermore, "[t]he court should not keep the case open only because of the possibility
13 that the court's jurisdiction may be invoked in the future." Fed. R. Bankr. P. 3022
14 Advisory Committee Note (1991).

15 Each of the aforementioned factors has been satisfied in this case — (1) the
16 January 10, 2011 Order confirming the Plan has become final; (2) no deposits were
17 required by the Plan; (3) the property proposed by the Plan to be transferred (i.e. funds)
18 has been transferred; (4) the project has been built/developed and the condominium units
19 are now being sold which will hopefully lead to some distribution on account of the
20 Debtor's subordinated interest in the sale proceeds which distributions can then be
21 passed on to creditors as provided in the confirmed Plan, and (5) all motions and
22 contested matters other than the instant motion have been finally resolved, and no
23 litigation, adversary actions or contested claims exist in this matter. Thus, the Debtor's
24 estate has been fully administered, and the Court should therefore enter a final decree
25 closing this case.

III

CONCLUSION

For the reasons set forth above, the Debtor respectfully requests that the Court enter an Order granting this Motion, enter a Final Decree closing the Debtor's bankruptcy case, and granting such other and further relief as the Court deems just and proper.

DATED: April 4, 2012

Respectfully submitted,

SulmeyerKupetz
A Professional Corporation

By: /s/ Victor A. Sahn
Victor A. Sahn
Attorneys for Toluca Lake Vintage, Inc.,
Reorganized Debtor

DECLARATION OF VICTOR A. SAHN³

I, Victor A. Sahn, declare:

1. I am a member of SulmeyerKupetz, attorneys for reorganized debtor Toluca Lake Vintage (the "Debtor") in the above-captioned chapter 11 case (the "Case"). I submit this declaration in support of the Debtor's "Motion for Final Decree Closing Chapter 11 Case." (the "Motion"). I submit this declaration based upon my own personal knowledge and belief and, if called as a witness, I would testify completely to each of the matters stated herein under the penalty of perjury.

2. The Debtor's estate (the "Estate") has been fully administered as the Debtor's Plan has been substantially consummated. The Plan is based upon a pre-confirmation Court approved settlement agreement by and between the Debtor, Chinatrust Bank, and others (the "Settlement Agreement") which resulted in the sale of the Debtor's sole asset, a partially completed condominium project in Toluca Lake, California located at 10539-10660 Woodbridge Street in Toluca Lake, California (the "Property"). The Settlement Agreement was approved by Order of this Court [Docket No. 64] entered on May 18, 2010.

3. Generally, pursuant to the Settlement Agreement CityView LA Urban Fund I, L.P., or an affiliate thereof, (the "Financier") was obligated to pay all obligations due by the Debtor to the Debtor's secured creditor, Chinatrust Bank. The Financier was additionally obligated to effectuate the completion of the construction of the condominium project (the "Project") at the Property. In exchange, the Financier received a deed in lieu of foreclosure for the Project and the Property.

4. Pursuant to the Settlement Agreement, the Debtor was entitled to a subordinated distribution from the proceeds realized from the sale of individual condominium units. The Confirmed Plan provided to the remaining unsecured creditors

³ All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Motion.

1 the Debtor's residual interest in the Project. The Settlement Agreement further provided
2 for the payment in full of many prepetition creditors holding mechanic's lien. There are
3 remaining unsecured creditors. In this Case, those creditors will be paid from the
4 distributions resulting from the sale of the individual condominium units, as set forth in the
5 Confirmed Plan.

6 5. Administrative expenses have been paid in full.

7 6. The Debtor's counsel was the only professional to file its Final Fee
8 Application [Docket No. 93]. A hearing was held and the Debtor's counsel's fees were
9 approved by Order of this Court [Docket No. 106] entered on July 1, 2011.

10 7. Priority tax claims have been paid in full.

11 8. As a result of the Settlement Agreement, as set forth above, all Mechanic's
12 Lien Claimants were paid in full prior to the confirmation of the Confirmed Plan.

13 9. China Trust Bank was paid in accordance with the Settlement Agreement
14 and, accordingly, its claim was satisfied pursuant to the Confirmed Plan.

15 10. Frey consented to the Settlement Agreement which resulted in the
16 reconveyance of the Trust Deed on the Project, and accordingly, his claim was satisfied
17 pursuant to the Confirmed Plan.

18 11. Allowed general unsecured claims shall receive distributions on a pro rata
19 basis from the subordinated distributions received by the Debtor from the proceeds from
20 the sale of individual condominium units.

21 12. All remaining proceeds after payment of all general unsecured claims will
22 be paid to the insider interest holders based on their ownership interests.

23 13. The sale agreement provided the Debtor with a subordinated interest in the
24 proceeds realized from the construction and sale of the condominium units of the
25 Debtor's real estate project. This subordinated interest would be paid if the sales
26 proceeds of all of the condominium units were sufficient to repay the purchaser's capital
27 investment in the project plus an agreed-upon return for that investment. To date, there
28 have not been any distributions received by the Debtor on account of its subordinated

1 interest in the sale proceeds realized from the condominium project's development.
2 However, not all of the condominium units have been sold and accordingly, it remains to
3 be seen whether there will be future distributions which the Debtor can then pass on to
4 creditors.

5 14. The following factors support the finding that the Estate has been fully
6 administered: (a) the January 10, 2011 Order confirming the Plan has become final; (b)
7 no deposits were required by the Plan; (c) the property proposed by the Plan to be
8 transferred (i.e. funds) has been transferred; (d) the project has been built/developed and
9 the condominium units are now being sold which will hopefully lead to some distribution
10 on account of the Debtor's subordinated interest in the sale proceeds which distributions
11 can then be passed on to creditors as provided in the confirmed Plan, and (e) all motions
12 and contested matters other than the instant motion have been finally resolved, and no
13 litigation, adversary actions or contested claims exist in this matter. Thus, the Debtor's
14 estate has been fully administered, and the Court should therefore enter a final decree
15 closing this case.

16 I declare under penalty of perjury under the laws of the United States of America
17 that the foregoing is true and correct.

18 Executed this 4th day of April, 2012, at Los Angeles, California.

19
20 /s/ Victor A. Sahn
Victor A. Sahn

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**IN THE SUPREME COURT OF THE
STATE OF NEVADA**

YACOV JACK HEFETZ;

Appellant,

v.

CHRISTOPHER BEAVOR,

Respondent.

Case No.: 70327

District Court Case No.: A-11-645353

Dept. No.: XXVII

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