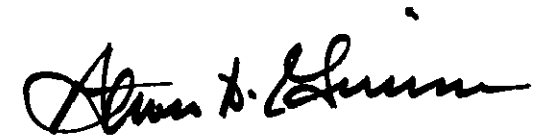


**CERTIFICATE OF SERVICE**

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 12<sup>th</sup> day of August 2015, she caused a copy of the foregoing **DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES**, 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](mailto:sjohnson@cohenjohnson.com)  
Michael V. Hughes, Esq.  
Email: [mhughes@cohenjohnson.com](mailto: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



CLERK OF THE COURT

1 **SUPP**  
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**

11 **YACOV JACK HEFETZ,**

12 **Plaintiff,**

13 **vs.**

14 **CHRISTOPHER BEAVOR,**

15 **Defendant.**

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

**DEFENDANT CHRISTOPHER  
BEAVOR'S SUPPLEMENT TO REPLY IN  
SUPPORT OF MOTION FOR  
ATTORNEYS' FEES AND COSTS**

**Date of Hearing: August 19, 2015  
Time of Hearing: In Chambers**

16 Defendant Christopher Beavor ("Beavor"), by and through counsel, the law firm of  
17 Dickinson Wright PLLC, files this supplement to his reply in support of his Motion for  
18 Attorneys' Fees and Costs (the "Motion") against Plaintiff Yacov Jack Hefetz ("Hefetz").  
19 ...  
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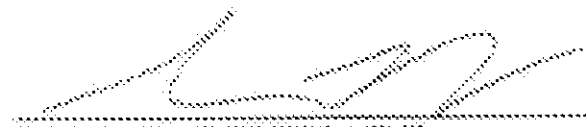
1 another example of Hefetz's bad faith in this action, thereby justifying an award of attorneys'  
2 fees pursuant to Nevada Revised Statute 17.115 and Nevada Rule of Civil Procedure 68.

3 **III. CONCLUSION**

4 Based on the foregoing, and for the reasons already set forth in Beavor's Motion and  
5 Reply, Beavor respectfully requests that this Court award him attorneys' fees in the amount of  
6 \$21,285.00 and costs of \$338.48.

7 DATED this 17<sup>th</sup> day of August 2015.

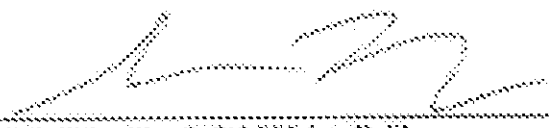
8 DICKINSON WRIGHT PLLC

9  
10   
11 JOEL Z. SCHWARZ  
12 Nevada Bar No. 9181  
13 GABRIEL A. BLUMBERG  
14 Nevada Bar No. 12332  
15 8363 West Sunset Road, Suite 200  
16 Las Vegas, Nevada 89113-2210  
17 Tel: (702) 382-4002  
18 Attorneys for Christopher Beavor  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 This supplement is based on the following Memorandum of Points and Authorities; the  
2 August 14, 2015 Docketing Statement filed by Hefetz, a copy of which is attached hereto as  
3 **Exhibit A**; and the papers and pleadings already on file herein.

4 DATED this 17<sup>th</sup> day of August 2015.

5 DICKINSON WRIGHT PLLC

6   
7 JOEL Z. SCHWARZ  
8 Nevada Bar No. 9181  
9 GABRIEL A. BLUMBERG  
10 Nevada Bar No. 12332  
11 8363 West Sunset Road, Suite 200  
12 Las Vegas, Nevada 89113-2210  
13 *Attorneys for Christopher Beavor*

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. SUPPLEMENTAL STATEMENT OF FACTS**

13 On July 18, 2015, Hefetz filed his Opposition to the Motion. In his Opposition, Hefetz's  
14 primary argument was that Beavor cannot "recover attorney's fees because he only obtained an  
15 order of dismissal without prejudice and not the statutorily required judgment." Opposition at  
16 6:17-18.

17 On August 14, 2015, two days after Beavor filed his Reply in support of the Motion,  
18 wherein he rebutted Hefetz's unmeritorious claim that the June 17, 2015 order of dismissal did  
19 not qualify as a final judgment, Hefetz filed his Docketing Statement in his appeal of the  
20 dismissal order. In the Docketing Statement, Hefetz states "[t]he judgment or order at issue in  
21 this appeal is a *final judgment or order* which disposed of all the claims previously pending in  
22 the district court." Docketing Statement at ¶ 20 (emphasis added).

23 **II. LEGAL ARGUMENT**

24 In stating to the Nevada Supreme Court that this Court's order of dismissal constitutes a  
25 "final judgment or order," Hefetz has directly contradicted the argument he presented to this  
26 Court in his Opposition. Hefetz continues to undermine prior arguments with each successive  
27 filing; a pattern of conduct which caused the extensive litigation in this matter following  
28 Beavor's Offer of Judgment. This most recent instance of contradictory filings serves as yet



**CERTIFICATE OF SERVICE**

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 17<sup>th</sup> day of August 2015, she caused a copy of the foregoing **DEFENDANTS' SUPPLEMENTAL REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES**, 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](mailto:sjohnson@cohenjohnson.com)  
Michael V. Hughes, Esq.  
Email: [mhughes@cohenjohnson.com](mailto: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 A**

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

YACOV JACK HEFETZ,  
Plaintiff-Appellant,  
v.  
CHRISTOPHER BEAVOR,  
Defendant-Appellee.

No. 68438  
DOCKETING STATEMENT  
CIVIL APPEALS

Electronically Filed  
Aug 14 2015 03:34 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See *KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XXVIII  
County Clark Judge Ronald J. Israel  
District Ct. Case No. A-11-645353-C

**2. Attorney filing this docketing statement:**

Attorney H. Stan Johnson & Michael V. Hughes Telephone (702) 823-3500  
Firm Cohen | Johnson, LLC  
Address Suite 100  
255 East Warm Springs Road  
Las Vegas, Nevada 89119

Client(s) Yacov Jack Hefetz

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Joel Z. Schwarz & Gabriel A. Blumberg Telephone (702) 382-4002  
Firm Dickinson Wright PLLC  
Address Suite 200  
8383 West Sunset Road  
Las Vegas, Nevada 89113

Client(s) Christopher Beavor

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |  |
|---|--|
| <input type="checkbox"/> Judgment after bench trial         | <input checked="" type="checkbox"/> Dismissal:   |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction  |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim                                      |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute  |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input checked="" type="checkbox"/> Other (specify): <u>Failure to Meet NRS 40.430</u> |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:   |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification                |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): _____                            |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Christopher Beavor v. Eighth Judicial District Court (Hefetz), Case No. 65656 (Supreme Court for the State of Nevada). Case Filed: May 13, 2014. Case Closed: October 13, 2014.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Yacov Jack Hefetz v. Christopher Beavor, Case No. A-11-645353-C (Eighth Judicial District Court for the State of Nevada) (Department No. XXVIII) (District Court Judge Ronald J. Israel). Dismissal Order - June 17, 2015.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

Appellant and Appellee are parties to a payment guaranty contract. The payment guaranty contract arose in connection with a real estate loan between a predecessor in interest to the Appellant and a limited liability company previously operated by the Appellee. That real estate loan contained a deed of trust, which attached to many parcels of real estate, including the personal residence of the Appellee. There was a default on the real estate loan. There was subsequently a default on the payment guaranty. Appellant, thereafter, commenced a lawsuit on the breach of the payment guaranty. Appellee responded to the lawsuit, but did not raise the affirmative defense of the One Action Rule (NRS 40.430) in his answer. The case proceeded to a trial and the jury returned a verdict in favor of the Appellee in the amount of zero dollars. The District Court eventually granted Appellant's motion for a new trial. While preparing for the second trial, Appellee raised for the first time a motion to dismiss pursuant to NRS 40.435. Appellant objected to the motion to dismiss on a series of grounds and requested that the action be continued to allow the proceedings to be converted to an action in compliance with the One Action Rule (NRS 40.430). The Court dismissed the action without prejudice on the basis of NRS 40.435(2)(a).

**9. Issues on appeal.** State specifically all issues in this appeal (attach separate sheets as necessary):

1. Does the One Action Rule (NRS 40.430) apply in an action for the recovery of a debt not secured by a mortgage or lien upon real estate?
2. Did the Appellee waive the One Action Rule (NRS 40.430) by failing to interpose that affirmative defense in his answer?
3. Is the Appellee barred from raising the One Action Rule (NRS 40.430) by failing to interpose that affirmative defense in his answer?
4. Did the Appellee waive the One Action Rule (NRS 40.430) by failing to interpose that affirmative defense prior to the entry of a jury verdict and a final judgment?
5. Is the Appellee barred from raising the One Action Rule (NRS 40.430) by failing to interpose that affirmative defense prior to the entry of a jury verdict and a final judgment?
6. Is Appellee barred from raising the affirmative defense of the One Action Rule by virtue of NRCp 6(b)?
7. Did the District Court abuse its discretion when it dismissed without prejudice the Appellant's claim instead of granting a continuance with an order to amend the pleadings to bring the pleadings into compliance with the One Action Rule (NRS 40.430)?

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Appellant is unaware of any proceeding presently pending before the Nevada Supreme Court which raises the same or similar issues as the ones contained in this appeal.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent(identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

**13. Trial.** If this action proceeded to trial, how many days did the trial last? 5

Was it a bench or jury trial? First Trial: Jury / Second Trial: None Held

**14. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
Appellant does not intend to file a motion for disqualification of any Justice of the Nevada Supreme Court.

## TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from June 17, 2015

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served June 18, 2015

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☒ NRCP 59      Date of filing June 19, 2015

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See *AA Primo Builders v. Washington*, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion July 23, 2015

(c) Date written notice of entry of order resolving tolling motion was served 07/24/2015

Was service by:

☐ Delivery

☒ Mail



**18. Date notice of appeal filed** July 14, 2015

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

### **SUBSTANTIVE APPEALABILITY**

**20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify)          | <u></u>                               |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The judgment or order at issue in this appeal arises from a civil action previously pending in the Eighth Judicial District Court for the State of Nevada. The judgment or order at issue in this appeal is a final judgment or order which disposed of all of the claims previously pending in the district court. In light of the foregoing, the judgment or order at issue in this appeal is one subject to being appealed under NRAP 3A(b)(1).

**21. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

1. Yacov Jack Hefetz
2. Christopher Beavor

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

**22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Appellant: Breach of Payment Guaranty (June 17, 2015)  
Appellee: No Claims

**23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**24. If you answered "No" to question 23, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

**26. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Yacov Jack Hefetz  
Name of appellant

H. Stan Johnson & Michael V. Hughes  
Name of counsel of record

August 14, 2015  
Date

Michael Hughes  
Signature of counsel of record

Clark County, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 14th day of August, 2015, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Joel Z. Schwarz, Esq.  
Dickinson Wright PLLC  
Suite 200  
8383 West Sunset Road  
Las Vegas, Nevada 89118

James J. Jimmerson, Esq.  
Jimmerson Hansen  
Suite 100  
415 South Sixth Street  
Las Vegas, Nevada 89101

Dated this 14th day of August, 2015

Michael Hughes  
Signature

REGISTER OF ACTIONS

CASE No. A-11-645353-C

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

§  
§  
§  
§  
§  
§  
§  
§

Case Type: Breach of Contract

Subtype: Guarantee

Date Filed: 07/21/2011

Location: Department 28

Cross-Reference Case Number: A645353

Supreme Court No.: 68438  
68843

PARTY INFORMATION

Counter Claimant	Beavor, Christopher	Lead Attorneys <del>Marc A. Saggese</del> <i>Retained</i> 702-788-8883(W)
Counter Claimant	Beavor, Samantha	<del>Marc A. Saggese</del> <i>Retained</i> 702-788-8883(W)
Counter Defendant	Hefetz, Yacov Jack	Harold Stanley Johnson <i>Retained</i> 702-823-3500(W)
Defendant	Beavor, Christopher	Joel Z. Schwarz <i>Retained</i> 775-343-7500(W)
Plaintiff	Hefetz, Yacov Jack	Harold Stanley Johnson <i>Retained</i> 702-823-3500(W)

EVENTS & ORDERS OF THE COURT

08/19/2015

Motion for Attorney Fees and Costs (3:00 AM) (Judicial Officer Israel, Ronald J.)

Minutes

08/19/2015 3:00 AM

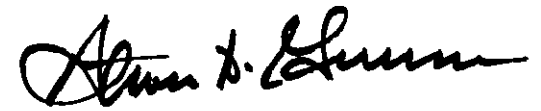
- Motion for Costs are GRANTED as no timely Motion to Retax was submitted. Motion for Attorney's Fees are GRANTED. Defendant prevailed and got the Complaint dismissed even though it was without prejudice. Attorney fees are appropriate pursuant to the offer of judgment and are awarded in the amount of \$15,000.00. This Court reduced the attorneys' fees as the billing seemed excessive post offer of judgment. In discussing the Brunzell factors, the quality of the work done was very good; the character and difficulty of the work was reasonable in nature and particularly so given that it resolved the case. It was the amount of time spent that this Court felt was excessive and therefore reduced the total award of attorneys' fees to \$15,000.00. The Defendant did achieve appropriate results or results that would satisfy the Brunzell factors. The Offer of Judgment was both timely and reasonable in the amount especially given the circumstances under which the Plaintiff had been advised prior to the filing of the motion that the One-Action Rule would resolve the situation. Prevailing party to prepare the order pursuant to EDCR 7.21. CLERK'S NOTE: A copy of this minute order was

APP001186

placed in the attorney folder(s) of: Joel Schwarz, Esq. (Dickinson Wright) and Stanley Johnson, Esq. (Cohen-Johnson)

[Return to Register of Actions](#)

**APP001187**



CLERK OF THE COURT

1 **NEOJ**  
2 **DICKINSON WRIGHT PLLC**  
3 **JOEL Z. SCHWARZ**  
4 Nevada Bar No. 9181  
5 Email: [jschwarz@dickinsonwright.com](mailto:jschwarz@dickinsonwright.com)  
6 **GABRIEL A. BLUMBERG**  
7 Nevada Bar No. 12332  
8 Email: [gblumberg@dickinsonwright.com](mailto: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  
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **YACOV JACK HEFETZ,**

12 Plaintiff,

13 vs.

14 **CHRISTOPHER BEAVOR,**

15 Defendant.  
16


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

17 **NOTICE OF ENTRY OF ORDER**

18 NOTICE IS HEREBY GIVEN that an Order Granting Defendant Christopher Beavor's  
19 Motion for Attorneys' Fees and Costs was entered on September 1, 2015, a copy of which is  
20 attached hereto.

21 DATED this 3<sup>rd</sup> day of September 2015.

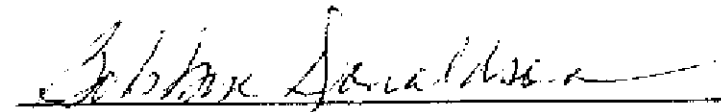
22 **DICKINSON WRIGHT PLLC**

23   
24 **JOEL Z. SCHWARZ**  
25 Nevada Bar No. 9181  
26 **GABRIEL A. BLUMBERG**  
27 Nevada Bar No. 12332  
28 8363 West Sunset Road, Suite 200  
Las Vegas, Nevada 89113-2210  
Tel: (702) 382-4002  
*Attorneys for Christopher Beavor*

**CERTIFICATE OF SERVICE**

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 3<sup>rd</sup> day of September 2015, she caused a copy of **Notice of Entry of Order** 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 to:

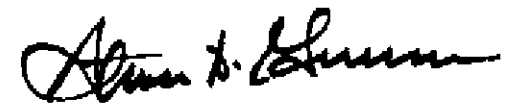
H. Stan Johnson, Esq.  
Email: sjohnson@cohenjohnson.com  
Michael V. Hughes, Esq.  
Email: mhughes@cohenjohnson.com  
COHEN-JOHNSON, L.L.C.  
255 East Warm Springs Road, Suite 100  
Las Vegas, NV 89119  
*Attorneys for Yacov Hefetz*



Bobbye Donaldson, an employee of  
Dickinson Wright PLLC



ORIGINAL



CLERK OF THE COURT

1 **ORDG**  
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*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **YACOV JACK HEFETZ,**

12 Plaintiff,

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

13 vs.

14 **CHRISTOPHER BEAVOR,**

15 Defendant.

17 **ORDER GRANTING DEFENDANT CHRISTOPHER BEAVOR'S MOTION FOR**  
18 **ATTORNEYS' FEES AND COSTS**

19 Defendant Christopher Beavor's ("Defendant") Motion for Attorneys' Fees and Costs  
20 ("Motion") having come before the Court in Chambers on August 19, 2015, the Court having  
21 reviewed the Motion, the opposition, and reply and supplement to reply thereto, and good cause  
22 appearing therefore, the Court hereby finds as follows:

23 IT IS HEREBY ORDERED that the Defendant's Motion for Attorney's Fees is  
24 GRANTED. Defendant is the prevailing party, having obtained a dismissal without prejudice.  
25 Attorney fees are appropriate pursuant to the Offer of Judgment and hereby are awarded in the  
26 amount of \$15,000.00.

27 Defendant's Offer of Judgment was both timely and reasonable in the amount especially  
28

DICKINSON WRIGHT

8383 West Sunset Road, Suite 200  
Las Vegas, Nevada 89113-7710




APP001190

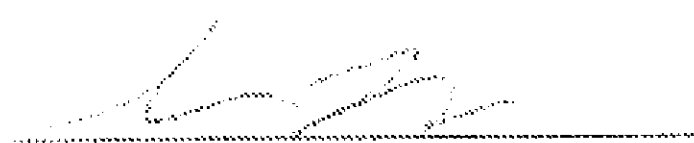
given the circumstances under which the Plaintiff had been advised prior to the filing of the motion to dismiss that the One-Action Rule would resolve the situation.

In discussing the *Brunzell* factors: (1) the quality of the work performed by Defendant's counsel was very good; (2) the character and difficulty of the work was reasonable in nature and particularly so given that it resolved the case; and (3) Defendant achieved appropriate results or results that would satisfy the *Brunzell* factors. It was the amount of time spent following the Offer of Judgment that this Court feels was excessive, and therefore the Court reduces the total award of attorneys' fees to \$15,000.00.

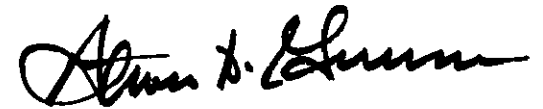
IT IS HEREBY FURTHER ORDERED that the Defendant's Motion for Costs is GRANTED as no timely Motion to Retax was submitted and the costs set forth in Defendant's memorandum of costs are all taxable pursuant to NRS 18.005. Defendant therefore is awarded costs in the amount of \$338.48.

  
DISTRICT COURT JUDGE  
DATED: 8-28-15

Submitted by  
DICKINSON WRIGHT PLLC

  
JOEL Z. SCHWARZ  
Nevada Bar No. 9181  
Email: jschwarz@dickinsonwright.com  
GABRIEL A. BLUMBERG  
Nevada Bar No. 12332  
Email: gblumberg@dickinsonwright.com  
8383 West Sunset Road, Suite 200  
Las Vegas, Nevada 89113  
Tel: (702) 382-4002  
Fax: (702) 382-1661  
Attorneys for Christopher Beavor

VEGLAS 65530-1 3306541



CLERK OF THE COURT

1 NOAS  
2 H. STAN JOHNSON, ESQ.  
3 Nevada Bar No. 00265  
4 sjohnson@cohenjohnson.com  
5 MICHAEL V. HUGHES, ESQ.  
6 Nevada Bar No. 13154  
7 mhughes@cohenjohnson.com  
8 Suite 100  
9 255 East Warm Springs Road  
10 Las Vegas, Nevada 89119  
11 Telephone No. (702) 823-3500  
12 Facsimile No. (702) 823-3400  
13 *Attorneys for Plaintiff-Appellant*  
14 *Yacov Jack Hefetz*

11 No. A-11-645353-C

Dept. No. XXVIII

12 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**  
13 **STATE OF NEVADA IN AND FOR**  
14 **THE COUNTY OF CLARK**

15 YACOV JACK HEFETZ,  
16  
17 Plaintiff-Appellant,

18 v.

19 CHRISTOPHER BEAVOR,  
20  
21 Defendant-Appellee.

22 **NOTICE OF APPEAL**

23  
24 Notice is hereby given that Plaintiff-Appellant, Yacov Jack Hefetz, by and  
25 through his counsel, H. Stan Johnson, Esq., and Michael V. Hughes, Esq. of the  
26 law firm of Cohen-Johnson, LLC, hereby appeals to the Supreme Court of Nevada  
27 from the Order: (1) Granting Defendant Christopher Beavor's Motion For  
28 Attorneys' Fees and Costs (hereinafter referred to as the "Order") entered in this

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

1 above-captioned action on the 3<sup>rd</sup> day of September, 2015. A copy of the Notice of  
2 Entry of Order with the attached Order is enclosed herewith as **Exhibit 1** and a  
3 copy of the Court Minutes arising from the hearing on August 19, 2015 is enclosed  
4 herewith as **Exhibit 2**.

5 Dated as of this 15<sup>th</sup> day of September, 2015.

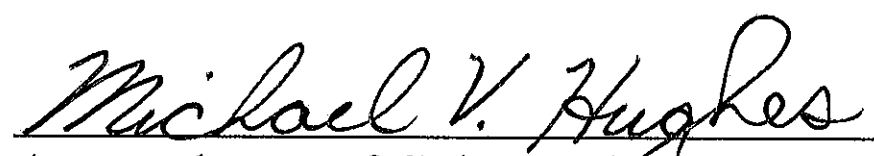
6  
7 By: Michael V. Hughes  
8 H. Stan Johnson, Esq.  
9 Nevada Bar No. 00265  
10 Michael V. Hughes, Esq.  
11 Nevada Bar No. 13154  
12 Suite 100  
13 255 East Warm Springs Road  
14 Las Vegas, Nevada 89119  
15 Telephone No. (702) 823-3500  
16 Facsimile No. (702) 823-3400  
17 *Attorneys for Plaintiff-Appellant*  
18 *Yacov Jack Hefetz*  
19  
20  
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22  
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26  
27  
28

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

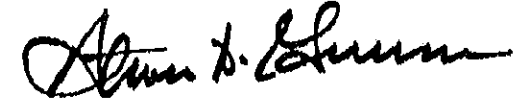
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on the 15<sup>th</sup> day of September, 2015, a true and correct copy of the foregoing **NOTICE OF APPEAL** was served upon each of the parties set forth below via U.S. First-Class Mail and Odyssey E-Filing System pursuant to Rule 5(b)(2)(D) of the Nevada Rules of Civil Procedure and Rule 8.05 of the Eighth Judicial District Court Rules:

Joel Z. Schwarz, Esq.  
Gabriel A. Blumberg, Esq.  
Dickinson Wright PLLC  
8383 West Sunset Road, Suite 200  
Las Vegas, Nevada 89113  
Email: [jschwarz@dickinsonwright.com](mailto:jschwarz@dickinsonwright.com)  
Email: [gblumberg@dickinsonwright.com](mailto:gblumberg@dickinsonwright.com)  
*Attorney for Defendant-Appellee*  
*Christopher Beavor*

  
An employee of Cohen-Johnson, LLC

# EXHIBIT 1



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  
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 YACOV JACK HEFETZ,

12 Plaintiff,

13 vs.

14 CHRISTOPHER BEAVOR,

15 Defendant.  
16

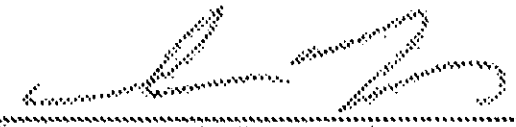
CASE NO. A-11-645353-C  
DEPT. XXVIII

17 NOTICE OF ENTRY OF ORDER

18 NOTICE IS HEREBY GIVEN that an Order Granting Defendant Christopher Beavor's  
19 Motion for Attorneys' Fees and Costs was entered on September 1, 2015, a copy of which is  
20 attached hereto.

21 DATED this 3<sup>rd</sup> day of September 2015.

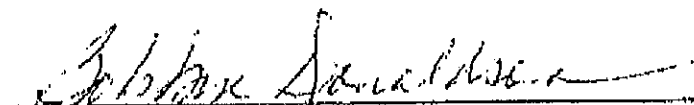
22 DICKINSON WRIGHT PLLC

23  
24   
25 JOEL Z. SCHWARZ  
26 Nevada Bar No. 9181  
27 GABRIEL A. BLUMBERG  
28 Nevada Bar No. 12332  
8383 West Sunset Road, Suite 200  
Las Vegas, Nevada 89113-2210  
Tel: (702) 382-4002  
Attorneys for Christopher Beavor

**CERTIFICATE OF SERVICE**

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 3<sup>rd</sup> day of September 2015, she caused a copy of **Notice of Entry of Order** 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 to:

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

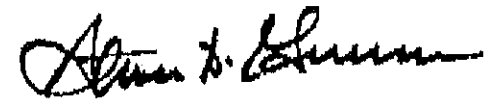
  
Bobbye Donaldson, an employee of  
Dickinson Wright PLLC

DICKINSON WRIGHT PLLC

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



ORIGINAL



CLERK OF THE COURT

1 **ORDG**  
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*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **YACOV JACK HEPETZ,**

12 Plaintiff,

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

13 vs.

14 **CHRISTOPHER BEAVOR.**

15 Defendant.

17 **ORDER GRANTING DEFENDANT CHRISTOPHER BEAVOR'S MOTION FOR**  
18 **ATTORNEYS' FEES AND COSTS**

19 Defendant Christopher Beavor's ("Defendant") Motion for Attorneys' Fees and Costs  
20 ("Motion") having come before the Court in Chambers on August 19, 2015, the Court having  
21 reviewed the Motion, the opposition, and reply and supplement to reply thereto, and good cause  
22 appearing therefore, the Court hereby finds as follows:

23 IT IS HEREBY ORDERED that the Defendant's Motion for Attorney's Fees is  
24 GRANTED. Defendant is the prevailing party, having obtained a dismissal without prejudice.  
25 Attorney fees are appropriate pursuant to the Offer of Judgment and hereby are awarded in the  
26 amount of \$15,000.00.

27 Defendant's Offer of Judgment was both timely and reasonable in the amount especially  
28



APP001198

DICKINSON WRIGHT  
8383 West Sunset Road, Suite 200  
Las Vegas, Nevada 89113-7710

1 given the circumstances under which the Plaintiff had been advised prior to the filing of the  
2 motion to dismiss that the One-Action Rule would resolve the situation.

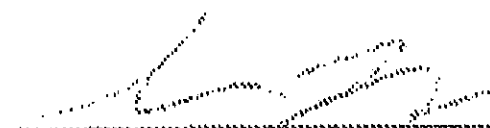
3 In discussing the *Brunzell* factors: (1) the quality of the work performed by Defendant's  
4 counsel was very good; (2) the character and difficulty of the work was reasonable in nature and  
5 particularly so given that it resolved the case; and (3) Defendant achieved appropriate results or  
6 results that would satisfy the *Brunzell* factors. It was the amount of time spent following the  
7 Offer of Judgment that this Court feels was excessive, and therefore the Court reduces the total  
8 award of attorneys' fees to \$15,000.00.

9 IT IS HEREBY FURTHER ORDERED that the Defendant's Motion for Costs is  
10 GRANTED as no timely Motion to Retax was submitted and the costs set forth in Defendant's  
11 memorandum of costs are all taxable pursuant to NRS 18.005. Defendant therefore is awarded  
12 costs in the amount of \$338.48.

13  
14   
15 DISTRICT COURT JUDGE  
16 DATED: 8-28-15

17 Submitted by

18 DICKINSON WRIGHT PLLC

19  
20   
21 JOEL Z. SCHWARZ  
22 Nevada Bar No. 9181  
23 Email: jschwarz@dickinsonwright.com  
24 GABRIEL A. BLUMBERG  
25 Nevada Bar No. 12332  
26 Email: gblumberg@dickinsonwright.com  
27 8383 West Sunset Road, Suite 200  
28 Las Vegas, Nevada 89113  
Tel: (702) 382-4002  
Fax: (702) 382-1661  
Attorneys for Christopher Beavor

LVEGAS 65530-1 33063v1

# EXHIBIT 2

DISTRICT COURT  
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

August 19, 2015

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

---

August 19, 2015      Chambers      Motion for Attorney Fees  
and Costs

HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

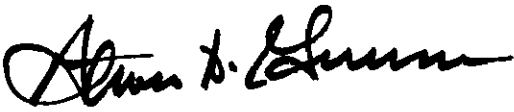
**PARTIES**

**PRESENT: None**

**JOURNAL ENTRIES**

- Motion for Costs are GRANTED as no timely Motion to Retax was submitted. Motion for Attorney's Fees are GRANTED. Defendant prevailed and got the Complaint dismissed even though it was without prejudice. Attorney fees are appropriate pursuant to the offer of judgment and are awarded in the amount of \$15,000.00. This Court reduced the attorneys' fees as the billing seemed excessive post offer of judgment. In discussing the Brunzell factors, the quality of the work done was very good; the character and difficulty of the work was reasonable in nature and particularly so given that it resolved the case. It was the amount of time spent that this Court felt was excessive and therefore reduced the total award of attorneys' fees to \$15,000.00. The Defendant did achieve appropriate results or results that would satisfy the Brunzell factors. The Offer of Judgment was both timely and reasonable in the amount especially given the circumstances under which the Plaintiff had been advised prior to the filing of the motion that the One-Action Rule would resolve the situation. Prevailing party to prepare the order pursuant to EDCR 7.21.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Joel Schwarz, Esq. (Dickinson Wright) and Stanley Johnson, Esq. (Cohen-Johnson)

  
CLERK OF THE COURT

1 **NEOJ**  
2 **COHEN|JOHNSON|PARKER|EDWARDS**  
3 H. STAN JOHNSON, ESQ.  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 CHRIS DAVIS, ESQ.  
7 Nevada Bar No. 6616  
8 cdavis@cohenjohnson.com  
9 MICHAEL V. HUGHES, ESQ.  
10 Nevada Bar No. 13154  
11 mhughes@cohenjohnson.com  
12 Suite 100  
13 255 E. Warm Springs Road  
14 Las Vegas, Nevada 89119  
15 Telephone: (702) 823-3500  
16 Facsimile: (702) 823-3400  
17 *Attorneys for Plaintiff Yacov Hefetz*

11  
12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 YACOV JACK HEFETZ, an individual,  
15  
16 Plaintiff,

16 vs.

17 CHRISTOPHER BEAVOR, an individual;  
18 SAMANTHA BEAVOR, an individual; DOES I  
19 through X; and ROE ENTITIES I through X,  
20 inclusive,  
21  
22 Defendants.

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

**NOTICE OF ENTRY OF ORDER**

22 ///

23  
24 ///

25 ///

26  
27 ///

**NOTICE OF ENTRY OF ORDER**

NOTICE IS HEREBY GIVEN that an Order Granting Plaintiff's Rule 50(a) Motion was entered on April 21, 2016, a copy of which is attached hereto.

COHEN | JOHNSON | PARKER | EDWARDS

By: /s/ Chris Davis

H. Stan Johnson, Esq.  
Nevada Bar No. 00265  
Michael V. Hughes, Esq.  
Nevada Bar No. 13154  
CHRIS DAVIS, ESQ.  
Nevada Bar No. 6616  
cdavis@cohenjohnson.com  
Suite 100  
255 East Warm Springs Road  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400  
*Attorneys for Plaintiff*

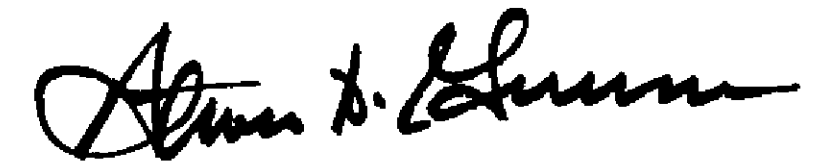
**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the 21<sup>st</sup> day of April, 2016, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** was served upon the following person pursuant to NRCP 5(b)(2)(D) and EDCR 8.05 via the Odyssey E-Filing system:

Joel Z. Schwarz, Esq.  
Dickinson Wright PLLC  
Suite 200  
8383 West Sunset road  
Las Vegas, Nevada 89113  
Email: [jschwarz@dickinsonwright.com](mailto:jschwarz@dickinsonwright.com)  
*Attorney for Christopher Beaver*

/s/ Sarah Gondek

An Employee of Cohen-Johnson, LLC



CLERK OF THE COURT

1 **ORDR**  
2 **COHEN|JOHNSON|PARKER|EDWARDS**  
3 H. STAN JOHNSON, ESQ.  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 CHRIS DAVIS, ESQ.  
7 Nevada Bar No. 6616  
8 cdavis@cohenjohnson.com  
9 MICHAEL V. HUGHES, ESQ.  
10 Nevada Bar No. 13154  
11 mhughes@cohenjohnson.com  
12 Suite 100  
13 255 E. Warm Springs Road  
14 Las Vegas, Nevada 89119  
15 Telephone: (702) 823-3500  
16 Facsimile: (702) 823-3400  
17 *Attorneys for Plaintiff Yacov Hefetz*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 YACOV JACK HEFETZ, an individual,  
14  
15 Plaintiff,

16 vs.

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

21 Defendants.

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

22 **ORDER GRANTING PLAINTIFF'S**  
23 **RULE 50(a) MOTION**

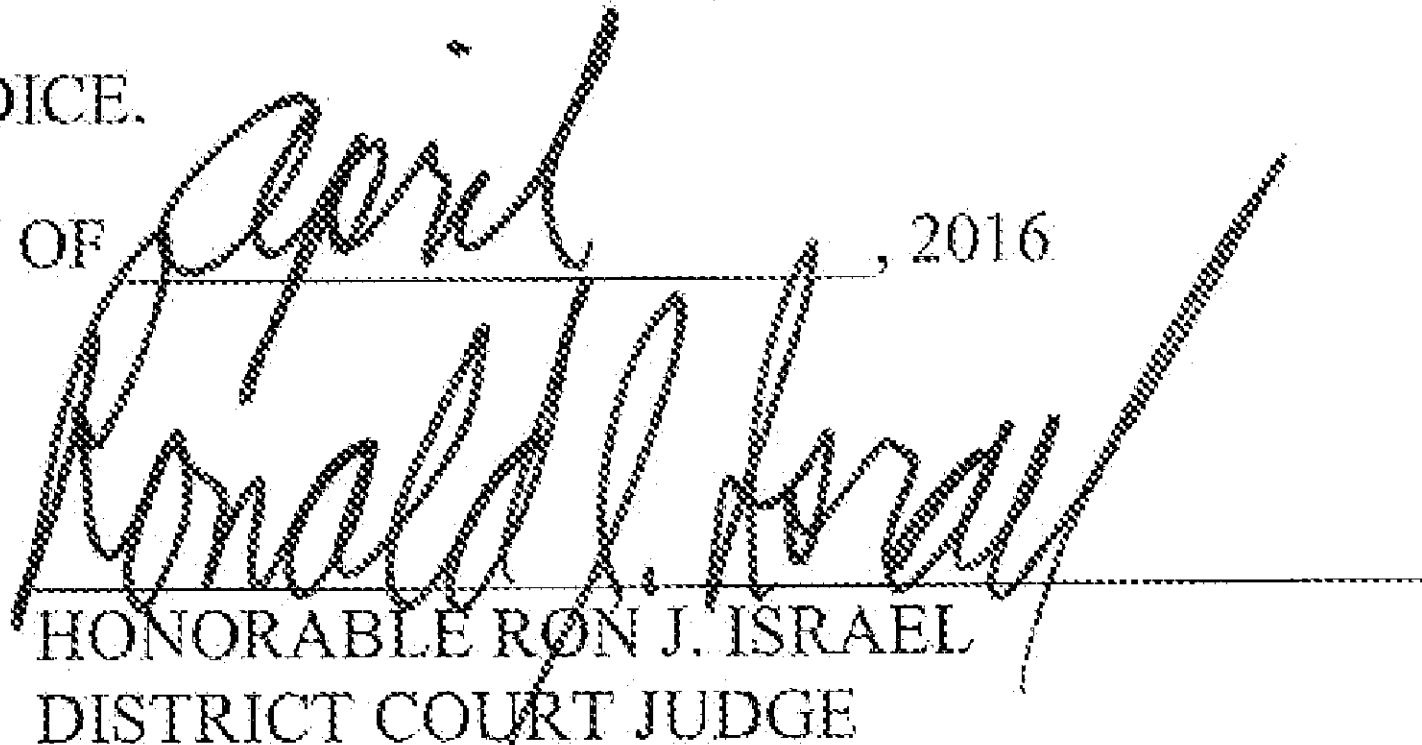
24 **Date of Hearing: March 1, 2013**  
25 **Time of Hearing: 10:30 a.m.**

26 PLAINTIFF YACOV JACK HEFETZ's (hereinafter referred to as "Plaintiff") NRCP  
27 50(a) Motion for Judgment as a Matter of Law on Defendants' Counterclaims came before the  
28 Court for a hearing on the 1<sup>st</sup> day of March 2013. Plaintiff appeared by and through his attorney  
of record. DEFENDANTS CHRISTOPHER BEAVOR and SAMANTHA BEAVOR  
(hereinafter collectively referred to as "Defendants") appeared by and through their attorney of  
record. Having considered the papers and pleadings on file, the evidence presented at trial, and  
the arguments of counsel at the hearing, based on the evidence produced at trial, the Court finds

1 no legal grounds for Defendants' counterclaim for tortious interference with contract. The Court  
2 further finds that Defendants failed to present evidence at trial of forgiveness of the \$6 million  
3 note at issue in this case, and also failed to present any evidence of forgiveness of Defendants'  
4 guaranty of the note. Additionally, the Court finds that Defendants failed to present evidence at  
5 trial showing personal liability of Mr. Hefetz on the counterclaims asserted by Defendants. The  
6 Court finds that Defendants failed to present evidence at trial showing that Defendants suffered  
7 any damages. Accordingly, based on the Nevada Supreme Court's finding<sup>1</sup> that this Court's  
8 Judgment, entered on May 21, 2013, did not dispose of Defendants' counterclaims,

9 IT IS ORDERED that Plaintiff's NRCP 50(a) Motion for Judgment as a Matter of Law  
10 on Defendants' Counterclaims is GRANTED and each and every counterclaim asserted by  
11 Defendants is DISMISSED WITH PREJUDICE.

12 DATED THIS 21 DAY OF April, 2016

13  
14   
15 HONORABLE RON J. ISRAEL  
16 DISTRICT COURT JUDGE

17 RESPECTFULLY SUBMITTED BY:

18 COHEN JOHNSON PARKER EDWARDS

19   
20 H. STAN JOHNSON, ESQ.

21 Nevada Bar No. 00265

22 sjohnson@cohenjohnson.com

23 CHRIS DAVIS, ESQ.

24 Nevada Bar No. 6616

25 cdavis@cohenjohnson.com

26 255 East Warm Springs Road, Suite 100

27 Las Vegas, Nevada 89119

28 Telephone: (702) 823-3500

Facsimile: (702) 823-3400

Attorneys for Plaintiff

<sup>1</sup> See Exhibit A, Order Dismissing Appeal.



1 APPROVED AS TO FORM AND CONTENT BY:

2 DICKINSON WRIGHT PLLC

3  
4 REFUSED TO SIGN

Joel Z. Schwarz, Esq.

5 Gabriel A. Blumberg, Esq.

Suite 200

6 8363 West Sunset Road

7 Las Vegas, Nevada 89113

Email: jschwarz@dickinsonwright.com

8 Email: gblumberg@dickinsonwright.com

Attorney for Defendant Christopher Beavor

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# Exhibit A

IN THE SUPREME COURT OF THE STATE OF NEVADA

YACOV JACK HEFETZ,  
Appellant,  
vs.  
CHRISTOPHER BEAVOR,  
Respondent.

No. 68438

YACOV JACK HEFETZ,  
Appellant,  
vs.  
CHRISTOPHER BEAVOR,  
Respondent.

No. 68843

**FILED**

APR 01 2016

TRACE KILDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER DISMISSING APPEALS*

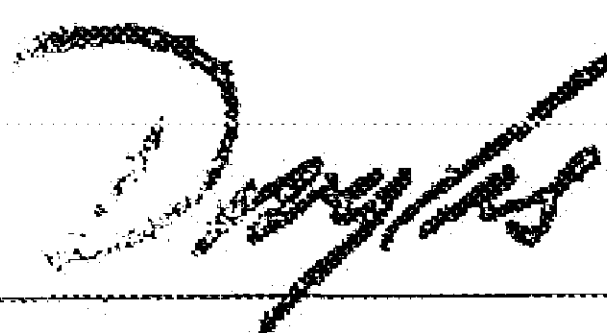
These consolidated appeals are from a district court order granting a motion to dismiss a complaint in a breach of contract action and an order granting a motion for attorney fees and costs. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

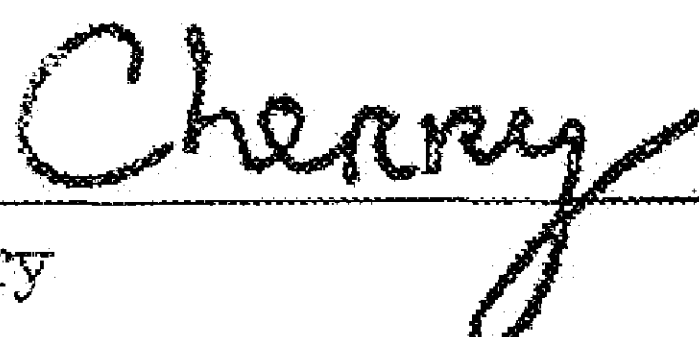
When our preliminary review of the amended docketing statement and the documents before this court revealed potential jurisdictional defects, we ordered appellant to show cause why these appeals should not be dismissed for lack of jurisdiction. It appeared that the district court had not yet entered a written order adjudicating all the rights and liabilities of all the parties such that the June 17, 2015, order was not a final judgment appealable under NRAP 3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 427, 996 P.2d 416, 418 (2000). Specifically, it appeared that the claims asserted by Alis Cohen, the claims asserted against Samantha Beaver, and the counterclaims may remain pending in the district court. And in the absence of a final judgment, the order awarding attorney fees and costs is not appealable as a special order after final judgment. See NRAP 3A(b)(8).

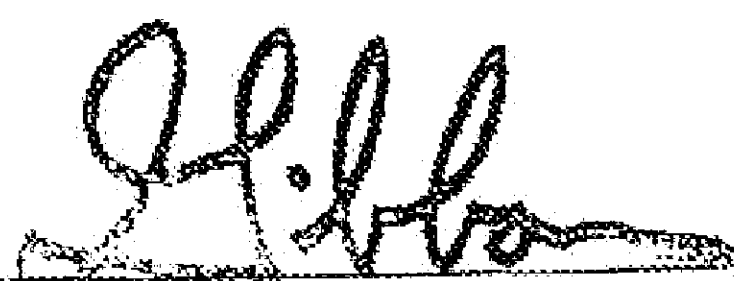
16-10302

In response to our order, appellant has demonstrated that the claims asserted by Alis Cohen and against Samantha Beavor have been resolved. Appellant asserts that the counterclaims were dismissed when the court granted his "Rule 50(a) motion" and cites to exhibits 5 and 7 to the response. Exhibit 5 is a copy of the district court minute entries from March 1, 2013. Those entries indicate that the district court orally dismissed the counterclaims. However, the district court's minute order is ineffective. *See State, Div. Child & Fam. Serv. v. Dist. Court*, 120 Nev. 445, 451, 92 P.3d 1239, 1243 (2004). Exhibit 7 is a notice of entry of judgment for the "May 17, 2013," judgment on jury verdict.<sup>1</sup> The judgment attached thereto is not file-stamped and is thus ineffective. *See id.*; NRCP 58(c). Moreover, the judgment does not purport to dismiss or otherwise enter judgment on the counterclaims. Appellant thus fails to demonstrate that the district court has entered a final judgment resolving all the claims of all the parties below. As a result, it appears that this court lacks jurisdiction over these appeals and we

ORDER these appeals DISMISSED.

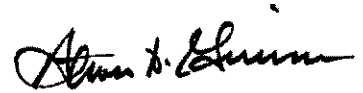
  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

<sup>1</sup>The district court docket sheet indicates that the judgment was entered on May 21, 2013, not May 17.

cc: Ronald J. Israel, District Judge  
Cohen-Johnson LLC  
Dickinson Wright PLLC  
Eighth District Court Clerk  
James J. Jimmerson, Settlement Judge



CLERK OF THE COURT

Electronically Filed  
May 05 2016 02:43 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

1 **NOA**  
2 **COHEN|JOHNSON|PARKER|EDWARDS**  
3 **H. STAN JOHNSON, ESQ.**  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 **CHRIS DAVIS, ESQ.**  
7 Nevada Bar No. 6616  
8 cdavis@cohenjohnson.com  
9 **MICHAEL V. HUGHES, ESQ.**  
10 Nevada Bar No. 13154  
11 mhughes@cohenjohnson.com  
12 255 E. Warm Springs Road, Suite 100  
13 Las Vegas, Nevada 89119  
14 Telephone: (702) 823-3500  
15 Facsimile: (702) 823-3400  
16 *Attorneys for Plaintiff Yacov Hefetz*

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

13 **YACOV JACK HEFETZ, an individual,**  
14  
15 **Plaintiff,**

16 **vs.**

17 **CHRISTOPHER BEAVOR, an individual;**  
18 **SAMANTHA BEAVOR, an individual; DOES I**  
19 **through X; and ROE ENTITIES I through X,**  
20 **inclusive,**  
21 **Defendants.**

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

**NOTICE OF APPEAL**

22 Notice is hereby given that Plaintiff YACOV JACK HEFETZ, by and through his  
23 counsel, H. Stan Johnson, Esq., Chris Davis, Esq. and Michael V. Hughes, Esq., of the law firm  
24 of Cohen|Johnson|Parker|Edwards, hereby appeals to the Supreme Court of Nevada from the  
25 following: "Order: (1) Granting Defendant's Motion to Dismiss Pursuant to NRS 40.435; and (2)  
26 Vacating as Moot Defendant's Motion for Leave to Reopen Dispositive Motion Deadline" filed  
27  
28

on June 17, 2015; and “Order Granting Defendant Christopher Beavor’s Motion for Attorneys’ Fees and Costs” filed September 1, 2015

Dated this 29<sup>th</sup> of April 2016,

COHEN|JOHNSON|PARKER|EDWARDS

/s/ Chris Davis

H. STAN JOHNSON, ESQ.

Nevada Bar No. 00265

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255 East Warm Springs Road, Suite 100

Las Vegas, Nevada 89119

Telephone: (702) 823-3500

Facsimile: (702) 823-3400

Attorneys for Plaintiff

**PROOF OF SERVICE**

CASE NAME: *Hefetz v. Beavor*  
 Court: District Court, Clark County, Nevada  
 Case No.: A-11-645353-C

On the date last written below, following document(s) was served as follows:

**NOTICE OF APPEAL**

\_\_\_\_\_ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States Mail, Las Vegas, Nevada and addressed to:

  X   by using the Court's CM/ECF Electronic Notification System addressed to:

\_\_\_\_\_ by electronic email addressed to :

\_\_\_\_\_ by personal or hand/delivery addressed to:

\_\_\_\_\_ By facsimile (fax) addresses to:

\_\_\_\_\_ by Federal Express/UPS or other overnight delivery addressed to:

Joel Z. Schwarz, Esq.  
 Gabriel A. Blumberg, Esq.  
 Dickinson Wright PLLC  
 Suite 200  
 8363 West Sunset Road  
 Las Vegas, Nevada 89113  
 Email: jschwarz@dickinsonwright.com  
 Email: gblumberg@dickinsonwright.com  
 Attorney for Defendant Christopher Beavor

DATED the 29<sup>th</sup> day of April, 2016.

/s/ Sarah Gondek  
 An employee of  
 COHEN|JOHNSON|PARKER|EDWARDS



DEPARTMENT 28  
**CASE SUMMARY**  
CASE NO. A-11-645353-C

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

§  
§  
§  
§  
§  
§  
§

Location: **Department 28**  
Judicial Officer: **Israel, Ronald J.**  
Filed on: **07/21/2011**  
Cross-Reference Case Number: **A645353**  
Supreme Court No.: **68438**  
**68843**

CASE INFORMATION

**Statistical Closures**

06/10/2015 Motion to Dismiss (By Defendant)  
03/04/2013 Jury Trial

Case Type: **Breach of Contract**  
Subtype: **Guarantee**

Case Flags: **Appealed to Supreme Court**  
**Jury Demand Filed**  
**Arbitration Exemption Granted**

DATE

CASE ASSIGNMENT

**Current Case Assignment**

Case Number A-11-645353-C  
Court Department 28  
Date Assigned 07/21/2011  
Judicial Officer Israel, Ronald J.

PARTY INFORMATION

<b>Plaintiff</b>	<b>Cohen, Alis</b> Removed: 06/26/2012 Dismissed	<b>Iglody, Lee I.</b> <i>Retained</i> 702-800-5482(W)
	<b>Hefetz, Yacov Jack</b>	<b>Johnson, Harold Stanley</b> <i>Retained</i> 702-823-3500(W)
<b>Defendant</b>	<b>Beavor, Christopher</b>	<b>Schwarz, Joel Z.</b> <i>Retained</i> 702-382-4002(W)
	<b>Beavor, Samantha</b> Removed: 06/10/2015 Dismissed	
<b>Counter Claimant</b>	<b>Beavor, Christopher</b> Removed: 04/21/2016 Dismissed	
	<b>Beavor, Samantha</b> Removed: 04/21/2016 Dismissed	
<b>Counter Defendant</b>	<b>Cohen, Alis</b> Removed: 10/21/2011 Data Entry Error	<b>Iglody, Lee I.</b> <i>Retained</i> 702-800-5482(W)
	<b>Hefetz, Yacov Jack</b> Removed: 04/21/2016 Dismissed	

DATE

EVENTS & ORDERS OF THE COURT

INDEX

07/21/2011











Document Filed  
Filed by: Plaintiff Hefetz, Yacov Jack

**APP001214**












DEPARTMENT 28  
**CASE SUMMARY**  
**CASE NO. A-11-645353-C**

*Verified Complaint*

07/21/2011	Case Opened
07/22/2011	 Initial Appearance Fee Disclosure Filed By: Plaintiff Hefetz, Yacov Jack <i>Initial Appearance Fee Disclosure</i>
09/21/2011	 Affidavit of Service Filed By: Plaintiff Hefetz, Yacov Jack <i>Affidavit of Service of Christopher Beavor</i>
09/27/2011	 Affidavit of Service Filed By: Plaintiff Hefetz, Yacov Jack <i>Affidavit of Service of Samantha Beavor</i>
10/21/2011	 Initial Appearance Fee Disclosure Filed By: Defendant Beavor, Christopher <i>Initial Appearance Fee Disclosure</i>
10/21/2011	 Answer and Counterclaim Filed By: Defendant Beavor, Christopher <i>Defendants' Answer to Complaint and Counterclaim</i>
11/01/2011	 Reply to Counterclaim Filed by: Counter Defendant Cohen, Alis <i>Reply to Counterclaim</i>
11/28/2011	 Demand for Jury Trial Filed By: Defendant Beavor, Christopher <i>Demand for Jury Trial</i>
12/12/2011	 Joint Case Conference Report Filed By: Plaintiff Hefetz, Yacov Jack <i>Joint Case Conference Report</i>
12/16/2011	 Commissioners Decision on Request for Exemption - Granted Party: Plaintiff Hefetz, Yacov Jack <i>Commissioner's Decision On Request For Exemption - Granted</i>
12/28/2011	 Scheduling Order <i>Scheduling Order</i>
12/30/2011	 Order Setting Civil Jury Trial Filed By: Plaintiff Hefetz, Yacov Jack <i>Order Setting Civil Jury Trial</i>
02/21/2012	 Motion for Leave to File Party: Defendant Beavor, Christopher <i>Defendants' / Counterclaimants' Motion for Leave to Amend Counterclaim</i>
02/22/2012	 Certificate of Service Filed by: Defendant Beavor, Christopher <i>Certificate of Service</i>








**APP001215**

DEPARTMENT 28  
**CASE SUMMARY**  
**CASE NO. A-11-645353-C**

02/27/2012	 Notice of Change of Address Filed By: Plaintiff Hefetz, Yacov Jack <i>Notice of Change of Address</i>
03/01/2012	 Arbitration File <i>Arbitration File</i>
03/27/2012	 <b>Motion to Amend</b> (3:00 AM) (Judicial Officer: Israel, Ronald J.) Events: 02/21/2012 Motion for Leave to File <i>Defendants' / Counterclaimants' Motion for Leave to Amend Counterclaim</i>
04/09/2012	 Counterclaim Filed By: Counter Claimant Beavor, Christopher <i>First Amended Counterclaim</i>
04/23/2012	 Reply to Counterclaim Filed by: Plaintiff Hefetz, Yacov Jack <i>Reply to First Amended Counterclaim</i>
05/16/2012	 Affidavit of Service Filed By: Plaintiff Hefetz, Yacov Jack <i>Affidavit of Service - Gary Frey</i>
05/29/2012	 Stipulation and Order to Extend Discovery Deadlines Filed By: Plaintiff Hefetz, Yacov Jack <i>Stipulation and Order to Extend Discovery Deadlines</i>
06/06/2012	<b>CANCELED Status Check</b> (9:15 AM) (Judicial Officer: Israel, Ronald J.) <i>Vacated - per Stipulation and Order</i> <i>S&amp;O To Extend Discovery rec'd in Dept. 5/24/12./sj</i>
06/08/2012	 Order Setting Civil Jury Trial <i>Order Re-Setting Civil Jury Trial</i>
06/26/2012	 Stipulation and Order for Dismissal Filed by: Plaintiff Hefetz, Yacov Jack <i>Stipulation and Order</i>
06/26/2012	<b>Order of Dismissal</b> (Judicial Officer: Israel, Ronald J.) Debtors: Christopher Beavor (Defendant), Samantha Beavor (Defendant) Creditors: Alis Cohen (Plaintiff) Judgment: 06/26/2012, Docketed: 07/05/2012
06/29/2012	 Notice of Entry Filed By: Plaintiff Hefetz, Yacov Jack <i>Notice of Entry</i>
07/03/2012	 Notice of Entry of Order Filed By: Plaintiff Hefetz, Yacov Jack <i>Notice of Entry of Order</i>
08/13/2012	<b>CANCELED Pre Trial Conference</b> (9:30 AM) (Judicial Officer: Israel, Ronald J.) <i>Vacated - per Stipulation and Order</i> <i>S&amp;O To Extend Discovery rec'd in Dept. 5/24/12./sj</i>

**APP001216**
















DEPARTMENT 28  
**CASE SUMMARY**  
**CASE NO. A-11-645353-C**

08/15/2012	 Order Setting Settlement Conference Filed By: Plaintiff Hefetz, Yacov Jack <i>Order Setting Settlement Conference</i>
08/15/2012	 <b>Status Check</b> (9:45 AM) (Judicial Officer: Israel, Ronald J.)
08/27/2012	<b>CANCELED Calendar Call</b> (9:30 AM) (Judicial Officer: Gates, Lee A.) <i>Vacated - per Stipulation and Order</i> <i>S&amp;O To Extend Discovery rec'd in Dept. 5/24/12./sj</i>
09/04/2012	<b>CANCELED Jury Trial</b> (1:30 PM) (Judicial Officer: Israel, Ronald J.) <i>Vacated - per Stipulation and Order</i> <i>S&amp;O To Extend Discovery rec'd in Dept. 5/24/12./sj</i>
09/10/2012	 <b>Status Check: Status of Case</b> (9:00 AM) (Judicial Officer: Israel, Ronald J.)
09/11/2012	 Motion for Partial Summary Judgment Filed By: Plaintiff Hefetz, Yacov Jack <i>Plaintiff's Motion for Partial Summary Judgment</i>
09/21/2012	 <b>Settlement Conference</b> (9:00 AM) (Judicial Officer: Bonaventure, Joseph T.)
10/09/2012	 Opposition to Motion Filed By: Defendant Beavor, Christopher <i>Defendants' / Counterclaimants' Opposition to Motion for Partial Summary Judgment</i>
10/11/2012	 Stipulation and Order Filed by: Defendant Beavor, Christopher <i>Stipulation &amp; Order to Continue Plaintiff's Motion for Partial Summary Judgment</i>
10/12/2012	 Notice of Entry of Stipulation and Order Filed By: Defendant Beavor, Christopher <i>Notice of Entry of Stipulation &amp; Order</i>
10/16/2012	 Reply in Support Filed By: Plaintiff Hefetz, Yacov Jack <i>Plaintiff's Reply in Support of Motion for Partial Summary Judgment</i>
10/19/2012	 Supplemental Filed by: Defendant Beavor, Christopher <i>Supplement to Defendants'/Counterclaimants' Opposition to Plaintiff's Motion for Partial Summary Judgment</i>
10/19/2012	 Response Filed by: Defendant Beavor, Christopher <i>Defendants'/Counterclaimants' Response to Plaintiff's Reply to Opposition to Motion for Partial Summary Judgment</i>
10/22/2012	<b>Pre Trial Conference</b> (9:30 AM) (Judicial Officer: Israel, Ronald J.)
10/22/2012	<b>Motion for Partial Summary Judgment</b> (9:30 AM) (Judicial Officer: Israel, Ronald J.) <i>Plaintiff's Motion for Partial Summary Judgment</i>
10/22/2012	<b>Status Check</b> (9:30 AM) (Judicial Officer: Israel, Ronald J.)

**APP001217**














DEPARTMENT 28  
**CASE SUMMARY**  
**CASE NO. A-11-645353-C**

*STATUS CHECK: OUTCOME OF SETTLEMENT CONFERENCE*

10/22/2012	 <b>All Pending Motions</b> (9:30 AM) (Judicial Officer: Israel, Ronald J.)
11/01/2012	 Notice of Change of Address Filed By: Plaintiff Hefetz, Yacov Jack <i>Notice of Change of Address</i>
11/05/2012	 <b>Calendar Call</b> (9:30 AM) (Judicial Officer: Israel, Ronald J.)
11/12/2012	 Notice of Entry of Order Filed By: Plaintiff Hefetz, Yacov Jack <i>Notice of Entry of Order</i>
11/13/2012	<b>CANCELED Jury Trial</b> (1:30 PM) (Judicial Officer: Israel, Ronald J.) <i>Vacated - per Judge</i>
11/21/2012	 Order Setting Civil Jury Trial <i>Order Re-Setting Civil Jury Trial</i>
01/15/2013	 <b>Pre Trial Conference</b> (9:30 AM) (Judicial Officer: Israel, Ronald J.)
01/29/2013	 <b>Calendar Call</b> (9:30 AM) (Judicial Officer: Israel, Ronald J.) <b>01/29/2013, 01/31/2013</b>
02/08/2013	 Pre-trial Memorandum Filed by: Plaintiff Hefetz, Yacov Jack <i>Joint Pretrial Memorandum</i>
02/25/2013	 Brief Filed By: Plaintiff Hefetz, Yacov Jack <i>Plaintiff's EDCR 7.27 Brief</i>
02/25/2013	 <b>Jury Trial</b> (9:30 AM) (Judicial Officer: Israel, Ronald J.) <b>02/25/2013-03/01/2013</b>
02/25/2013	 Jury List Party: Plaintiff Hefetz, Yacov Jack
02/27/2013	 Transcript of Proceedings <i>Excerpt of Jury Trial - Day 1 Defendant's Opening Statement</i>
03/01/2013	 Jury List Party: Plaintiff Hefetz, Yacov Jack <i>Amended Jury List</i>
03/01/2013	 Verdict Party: Plaintiff Hefetz, Yacov Jack
03/01/2013	 Jury Instructions Party: Plaintiff Hefetz, Yacov Jack <i>Court's Instructions To the Jury</i>

**APP001218**

DEPARTMENT 28  
**CASE SUMMARY**  
**CASE NO. A-11-645353-C**

03/01/2013	 Proposed Jury Instructions Not Used At Trial <i>Plaintiff's Proposed Jury Instructions Not Used At Trial</i>
03/01/2013	<b>Verdict</b> (Judicial Officer: Israel, Ronald J.) Debtors: Yacov Jack Hefetz (Plaintiff) Creditors: Christopher Beavor (Defendant) Judgment: 03/01/2013, Docketed: 03/05/2013
03/04/2013	 Order to Statistically Close Case <i>Civil Order To Statistically Close Case</i>
03/06/2013	 Motion for Judgment Filed By: Plaintiff Hefetz, Yacov Jack <i>Plaintiff Motion for Judgment</i>
03/19/2013	 Substitution of Attorney Filed by: Plaintiff Hefetz, Yacov Jack <i>Substitution of Counsel</i>
03/25/2013	 Withdrawal of Attorney Filed by: Defendant Beavor, Christopher <i>Notice of Withdrawal of Attorney</i>
04/16/2013	 <b>Status Check: Settlement Documents</b> (9:00 AM) (Judicial Officer: Israel, Ronald J.) <i>Status Check: Settlement Documents re: Samantha Beavor</i>
05/15/2013	 <b>Status Check: Settlement Documents</b> (3:00 AM) (Judicial Officer: Israel, Ronald J.) <b>05/15/2013, 06/13/2013, 07/09/2013, 08/08/2013</b> <i>STATUS CHECK: SETTLEMENT DOCUMENTS / DISMISSAL OF SAMANTHA BEAVOR//STATUS OF CASE</i>
05/21/2013	 Judgment Filed By: Counter Claimant Beavor, Christopher; Defendant Beavor, Christopher; Defendant Beavor, Samantha; Counter Claimant Beavor, Samantha
05/21/2013	 Notice of Entry of Judgment Filed By: Defendant Beavor, Christopher
05/21/2013	<b>Judgment Upon the Verdict</b> (Judicial Officer: Israel, Ronald J.) Debtors: Yacov Jack Hefetz (Plaintiff) Creditors: Christopher Beavor (Defendant) Judgment: 05/21/2013, Docketed: 05/29/2013
06/07/2013	 Recorders Transcript of Hearing <i>Transcript of Proceedings Jury Trial - Day 3 February 27, 2013</i>
06/07/2013	 Recorders Transcript of Hearing <i>Transcript of Proceedings Jury Trial - Day 5 March 1, 2013</i>
06/07/2013	 Recorders Transcript of Hearing <i>Transcript of Proceedings Jury Trial - Day 2 February 26, 2013</i>
06/10/2013	 Motion for New Trial Filed By: Plaintiff Hefetz, Yacov Jack

**APP001219**

# CASE SUMMARY

## CASE NO. A-11-645353-C

*Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV)*

06/20/2013



Opposition

Filed By: Defendant Beavor, Christopher

*Defendant Christopher Beavor's Opposition to Plaintiff's Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV)*

07/02/2013



Reply to Opposition

Filed by: Plaintiff Hefetz, Yacov Jack

*Reply to Defendant Christopher Beavor's Opposition to Plaintiff's Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV)*

08/07/2013



**Motion for New Trial** (3:00 AM) (Judicial Officer: Israel, Ronald J.)

Events: 06/10/2013 Motion for New Trial

*Plaintiff's Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV)*

08/07/2013



Motion for Attorney Fees

Filed By: Counter Claimant Beavor, Samantha

*Defendant's Motion for Attorney Fees*

08/28/2013



Motion to Reconsider

Filed By: Defendant Beavor, Christopher

*Defendant Christopher Beavor's Motion for Reconsideration*

08/29/2013



**Status Check: Trial Setting** (9:00 AM) (Judicial Officer: Israel, Ronald J.)

08/29/2013

**CANCELED All Pending Motions** (9:00 AM) (Judicial Officer: Israel, Ronald J.)

*Vacated - On in Error*

*All Pending Motions (08/29/13)*

09/04/2013



Order Setting Civil Jury Trial

*Order Setting Civil Jury Trial*

09/05/2013



Order Granting Motion

Filed By: Counter Defendant Hefetz, Yacov Jack

*Order*

09/09/2013



Notice of Entry of Order

Filed By: Plaintiff Hefetz, Yacov Jack

*Notice of Entry of Order*

09/17/2013



Opposition to Motion

Filed By: Plaintiff Hefetz, Yacov Jack

*Opposition to Defendant's Motion for Reconsideration*

09/24/2013



Certificate of Service

Filed by: Defendant Beavor, Christopher

*Certificate of Service*

09/25/2013



Opposition to Motion












Filed By: Plaintiff Hefetz, Yacov Jack

*Opposition to Defendant Samantha Beavor's Motion for Attorneys Fees*

**APP001220**

# CASE SUMMARY

## CASE NO. A-11-645353-C












09/26/2013	<b>Motion for Attorney Fees</b> (9:00 AM) (Judicial Officer: Israel, Ronald J.) <b>09/26/2013, 10/24/2013</b> Events: 08/07/2013 Motion for Attorney Fees <i>Defendant's Motion for Attorney Fees</i>
09/26/2013	<b>Motion For Reconsideration</b> (9:00 AM) (Judicial Officer: Israel, Ronald J.) Events: 08/28/2013 Motion to Reconsider <i>Defendant Christopher Beavor's Motion for Reconsideration</i>
09/26/2013	 <b>All Pending Motions</b> (9:00 AM) (Judicial Officer: Israel, Ronald J.) <i>All Pending Motions (09/26/13)</i>
10/04/2013	 Supplement Filed by: Defendant Beavor, Samantha <i>Supplement to Defendant Samantha Beavor Motion for Attorney's Fees</i>
10/04/2013	 Certificate of Service Filed by: Defendant Beavor, Samantha <i>Certificate of Service</i>
10/21/2013	 Opposition Filed By: Plaintiff Hefetz, Yacov Jack <i>Opposition to Supplement to Defendants Samantha Beavor's Motion for Attorney's Fees</i>
10/24/2013	<b>Status Check</b> (9:00 AM) (Judicial Officer: Israel, Ronald J.) <i>Status Check: Dismissal /S. Beavor</i>
10/24/2013	 <b>All Pending Motions</b> (9:00 AM) (Judicial Officer: Israel, Ronald J.) <i>All Pending Motions (10/24/13)</i>
11/14/2013	 Order Filed By: Plaintiff Hefetz, Yacov Jack <i>Order</i>
11/14/2013	 Findings of Fact, Conclusions of Law and Order Filed By: Defendant Beavor, Christopher <i>Findings of Fact, Conclusion of Law and Order</i>
11/15/2013	 Notice of Entry of Order Filed By: Plaintiff Hefetz, Yacov Jack <i>Notice of Entry of Order</i>
11/15/2013	 Notice of Entry of Order Filed By: Plaintiff Hefetz, Yacov Jack <i>Notice of Entry of Order</i>
11/25/2013	 Motion to Stay Filed By: Counter Claimant Beavor, Christopher <i>Defendant Christopher Beavor's Motion for Stay of Proceedings</i>
01/07/2014	 <b>Motion For Stay</b> (9:00 AM) (Judicial Officer: Israel, Ronald J.) Events: 11/25/2013 Motion to Stay <i>Defendant Christopher Beavor's Motion for Stay of Proceedings</i>
01/07/2014	Notice of Stay

APP001221














DEPARTMENT 28  
**CASE SUMMARY**  
**CASE NO. A-11-645353-C**

*Stay proceedings 01/07/14*

02/20/2014	<b>CANCELED Pre Trial Conference</b> (9:30 AM) (Judicial Officer: Israel, Ronald J.) <i>Vacated - per Judge</i>
03/11/2014	<b>CANCELED Calendar Call</b> (9:30 AM) (Judicial Officer: Israel, Ronald J.) <i>Vacated - per Judge</i>
03/17/2014	<b>CANCELED Jury Trial</b> (1:30 PM) (Judicial Officer: Israel, Ronald J.) <i>Vacated - per Judge</i>
05/13/2014	 <b>Status Check: Status of Case</b> (9:00 AM) (Judicial Officer: Israel, Ronald J.) <b>05/13/2014, 08/13/2014, 11/12/2014, 12/11/2014</b> <i>Status Check: Status of Case//Resetting Trial</i>
10/01/2014	 Motion to Withdraw As Counsel Filed By: Defendant Beavor, Christopher <i>Notice of Motion to Withdraw as Counsel for Defendant Christopher Beavor</i>
11/05/2014	 <b>Motion to Withdraw as Counsel</b> (3:00 AM) (Judicial Officer: Israel, Ronald J.) Events: 10/01/2014 Motion to Withdraw As Counsel <i>Hofland &amp; Tomsheck's Motion to Withdraw as Counsel for Defendant Christopher Beavor</i>
12/30/2014	 Order Setting Civil Jury Trial <i>Order Re-Setting Civil Jury Trial</i>
01/20/2015	 <b>Pre Trial Conference</b> (9:30 AM) (Judicial Officer: Israel, Ronald J.)
01/21/2015	 Notice of Appearance Party: Defendant Beavor, Christopher <i>Notice of Appearance</i>
01/27/2015	 Order Setting Settlement Conference <i>Order Setting Settlement Conference</i>
01/27/2015	 Order Setting Civil Jury Trial <i>Order Re-Setting Civil Jury Trial</i>
02/03/2015	<b>CANCELED Calendar Call</b> (9:30 AM) (Judicial Officer: Israel, Ronald J.) <i>Vacated - per Judge</i>
02/09/2015	<b>CANCELED Jury Trial</b> (1:30 PM) (Judicial Officer: Israel, Ronald J.) <i>Vacated - per Judge</i>
02/26/2015	 <b>Settlement Conference</b> (1:00 PM) (Judicial Officer: Scotti, Richard F.)
03/05/2015	 Motion in Limine Filed By: Plaintiff Hefetz, Yacov Jack <i>Plaintiff's Motion in Limine Concerning The Exclusion Of The Contents Of Settlement Negotiations</i>
03/05/2015	 Motion in Limine Filed By: Plaintiff Hefetz, Yacov Jack <i>Plaintiff's Motion in Limine Concerning The Exclusion of References To National Origins And Religious Beliefs.</i>








**APP001222**

DEPARTMENT 28  
**CASE SUMMARY**  
**CASE NO. A-11-645353-C**

03/25/2015	 Response Filed by: Defendant Beavor, Christopher <i>Response to Plaintiff's Motion in Limine Concerning the Exclusion of References to National Origins and Religious Beliefs</i>
03/25/2015	 Opposition to Motion in Limine Filed By: Defendant Beavor, Christopher <i>Opposition to Plaintiff's Motion in Limine Concerning the Exclusion of the Contents of Settlement Negotiations</i>
03/30/2015	 Transcript of Proceedings <i>Transcript of Proceedings Jury Trial - Day 1 February 25, 2013</i>
03/30/2015	 Transcript of Proceedings <i>Transcript of Proceedings Jury Trial - Day 4 February 28, 2013</i>
03/31/2015	 <b>Pre Trial Conference</b> (9:30 AM) (Judicial Officer: Israel, Ronald J.)
04/01/2015	 Reply in Support Filed By: Plaintiff Hefetz, Yacov Jack <i>Plaintiff's Reply In Support Of The Motion In Limine Concerning The Exclusion Of The Contents Of Settlement Negotiations</i>
04/06/2015	 Pre-Trial Disclosure Party: Plaintiff Hefetz, Yacov Jack <i>Plaintiff's Pre-Trial Disclosures Pursuant To NRCP 16.1(4)(3)</i>
04/06/2015	 Notice Filed By: Defendant Beavor, Christopher <i>Notice of Disassociation of Counsel</i>
04/07/2015	 Order Setting Civil Jury Trial <i>Order Re-Setting Civil Jury Trial</i>
04/07/2015	<b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Israel, Ronald J.) Events: 03/05/2015 Motion in Limine <i>Plaintiff's Motion in Limine Concerning The Exclusion Of The Contents Of Settlement Negotiations</i>
04/07/2015	<b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Israel, Ronald J.) Events: 03/05/2015 Motion in Limine <i>Plaintiff's Motion in Limine Concerning The Exclusion of References To National Origins And Religious Beliefs.</i>
04/07/2015	 <b>All Pending Motions</b> (9:00 AM) (Judicial Officer: Israel, Ronald J.) <i>All Pending Motions (04/07/15)</i>
04/14/2015	<b>CANCELED Calendar Call</b> (9:30 AM) (Judicial Officer: Becker, Nancy) <i>Vacated - per Judge</i>
04/20/2015	<b>CANCELED Jury Trial</b> (1:30 PM) (Judicial Officer: Israel, Ronald J.) <i>Vacated - per Judge</i>
05/07/2015	 Motion to Dismiss

**APP001223**

DEPARTMENT 28  
**CASE SUMMARY**  
**CASE NO. A-11-645353-C**

	Filed By: Defendant Beavor, Christopher <i>Defendant's Motion to Dismiss Pursuant to NRS 40.435</i>
05/08/2015	 Order Setting Settlement Conference <i>Order Setting Settlement Conference</i>
05/08/2015	 Motion Filed By: Defendant Beavor, Christopher <i>Defendant Christopher Beavor's Motion to Reopen Dispositive Motion Deadline</i>
05/08/2015	 Order Granting Motion Filed By: Plaintiff Hefetz, Yacov Jack <i>Order Granting Plaintiff's Motion In Limine Concerning National Origins and Religious Beliefs</i>
05/08/2015	 Order Denying Motion Filed By: Defendant Beavor, Christopher <i>Order Denying Plaintiff's Motion In Limine Concerning the Exclusion of the Contents of Settlement Negotiations</i>
05/11/2015	 Notice of Entry of Order Filed By: Plaintiff Hefetz, Yacov Jack <i>Notice of Entry of Order</i>
05/11/2015	 Notice of Entry of Order Filed By: Plaintiff Hefetz, Yacov Jack <i>Notice of Entry of Order</i>
05/14/2015	 <b>Settlement Conference</b> (10:30 AM) (Judicial Officer: Kishner, Joanna S.)
05/19/2015	 Opposition to Motion to Dismiss Filed By: Plaintiff Hefetz, Yacov Jack <i>Plaintiff's Opposition To Defendant's Motion To Dismiss Pursuant To NRS 40.435</i>
05/20/2015	 Opposition to Motion Filed By: Plaintiff Hefetz, Yacov Jack <i>Plaintiff's Opposition To Defendant's Motion To Reopen Dispositive Motion Deadline</i>
06/02/2015	 Reply in Support Filed By: Defendant Beavor, Christopher <i>Defendant's Reply in Support of Motion to Dismiss Pursuant to NRS 40.435</i>
06/02/2015	 Reply in Support Filed By: Defendant Beavor, Christopher <i>Defendant Christopher Beavor's Reply in Support of Motion to Reopen Dispositive Motion Deadline</i>
06/04/2015	 Notice of Change of Address Filed By: Defendant Beavor, Christopher <i>Notice of Change of Firm Affiliation and Address</i>
06/09/2015	<b>Motion to Dismiss</b> (9:00 AM) (Judicial Officer: Israel, Ronald J.) Events: 05/07/2015 Motion to Dismiss <i>Defendant's Motion to Dismiss Pursuant to NRS 40.435</i>

**APP001224**

DEPARTMENT 28  
**CASE SUMMARY**  
**CASE NO. A-11-645353-C**

06/09/2015	<b>Motion</b> (9:00 AM) (Judicial Officer: Israel, Ronald J.) Events: 05/08/2015 Motion <i>Defendant Christopher Beavor's Motion to Reopen Dispositive Motion Deadline</i>
06/09/2015	 <b>All Pending Motions</b> (9:00 AM) (Judicial Officer: Israel, Ronald J.) <i>All Pending Motions (06/09/15)</i>
06/10/2015	 Order to Statistically Close Case <i>Civil Order To Statistically Close Case</i>
06/17/2015	 Order For Dismissal Without Prejudice Filed By: Defendant Beavor, Christopher <i>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</i>
06/17/2015	<b>Order of Dismissal Without Prejudice</b> (Judicial Officer: Israel, Ronald J.) Debtors: Yacov Jack Hefetz (Plaintiff) Creditors: Christopher Beavor (Defendant), Samantha Beavor (Defendant) Judgment: 06/17/2015, Docketed: 06/18/2015
06/18/2015	 Notice of Entry of Order Filed By: Defendant Beavor, Christopher <i>Notice of Entry of Order</i>
06/19/2015	 Motion Filed By: Plaintiff Hefetz, Yacov Jack <i>Plaintiff's Motion To Re-Open The Case And For Reconsideration Of An Order Of Dismissal Without Prejudice</i>
06/23/2015	 Notice of Change of Hearing <i>Notice of Change of Hearing</i>
06/25/2015	 Memorandum of Costs and Disbursements Filed By: Defendant Beavor, Christopher <i>Memorandum of Costs and Disbursements</i>
07/07/2015	 Opposition to Motion Filed By: Defendant Beavor, Christopher <i>Defendant's Opposition to Plaintiff's Motion to Re-Open the Case and for Reconsideration of an Order of Dismissal without Prejudice</i>
07/08/2015	 Motion for Attorney Fees Filed By: Defendant Beavor, Christopher <i>Defendant Christopher Beavor's Motion for Attorneys' Fees and Costs</i>
07/14/2015	 Reply in Support Filed By: Plaintiff Hefetz, Yacov Jack <i>Plaintiff's Reply In Support Of The Motion To Re-Open The Case And For Reconsideration Of An Order Of Dismissal Without Prejudice</i>
07/14/2015	 Notice of Appeal Filed By: Plaintiff Hefetz, Yacov Jack <i>Notice of Appeal</i>
07/14/2015	 Case Appeal Statement

**APP001225**

DEPARTMENT 28  
**CASE SUMMARY**  
**CASE NO. A-11-645353-C**

	Filed By: Plaintiff Hefetz, Yacov Jack <i>Case Appeal Statement</i>
07/16/2015	 Motion Filed By: Defendant Beavor, Christopher <i>Defendant's Motion for Leave to Strike Reply; or, in the Alternative, Motion to File Sur-Reply</i>
07/18/2015	 Opposition to Motion Filed By: Plaintiff Hefetz, Yacov Jack <i>Plaintiff's Opposition To Defendant's Motion For An Award Of Attorneys' Fees and Costs</i>
07/21/2015	 Opposition to Motion Filed By: Plaintiff Hefetz, Yacov Jack <i>Plaintiff's Opposition to Defendant's Motion for Leave to Strike Reply; or, in the alternative, Motion to File Sur-Reply</i>
07/22/2015	 <b>Motion</b> (3:00 AM) (Judicial Officer: Israel, Ronald J.) Events: 06/19/2015 Motion <i>Plaintiff's Motion To Re-Open The Case And For Reconsideration Of An Order Of Dismissal Without Prejudice</i>
07/23/2015	 Posting of Appeal Bond Filed by: Plaintiff Hefetz, Yacov Jack <i>Notice Of Posting Appeal Bond</i>
07/23/2015	 Order Denying Motion <i>Order</i>
07/24/2015	 Notice of Entry of Order Filed By: Defendant Beavor, Christopher <i>Notice of Entry of Order</i>
08/12/2015	 Reply in Support Filed By: Defendant Beavor, Christopher <i>Defendant Christopher Beavor's Reply in Support of Motion for Attorneys' Fees and Costs</i>
08/17/2015	 Supplemental Filed by: Defendant Beavor, Christopher <i>Defendant Christopher Beavor's Supplement to Reply in Support of Motion for Attorneys' Fees and Costs</i>
08/19/2015	 <b>Motion for Attorney Fees and Costs</b> (3:00 AM) (Judicial Officer: Israel, Ronald J.)
09/01/2015	 Order Granting Motion Filed By: Defendant Beavor, Christopher <i>Order Granting Defendant Christopher Beavor's Motion for Attorneys Fees and Costs</i>
09/01/2015	<b>Order</b> (Judicial Officer: Israel, Ronald J.) Debtors: Yacov Jack Hefetz (Plaintiff) Creditors: Christopher Beavor (Defendant) Judgment: 09/01/2015, Docketed: 09/09/2015 Total Judgment: 15,338.48
09/03/2015	 Notice of Entry of Order Filed By: Defendant Beavor, Christopher

**APP001226**

DEPARTMENT 28  
**CASE SUMMARY**  
**CASE NO. A-11-645353-C**

*Notice of Entry of Order*

09/15/2015



Notice of Appeal

Filed By: Plaintiff Hefetz, Yacov Jack

*Notice of Appeal*

09/22/2015

**CANCELED Pre Trial Conference** (9:30 AM) (Judicial Officer: Israel, Ronald J.)

*Vacated - per Judge*

09/22/2015



Case Appeal Statement

Filed By: Plaintiff Hefetz, Yacov Jack

*Case Appeal Statement*

09/23/2015



Posting of Appeal Bond

Filed by: Plaintiff Hefetz, Yacov Jack

*Notice Of Posting Appeal Bond*

10/06/2015

**CANCELED Calendar Call** (9:30 AM) (Judicial Officer: Thompson, Charles)

*Vacated - per Judge*

10/12/2015

**CANCELED Jury Trial** (1:30 PM) (Judicial Officer: Israel, Ronald J.)

*Vacated - per Judge*

10/13/2015



Amended Certificate of Service

Party: Plaintiff Hefetz, Yacov Jack

*Amended Certificate Of Service*

11/18/2015



Recorders Transcript of Hearing

*Transcript of Proceedings Defendant Christopher Beavor's Motion for Reconsideration  
September 26, 2013 Defendant's Motion for Attorney Fees*

01/22/2016



Recorders Transcript of Hearing

*Transcript of Proceedings Defendant's Motion to Dismiss Pursuant to NRS 40.435 Defendant  
Christopher Beavor's Motion to Reopen Dispositive Motion Deadline*

02/04/2016



Request

Filed by: Plaintiff Hefetz, Yacov Jack

*Request For Transcript Of Proceedings*

04/05/2016



Order Scheduling Status Check

*Order Scheduling Status Check: Supreme Court Order Dismissing Appeals and Status of Case*

04/21/2016



Notice of Entry of Order

Filed By: Plaintiff Hefetz, Yacov Jack

*Notice of Entry of Order*

04/21/2016



**Status Check** (9:00 AM) (Judicial Officer: Israel, Ronald J.)

*Status Check: Supreme Court Order Dismissing Appeals and Status of Case*

04/21/2016



Order Granting Motion

Filed By: Plaintiff Hefetz, Yacov Jack

*Order Granting Plaintiff's Rule 50(a) Motion*



04/21/2016

**Order of Dismissal With Prejudice** (Judicial Officer: Israel, Ronald J.)

Debtors: Christopher Beavor (Counter Claimant), Samantha Beavor (Counter Claimant)

**APP001227**

DEPARTMENT 28  
**CASE SUMMARY**  
**CASE NO. A-11-645353-C**

	Creditors: Alis Cohen (Counter Defendant), Yacov Jack Hefetz (Counter Defendant) Judgment: 04/21/2016, Docketed: 04/28/2016	
04/29/2016	 Notice of Appeal Filed By: Plaintiff Hefetz, Yacov Jack <i>Notice of Appeal</i>	
04/29/2016	 NV Supreme Court Clerks Certificate/Judgment - Dismissed <i>Nevada Supreme Court Clerk's Certificate Judgment - Dismissed</i>	

DATE	FINANCIAL INFORMATION
	<b>Defendant</b> Beavor, Samantha Total Charges 30.00 Total Payments and Credits 30.00 <b>Balance Due as of 5/3/2016 0.00</b>
	<b>Defendant</b> Beavor, Christopher Total Charges 223.00 Total Payments and Credits 223.00 <b>Balance Due as of 5/3/2016 0.00</b>
	<b>Plaintiff</b> Hefetz, Yacov Jack Total Charges 572.00 Total Payments and Credits 572.00 <b>Balance Due as of 5/3/2016 0.00</b>
	<b>Plaintiff</b> Hefetz, Yacov Jack Appeal Bond Balance as of 5/3/2016 <b>1,000.00</b>

**APP001228**

## CIVIL COVER SHEET

Clark County, Nevada

A-11-645353-C

Case No. \_\_\_\_\_

XXVIII

(Assigned by Clerk's Office)

**I. Party Information**

Plaintiff(s) (name/address/phone): YACOV HEFETZ AND ALIS COHEN

Defendant(s) (name/address/phone): CHRISTOPHER BEAVOR AND SAMANTHA BEAVOR

Attorney (name/address/phone):

Lee I. Igloody, Esq.

9555 S. Eastern, # 280

Las Vegas, NV 89123

Attorney (name/address/phone):

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> <b>Negligence</b> <input type="checkbox"/> <b>Negligence - Auto</b> <input type="checkbox"/> <b>Negligence - Medical/Dental</b> <input type="checkbox"/> <b>Negligence - Premises Liability</b> (Slip/Fall) <input type="checkbox"/> <b>Negligence - Other</b>	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
<input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input checked="" type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input checked="" type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

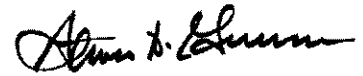
- ☐ NRS Chapters 78-88  
☐ Commodities (NRS 90)  
☐ Securities (NRS 90)

- ☐ Investments (NRS 104 Art. 8)  
☐ Deceptive Trade Practices (NRS 598)  
☐ Trademarks (NRS 600A)

- ☐ Enhanced Case Mgmt/Business  
☐ Other Business Court Matters

APP001229





CLERK OF THE COURT

1 **ORD**  
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 **ORDER: (1) GRANTING DEFENDANT'S MOTION TO DISMISS PURSUANT TO NRS**  
17 **40.435; AND (2) VACATING AS MOOT DEFENDANT'S MOTION FOR**  
**LEAVE TO REOPEN DISPOSITIVE MOTION DEADLINE**

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

27 (1) The Motion to Dismiss is appropriate and timely pursuant to Nevada Revised  
28 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 Delt(s)	

APP001230

6/17/15 (AB)

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.

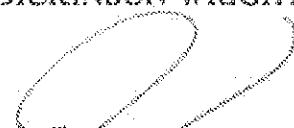
9 Accordingly, the Court HEREBY ORDERS that based upon the foregoing, and for the  
10 reasons stated on the record at the June 9, 2015 hearing, Defendant's Motion to Dismiss is  
11 GRANTED and Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE. The current  
12 trial date and all other dates scheduled 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  
19 DICKINSON WRIGHT, PLLC

20   
21 JOEL Z. SCHWARZ  
22 Nevada Bar No. 9181  
23 Email: jschwarz@dickinsonwright.com  
24 GABRIEL A. BLUMBERG  
25 Nevada Bar No. 12332  
26 Email: gblumberg@dickinsonwright.com  
27 8383 West Sunset Road, Suite 200  
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Fax: (702) 382-1661  
*Attorneys for Christopher Beavor*

APP001231

1 Approved as to form and content:

2 COHEN-JOHNSON, LLC

3 

4 H. STAN JOHNSON, ESQ.

5 Nevada Bar No. 00265

Email: sjohnson@cohenjohnson.com

6 MICHAEL V. HUGHES, ESQ.

Nevada Bar No. 13154

7 Email: mhughes@cohenjohnson.com

255 East Warm Springs Road, Suite 100

8 Las Vegas, NV 89119

*Attorneys for Yacov Hefetz*

1 NEOJ  
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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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*

  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 YACOV JACK HEFETZ,

11 Plaintiff,

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

12 vs.

13 CHRISTOPHER BEAVOR,

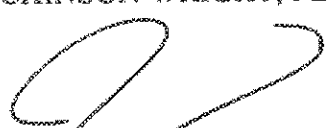
14 Defendant.

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 18<sup>th</sup> day of June 2015.

22 DICKINSON WRIGHT, PLLC

23  
24   
25 JOEL Z. SCHWARZ, Nevada Bar No. 9181  
26 Email: jschwarz@dickinsonwright.com  
27 8383 West Sunset Road, Suite 200  
28 Las Vegas, Nevada 89113  
Tel: (702) 382-4002  
*Attorneys for Christopher Beavor*

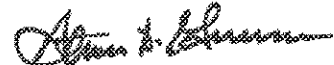
APP001233

## CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright, PLLC, hereby certifies that on the 18<sup>th</sup> day of June 2015, she caused a copy of the foregoing Notice of Entry of Order, to be hand-delivered to and transmitted 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:

COHEN-JOHNSON, LLC  
H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
Email: [sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com)  
MICHAEL V. HUGHES, ESQ.  
Nevada Bar No. 13154  
Email: [mhughes@cohenjohnson.com](mailto:mhughes@cohenjohnson.com)  
255 East Warm Springs Road, Suite 100  
Las Vegas, NV 89119  
*Attorneys for Yacov Hefetz*

Bobbie Donaldson  
Bobbie Donaldson, an employee of  
DICKINSON WRIGHT, PLLC

  
CLERK OF THE COURT

ORD  
DICKINSON WRIGHT PLLC  
JOEL Z. SCHWARZ  
Nevada Bar No. 9181  
Email: jschwarz@dickinsonwright.com  
GABRIEL A. BLUMBERG  
Nevada Bar No. 12332  
Email: gblumberg@dickinsonwright.com  
8383 West Sunset Road, Suite 200  
Las Vegas, Nevada 89113  
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 Acquittal

6/16/15 (88)  
APP001235

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.

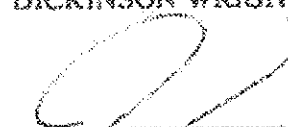
9 Accordingly, the Court HEREBY ORDERS that based upon the foregoing, and for the  
10 reasons stated on the record at the June 9, 2015 hearing, Defendant's Motion to Dismiss is  
11 GRANTED and Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE. The current  
12 trial date and all other dates scheduled 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

24 GABRIEL A. BLUMBERG

25 Nevada Bar No. 12332

26 Email: gblumberg@dickinsonwright.com

27 8383 West Sunset Road, Suite 200

28 Las Vegas, Nevada 89113

Tel: (702) 382-4002

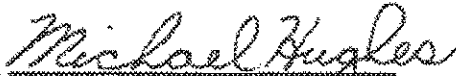
Fax: (702) 382-1661

Attorneys for Christopher Beaver

APP001236

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

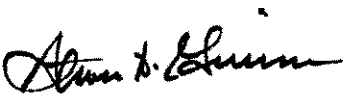
11 Las Vegas, NV 89119

12 Attorneys for Yacov Hefetz

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LVEGAS 99998-2830 22872v2

APP001237



  
CLERK OF THE COURT

ORIGINAL

ORDG  
DICKINSON WRIGHT PLLC  
JOEL Z. SCHWARZ  
Nevada Bar No. 9181  
Email: jschwarz@dickinsonwright.com  
GABRIEL A. BLUMBERG  
Nevada Bar No. 12332  
Email: gblumberg@dickinsonwright.com  
8383 West Sunset Road, Suite 200  
Las Vegas, Nevada 89113  
Tel: (702) 382-4002  
Fax: (702) 382-1661  
*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

ORDER GRANTING DEFENDANT CHRISTOPHER BEAVOR'S MOTION FOR  
ATTORNEYS' FEES AND COSTS

Defendant Christopher Beavor's ("Defendant") Motion for Attorneys' Fees and Costs ("Motion") having come before the Court in Chambers on August 19, 2015, the Court having reviewed the Motion, the opposition, and reply and supplement to reply thereto, and good cause appearing therefore, the Court hereby finds as follows:

IT IS HEREBY ORDERED that the Defendant's Motion for Attorney's Fees is GRANTED. Defendant is the prevailing party, having obtained a dismissal without prejudice. Attorney fees are appropriate pursuant to the Offer of Judgment and hereby are awarded in the amount of \$15,000.00.

Defendant's Offer of Judgment was both timely and reasonable in the amount especially

APP001238

9/27/15 (25)

1 given the circumstances under which the Plaintiff had been advised prior to the filing of the  
2 motion to dismiss that the One-Action Rule would resolve the situation.


3 In discussing the *Brunzell* factors: (1) the quality of the work performed by Defendant's  
4 counsel was very good; (2) the character and difficulty of the work was reasonable in nature and  
5 particularly so given that it resolved the case; and (3) Defendant achieved appropriate results or  
6 results that would satisfy the *Brunzell* factors. It was the amount of time spent following the  
7 Offer of Judgment that this Court feels was excessive, and therefore the Court reduces the total  
8 award of attorneys' fees to \$15,000.00.

9 IT IS HEREBY FURTHER ORDERED that the Defendant's Motion for Costs is  
10 GRANTED as no timely Motion to Retax was submitted and the costs set forth in Defendant's  
11 memorandum of costs are all taxable pursuant to NRS 18.005. Defendant therefore is awarded  
12 costs in the amount of \$338.48.

13  
14   
15 DISTRICT COURT JUDGE  
16 DATED: P-28-15

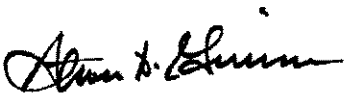
17 Submitted by

18 DICKINSON WRIGHT PLLC

19  
20   
21 JOEL Z. SCHWARZ  
22 Nevada Bar No. 9181  
23 Email: jschwarz@dickinsonwright.com  
24 GABRIEL A. BLUMBERG  
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Tel: (702) 382-4002  
Fax: (702) 382-1661  
Attorneys for Christopher Beavor

LVEGAS 65530-1 33065v1

APP001239

  
CLERK OF THE COURT

1 **NEOJ**  
2 **DICKINSON WRIGHT PLLC**  
3 **JOEL Z. SCHWARZ**  
4 Nevada Bar No. 9181  
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12 Fax: (702) 382-1661  
13 *Attorneys for Christopher Beavor*

8  
9  
10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 **YACOV JACK HEFETZ,**

13 Plaintiff,

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

14 vs.

15 **CHRISTOPHER BEAVOR,**

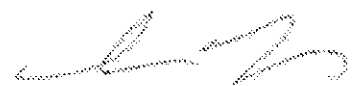
16 Defendant.

17 **NOTICE OF ENTRY OF ORDER**

18 NOTICE IS HEREBY GIVEN that an Order Granting Defendant Christopher Beavor's  
19 Motion for Attorneys' Fees and Costs was entered on September 1, 2015, a copy of which is  
20 attached hereto.

21 DATED this 3<sup>rd</sup> day of September 2015.

22 **DICKINSON WRIGHT PLLC**

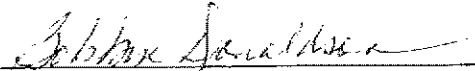
23   
24 **JOEL Z. SCHWARZ**  
25 Nevada Bar No. 9181  
26 **GABRIEL A. BLUMBERG**  
27 Nevada Bar No. 12332  
28 8363 West Sunset Road, Suite 200  
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*Attorneys for Christopher Beavor*

**APP001240**

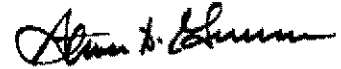
**CERTIFICATE OF SERVICE**

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 3<sup>rd</sup> day of September 2015, she caused a copy of **Notice of Entry of Order** 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 to:

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

  
Bobbye Donaldson, an employee of  
Dickinson Wright PLLC

ORIGINAL



CLERK OF THE COURT

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

8  
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **YACOV JACK HEFETZ,**

12 Plaintiff,

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

13 vs.

14 **CHRISTOPHER BEAVOR.**

15 Defendant.

16  
17 **ORDER GRANTING DEFENDANT CHRISTOPHER BEAVOR'S MOTION FOR**  
18 **ATTORNEYS' FEES AND COSTS**

19 Defendant Christopher Beavor's ("Defendant") Motion for Attorneys' Fees and Costs  
20 ("Motion") having come before the Court in Chambers on August 19, 2015, the Court having  
21 reviewed the Motion, the opposition, and reply and supplement to reply thereto, and good cause  
22 appearing therefore, the Court hereby finds as follows:

23 IT IS HEREBY ORDERED that the Defendant's Motion for Attorney's Fees is  
24 GRANTED. Defendant is the prevailing party, having obtained a dismissal without prejudice.  
25 Attorney fees are appropriate pursuant to the Offer of Judgment and hereby are awarded in the  
26 amount of \$15,000.00.

27 Defendant's Offer of Judgment was both timely and reasonable in the amount especially  
28

APP001242

1 given the circumstances under which the Plaintiff had been advised prior to the filing of the  
2 motion to dismiss that the One-Action Rule would resolve the situation.

3 In discussing the *Brunzell* factors: (1) the quality of the work performed by Defendant's  
4 counsel was very good; (2) the character and difficulty of the work was reasonable in nature and  
5 particularly so given that it resolved the case; and (3) Defendant achieved appropriate results or  
6 results that would satisfy the *Brunzell* factors. It was the amount of time spent following the  
7 Offer of Judgment that this Court feels was excessive, and therefore the Court reduces the total  
8 award of attorneys' fees to \$15,000.00.

9 IT IS HEREBY FURTHER ORDERED that the Defendant's Motion for Costs is  
10 GRANTED as no timely Motion to Retax was submitted and the costs set forth in Defendant's  
11 memorandum of costs are all taxable pursuant to NRS 18.005. Defendant therefore is awarded  
12 costs in the amount of \$338.48.

13  
14   
DISTRICT COURT JUDGE

15 DATED: 8-28-15  
16

17 Submitted by

18 DICKINSON WRIGHT PLLC

19  
20   
JOEL Z. SCHWARZ

21 Nevada Bar No. 9181

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26 Attorneys for Christopher Beavor

27  
28 LVEGAS 65530-1 33065v1

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**March 27, 2012**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

---

<b>March 27, 2012</b>	<b>3:00 AM</b>	<b>Motion to Amend</b>	<b>Defendants' / Counterclaimants' Motion for Leave to Amend Counterclaim</b>
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**HEARD BY:** Israel, Ronald J.

**COURTROOM:**

**COURT CLERK:** Kathy Klein

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Upon review of the papers and pleadings on file in this Matter, there being no opposition and good cause, COURT ORDERED, Deft's Motion for Leave to Amend Counterclaim, GRANTED. Defendants have 30 days from today (03/29/12) to file the amended counterclaim.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Lee Iglody, Esq. and Marc Saggese, Esq.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**August 15, 2012**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

---

**August 15, 2012      9:45 AM      Status Check**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Kathy Klein

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:**      Iglody, Lee I.      Attorney  
                         Saggese, Marc A.      Attorney

**JOURNAL ENTRIES**

- Ms. Iglody noted a settlement conference would be productive. Colloquy regarding scheduling options for a settlement conference with a Senior Judge or private Judge. Court directed Counsel to call to schedule and to have available dates before the end of October. Court noted it would not move the trial date at this time. Mr. Iglody requested matter be continued two weeks for Counsel to find a mediator and move the motion deadline out two weeks. Mr. Saggese stipulated in open court. At the request of Counsel COURT ORDERED, Matter set for a status check regarding the status of the case.

09/10/12 9:00 AM STATUS CHECK: STATUS OF CASE (Courtroom 15D)



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**September 10, 2012**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

---

**September 10, 2012      9:00 AM**

**Status Check: Status of  
Case**

**HEARD BY:** Israel, Ronald J.

**COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Kathy Klein

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:** Iglody, Lee I.

Attorney

**JOURNAL ENTRIES**

- Mr. Iglody informed the Court of the settlement conference being scheduled for 09/21/12 in front of Sr. Judge Bonaventure. Upon Court's inquiry, Mr. Iglody noted discovery was closed. Court noted Counsel may update this Court at the pre-trial conference.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**September 21, 2012**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

---

**September 21, 2012    9:00 AM      Settlement Conference**

**HEARD BY:** Bonaventure, Joseph T.      **COURTROOM:**

**COURT CLERK:**

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Clerk not present. Senior Judge Bonaventure conducted the conference; however, matter did not settle. TRIAL STANDS.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**October 22, 2012**

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A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

---

**October 22, 2012      9:30 AM      All Pending Motions**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Tiffany Lawrence

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:**      Iglody, Lee I.      Attorney  
                         Saggese, Marc A.      Attorney

**JOURNAL ENTRIES**

- STATUS CHECK: OUTCOME OF SETTLEMENT CONFERENCE...Case did not settle.

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT...COURT ORDERED, Defts' Response to Pltf's Reply STRICKEN. Arguments of counsel regarding whether Defts are entitled to an off-set judgment; whether Pltf qualified to possess the note. COURT stated FINDINGS and ORDERED, Motioned DENIED.

PRE TRIAL CONFERENCE...Counsel anticipate 5 days for trial.

Mr. Iglody to prepare the Order.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**November 05, 2012**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

---

**November 05, 2012      9:30 AM      Calendar Call**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Louisa Garcia

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:**      Iglody, Lee I.      Attorney  
Saggese, Marc A.      Attorney

**JOURNAL ENTRIES**

- Upon Court's inquiry, counsel anticipate trial to last 4 days. Colloquy regarding trial readiness. At the request of counsel, COURT ORDERED, trial date VACATED and reset, due to scheduling conflicts.

1/29/13 9:30 AM CALENDAR CALL

2/4/13 1:30 PM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**January 15, 2013**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

---

**January 15, 2013      9:30 AM      Pre Trial Conference**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Klein

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:**      Iglody, Lee I.      Attorney  
                         Saggese, Marc A.      Attorney

**JOURNAL ENTRIES**

- Mr. Iglody present and noted he did not see opposing Counsel. Mr. Iglody further noted settlement was unlikely and estimated trial to be four days. Court trailed matter for Counsel.

Later Recalled: Mr. Saggese not present. COURT ORDERED, Matter CONTINUED, for Counsel to appear.

LATER RECALLED: Mr. Iglody and Mr. Saggese present. Mr. Saggese noted there would be no settlement. Counsel requested trial to be set for either the week of 02/25/13 or 03/04/13. Court to confirm trial date at calendar call. Court vacated continued date previously set.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**January 29, 2013**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

---

**January 29, 2013      9:30 AM      Calendar Call**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Klein

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:**      Iglody, Lee I.      Attorney  
                         Saggese, Marc A.      Attorney

**JOURNAL ENTRIES**

- Mr. Iglody announced ready and estimated 4 days. Mr. Saggese advised he may have a potential Federal Court Trial and will travel Thursday to the hearing to confirm that trial. Colloquy regarding trial scheduling. Counsel agreed if the Federal Court Trial does not proceed, they would be starting trial on 02/25/13. COURT ORDERED, Matter CONTINUED, Counsel to notify the Judicial Executive Assistant (JEA) following the Federal Court hearing and inform this Court of Mr. Saggese's availability and confirm or vacate this Court's tentative trial date.

01/31/13 11:00 AM CONFERENCE CALL: CALENDAR CALL

02/25/13 9:00 AM JURY TRIAL (4 Days) Tentative

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**January 31, 2013**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

---

**January 31, 2013      11:00 AM      Calendar Call**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:**

**COURT CLERK:** Kathy Klein

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Mr. Saggese's Office called and stated Mr. Saggese Federal Trial was continued, Therefore this Trial set for 02/25/13 may proceed. TRIAL STANDS. Mr. Iglody called and was notified by Mr. Saggese's Office and confirmed by chambers, the current trial date is a firm date.

02/25/13 9:00 AM JURY TRIAL (4 Days)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**February 25, 2013**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

---

**February 25, 2013      9:30 AM      Jury Trial**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Klein

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Beavor, Christopher	Defendant
	Beavor, Samantha	Defendant
	Hefetz, Yacov Jack	Plaintiff
	Hulet, Jeffrey L.	Attorney
	Iglody, Lee I.	Attorney
	Saggese, Marc A.	Attorney

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Court received a copy of Plaintiff's brief and Court noted this should have been a Motion In Limine prior to trial. Arguments by Counsel. Court suggested Court could hear the issue and sanction Counsel. Mr. Iglody agreed to set aside his request regarding excluding testimony of close relations. Colloquy regarding the trial protocol. Counsel agreed to last two jurors as the secret alternates. Counsel further agreed to Plaintiff's Rebuttal Witness to be taken out of order. Colloquy regarding stipulated exhibits. (See worksheets).

PROSPECTIVE JURY PANEL PRESENT: Jury and two secret alternates selected and sworn. Opening statements by Counsel. EXCLUSIONARY RULE INVOKED. Testimony and exhibits presented (see worksheets).

Evening recess.



**A-11-645353-C**

02/26/13 11:30 AM Jury Trial

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**February 26, 2013**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

---

**February 26, 2013      11:00 AM      Jury Trial**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Klein

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Beavor, Christopher	Defendant
	Beavor, Samantha	Defendant
	Hefetz, Yacov Jack	Plaintiff
	Hulet, Jeffrey L.	Attorney
	Iglody, Lee I.	Attorney
	Saggese, Marc A.	Attorney

**JOURNAL ENTRIES**

- JURY PRESENT: Clerk took the roll of the Jury. Testimony and exhibits presented. (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Court admonished Mr. Saggese regarding comments that could be prejudicial and instructed Mr. Saggese not to refer to the Plaintiff as an Israeli and if Counsel uses these type of comments in this trial again, Court will then declare a mistrial. Mr. Saggese stated his reason for the use of his comments and apologized to the Court and all parties. Upon Court's inquiry regarding a curative instruction, Mr. Iglody noted he would wait, to see if it becomes necessary.

JURY PRESENT: Plaintiff's Rebuttal Witness taken out of order as stipulated prior to trial. Further testimony and exhibits presented. (See worksheet).

Evening recess.

**A-11-645353-C**

02/27/13 10:00 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**February 27, 2013**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

---

**February 27, 2013      10:00 AM      Jury Trial**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Klein  
Phyllis Irby

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Beavor, Christopher	Defendant
	Beavor, Samantha	Defendant
	Hefetz, Yacov Jack	Plaintiff
	Hulet, Jeffrey L.	Attorney
	Iglody, Lee I.	Attorney
	Saggese, Marc A.	Attorney

**JOURNAL ENTRIES**

- \*\*\*Court Clerk: Kathy Klein 10:00am -11:30am

OUTSIDE THE PRESENCE OF THE JURY: Counsel stipulated to admit additional exhibits. Counsel further agreed not to bring up the issue regarding Alis Cohen. Colloquy regarding trial scheduling.

JURY PRESENCE: Clerk took the roll of the jury. Plaintiff Rested. Testimony and exhibits presented. (See worksheets).

\*\*\*Court Clerk: Phyllis Irby 1:00pm - 5:00pm

OUTSIDE THE PRESENCE OF THE JURY. Parties have made a partial settlement with Samantha Beavor. Parties have stipulated to put the negotiations on the record.

Mr. Hulet informed the Court one party on the defense side has settled out; Ms. Samantha Beavor. Mr. Hulet stated the terms of the settlement are that Pltf Jack Hefetz is settling with Deft Samantha

Beavor for complete and full mutual release between Samantha Beavor and Jack Hefetz. Both clients agree to release by April 15th the Deed of Trust she resides in the condo on Domnus Lane within 15 DAYS, extending the condition of the settlement is that Samantha Beavor agree not to aid, abet, move or participate in any transfer of assets of her ex-husband Christopher Beavor. We agree to go by the uniform fraudulent transfer act as it pertains to the assets. If the condition is violated or if settlement is breached, parties agree to have liquidated damage clause provision of ONE MILLION (\$1,000,000.00) DOLLARS by the Pltf against the Deft. Mr. Hulet requested a status be set to have the necessary paperwork Stip & Order, Settlement documents and the Deed of Trust in order. COURT ORDERED, STATUS CHECK SET.

4-16-13 9:00 AM STATUS CHECK: SETTLEMENT DOCUMENTS (DEPT. XXVII)

JURY PRESENT. Testimony and exhibits presented (see worksheets). COURT ORDERED, MATTER CONTINUED. Jury recessed for the evening.

02/28/13 10:30 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**February 28, 2013**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

---

**February 28, 2013      10:30 AM      Jury Trial**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Klein

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Beavor, Christopher	Defendant
	Hefetz, Yacov Jack	Plaintiff
	Hulet, Jeffrey L.	Attorney
	Iglody, Lee I.	Attorney
	Saggese, Marc A.	Attorney

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding Plaintiff's rebuttal witness to be taken out of order. Mr. Saggese objected. Upon review of the trial schedule and the witness schedule, Court will allow Plaintiffs Rebuttal witness to be called later today.

JURY PRESENT: Clerk took the roll of the jury. Testimony and exhibits presented. (See worksheets). Counsel agreed to call Plaintiff's second rebuttal witness out of order. Further Testimony and exhibits presented. Defendant/Counterclaimant rested.

OUTSIDE THE PRESENCE OF THE JURY: Plaintiff moved for a 50(a) Motion and provided the Court and Counsel a copy of the motion. Court directed Counsel to file with the Clerks Office and arguments will be heard tomorrow regarding this motion. Colloquy regarding scheduling issues. Counsel to argue the 50(a) Motion and jury instructions.

Evening recess

**A-11-645353-C**

03/01/13 10:30 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**March 01, 2013**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

---

**March 01, 2013      10:30 AM      Jury Trial**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Klein

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Beavor, Christopher	Defendant
	Hefetz, Yacov Jack	Plaintiff
	Hulet, Jeffrey L.	Attorney
	Iglody, Lee I.	Attorney
	Saggese, Marc A.	Attorney

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding Samantha Beavor, Defendant, reached an agreement and will no longer be listed as a Defendant in the trial. Arguments by Counsel regarding Plaintiff's 50(a) Motion. Court stated its findings and ORDERED, Plaintiff's 50 (a) Motion, GRANTED; Defendant's Counter-Claims Dismissed. Discussions regarding jury instructions and verdict form. Instructions settled 1-34.

JURY PRESENT: Clerk took the roll of the jury. Court advised the Jury, Samantha Beavor and the Counter-Claims will no longer be an issue in this trial. Court instructed the jury. Closing arguments by Counsel. Marshal and Law Clerk sworn and given charge of the jury. Court Thanked and released the alternate jurors. Amended Jury List Filed in Open Court.

At the hour of 2:38 p.m. the jury retired to deliberate.

At the hour of 4:20 p.m. Jury returned with a Defense Verdict.



Jury polled. Court Thanked and excused the Jury.

Court adjourned.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract****COURT MINUTES****April 16, 2013**

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

<b>April 16, 2013</b>	<b>9:00 AM</b>	<b>Status Check: Settlement Documents</b>	<b>Status Check: Settlement Documents re Samantha Beavor</b>
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**HEARD BY:** Israel, Ronald J.**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Ying Pan**RECORDER:** Judy Chappell**REPORTER:****PARTIES**

<b>PRESENT:</b>	H. Stanley Johnson	Attorney
	Saggese, Marc A.	Attorney

**JOURNAL ENTRIES**

- Court NOTED, there has been a Trial. Upon Court's inquiry, Mr. Saggese stated Plaintiff's Trial counsel recently withdrew, and he is not sure whether the Plaintiff's Trial counsel forwarded the settlement documents to new counsel, Mr. Johnson. Mr. Johnson noted Plaintiff's prior counsel did not provide him with any settlement documents. COURT ORDERED, Status Check regarding settlement documents and case dismissal shall be SET for Court's Chambers Calendar; if counsel submit all the necessary documents by the next Status Check, case will be dismissed; otherwise, counsel will be required to appear and provide an explanation.

5/15/13 3:00 AM STATUS CHECK: SETTLEMENT DOCUMENTS / DISMISSAL OF SAMANTHA BEAVOR

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**May 15, 2013**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

---

May 15, 2013	3:00 AM	Status Check: Settlement Documents	STATUS CHECK: SETTLEMENT DOCUMENTS / DISMISSAL OF SAMANTHA BEAVOR
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HEARD BY: Israel, Ronald J.

COURTROOM:

COURT CLERK: Kathy Klein

RECORDER:

REPORTER:

PARTIES  
PRESENT:

**JOURNAL ENTRIES**

- Upon review of the papers filed in this matter, Court notes settlement documents have not been submitted and ORDERED, Matter CONTINUED to the hearing calendar. Court directs Counsel to inform the Court of the status of the case.

06/13/13 9:00 AM STATUS CHECK: SETTLEMENT DOCUMENTS// DISMISSAL OF SAMANTHA BEAVOR// STATUS OF CASE

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: H. Stan Johnson, Esq. (Cohen-Johnson) and Marc Saggese, Esq.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract****COURT MINUTES****June 13, 2013**

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

<b>June 13, 2013</b>	<b>9:00 AM</b>	<b>Status Check: Settlement Documents</b>	<b>STATUS CHECK: SETTLEMENT DOCUMENTS / DISMISSAL OF SAMANTHA BEAVOR//STATUS OF CASE</b>
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**HEARD BY:** Israel, Ronald J.**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Kathy Klein  
Keri Cromer**RECORDER:** Judy Chappell**REPORTER:****PARTIES****PRESENT:** Saggese, Marc A.      Attorney**JOURNAL ENTRIES**

- Upon Court's inquiry, Mr. Saggese noted there was a substitution of counsel for Plaintiff and they stated they would produce the documents, However we have not received them. Mr. Saggese noted Mr. Johnson is new Counsel for Plaintiff. COURT ORDERED, Matter CONTINUED. Law Clerk to notify Counsel of the upcoming date. Court noted if Counsel does not appear to the next hearing, Counsel may be sanctioned.

06/20/13 9:00 AM STATUS CHECK: SETTLEMENT DOCUMENTS / DISMISSAL OF SAMANTHA BEAVOR // STATUS OF CASE

CLERK'S NOTE: Law Clerk notified Mr. Johnson, 06/13/13, kk.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

July 09, 2013

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

July 09, 2013	9:00 AM	Status Check: Settlement Documents	STATUS CHECK: SETTLEMENT DOCUMENTS / DISMISSAL OF SAMANTHA BEAVOR//STATUS OF CASE
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HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

**PARTIES**

<b>PRESENT:</b>	Morris, Brian A., ESQ	Attorney
	Saggese, Marc A.	Attorney

**JOURNAL ENTRIES**

- Court noted parties agreed to a stipulation at the time of trial and Counsel has not received the documents of the stipulation. Mr. Morris noted Mr. Johnson was just retained on this case and assured the Court the documents would be submitted. COURT ORDERED, Matter CONTINUED. Court noted if the documents are submitted, Counsel will not need to appear.

08/08/13 9:00 AM STATUS CHECK: SETTLEMENT DOCUMENTS / DISMISSAL OF SAMANTHA BEAVOR // STATUS OF CASE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**August 07, 2013**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

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<b>August 07, 2013</b>	<b>3:00 AM</b>	<b>Motion for New Trial</b>	<b>Plaintiff's Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV)</b>
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**HEARD BY:** Israel, Ronald J.

**COURTROOM:**

**COURT CLERK:** Kathy Klein

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Upon review of all the papers and pleadings on file in this matter, Court notes Defendant's opposition only addressed the timeliness of Plaintiff's Motion for New Trial and Defendant's were incorrect as to the proper procedure pursuant to EDCR, Therefore, there was no opposition on the merits, COURT ORDERED, Plaintiff's Motion for New Trial, GRANTED. COURT FURTHER ORDERED, Matter set for a status check to reset the trial.

08/29/13 9:00 AM STATUS CHECK: RESET TRIAL

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: H. Stan Johnson, Esq. (Cohen- Johnson) and Marc Saggese, Esq. (Saggese & Associates)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**August 08, 2013**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

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<b>August 08, 2013</b>	<b>9:00 AM</b>	<b>Status Check: Settlement Documents</b>	<b>STATUS CHECK: SETTLEMENT DOCUMENTS / DISMISSAL OF SAMANTHA BEAVOR//STATUS OF CASE</b>
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**HEARD BY:** Israel, Ronald J.

**COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Klein

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	H. Stanley Johnson	Attorney
	Saggese, Marc A.	Attorney

**JOURNAL ENTRIES**

- Colloquy regarding the preparing of the stipulation and order and the settlement agreement.  
COURT ORDERED, CASE CLOSED as to Samantha Beavor. Court noted there will be additional motions regarding Defendant Christopher Beavor.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**August 29, 2013**

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A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

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**August 29, 2013      9:00 AM      Status Check: Trial Setting**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Klein

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:**      Morris, Brian A., ESQ      Attorney  
                         Tomsheck, Joshua L.      Attorney

**JOURNAL ENTRIES**

- Mr. Morris noted both law firms are new on this case. Colloquy regarding schedules. COURT ORDERED, Jury Trial, SET. The Judicial Executive Assistant (JEA) to issue a trial order. At the request of Counsel, COURT ORDERED, The upcoming Motion for Attorney Fees and Motion for Reconsideration be reset together on the hearing calendar.

09/26/13 9:00 AM MOTION FOR ATTORNEY FEES...MOTION FOR RECONSIDERATION

02/20/14 9:30 AM PRE-TRIAL CONFERENCE

03/11/14 9:30 AM CALENDAR CALL

03/17/14 1:30 PM JURY TRIAL



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**September 26, 2013**

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A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

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**September 26, 2013      9:00 AM**

**All Pending Motions**

**All Pending Motions  
(09/26/13)**

**HEARD BY:** Israel, Ronald J.

**COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Klein

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:**      H. Stanley Johnson      Attorney  
                         Saggese, Marc A.      Attorney  
                         Tomsheck, Joshua L.      Attorney

**JOURNAL ENTRIES**

- DEFENDANT CHRISTOPHER BEAVOR'S MOTION FOR RECONSIDERATION...DEFENDANT'S MOTION FOR ATTORNEY FEES

Colloquy regarding the dismissal of Ms. Samantha Beavor. Mr. Saggese noted it was in the process, they were fine tuning the language. COURT ORDERED, Matter CONTINUED and FURTHER CONTINUED Mr. Saggese's Motion for Attorney Fees. Court noted if the settlement documents are submitted, Counsel may notify chambers to have the matter taken off calendar.

Arguments by Counsel regarding the Motion to Reconsider Plaintiff's Motion for a new trial. Mr. Tomsheck argued the time of service of the notice of judgment. Colloquy regarding rule 6A and rule 6E and holidays and weekends excluded from the time of service. Further arguments. COURT stated its finding and noted under 2.24 there were no grounds for reconsideration and ORDERED, Motion to Reconsider, DENIED. Mr. Tomsheck requested matter be stayed to take it up on a writ. COURT ORDERED, Oral Motion to Stay, DENIED.

10/24/13 9:00 AM STATUS CHECK: DISMISSAL/S. BEAVOR...DEFT'S MOTION FOR ATTORNEY FEES

CLERK'S NOTE: Following Court, Court noted Mr. Tomsheck may file a written motion for a stay for both sides to brief. A copy of this minute order was placed in the attorney folder(s) of: Joshua Tomsheck, Esq. (Hofland & Tomsheck) and H. Stanley Johnson, Esq. (Cohen-Johnson) and Marc Saggese, Esq.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**October 24, 2013**

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A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

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**October 24, 2013      9:00 AM      All Pending Motions      All Pending Motions  
(10/24/13)**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Klein

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:**      H. Stanley Johnson      Attorney  
                         Saggese, Marc A.      Attorney

**JOURNAL ENTRIES**

- DEFENDANT'S MOTION FOR ATTORNEY FEES...STATUS CHECK: SAMANTHA BEAVOR

Mr. Johnson noted the settlement with Samantha Beavor was done. Colloquy regarding the Motion for Attorney Fees, and Mr. Johnson's appearances for the past hearings. Court trailed the matter. Later recalled. Court noted Mr. Hefetz had changed Counsel and delayed this matter. COURT ORDERED, Motion for Attorney Fees, DENIED, Court finds no one had placed the terms on the record.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**January 07, 2014**

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A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

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January 07, 2014      9:00 AM      Motion For Stay      Defendant  
Christopher Beavor's  
Motion for Stay of  
Proceedings

HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

**PARTIES**

PRESENT:      Tomsheck, Joshua L.      Attorney

**JOURNAL ENTRIES**

- There being no opposition, COURT ORDERED, Stay of Proceedings, GRANTED. Upon Court's inquiry, Mr. Tomsheck advised he would file the writ now. COURT FURTHER ORDERED, Trial Dates, VACATED and Matter set for a status check as to the status of the case and to reset trial. Case STAYED pending Supreme Court decision.

05/13/14 9:00 AM STATUS CHECK: STATUS OF CASE // RESETTING TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**May 13, 2014**

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A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

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<b>May 13, 2014</b>	<b>9:00 AM</b>	<b>Status Check: Status of Case</b>	<b>Status Check: Status of Case//Resetting Trial</b>
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**HEARD BY:** Israel, Ronald J.

**COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Klein

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:** Tomsheck, Joshua L.      Attorney

**JOURNAL ENTRIES**

- Mr. Tomsheck noted the writ had been filed with the Supreme Court. COURT ORDERED, Matter set for a status check. Court directed Counsel to notify chambers of the status prior to the hearing.

08/13/14 (CHAMBERS) STATUS CHECK: STATUS OF SUPREME COURT DECISION

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**August 13, 2014**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

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<b>August 13, 2014</b>	<b>3:00 AM</b>	<b>Status Check: Status of Case</b>	<b>Status Check: Status of Case//Resetting Trial</b>
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**HEARD BY:** Israel, Ronald J.

**COURTROOM:**

**COURT CLERK:** Kathy Klein

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Upon review, writ of mandamus pending before the Supreme Court. COURT ORDERED, Matter CONTINUED.

11/12/14 (CHAMBERS) STATUS CHECK: STATUS OF CASE/RESETTING TRIAL

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Joshua Tomsheck, Esq. (Hofland & Tomsheck) and Harold Johnson, Esq. (Cohen-Johnson)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**November 05, 2014**

---

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

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<b>November 05, 2014</b>	<b>3:00 AM</b>	<b>Motion to Withdraw as Counsel</b>	<b>Hofland &amp; Tomsheck's Motion to Withdraw as Counsel for Defendant Christopher Beavor</b>
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**HEARD BY:** Israel, Ronald J.

**COURTROOM:**

**COURT CLERK:** Kathy Klein

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(b) the Motion to Withdraw is deemed unopposed. Therefore, good cause appearing, COURT ORDERED, motion is GRANTED. Moving Counsel is to prepare and submit an order including the last known address and all upcoming dates including all dates for pretrial compliance with NRCP 16.1 within ten (10) days and distribute a filed copy to all parties involved in this matter.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Joshua Tomsheck, Esq. (Hofland & Tomsheck) and Counsel to notify all parties.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**November 12, 2014**

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A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

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**November 12, 2014      3:00 AM**

**Status Check: Status of  
Case**

**Status Check: Status  
of Case//Resetting  
Trial**

**HEARD BY:** Israel, Ronald J.

**COURTROOM:**

**COURT CLERK:** Kathy Klein

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- COURT ORDERED, Matter CONTINUED to the Hearing Calendar for trial setting.

12/11/14 9:00 AM STATUS CHECK: STATUS OF CASE // TRIAL SETTING

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Joshua Tomsheck, Esq. (Hofland & Tomsheck) and Harold Johnson, Esq. (Cohen-Johnson)



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

December 11, 2014

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

December 11, 2014	9:00 AM	Status Check: Status of Case	Status Check: Status of Case//Resetting Trial
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HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

**PARTIES**

PRESENT:      Hughes, Michael V., ESQ      Attorney

**JOURNAL ENTRIES**

- Mr. Hughes requested trial dates be set. Court noted the Supreme Court denied the writ and Defense Counsel withdrew. COURT ORDERED, Trial SET. The Judicial Executive Assistant (JEA) to issue the trial order. Upon inquiry, Mr. Hughes noted the trial would be 5 days for the re-trial.

01/20/15 9:30 AM PRE-TRIAL CONFERENCE

02/03/15 9:30 AM CALENDAR CALL

02/09/15 1:30 PM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**January 20, 2015**

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A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

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**January 20, 2015      9:30 AM      Pre Trial Conference**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Klein

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:**      Johnson, Harold Stanley      Attorney  
                         Schwarz, Joel Z.      Attorney

**JOURNAL ENTRIES**

- Mr. Schwarz noted he was just retained Thursday and he spoke with Counsel regarding other trial stacks and will be submitting a joint motion to continue the trial. Court noted the age of the case and the prior trial on this case going to the Supreme Court. Court will allow a limited time given the fact Mr. Schwarz was just retained. Colloquy regarding scheduling issues. COURT ORDERED, Trial dates VACATED and RESET. The Judicial Executive Assistant (JEA) to issue the trial order. COURT FURTHER ORDERED, All Parties to a Settlement Conference. Counsel to notify the Law Clerk in chambers by next Tuesday of the date set for the settlement conference.

CLERK'S NOTE: Chambers received a fax 01/26/15, from Joel Z. Schwarz, Esq. advising that the parties have a Settlement Conference scheduled with Judge Scotti on 02/26/15 @1:00 PM. kk 01/26/15.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**February 26, 2015**

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A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

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**February 26, 2015      1:00 PM      Settlement Conference**

**HEARD BY:** Scotti, Richard F.      **COURTROOM:** Phoenix Building Courtroom -  
11th Floor

**COURT CLERK:** Keri Cromer

**RECORDER:**

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Beavor, Christopher	Defendant
	Hefetz, Yacov Jack	Plaintiff
	Hughes, Michael V., ESQ	Attorney
	Schwarz, Joel Z.	Attorney

**JOURNAL ENTRIES**

- Court reviewed the settlement conference process with all parties and advised they must participate in good faith; further advised that anything spoken about by either side would remain confidential. Upon Court's inquiry, Mr. Schwarz indicated that Judge Israel inquired about the possibility of scheduling a settlement conference during their Pre-Trial Conference, and both sides stated they were open to having one. Counsel advised it would be best to move forward with the settlement conference with both sides separated due to the history of the case. Mr. Hughes advised they were open to a constructive settlement and that there was room for negotiation. Settlement conference conducted. Court advised the parties conducted a good faith settlement; however, the matter did not settle. Matter REFERRED back to its originating department for further proceedings.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**March 31, 2015**

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A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

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**March 31, 2015      9:30 AM      Pre Trial Conference**

**HEARD BY:** Israel, Ronald J.      **COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Klein

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:** Hughes, Michael V., ESQ      Attorney  
Schwarz, Joel Z.      Attorney

**JOURNAL ENTRIES**

- Upon Court's inquiry, Counsel announced ready and estimated 5 days for trial. Counsel stated the dates that they would be unavailable for trial, the week of April 20th and May 4th. Mr. Hughes asked if the Pre-Trial Memorandum could be due after the Motions In Limine. Court will allow the filing of the Pre-Trial Memorandum by April 14th. Colloquy regarding the pending Motions In Limine and the unsuccessful settlement conference.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Breach of Contract

COURT MINUTES

April 07, 2015

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

April 07, 2015	9:00 AM	All Pending Motions	All Pending Motions (04/07/15)
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HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

## PARTIES

PRESENT: Hughes, Michael V., ESQ Attorney  
Schwarz, Joel Z. Attorney

## JOURNAL ENTRIES

- PLAINTIFF'S MOTION IN LIMINE CONCERNING THE EXCLUSION OF REFERENCES TO NATIONAL ORIGINS AND RELIGIOUS BELIEFS: Colloquy regarding avoiding references. Upon Court's inquiry of Counsel holding a meet and confer, Mr. Hughes stated he had failed to set it up. Mr. Schwarz advised the references regarding the national origins or religion may be seen from the evidence and facts presented in trial and should have no bearing on this case. Arguments by Counsel. COURT ORDERED, Motion GRANTED. Moving Counsel to prepare the order.

PLAINTIFF'S MOTION IN LIMINE CONCERNING THE EXCLUSION OF THE CONTENTS OF SETTLEMENT NEGOTIATIONS: Arguments by Counsel. Court inquired if Plaintiff was seeking the amount of the settlement or that they had a settlement. Court further noted Defendants never sought to enforce the settlement. Colloquy. Court stated this was a new trial and the previous stipulations for evidence is not in the new trial. COURT stated its findings noting this is a question for the jury and ORDERED, Motion In Limine, DENIED. Plaintiff's Counsel to prepare the order.

Colloquy regarding Defendant's Order Shortening Time that the Court just received. Mr. Schwarz advised the Motion is a one action rule and not able to waive; Further stating his Client was a Nevada

PRINT DATE: 05/03/2016

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Minutes Date: March 27, 2012

APP001282

resident and his property is located in Nevada, the deed of trust is on Defendant's house. Conference at the bench. Court noted Counsel is not ready for trial and ORDERED, Trial VACATED and RESET. The Judicial Executive Assistant (JEA) to issue the trial order. COURT FURTHER ORDERED, All Parties to a Settlement Conference. Counsel to notify chambers with three dates where all parties are available, by next Friday. Court noted they may schedule in Dept. XXX, set a private mediation, or find a Judge that is available. Mr. Schwarz noted the Order Shortening Time is no longer needed.

09/22/15 9:30 AM PRE-TRIAL CONFERENCE

10/06/15 9:30 AM CALENDAR CALL

10/12/15 1:30 PM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**May 14, 2015**

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A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

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**May 14, 2015      10:30 AM      Settlement Conference**

**HEARD BY:** Kishner, Joanna S.      **COURTROOM:** RJC Courtroom 12B

**COURT CLERK:** Sandra Harrell

**RECORDER:** Rachelle Hamilton

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Beavor, Christopher	Defendant
	Hefetz, Yacov Jack	Plaintiff
	Johnson, Harold Stanley	Attorney
	Schwarz, Joel Z.	Attorney

**JOURNAL ENTRIES**

**- SETTLEMENT CONFERENCE**

All parties and counsel present. Settlement options discussed with no settlement reached.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

June 09, 2015

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

June 09, 2015

9:00 AM

All Pending Motions

All Pending Motions  
(06/09/15)

HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

**PARTIES**

**PRESENT:**      Hughes, Michael V., ESQ      Attorney  
                         Schwarz, Joel Z.      Attorney

**JOURNAL ENTRIES**

- DEFENDANT'S MOTION TO DISMISS PURSUANT TO NRS 40.435...DEFENDANT  
CHRISTOPHER BEAVOR'S MOTION TO REOPEN DISPOSITIVE MOTION DEADLINE

Arguments by Counsel. Mr. Schwarz advised they could not waive the one action rule and Plaintiff should release the security or dismiss. Mr. Hughes noted the security interest is under water and the statute of limitations has expired. Conference at the Bench. Court noted the past history of the case. Court stated its findings and noted Defendant's Motion is appropriate and ORDERED, Deft's Motion to Dismiss, GRANTED Without Prejudice. Court noted Plaintiff has not agreed upon a course of action to amend the action and the one action applies. COURT FURTHER ORDERED, Deft's Motion to Reopen Dispositive Motion Deadline, Denied as MOOT and Trial Dates, VACATED. Mr. Schwarz to prepare the order. CASE CLOSED.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**July 22, 2015**

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A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

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July 22, 2015	3:00 AM	Motion	Plaintiff's Motion To Re-Open The Case And For Reconsideration Of An Order Of Dismissal Without Prejudice
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HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER:

REPORTER:

PARTIES  
PRESENT:

**JOURNAL ENTRIES**

- COURT ORDERED, Plaintiff's Motion DENIED. Written decision and Order prepare and e-filed by the Court, 07/22/15.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**August 19, 2015**

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A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

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**August 19, 2015      3:00 AM      Motion for Attorney Fees  
and Costs**

**HEARD BY:** Israel, Ronald J.

**COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Klein

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Motion for Costs are GRANTED as no timely Motion to Retax was submitted. Motion for Attorney's Fees are GRANTED. Defendant prevailed and got the Complaint dismissed even though it was without prejudice. Attorney fees are appropriate pursuant to the offer of judgment and are awarded in the amount of \$15,000.00. This Court reduced the attorneys' fees as the billing seemed excessive post offer of judgment. In discussing the Brunzell factors, the quality of the work done was very good; the character and difficulty of the work was reasonable in nature and particularly so given that it resolved the case. It was the amount of time spent that this Court felt was excessive and therefore reduced the total award of attorneys' fees to \$15,000.00. The Defendant did achieve appropriate results or results that would satisfy the Brunzell factors. The Offer of Judgment was both timely and reasonable in the amount especially given the circumstances under which the Plaintiff had been advised prior to the filing of the motion that the One-Action Rule would resolve the situation. Prevailing party to prepare the order pursuant to EDCR 7.21.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Joel Schwarz, Esq. (Dickinson Wright) and Stanley Johnson, Esq. (Cohen-Johnson)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

April 21, 2016

A-11-645353-C      Yacov Hefetz, Plaintiff(s)  
vs.  
Christopher Beavor, Defendant(s)

<b>April 21, 2016</b>	<b>9:00 AM</b>	<b>Status Check</b>	<b>Status Check: Supreme Court Order Dismissing Appeals and Status of Case</b>
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HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

**PARTIES**

<b>PRESENT:</b>	Davis, Chris W.	Attorney
	Schwarz, Joel Z.	Attorney

**JOURNAL ENTRIES**

- Court noted both Counsel were retained following the trial. Court noted Mr. Cohen was dismissed and three days of the trial and Ms. Beavor was also dismissed with prejudice. Mr. Davis clarified page three of the Supreme Court Order they discuss the counter claims. Mr. Davis further noted he prepare an order to dismiss the counterclaim, pursuant to Court's prior decision and the order was never submitted. Mr. Schwarz objected. Arguments by Counsel. Court noted this was reviewed and the order stated what took place, therefore, Court signed the Order to Dismiss the Counterclaims, in Open Court. CASE CLOSED.

DISTRICT COURT  
CLARK COUNTY, NEVADA  
*Yacov Jack Hefetz vs. Christopher Beavor and Teresa Beavor*  
Case No. A645353

February 25, 2013 Trial

**Stipulated Exhibit List**

**PLAINTIFF'S EXHIBITS**

Exhibit	Description	Objection	Offered	Admitted
P1.	Loan, Guaranty and Deeds of Trust Documents Bate No . 000001-000167		Stip	02/25/13
P2.	Defendants' Answer and Counterclaim and Verified Complaint		Stip	02/25/13
P3.	Assignment documents Bate No. Hefetz Toluca Lake 001-014		Stip	02/25/13
P4.	Ch 11 plan documents Bate No. Hefetz Toluca Lake 015-038		Stip	02/25/13
P5.	Plan description		Stip	02/25/13
P6.	Power of Attorney <del>170 171</del>		Stip	02/25/13
P7.	Copy of Bank Statement with evidence of wire of funds from Hefetz to Frey		Stip	02/25/13
P8.	Alis Cohen Assignment Documents <i>- not Provided by Counsel</i>			
P9	Exhibit 7 from Christopher Beavor		stip	2/27/13
P10	Exhibit 10 from Christopher Beavor		stip	2/27/13

**APP001289**

DISTRICT COURT  
CLARK COUNTY, NEVADA  
*Yacov Jack Hefetz vs. Christopher Beavor and Teresa Beavor*  
Case No. A645353

February 25, 2013 Trial

**Stipulated Exhibit List**

**DEFENDANTS' EXHIBITS**

<b>Exhibit</b>	<b>Description</b>	<b>Objection</b>	<b>Offered</b>	<b>Admitted</b>
D1.	Eighteen payments to Herbert Frey Revocable Family Trust for monthly installments of one thousand two hundred fifty dollars (\$1,250.00).		Stip	02/25/13
D2.	Mutual Release and Payment Agreement between Christopher Beavor, Samantha Beavor, C&S Holdings, LLC, Brian Head Lofts, LLC, Herbert Frey and his successors, and the Herbert Frey Revocable Family Trust dated November 22, 1982		Stip	02/25/13
D3.	Cashier's Check from Silver State Realty & Investment to the Herbert Frey Revocable Family Trust, dated January 4, 2011, in the amount of one thousand dollars (\$1,000.00).		Stip	02/25/13
D4.	Secretary of State Entity Details for Star Development, LLC, listing Yacov Hefetz and Gary M. Frey, as Managers in 2010		Stip	02/25/13
D5.	Proposed Settlement Agreement, Release of Guarantees and Reconveyance of Deeds of Trust between Christopher Beavor, Samantha Beavor, Robert A. Rink, Alan R. Floyd, Herbert Frey and Herbert Frey, as Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982.		Stip	02/25/13
D6.	Substitution of Attorney for Toluca Lake Vintage, LLC, dated April 24, 2009		Stip	02/25/13
D7.	Toluca Lake Vintage, LLC, Voluntary Petition for Bankruptcy, United States Bankruptcy Court, Central District of California – SFV Division		Stip	02/25/13
D8.	Toluca Lake Vintage, LLC, List of Creditors Holding 20 Largest Unsecured Claims, United States Bankruptcy Court, Central District of California – San Fernando Valley Division.		Stip	02/25/13

DISTRICT COURT  
CLARK COUNTY, NEVADA  
*Yacov Jack Hefetz vs. Christopher Beavor and Teresa Beavor*  
Case No. A645353

February 25, 2013 Trial

**Stipulated Exhibit List**

**DEFENDANTS' EXHIBITS**

<b>Exhibit</b>	<b>Description</b>	<b>Objection</b>	<b>Offered</b>	<b>Admitted</b>
D9.	Toluca Lake Vintage, LLC, Notice of Bankruptcy Case Filing under Chapter 11 of the United States Bankruptcy Code, United States Bankruptcy Court, Central District of California, entered on May 14, 2009		Stip	02/25/13
D10.	Notice of Commencement of Bankruptcy Case and of Automatic Stay [11 U.S.C. § 362] dated May 14, 2009		Stip	02/25/13
D11.	Notice of Motion and Motion for Order Approving Settlement Agreement by and Between Debtor, Chinatrast Bank (U.S.A.), and Others Pursuant to F.R.B.P. 9019(a); Memorandum of Points and Authorities; Declaration of Victor A. Sahn in Support Thereof, dated January 21, 2010		Stip	02/25/13
D12.	Objection to Emergency Ex Parte Application for Hearing on Debtor's Emergency Motion for Order Authorizing and Approving: (1) A Modification of the Order Approving Settlement Agreement By and Between Debtor, Chinatrast Bank and Others [Docket No. 44]; Etc., dated May 10, 2010		Stip	02/25/13
D13.	Declaration of Christopher Beavor in Opposition to Motion to Modify, dated May 17, 2010.		Stip	02/25/13
D14.	Order Granting Emergency Ex Parte Motion for Order Authorizing and Approving: (1) Modification of the Order Approving Settlement By and Between Debtor, Chinatrast Bank and Others [Docket No. 44]; (2) Granting Chinatrast Bank Relief from Automatic stay and Related Relief; and (3) Debtor's Execution of Certain Documents and Agreements in Connection with the Purchase of the Chinatrast Bank Loan by Debtor or a Successor in Interest and Certain Other Relief, dated May 18, 2010.		Stip	02/25/13

DISTRICT COURT  
CLARK COUNTY, NEVADA  
*Yacov Jack Hefetz vs. Christopher Beavor and Teresa Beavor*  
Case No. A645353

February 25, 2013 Trial

**Stipulated Exhibit List**

**DEFENDANTS' EXHIBITS**

Exhibit	Description	Objection	Offered	Admitted
D15.	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)], citing satisfaction of the Herbert Frey Revocable Family Trust Claim		Stip	02/25/13
D16.	Chapter 11 Bankruptcy Petition filing regarding Toluca Lake Vintage, LLC, Case No. 1:09-bk-15680-GM, dated May 18, 2009 (BATES No. 002193-002225)		Stip	02/25/13
D17.	*Omitted			
D18.	*Omitted			
D19.	Email from Christopher Beavor to Wayne Krygier dated January 7, 2011			
D20.	Email from Christopher Beavor to Yacov Hefetz dated February 1, 2011			
D21.	Email from David Haberbusch, Esq., to Christopher Beavor, dated April 26, 2010			
D22.	Email communications between Christopher Beavor and Robert Rink, dated January 26, 2010			
D23.	Email communications between Christopher Beavor, David Haberbusch, Robert Rink, and Gary Frey dated May 11, 2010			
D24	Exhibit from Mr. Hefetz- Deposition #7	2/26/13	Stp	2/26/13

*Not Provided  
by Counsel*

## EXHIBITS

CASE NO. A645353

[illegible]





EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE  
**NOTICE OF DEFICIENCY**  
ON APPEAL TO NEVADA SUPREME COURT

H. STAN JOHNSON, ESQ.  
255 E. WARM SPRINGS RD., SUITE 100  
LAS VEGAS, NV 89119

DATE: May 3, 2016  
CASE: A-11-645353-C

**RE CASE:** YACOV JACK HEFETZ vs. CHRISTOPHER BEAVOR; SAMANTHA BEAVOR

NOTICE OF APPEAL FILED: April 29, 2016

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)\*\*
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)\*\*
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)\*\*
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☒ Case Appeal Statement
  - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

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**NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:**

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

*Please refer to Rule 3 for an explanation of any possible deficiencies.*

---

*\*\*Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

**APP001294**

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; 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; NOTICE OF ENTRY OF ORDER; ORDER GRANTING DEFENDANT CHRISTOPHER BEAVOR'S MOTION FOR ATTORNEYS' FEES AND COSTS; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

YACOV JACK HEFETZ,

Plaintiff(s),

vs.

CHRISTOPHER BEAVOR; SAMANTHA  
BEAVOR,

Defendant(s),

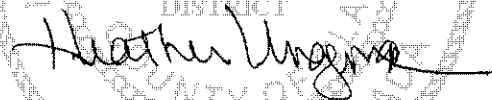
Case No: A-11-645353-C

Dept No: XXVIII

now on file and of record in this office.

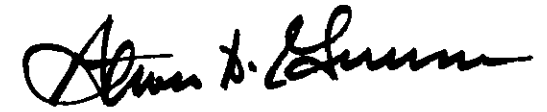
IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 3 day of May 2016.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

APP001295



CLERK OF THE COURT

DICKINSON WRIGHT PLLC  
JOEL Z. SCHWARZ  
Nevada Bar No. 9181  
Email: jschwarz@dickinsonwright.com  
GABRIEL A. BLUMBERG  
Nevada Bar No. 12332  
Email: gblumberg@dickinsonwright.com  
8383 West Sunset Road, Suite 200  
Las Vegas, Nevada 89113  
Tel: (702) 382-4002  
Fax: (702) 382-1661  
*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 FOR ATTORNEYS'  
FEES AND COSTS

Defendant Christopher Beavor ("Beavor"), by and through counsel, the law firm of Dickinson Wright PLLC, hereby moves the Court for an award of attorneys' fees in the amount of \$21,831.00 against Plaintiff Yacov Jack Hefetz ("Hefetz") pursuant to Nevada Rule of Civil Procedure ("NRCP 68") and Nevada Revised Statute ("NRS") 17.115 and costs in the amount of \$338.48 pursuant to NRS 18.020 and NRS 18.110.

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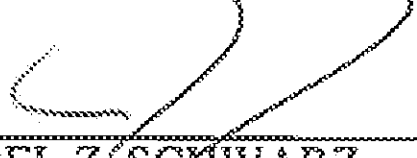
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This Motion is based upon the following Memorandum of Points and Authorities; the declaration of Joel Z. Schwarz, Esq. attached hereto as Exhibit 1 and the exhibits thereto; the papers and pleadings already on file herein; and any oral argument the Court may permit at the hearing of this matter.

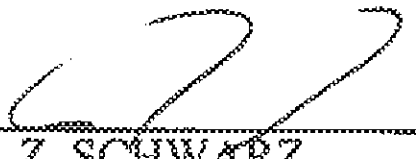
DATED this 3<sup>rd</sup> day of July, 2015.

DICKINSON WRIGHT PLLC  
  
JOEL Z. SCHWARZ  
Nevada Bar No. 9181  
GABRIEL A. BLUMBERG  
Nevada Bar No. 12332  
8363 West Sunset Road, Suite 200  
Las Vegas, Nevada 89113-2210  
Tel: (702) 382-4002  
*Attorneys for Christopher Beavor*

NOTICE OF MOTION

YOU, AND EACH OF YOU, will please take notice that the undersigned will bring the above and foregoing Motion on for hearing before this Court on the 19<sup>th</sup> day of AUG, 2015 at the hour of 10<sup>00</sup> o'clock IN CHAMBERS of said day, or as soon thereafter as counsel can be heard in Department No. XXVIII.

DATED this 8<sup>th</sup> day of July, 2015.

DICKINSON WRIGHT PLLC  
  
JOEL Z. SCHWARZ  
Nevada Bar No. 9181  
GABRIEL A. BLUMBERG  
Nevada Bar No. 12332  
8363 West Sunset Road, Suite 200  
Las Vegas, Nevada 89113-2210  
Tel: (702) 382-4002  
*Attorneys for Christopher Beavor*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

On April 3, 2015, Beavor served Hefetz with an offer of judgment (the "Offer of Judgment"). By way of the Offer of Judgment, Beavor offered to allow judgment to be taken against him in the amount of \$10,000.00, including costs and attorneys' fees. Hefetz failed to respond to the offer and, therefore, was deemed to have rejected said offer.

On June 17, 2015, the Court entered its order dismissing Hefetz's claim against Beavor (the "Order"). As such, Beavor obtained an outcome significantly more favorable than the Offer of Judgment and now seeks to recover his attorneys' fees against Hefetz pursuant to NRCP 68 and NRS 17.115.

Additionally, Beavor seeks to recover his costs as the prevailing party. Beavor filed a memorandum of costs in compliance with NRS 18.110 and Hefetz failed to file any motion to retax. Thus, Beavor is entitled to recover his costs in the amount of \$338.48.

### II. STATEMENT OF RELEVANT FACTS

On July 21, 2011, Hefetz commenced the instant action by filing a complaint with a single claim for breach of guaranty. *See* Schwarz Declaration at ¶ 3. Ultimately, Hefetz's breach of guaranty claim was tried to a jury from February 25, 2013 through March 1, 2013 and the jury returned a verdict in favor of Beavor. *See id.* at ¶ 4. On May 21, 2013, the Court entered a judgment on the jury verdict. *See id.* at ¶ 5.

On June 10, 2013, Hefetz filed a Motion for New Trial, which Beavor's then-counsel failed to substantively oppose, resulting in the Court ordering a new trial. *See id.* at ¶ 6. Beavor's then-counsel then failed to properly appeal the granting of a new trial, instead filing a writ petition which was denied by the Nevada Supreme Court. *See id.* at ¶ 7.

Beavor's current counsel substituted in on January 21, 2015. *See id.* at ¶ 8. In the brief three to four months with the file, Beavor's instant counsel quickly realized the obvious legal defenses which prior counsel failed to present. *See id.* at ¶ 9. Upon recognizing these valid defenses, Beavor filed a motion to dismiss and a motion to reopen dispositive motion deadline. *See id.* at ¶ 10.

1 On April 3, 2015, Beavor served Hefetz with the Offer of Judgment. *See id.* at ¶ 11. By  
2 way of the Offer of Judgment, Beavor offered to allow judgment to be taken against him in the  
3 amount of \$10,000.00, including costs and attorneys' fees. *See id.* at ¶ 12.

4 On April 7, 2015, while the Offer of Judgment remained open, the parties attended a  
5 hearing wherein the Court ruled on outstanding motions in limine. *See id.* at ¶ 13. At this same  
6 hearing, Beavor's counsel announced that he had submitted an order shortening time (the  
7 "OST") with a motion to dismiss based on the one-action rule. *See id.* at ¶ 14. The Court  
8 acknowledged receipt of the OST, but ordered the parties to attend a settlement conference and  
9 continued the trial. Accordingly, Beavor's counsel stated in open court that he would withdraw  
10 the OST application and file the motion to dismiss in the ordinary course because Hefetz was  
11 acting in clear violation of the one-action rule.<sup>1</sup> *See id.* at ¶ 15.

12 Despite learning of Beavor's motion to dismiss based on Hefetz's indisputable violation  
13 of the one-action rule, Hefetz did not accept the Offer of Judgment within ten days of service  
14 and, therefore, the Offer of Judgment was rejected. *See id.* at ¶ 16.

15 On May 7, 2015, Beavor filed his dispositive motion to dismiss based on the one-action  
16 rule. On June 17, 2015, the Court granted Beavor's motion to dismiss and entered its Order  
17 dismissing Hefetz's sole claim for relief. *See id.* at ¶ 17. The Notice of Entry of Order was filed  
18 on June 18, 2015. *See id.* at ¶ 18. Because Hefetz's claim was dismissed, his recovery clearly  
19 failed to exceed the Offer of Judgment and Beavor now moves for an award of his attorneys'  
20 fees from the period April 3, 2015 through June 18, 2015.

21 On June 25, 2015, Beavor filed his Memorandum of Costs and Disbursements seeking to  
22 recover \$338.48 in costs. *See id.* at ¶ 19. Hefetz failed to file a motion to retax Beavor's costs.  
23 *See id.* at ¶ 20.

24 ...

25 ...

26 ...

27 <sup>1</sup> Beavor withdrew the OST and filed the motion to dismiss in the ordinary course after the Court reset the trial to  
28 October 2015.

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III. LEGAL ARGUMENT

## A. BEAVOR IS ENTITLED TO RECOVER \$338.48 IN COSTS

A prevailing party shall recover costs against the party against whom the judgment is rendered. NRS 18.020. In order to recover costs, a party must file a memorandum of costs within five days after entry of judgment. NRS 18.110(1). The party opposing the claimed costs must file any motion to relax costs within three days after service of a copy of the memorandum of costs. NRS 18.110(4).

Here, Beavor, the prevailing party, timely filed his memorandum of costs on June 25, 2015. By rule, Hefetz was considered served with the memorandum of costs on June 29, 2015 and therefore had to file any motion to relax costs no later than July 2, 2015. Hefetz failed to file a motion to relax costs and therefore Beavor is entitled to recover his costs in the amount of \$338.48.

## B. BEAVOR IS ENTITLED TO RECOVER ATTORNEYS' FEES FROM APRIL 3, 2015 TO JUNE 18, 2015

The purpose of NRCP 68 and NRS 17.115 is to promote and encourage settlement and save time and money for the court system, the parties, and the taxpayers. *See Muje v. A North Las Vegas Cab Co., Inc.*, 106 Nev. 664, 667, 799 P.2d 559, 561 (1990). NRS 17.115 rewards a party who makes a reasonable offer to settle a lawsuit and punishes the party who refuses to accept such an offer. *See id.*; *see also Dillard Dep't Stores v. Beckwith*, 115 Nev. 372, 382, 989 P.2d 882, 888 (1999). A party who does not accept the offer and then fails to beat the offer will be subject to "serious consequences." *See Nava v. District Court*, 118 Nev. 396, 399, 46 P.3d 60, 61 (2002).

An offer of judgment made pursuant to NRCP 68 and NRS 17.115 may be made at any time more than 10-days prior to trial. NRCP 68(a); NRS 17.115(1). By the express terms of NRCP 68, if the offeree rejects an offer and fails to obtain a more favorable judgment, "the offeree shall pay the offeror's post-offer costs, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of the offer." NRCP 68(f)(2). An offer is rejected

1 if it is not accepted within ten days of the offer being made. NRCP 68(e). In this case, Hefetz  
2 rejected Beavor's Offer of Judgment and thus Beavor is entitled to recover attorneys' fees and  
3 costs accrued since April 3, 2015.

4 **C. LEGAL STANDARD FOR REASONABLE ATTORNEYS' FEES**

5 The Nevada Supreme Court has set forth several factors to be considered in determining  
6 when and how the Court may exercise its discretion in the award of attorneys' fees after entry of  
7 judgment, including:

8 (1) whether Hefetz's claim was brought in good faith;

9 (2) whether Beavor's Offer of Judgment was reasonable and in good faith in both its  
10 timing and amount;

11 (3) whether Hefetz's decision to reject the offer was grossly unreasonable or in bad faith;  
12 and

13 (4) whether the fees sought by Beavor are reasonable and justified in amount.

14 See *Beattie v. Thomas*, 99 Nev. 579, 588-89; 668 P.2d 268, 274 (1983); see also *Ozawa*  
15 *v. Vision Airlines*, 216 P.3d 788, 792 (Nev. 2009). After weighing the foregoing factors, the  
16 district judge may award the full amount of fees requested. *Beattie*, 668 P.2d at 274. No single  
17 factor is determinative, and the court has broad discretion to grant the request as long as all  
18 appropriate factors are considered. *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252 n.  
19 16; 955 P.2d 661, 673 n. 16 (1998).

20 **1. Hefetz Did Not Maintain his Claim in Good Faith**

21 During the nearly four years of litigating this case, Hefetz had ample opportunity to  
22 recognize the issues that would ultimately preclude him from recovering. Hefetz lost a jury trial  
23 and never should have received the opportunity to have a second trial. Had it not been for  
24 Beavor's prior counsel's errors, Hefetz would have been barred from pursuing the instant action.  
25 Hefetz's bad faith in continuing to pursue his claim was further exemplified by his refusal to  
26 remove the lien from Beavor's home. Despite informing the Court that he believed Beavor's  
27 home was underwater and that there were two substantial creditors who had priority anyway,  
28 Hefetz still maintained the instant action in clear violation of the one-action rule. These facts



1 demonstrate that Hefetz was not pursuing his claim in good faith and should be required to pay  
2 Beavor's attorneys' fees.

3           **2. The Offer of Judgment was Reasonable and Made in Good Faith in Both its**  
4           **Timing and Amount**

5           The Offer of Judgment was not made by Beavor at the inception of litigation. Rather,  
6 Beavor served the Offer of Judgment nearly four years after the filing of the Complaint, and after  
7 the close of discovery. The facts were well known by the time Beavor issued the Offer of  
8 Judgment. Beavor's current counsel had advised Hefetz's counsel of the fatal issue presented by  
9 the one action rule. Hefetz did nothing to alleviate the problem, either after counsels' discussion  
10 or after Beavor filed his motion to dismiss. Given the clear case-dispositive one action rule issue  
11 and the additional issues outlined in Beavor's proposed summary judgment motion, it was clear  
12 that Hefetz basically had no chance of prevailing. Therefore, even without the benefit of  
13 hindsight in the form of the Judgment—which in and of itself indicates the Offer of Judgment  
14 was reasonable—Beavor's offer to pay Hefetz \$10,000 was more than reasonable and  
15 demonstrated his good faith to resolve the matter.

16           **3. Hefetz was Unreasonable in Deciding to Reject the Offer of Judgment**

17           Hefetz rejection of the Offer of Judgment was unreasonable. By the time the Offer of  
18 Judgment was made, this case was nearly four years old. Hefetz had already completely lost a  
19 trial on the merits and was advised by the undersigned that the instant action could not survive  
20 the one action rule. Despite these facts, Hefetz refused to accept \$10,000 in order to continue  
21 pursuing his meritless claim. Hefetz's decision was unreasonable and should subject him to the  
22 penalty outlined in NRS 17.115 and NRCP 68.

23           **4. Beavor's Attorneys' Fees are Reasonable**

24           While the trial court has discretion to determine the reasonable amount of attorney fees  
25 provided for by an agreement, the court must evaluate the factors set forth in *Brunzell v. Golden*  
26 *Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

27           The *Brunzell* factors are as follows:

28           (1) the advocate's qualities, including ability, training, education, experience, professional

1 standing, and skill;

2 (2) the character of the work, including its difficulty, intricacy, importance, as well as the  
3 time and skill required, the responsibility imposed, and the prominence and character of the  
4 parties when affecting the importance of the litigation;

5 (3) the work performed, including the skill, time, and attention given to the work; and

6 (4) the result—whether the attorney was successful and what benefits were derived.

7 See *id.*; see also *Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005); *Shuette*  
8 *v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 865, 124 P.3d 530, 549 (2005). Under the  
9 Brunzell factors, Beavor's request for fees is clearly reasonable.

10 a. Beavor's counsel's quality and skills are well known in the community

11 First, the qualities of Beavor's counsel is well-known in the community. By using a team  
12 approach to the practice of law, clients benefit from the experience, training, and knowledge of  
13 each member of firm. This approach was used by Beavor's counsel from the moment it was  
14 retained.

15 b. The character and difficulty of the work performed by Beavor's  
16 counsel required unique skill

17 The character of the work Beavor's counsel performed in this case, including the  
18 intricacy, importance, and the time and skill required in its work, is evident. For instance,  
19 Beavor's counsel achieved dismissal of a nearly four year old case on a theory that was  
20 overlooked by prior counsel. It was the unique skill of Beavor's current counsel that allowed for  
21 such a successful result at such an early stage of the undersigned's representation. This factor,  
22 therefore, weighs in favor of the reasonableness of the attorneys' fees.

23 c. The amount of time spent and corresponding attorney's fees were  
24 reasonable

25 The work actually performed by Beavor's counsel in this case is evidenced by the  
26 Schwarz Declaration and the exhibits thereto. Specifically, the Declaration and transaction  
27 report reflect the amount of time expended by Beavor's counsel since April 3, 2015, including  
28 the time spent preparing the case dispositive motion to dismiss. The number of hours expended  
in this case was reasonable and necessary in light of the nature of the case and the complexity of

1 the issues. Furthermore, the hourly rates of Beavor's counsel are well within the range of  
2 prevailing market rates in the Las Vegas area. In all, Beavor incurred \$21,831.00 in attorneys'  
3 fees for 69.6 hours of legal services. See Exhibits I-B and I-C.

4 Lead counsel on this matter, Joel Z. Schwarz, is a litigator with over ten years of  
5 experience in complex litigation. See Schwarz Declaration at ¶ 23. Mr. Schwarz's billing rate is  
6 \$375.00 per hour. *Id.* Mr. Schwarz billed 31.7 hours to the matter after April 3, 2015 at a cost of  
7 \$11,887.50. *Id.*

8 Also assisting with this matter was Eric Olsen, a litigator who has decades of experience  
9 in complex litigation and enjoys a favorable reputation in the Las Vegas legal community. *Id.* at  
10 ¶ 24. Mr. Olsen's billing rate is \$495.00 per hour. *Id.* Mr. Olsen billed 0.2 hours to the matter  
11 after April 3, 2015 at a cost of \$99.00. *Id.*

12 Also assisting with this matter was Tom Fell, an attorney with over 25 years of  
13 experience in bankruptcy law who is a respected attorney in the Las Vegas community. *Id.* at ¶  
14 25. Mr. Fell's billing rate is \$625.00 per hour. *Id.* Mr. Fell billed 2.3 hours to the matter after  
15 April 3, 2015 at a cost of \$1,437.50. *Id.*

16 Also assisting with this matter was Gabriel Blumberg, a litigator with four years of  
17 experience in complex litigation and who enjoys a favorable reputation in the Las Vegas legal  
18 community. *Id.* at ¶ 26. Mr. Blumberg's billing rate is \$245.00 per hour. *Id.* Mr. Blumberg  
19 billed 32.6 hours to the matter after April 3, 2015 at a cost of \$7,861.00. *Id.*

20 Also assisting with this matter was Lisa Sifuentes, a paralegal with decades of  
21 experience. *Id.* at ¶ 27. Ms. Sifuentes' billing rate is \$195.00 per hour. *Id.* Ms. Sifuentes billed  
22 2.8 hours to the matter after April 3, 2015 at a cost of \$546.00. *Id.*

23 d. Beavors' counsel achieved the desired result.

24 Fourth and finally, the result of the work performed by Beavor's counsel is self-evident  
25 given the Order dismissing Hefetz's claim. This successful result, together with the other  
26 Brunzell factors, is compelling evidence and favors awarding Beavor the total amount of his  
27 requested attorneys' fees.

28 ...

IV. CONCLUSION

Based on the foregoing, Beavor respectfully requests that this Court award him attorneys' fees in the amount of \$21,831.00 and costs of \$338.48.

DATED this 8<sup>th</sup> day of July, 2015.

DICKINSON WRIGHT PLLC

JOEL Z. SCHWARZ

Nevada Bar No. 9181

GABRIEL A. BLUMBERG

Nevada Bar No. 12332

8363 West Sunset Road, Suite 200

Las Vegas, Nevada 89113-2210

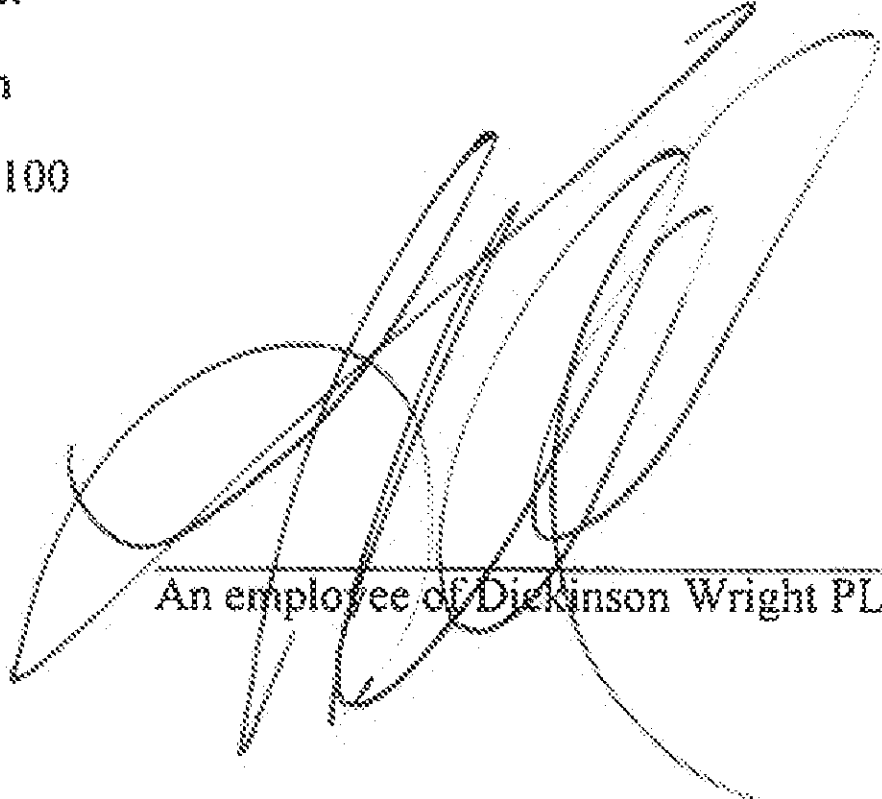
Tel: (702) 382-4002

*Attorneys for Christopher Beavor*

CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 9<sup>th</sup> day of June 2015, she caused a copy of the foregoing DEFENDANTS' MOTION FOR ATTORNEYS' FEES, 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**

1 DICKINSON WRIGHT PLLC

JOEL Z. SCHWARZ

2 Nevada Bar No. 9181

Email: jschwarz@dickinsonwright.com

3 GABRIEL A. BLUMBERG

Nevada Bar No. 12332

4 Email: gblumberg@dickinsonwright.com

8383 West Sunset Road, Suite 200

5 Las Vegas, Nevada 89113

Tel: (702) 382-4002

6 Fax: (702) 382-1661

*Attorneys for Christopher Beavor*

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 YACOV JACK HEFETZ,

11 Plaintiff,

12 vs.

13 CHRISTOPHER BEAVOR,

14 Defendant.

CASE NO. A-11-645353-C

DEPT. XXVIII

DECLARATION OF JOEL Z. SCHWARZ  
IN SUPPORT OF DEFENDANT  
CHRISTOPHER BEAVOR'S MOTION  
FOR ATTORNEYS' FEES

15  
16 I, Joel Z. Schwarz, hereby declare under penalty of perjury of the laws of the State of  
17 Nevada that the following is true and correct:

18 1. I have personal knowledge of the facts set forth below, except for those  
19 statements made on information and belief, and am competent to testify regarding these facts and  
20 statements. I declare that all statements made herein of my own knowledge are true and that all  
21 statements made on information and belief are believed to be true.

22 2. I am an attorney with the law firm of Dickinson Wright PLLC, counsel for  
23 Defendant Christopher Beavor ("Beavor"), in the above entitled action.

24 3. On July 21, 2011, Hefetz commenced the instant action by filing a complaint with  
25 a single claim for breach of guaranty.

26 4. Ultimately, Hefetz's breach of guaranty claim was tried to a jury from February  
27 25, 2013 through March 1, 2013 and the jury returned a verdict in favor of Beavor.

28 5. On May 21, 2013, the Court entered a judgment on the jury verdict.

1           6.       On June 10, 2013, Hefetz filed a Motion for New Trial, which Beavor's then-  
2 counsel failed to substantively oppose, resulting in the Court ordering a new trial.

3           7.       Beavor's then-counsel then failed to properly appeal the granting of a new trial,  
4 instead filing a writ petition which was denied by the Nevada Supreme Court.

5           8.       Beavor's current counsel substituted in on January 21, 2015.

6           9.       In the brief three to four months with the file, Beavor's instant counsel quickly  
7 realized the obvious legal defenses which prior counsel failed to present.

8           10.      Upon recognizing these valid defenses, Beavor filed a motion to dismiss and a  
9 motion to reopen dispositive motion deadline.

10          11.      On April 3, 2015, Beavor served Hefetz with an Offer of Judgment (the "Offer of  
11 Judgment"). A true and correct copy of the Offer of Judgment is attached hereto as Exhibit 1-A.

12          12.      By way of the Offer of Judgment, Beavor offered to allow judgment to be taken  
13 against him in the amount of \$10,000.00, including costs and attorneys' fees.

14          13.      On April 7, 2015, while the Offer of Judgment remained open, the parties  
15 attended a hearing wherein the Court ruled on outstanding motions in limine, ordered the parties  
16 to attend a settlement conference, and continued the trial.

17          14.      At this same hearing, though, I announced that I had submitted an order  
18 shortening time (the "OST") with a motion to dismiss based on the one-action rule.

19          15.      The Court acknowledged receipt of the OST and I stated in open court that I  
20 planned on withdrawing the application for OST and filing the motion to dismiss in the ordinary  
21 course because Hefetz was acting in clear violation of the one-action rule.

22          16.      Hefetz did not accept the Offer of Judgment within ten days of service and,  
23 therefore, the Offer of Judgment was rejected.

24          17.      On June 17, 2015, the Court granted Beavor's motion to dismiss and entered its  
25 Order dismissing Hefetz's sole claim for relief.

26          18.      The Notice of Entry of Order was filed on June 18, 2015.

27          19.      On June 25, 2015, Beavor filed his Memorandum of Costs and Disbursements  
28 seeking to recover \$338.48 in costs.



1           20.     Hefetz failed to file a motion to retax Beavor's costs.

2           21.     Beavor's counsel, both while at Gordon Silver and at Dickinson Wright, kept its  
3 billings in the ordinary course of business. A true and correct copy of the attorneys' fees  
4 incurred during Gordon Silver's relevant representation is attached hereto as Exhibit 1-B. A true  
5 and correct copy of the attorneys' fees incurred during Dickinson Wright's representation is  
6 attached hereto as Exhibit 1-C.<sup>1</sup>

7           22.     I believe the hourly rates charged to Beavor in this matter are well within the  
8 range of prevailing market rates in the Las Vegas area.

9           23.     I am lead counsel on this matter and I am a litigator with over ten years of  
10 experience in complex litigation. My billing rate is \$375.00 per hour. I billed 31.7 hours to the  
11 matter after April 3, 2015 at a cost of \$11,887.50.

12           24.     Also assisting with this matter was Eric Olsen, a litigator who has decades of  
13 experience in complex litigation and enjoys a favorable reputation in the Las Vegas legal  
14 community. Mr. Olsen's billing rate is \$495.00 per hour. Mr. Olsen billed 0.2 hours to the  
15 matter after April 3, 2015 at a cost of \$99.00.

16           25.     Also assisting with this matter was Tom Fell, an attorney with over 25 years of  
17 experience in bankruptcy law who is a respected attorney in the Las Vegas community. Mr.  
18 Fell's billing rate is \$625.00 per hour. Mr. Fell billed 2.3 hours to the matter after April 3, 2015  
19 at a cost of \$1,437.50.

20           26.     Also assisting with this matter was Gabriel Blumberg, a litigator with four years  
21 of experience in complex litigation and who enjoys a favorable reputation in the Las Vegas legal  
22 community. Mr. Blumberg's billing rate is \$245.00 per hour. Mr. Blumberg billed 32.6 hours to  
23 the matter after April 3, 2015 at a cost of \$7,861.00.

24     ...

25     ...

26     ...

27     

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28     <sup>1</sup> The records have been redacted to protect the attorney-client privilege. Beavor can provide unredacted billings for  
in camera review if the Court deems it necessary.

27. Also assisting with this matter was Lisa Sifuentes, a paralegal with decades of experience. Ms. Sifuentes' billing rate is \$195.00 per hour. Ms. Sifuentes billed 2.8 hours to the matter after April 3, 2015 at a cost of \$546.00.

DATED this 8<sup>th</sup> day of July 2015.

JOEL Z. SCHWARZ

~~DICKINSON~~ RIGHT INC

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

**EXHIBIT 1-A**

**EXHIBIT 1-A**

1 OFFR  
GORDON SILVER  
2 JOEL Z. SCHWARZ  
Nevada Bar No. 9181  
3 Email: [jschwarz@gordonsilver.com](mailto: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*

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 YACOV JACK HEFETZ,

10 Plaintiff,

11 vs.

12 CHRISTOPHER BEAVOR,

13 Defendant.

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

OFFER OF JUDGMENT

14  
15 TO: Yacov Jack Hefetz, Plaintiff

16 TO: H. Stan Johnson, Esq., Cohen-Johnson, LLC, Plaintiff's attorneys.

17 PLEASE TAKE NOTICE that pursuant to the provisions of Rule 68 of the Nevada Rules  
18 of Civil Procedure and Nevada Revised Statutes 17.115, Defendant Christopher Beavor hereby  
19 offers to allow judgment to be taken against him in the total sum of Ten Thousand and 0/100  
20 (\$10,000.00) Dollars, which sum includes all costs, interest and attorneys' fees incurred to date.  
21 This sum represents a full and final resolution of the claims alleged in the above-captioned case,  
22 and is made for the purposes specified in NRCP 68 and NRS 17.115. It is not intended to be, nor  
23 should it be construed, as an admission of liability of any kind whatsoever. This offer will expire  
24 ten (10) days after the date of service upon Plaintiff. No partial acceptance may be made, and

25 ...

26 ...

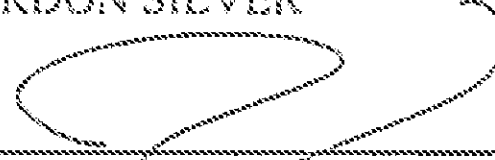
27 ...

28 ...

1 any acceptance of only part of this offer will be construed as a rejection of the entire offer.

2 Dated this 3<sup>rd</sup> day of April, 2015.

3 GORDON SILVER

4 

5 JOEL Z. SCHWARZ

6 Nevada Bar No. 9181

7 3960 Howard Hughes Pkwy., 9th Floor

8 Las Vegas, Nevada 89169

9 Tel: (702) 796-5555

10 Fax: (702) 369-2666

11 *Attorneys for Christopher Beavor*

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RECEIPT OF COPY

The undersigned hereby acknowledges receipt of copy of OFFER OF JUDGMENT this  
3<sup>rd</sup> day of April, 2015.



H. Stan Johnson, Esq.  
Brian A. Morris, Esq.  
Michael V. Hughes, Esq.  
COHEN-JOHNSON, LLC  
255 East Warm Springs Road, Suite 100  
Las Vegas, NV 89119  
*Attorneys for Plaintiff*

**EXHIBIT 1-B**

**EXHIBIT 1-B**

## Transactions Fees & Costs

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

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			4.00		30.50	
Component: F						
4/3/2015	THF	101236-003	1.60	625.00	1,000.00	Review file re: [REDACTED] Conference with JZS re: [REDACTED]
4/3/2015	GAB	101236-003	1.00	245.00	245.00	Conduct research re: [REDACTED] email to J. Schwarz re: [REDACTED]
4/3/2015	JZS	101236-003	1.70	375.00	637.50	Discuss and analyze [REDACTED] with Tom Fell; begin preparation of motion to dismiss and motion for summary judgment
4/3/2015	JZS	101236-003	0.50	375.00	187.50	Telephone Conference Chris Beavor re: [REDACTED]
4/3/2015	JZS	101236-003	0.20	375.00	75.00	Draft, finalize, and issue offer of judgment to Plaintiff
4/3/2015	JZS	101236-003	0.20	375.00	75.00	Review and analyze communication from Gabe Blumberg with [REDACTED]
4/3/2015	ERO	101236-003	0.20	495.00	99.00	Conf w/ jzs re: [REDACTED]
4/5/2015	JZS	101236-003	2.00	375.00	750.00	Draft Motion to Dismiss; application for order shortening time
4/6/2015	LMS	101236-003	2.80	195.00	546.00	Conference with clerk of the court regarding exhibits; prepare Defendant's exhibits list in accordance with rules; begin marking exhibits for use by Mr. Schwartz re: trial preparation.
4/6/2015	JZS	101236-003	3.30	375.00	1,237.50	Draft motion dismiss; Telephone Conference Chris Beavor; prepare Declaration of Chris Beavor in

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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
						support of motion to dismiss; communications with Chris Beavor; review and revise draft motion and application for order shortening time; revise, finalize, and submit motion
4/7/2015	GAB	101236-003	0.20	245.00	49.00	Confer with J. Schwarz re: [REDACTED] [REDACTED]
4/7/2015	THF	101236-003	0.70	625.00	437.50	Conference with JS re: [REDACTED] [REDACTED]
4/7/2015	JZS	101236-003	3.00	375.00	1,125.00	Prepare for and attend hearing on Motion in Limine
4/7/2015	JZS	101236-003	0.20	375.00	75.00	Review and analyze Plaintiffs' pre-trial disclosures
4/7/2015	JZS	101236-003	0.30	375.00	112.50	Discuss [REDACTED] with Tom Fell
4/7/2015	JZS	101236-003	0.40	375.00	150.00	Telephone Conference [REDACTED] [REDACTED] with Chris Beavor
4/7/2015	JZS	101236-003	0.20	375.00	75.00	Communications with Michael Hughes re: settlement conference
4/7/2015	JZS	101236-003	0.10	375.00	37.50	Review order re-setting jury trial
4/7/2015	JZS	101236-003	0.30	375.00	112.50	Discuss and analyze [REDACTED] [REDACTED] with Gabe Blumberg
4/9/2015	JZS	101236-003	0.50	375.00	187.50	Review and analyze draft order granting motion in limine from plaintiff's counsel; draft order denying motion in limine re: settlement; communications with plaintiffs' counsel re: draft orders
4/10/2015	GAB	101236-003	1.00	245.00	245.00	Draft motion to reopen dispositive motion deadline
4/10/2015	JZS	101236-003	0.10	375.00	37.50	Review communication from Michael Hughes re: revisions to draft order denying motion in limine
4/13/2015	GAB	101236-003	0.50	245.00	122.50	Draft declaration in support of motion to reopen dispositive motion deadline; revise motion
4/13/2015	JZS	101236-003	0.40	375.00	150.00	Review and analyze draft motion to extend dispositive motion deadline and supporting declaration; discuss [REDACTED] with Gabe Blumberg
4/14/2015	GAB	101236-003	0.10	245.00	24.50	Email from J. Schwarz re: [REDACTED] [REDACTED]
4/14/2015	GAB	101236-003	0.50	245.00	122.50	Draft motion for summary judgment
4/15/2015	GAB	101236-003	3.40	245.00	833.00	Continue drafting motion for summary judgment

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APP001092

## 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
4/15/2015	GAB	101236-003	0.20	245.00	49.00	Confer with J. Schwarz re: [REDACTED]
4/16/2015	GAB	101236-003	1.70	245.00	416.50	Finish drafting motion for summary judgment
4/17/2015	JZS	101236-003	0.20	375.00	75.00	Review communication from Michael Hughes; communications with Chris Beavor; draft communication to Michael Hughes
4/20/2015	GAB	101236-003	0.20	245.00	49.00	Draft declaration of J. Schwarz in support of motion for summary judgment
4/20/2015	GAB	101236-003	0.30	245.00	73.50	Revise declaration of Beavor in support of motion for summary judgment
4/20/2015	GAB	101236-003	1.00	245.00	245.00	Revise motion for summary judgment
4/20/2015	JZS	101236-003	0.20	375.00	75.00	Revise draft order; draft communication to Michael Hughes
4/20/2015	JZS	101236-003	0.30	375.00	112.50	Communications re: [REDACTED]
4/21/2015	JZS	101236-003	1.20	375.00	450.00	Review and revise draft motion to extend dispositive motion [REDACTED] and draft motion for summary judgment
4/21/2015	JZS	101236-003	0.30	375.00	112.50	Review and revise draft motion to dismiss
4/22/2015	GAB	101236-003	0.40	245.00	98.00	Revise motion to reopen dispositive motion deadline
4/22/2015	GAB	101236-003	0.50	245.00	122.50	Revise motion for summary judgment
4/23/2015	JZS	101236-003	0.20	375.00	75.00	Communications with Michael Hughes re: settlement issues
4/28/2015	JZS	101236-003	0.10	375.00	37.50	Review communication from opposing counsel re: orders; finalize and submit orders
4/30/2015	GAB	101236-003	0.10	245.00	24.50	Emails with J. Schwarz re: [REDACTED]
4/30/2015	JZS	101236-003	0.50	375.00	187.50	Review message from Michael Hughes re: dates for settlement conference with Judge Kishner; communications with Chris Beavor; Telephone Conference Dept. 31; Telephone Conference Michael Hughes; draft communication to Chris Beavor
5/1/2015	GAB	101236-003	0.90	245.00	220.50	Revise motion for summary judgment
5/1/2015	GAB	101236-003	1.50	245.00	367.50	Revise motion to reopen dispositive motion deadline
5/1/2015	JZS	101236-003	0.40	375.00	150.00	Review and revise draft motion for leave to file motion for summary judgment and draft summary judgment motion
5/4/2015	GAB	101236-003	0.10	245.00	24.50	Revise motion to reopen dispositive motion

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APP001093

## 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 deadline
5/4/2015	GAB	101236-003	0.10	245.00	24.50	Revise motion for summary judgment
5/5/2015	JZS	101236-003	0.10	375.00	37.50	Communications with Michael Hughes re: settlement conference
5/5/2015	JZS	101236-003	0.10	375.00	37.50	Communications with Gabe Blumberg re: motion [REDACTED]
5/7/2015	GAB	101236-003	1.60	245.00	392.00	Finalize motion for summary judgment and motion to reopen dispositive motion deadline for filing
5/7/2015	JZS	101236-003	0.30	375.00	112.50	Review, finalize, and file motion to dismiss
5/7/2015	JZS	101236-003	0.30	375.00	112.50	Review and revise motion for leave to file summary judgment motion and motion for summary judgment
5/8/2015	GAB	101236-003	0.20	245.00	49.00	Revise motion to reopen dispositive motion deadline
5/8/2015	GAB	101236-003	0.90	245.00	220.50	Begin drafting settlement brief
5/8/2015	JZS	101236-003	0.30	375.00	112.50	Review, finalize motion for leave to file motion for summary judgment and motion for summary judgment
5/11/2015	GAB	101236-003	0.70	245.00	171.50	Revise settlement brief; email to J. Schwarz re: [REDACTED]
5/11/2015	JZS	101236-003	0.70	375.00	262.50	Review and revise draft settlement brief
5/13/2015	JZS	101236-003	0.10	375.00	37.50	Communications with Chris Beaver re: [REDACTED]
5/14/2015	JZS	101236-003	5.00	375.00	1,875.00	Prepare for and attend settlement conference
5/20/2015	GAB	101236-003	0.20	245.00	49.00	Confer with J. Schwarz re: [REDACTED]
5/20/2015	GAB	101236-003	0.40	245.00	98.00	Analyze opposition to motion to dismiss
5/20/2015	JZS	101236-003	0.60	375.00	225.00	Review and analyze Hefetz Opposition to Motion to Dismiss; discuss and analyze [REDACTED] with Gabe Blumberg
5/21/2015	JZS	101236-003	0.60	375.00	225.00	Review and analyze Hefetz Opposition to re-open dispositive motion deadline; discuss [REDACTED] with Gabe Blumberg
5/21/2015	GAB	101236-003	0.20	245.00	49.00	Confer with J. Schwarz re: [REDACTED]
5/22/2015	GAB	101236-003	0.90	245.00	220.50	Analyze Hefetz opposition to motion for leave to amend
5/26/2015	GAB	101236-003	1.00	245.00	245.00	Draft reply in support of motion to reopen

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APP001094

# 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
						dispositive motion deadline
5/27/2015	GAB	101236-003	0.60	245.00	147.00	Continue drafting reply in support of motion to reopen dispositive motion deadline
5/28/2015	GAB	101236-003	3.40	245.00	833.00	Draft reply in support of motion to dismiss
5/28/2015	JZS	101236-003	0.20	375.00	75.00	Discuss [REDACTED] [REDACTED] with Gabe Blumberg
5/28/2015	GAB	101236-003	0.20	245.00	49.00	Confer with J. Schwarz re: [REDACTED]
5/31/2015	GAB	101236-003	0.70	245.00	171.50	Finish drafting reply in support of motion to reopen deadline
6/1/2015	GAB	101236-003	1.30	245.00	318.50	Revise reply in support of motion to reopen deadline
6/1/2015	GAB	101236-003	0.10	245.00	24.50	Revise reply in support of motion to dismiss
6/1/2015	JZS	101236-003	0.30	375.00	112.50	Review and revise reply to motion to dismiss
6/1/2015	JZS	101236-003	0.30	375.00	112.50	Review and revise reply in support of motion for leave to reopen dispositive motion deadline
6/2/2015	GAB	101236-003	0.20	245.00	49.00	Draft declaration in support of reply to reopen motion deadline; finalize motions for filing
Component: F			<u>57.30</u>		<u>18,163.50</u>	
Component: MS						
4/3/2015	JJJ	101236-003	1.00	10.00	10.00	Messenger Service
4/6/2015	JJJ	101236-003	1.00	10.00	10.00	Messenger Service
4/6/2015	JJJ	101236-003	1.00	10.00	10.00	Messenger Service
4/28/2015	JJJ	101236-003	1.00	10.00	10.00	Messenger Service
Component: MS			<u>4.00</u>		<u>40.00</u>	
Component: PC						
4/3/2015		101236-003	3.00	0.25	0.75	Photocopies
Component: PC			<u>3.00</u>		<u>0.75</u>	
Component: PS						
4/6/2015	JJJ	101236-003	1.00	0.48	0.48	Postage
Component: PS			<u>1.00</u>		<u>0.48</u>	

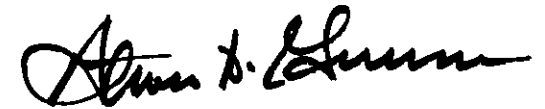
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APP001095

**EXHIBIT 1-C**

**EXHIBIT 1-C**

Date	Name	Hours	Amount	Description	Matter Number
6/9/2015	GABRIEL A. BLUMBERG	0.2	45	Confer with J. Schwarz re: [REDACTED]	065530-00001
6/9/2015	JOEL Z. SCHWARZ	2.5	937.5	Prepare for and attend hearing on motion to dismiss and motion to reopen dispositive motion deadline	065530-00001
				Discuss and analyze [REDACTED]	
6/9/2015	JOEL Z. SCHWARZ	0.2	75	[REDACTED] with Gabe Blumberg	065530-00001
6/9/2015	JOEL Z. SCHWARZ	0.2	75	Communications with Chris Beavor re: [REDACTED]	065530-00001
6/10/2015	JOEL Z. SCHWARZ	1.3	487.5	Draft order granting motion to dismiss and denying as moot motion to re-open dispositive motion deadline; draft communication to Michael Hughes regarding draft order	065530-00001
6/10/2015	JOEL Z. SCHWARZ	0.7	262.5	Telephone Conference Chris Beavor re: [REDACTED]	065530-00001
6/11/2015	GABRIEL A. BLUMBERG	0.2	45	Draft memo of costs	065530-00001
6/11/2015	GABRIEL A. BLUMBERG	0.2	45	Confer with J. Schwarz re: [REDACTED]	065530-00001
6/11/2015	JOEL Z. SCHWARZ	0.3	112.5	Review minutes from hearing; review order statistically closing	065530-00001
6/11/2015	JOEL Z. SCHWARZ	0.1	37.5	Draft communications with Chris Beavor re: [REDACTED]	065530-00001
6/15/2015	GABRIEL A. BLUMBERG	2.8	630	Begin drafting motion for attorneys' fees	065530-00001
6/15/2015	JOEL Z. SCHWARZ	0.1	37.5	Draft communication to Michael Hughes re: status of draft order	065530-00001
6/15/2015	JOEL Z. SCHWARZ	0.3	112.5	Review communication from Michael Hughes with proposed revisions to draft order; revise draft order; draft communication to Michael Hughes	065530-00001
6/17/2015	JOEL Z. SCHWARZ	0.3	112.5	Review entered order of dismissal; prepare notice of entry; draft communication to Chris Beavor	065530-00001
6/18/2015	GABRIEL A. BLUMBERG	2.5	562.5	Finish drafting motion for attorneys' fees	065530-00001
6/18/2015	GABRIEL A. BLUMBERG	0.4	90	Draft declaration of J. Schwarz in support of motion for attorneys' fees	065530-00001
	GRAND TOTAL	12.3	3,667.50		



CLERK OF THE COURT

1 **NOAS**  
2 **H. STAN JOHNSON, ESQ.**  
3 Nevada Bar No. 00265  
4 **sjohnson@cohenjohnson.com**  
5 **MICHAEL V. HUGHES, ESQ.**  
6 Nevada Bar No. 13154  
7 **mhughes@cohenjohnson.com**  
8 Suite 100  
9 255 East Warm Springs Road  
10 Las Vegas, Nevada 89119  
11 Telephone No. (702) 823-3500  
12 Facsimile No. (702) 823-3400  
13 *Attorneys for Plaintiff-Appellant*  
14 *Yacov Jack Hefetz*

11 No. A-11-645353-C

Dept. No. XXVIII

12 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**  
13 **STATE OF NEVADA IN AND FOR**  
14 **THE COUNTY OF CLARK**

15 **YACOV JACK HEFETZ,**  
16  
17 **Plaintiff-Appellant,**  
18  
19 **v.**  
20 **CHRISTOPHER BEAVOR,**  
21 **Defendant-Appellee.**

22 **NOTICE OF APPEAL**

23  
24 Notice is hereby given that Plaintiff-Appellant, Yacov Jack Hefetz, by and  
25 through his counsel, H. Stan Johnson, Esq., and Michael V. Hughes, Esq. of the  
26 law firm of Cohen-Johnson, LLC, hereby appeals to the Supreme Court of Nevada  
27 from the Order: (1) Granting Defendant's Motion To Dismiss Pursuant To NRS  
28 40.435; And (2) Vacating As Moot Defendant's Motion For Leave To Reopen

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

1 Dispositive Motion Deadline (hereinafter referred to as the "Order") entered in this  
2 above-captioned action on the 17<sup>th</sup> day of June, 2015. A copy of the Notice of  
3 Entry of Order with the attached Order is enclosed herewith as **Exhibit 1** and a  
4 copy of the Court Minutes arising from the hearing on June 9, 2015 is enclosed  
5 herewith as **Exhibit 2**.

6 Dated as of this 14<sup>th</sup> day of July, 2015.

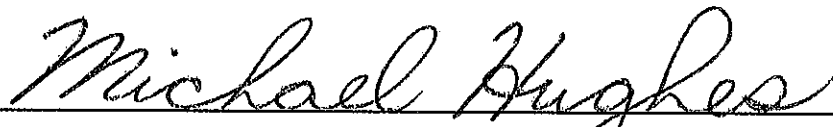
7  
8 By: Michael Hughes  
9 H. Stan Johnson, Esq.  
10 Nevada Bar No. 00265  
11 Michael V. Hughes, Esq.  
12 Nevada Bar No. 13154  
13 Suite 100  
14 255 East Warm Springs Road  
15 Las Vegas, Nevada 89119  
16 Telephone No. (702) 823-3500  
17 Facsimile No. (702) 823-3400  
18 *Attorneys for Plaintiff-Appellant*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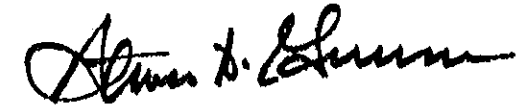
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on the 14th day of July, 2015, a true and correct copy of the foregoing **NOTICE OF APPEAL** was served upon each of the parties set forth below via U.S. First-Class Mail and Odyssey E-Filing System pursuant to Rule 5(b)(2)(D) of the Nevada Rules of Civil Procedure and Rule 8.05 of the Eighth Judicial District Court Rules:

Joel Z. Schwarz, Esq.  
Gabriel A. Blumberg, Esq.  
Dickinson Wright PLLC  
8383 West Sunset Road, Suite 200  
Las Vegas, Nevada 89113  
Email: [jschwarz@dickinsonwright.com](mailto:jschwarz@dickinsonwright.com)  
Email: [gblumberg@dickinsonwright.com](mailto:gblumberg@dickinsonwright.com)  
*Attorney for Defendant-Appellee*  
*Christopher Beavor*

  
An employee of Cohen-Johnson, LLC

# EXHIBIT 1



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,

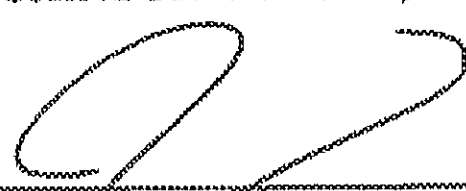
14 Defendant.  
15

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 18<sup>th</sup> day of June 2015.  
22

23 DICKINSON WRIGHT, PLLC

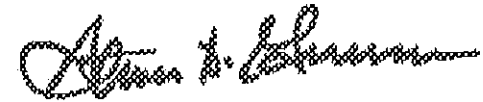
24   
25 JOEL Z. SCHWARZ, Nevada Bar No. 9181  
26 Email: jschwarz@dickinsonwright.com  
27 8383 West Sunset Road, Suite 200  
28 Las Vegas, Nevada 89113  
Tel: (702) 382-4002  
Attorneys for Christopher Beavor

1 CERTIFICATE OF SERVICE

2 The undersigned, an employee of Dickinson Wright, PLLC, hereby certifies that on the  
3 18<sup>th</sup> day of June 2015, she caused a copy of the foregoing Notice of Entry of Order, to be hand-  
4 delivered to and transmitted by electronic service in accordance with Administrative Order 14.2,  
5 to all interested parties, through the Court's Odyssey E-File & Serve system addressed to:

6 COHEN-JOHNSON, LLC  
7 H. STAN JOHNSON, ESQ.  
8 Nevada Bar No. 00265  
9 Email: sjohnson@cohenjohnson.com  
10 MICHAEL V. HUGHES, ESQ.  
11 Nevada Bar No. 13154  
12 Email: mhughes@cohenjohnson.com  
13 255 East Warm Springs Road, Suite 100  
14 Las Vegas, NV 89119  
15 *Attorneys for Yacov Hefetz*

12   
13 Bobbye Donaldson, an employee of  
14 DICKINSON WRIGHT, PLLC



CLERK OF THE COURT

1 ORD  
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

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

6/17/15 (PB)

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.

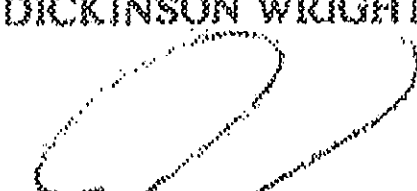
9 Accordingly, the Court HEREBY ORDERS that based upon the foregoing, and for the  
10 reasons stated on the record at the June 9, 2015 hearing, Defendant's Motion to Dismiss is  
11 GRANTED and Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE. The current  
12 trial date and all other dates scheduled 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  
24 GABRIEL A. BLUMBERG  
25 Nevada Bar No. 12332  
26 Email: gblumberg@dickinsonwright.com  
27 8383 West Sunset Road, Suite 200  
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*Attorneys for Christopher Beaver*

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Approved as to form and content:

COHEN-JOHNSON, LLC



H. STAN JOHNSON, ESQ.

Nevada Bar No. 00265

Email: [sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com)

MICHAEL V. HUGHES, ESQ.

Nevada Bar No. 13154

Email: [mhughes@cohenjohnson.com](mailto:mhughes@cohenjohnson.com)

255 East Warm Springs Road, Suite 100

Las Vegas, NV 89119

*Attorneys for Yacov Hefetz*

# EXHIBIT 2



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**June 09, 2015**

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A-11-645353-C	Yacov Hefetz, Plaintiff(s) vs. Christopher Beavor, Defendant(s)
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June 09, 2015	9:00 AM	All Pending Motions	All Pending Motions (06/09/15)
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**HEARD BY:** Israel, Ronald J.

**COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Klein

**RECORDER:** Judy Chappell

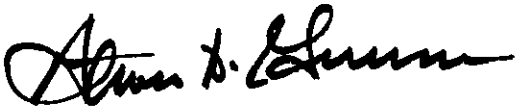
**PARTIES**

<b>PRESENT:</b>	Hughes, Michael V. Schwarz, Joel Z.	Attorney for Plaintiff Attorney for Deft. C. Beavor
-----------------	--	--

**JOURNAL ENTRIES**

- DEFENDANT'S MOTION TO DISMISS PURSUANT TO NRS 40.435...DEFENDANT CHRISTOPHER BEAVOR'S MOTION TO REOPEN DISPOSITIVE MOTION DEADLINE

Arguments by Counsel. Mr. Schwarz advised they could not waive the one action rule and Plaintiff should release the security or dismiss. Mr. Hughes noted the security interest is under water and the statute of limitations has expired. Conference at the Bench. Court noted the past history of the case. Court stated its findings and noted Defendant's Motion is appropriate and ORDERED, Deft's Motion to Dismiss, GRANTED Without Prejudice. Court noted Plaintiff has not agreed upon a course of action to amend the action and the one action applies. COURT FURTHER ORDERED, Deft's Motion to Reopen Dispositive Motion Deadline, Denied as MOOT and Trial Dates, VACATED. Mr. Schwarz to prepare the order. CASE CLOSED.

  
CLERK OF THE COURT

RIS  
COHEN-JOHNSON, LLC  
H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
MICHAEL V. HUGHES, ESQ.  
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Las Vegas, Nevada 89119  
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 REPLY IN SUPPORT OF THE 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 submits Plaintiff's Reply In Support Of The Motion To Re-Open The Case And For Reconsideration Of An Order Of Dismissal Without Prejudice (hereinafter referred to as the "Reply").

...

...

...

...

1 The Reply is made and based upon the Memorandum of Points and Authorities attached  
2 hereto, the pleadings and papers on file in the above-captioned case, and any oral argument and  
3 evidence allowed at the time of the hearing on the Motion To Re-Open The Case And For  
4 Reconsideration Of An Order Of Dismissal Without Prejudice (hereinafter referred to as the  
5 "Motion").

6 Dated this 14th day of July, 2015.

7 COHEN|JOHNSON, LLC

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*  
19  
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28

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Yacov Hefetz (hereinafter referred to as “Hefetz”) brought the pending Motion in order to provide the District Court with an opportunity to articulate the legal standard used by it to grant the remedy of a dismissal without prejudice over the remedy of a continuance with a judicial directive to amend the pleadings to bring them into compliance with the One Action Rule. The Motion was intended to re-open the case to permit the Court to have an opportunity to identify the pertinent legal standard and then to explain how it applied the facts present in the above-captioned case to the pertinent legal standard.

Notwithstanding the reasonableness of the Motion, Christopher Beavor (hereinafter referred to as “Beavor”) opposes the Motion in reliance on arguments based on absolutely incorrect legal standards and totally irrelevant facts. In light of the opposition set forth by Beavor, Hefetz is now compelled to file this Reply.

**II. LEGAL STANDARD**

**THE PENDING MOTION IS BROUGHT UNDER NRCP 59(E) AND, AS A CONSEQUENCE, IS NOT GOVERNED BY THE STANDARDS OF EDCR 2.24**

Beavor initially argues that EDCR 2.24 governs the legal standard for evaluating the pending motion. Beavor, however, completely misreads the text of EDCR 2.24, which provides in pertinent part that:

*A party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion for relief within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged.*

EDCR 2.24 (emphasis added). As the text of EDCR 2.24 makes abundantly clear, EDCR 2.24 does not apply to the reconsideration of any order which may be addressed by a motion pursuant to NRCP 59. *AA Primo Builders, LLC v. Washington*, 245 P.3d 1190, 1193 (Nev. 2010) (“Thus, by its terms, EDCR 2.24(b) excludes motions for reconsideration under NRCP 59(e) . . .”).

Notwithstanding Beavor's assertions to the contrary, the pending Motion is one under NRCP 59(e). *See Washington*, 245 P.3d at 1194-1195 ("Accordingly, we hold that so long as a post-judgment motion for reconsideration is in writing, timely filed, states its grounds with particularity, and 'requests a substantive alteration of the judgment, not merely the correction of a clerical error, or relief of a type wholly collateral to the judgment,' there is no reason to deny it NRCP 59(e) status, with tolling effect under NRAP 4(a)(4)(C)."). As such a motion, two of the basic grounds for relief under a NRCP Rule 59(e) are the need to correct manifest errors of law or fact and the need to prevent manifest injustice. *Washington*, 245 P.3d at 1193. As shall be shown below, both such grounds exist here.

### III. LEGAL DISCUSSION

#### A. HEFETZ HAS SET FORTH VALID GROUNDS FOR ITS NRCP RULE 59(E) MOTION NOTWITHSTANDING BEAVOR'S MERITLESS ASSERTIONS TO THE CONTRARY

Beavor initially maintains that Hefetz failed to identify any valid basis for reconsideration. He bases that contention on three Nevada Supreme Court cases.<sup>1</sup> None of those cases, however, is relevant because none of them addresses the legal or factual grounds for a motion under NRCP Rule 59(e). Accordingly, the legal and factual bases for Beavor's initial three arguments in opposition to the motion are completely flawed and must be rejected in their entirety.

When correctly analyzed, Hefetz's motion under NRCP Rule 59(e) sets forth two grounds for relief: (1) the need to correct manifest errors of law or fact and (2) the need to prevent manifest injustice. As indicated in the Motion, the District Court committed a manifest

<sup>1</sup> The cases relied upon by Beavor are *Masonry & Tile Contractors Ass'n of Southern Nevada v. Jolly, Urga & Wirth, Ltd.*, 113 Nev. 737, 941 P.2d 486 (1997); *Achrem v. Expressway Plaza Ltd. Partnership*, 112 Nev. 737, 917 P.2d 447 (1996); and *Moore v. City of Las Vegas*, 92 Nev. 402, 551 P.2d 246 (1976).

1 error of law by failing to articulate any legal standard to govern its decision for choosing the  
2 statutory remedy of dismissal without prejudice over the statutory remedy of granting a  
3 continuance with a judicial directive to amend the pleadings to place them into compliance with  
4 the One Action Rule. Additionally, as suggested in the Motion, the District Court committed  
5 manifest error of fact by failing to identify the facts applicable to the legal standard governing  
6 the judicial choice between the statutory remedy of dismissal without prejudice over the statutory  
7 remedy of granting a continuance with a judicial directive to amend the pleadings to place them  
8 into compliance with the One Action Rule. Finally, as set forth in the Motion, manifest injustice  
9 can only be prevented if the District Court correctly articulates the governing legal standard and  
10 applies the relevant facts to that standard to reach the appropriate choice between the statutory  
11 remedy of dismissal without prejudice and the statutory remedy of continuance with a judicial  
12 directive to amend the pleadings to place them into conformity with the One Action Rule. In  
13 light of the aforementioned analysis, Hefetz has set forth sufficient grounds under NRCP Rule  
14 59(e) for the granting of the pending Motion.<sup>2</sup>

---

17 <sup>2</sup> Besides relying on the irrelevant legal citations set forth in footnote no. 1, Beavor develops  
18 flawed factual analyses in support of his initial three positions in opposition to the Motion. Beavor  
19 initially argues that Hefetz has not introduced substantially different evidence to merit the granting of his  
20 motion under NRCP Rule 59(e). His contention, however, is erroneous since the standard is not the  
21 introduction of substantially different evidence, but the prevention of manifest errors of law or fact and  
22 the prevention of manifest injustice. As noted above, the District Court will clearly commit manifest  
errors of law or fact and manifest injustice if it fails to identify the applicable legal standard for choosing  
between two statutory remedies or fails to apply the facts relevant for choosing between those remedies in  
light of the governing legal standard.

23 Beavor next contends that the District Court's decision was not clearly erroneous because the  
24 District Court implemented a statutory remedy (dismissal without prejudice). Beavor's contention,  
25 however, completely misses the mark. The issue is not the mere selection of a statutory remedy. The  
issue is whether or not the District Court applied the correct legal standard and facts for selecting between  
two statutory remedies and then articulated that basis on the record. The District Court knows that it has  
not done so to date and its failure is a manifest error of law and fact as well as a manifest injustice.

26 Beavor finally contends that the District Court did not abuse its discretion because it found that  
27 the One Action Rule applied to the facts of the above-captioned case. Beavor's contention, however, still  
28 misses the mark. The issue set forth in the motion to reconsider is not whether or not the One Action  
Rule applies. It is whether or not the District Court applied the correct legal standard and facts for  
selecting between two statutory remedies and then articulated that basis on the record. As previously

**B. HEFETZ'S MOTION IS RIPE FOR DECISION NOTWITHSTANDING  
BEAVOR'S SELF-SERVING LEGAL CONCLUSIONS TO THE CONTRARY**

Beavor argues that the pending Motion is moot on the ground that Hefetz cannot legally foreclose on the Beavor's principal residence. His argument, however, once again completely misses the mark for three reasons. First, Beavor's original motion to dismiss only sought the dismissal of Hefetz's payment guaranty claim on the basis of the One Action Rule. It did not move for dismissal on the basis of an alleged violation of NRS 645E or on the basis of a purported settlement approved by the Bankruptcy Court. As a result, the District Court never reviewed any evidence or made any factual findings or conclusions of law regarding an alleged violation of NRS 645E or any purported settlement approved by the Bankruptcy Court. Accordingly, such issues are completely beyond the scope of Hefetz's pending Motion and cannot be considered here.

Second, the transaction here is not voidable under NRS 645E.920 for the following reasons. Initially, as a threshold matter, NRS 645E does not apply in this case because the document at issue here (a Payment Guaranty) is a personal guarantee – not a “mortgage transaction.” NRS 645E only governs mortgage transactions and not personal guarantees. A “mortgage” is “an interest in land created by a written instrument providing security for the performance of a duty or the payment of a debt.” *Black's Law Dictionary*, 1009 (6<sup>th</sup> ed. 1990). Conversely, a personal guarantee is a simple contract – not a mortgage. *See Bank of Nevada v. Friedman*, 82 Nev. 417, 423-424, 420 P.2d 1, 5 (1966) (“A contract of guaranty is a separate contract and is to be separately considered. It may be written on the back of a promissory note, but its effect must be judged as a simple contract, just as if it were on a separate paper.”). Since

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noted, it has not done so to date and, as a consequence, there exists manifest errors of law and fact as well as a manifest injustice.

1 the Payment Guaranty is not a mortgage, NRS 645E is not even implicated here and Beavor's  
2 argument regarding the voidability of the transaction at issue here fails as a matter of law.

3 Next, even if the Payment Guaranty were somehow construed to be a mortgage, the  
4 borrower on that mortgage is Toluca Lake Vintage, LLC and not Beavor. Accordingly, Beavor  
5 does not even have standing to assert a claim under NRS 645E. *See* NRS 645E.920.  
6

7 Furthermore, Herbert Frey was not a mortgage banker because there is no evidence that  
8 he held himself out for any of the qualifying acts requiring licensure. Under Nevada law,  
9 "holding oneself out" is accomplished by "advertising or soliciting agents, or may result from a  
10 course of business or conduct, but essentially must be a public offering of the service that  
11 communicates that it is available to those who wish to use it." *Fathers & Sons & A Daughter*  
12 *Too v. Transportation Services Authority of Nevada*, 124 Nev. 254, 261 n. 16, 182 P.3d 100, 105  
13 (2008). There is simply no evidence that Herbert Frey "held himself out" to the public.  
14 Accordingly, he was not a mortgage banker under NRS 645E.100.  
15

16 Finally, Herbert Frey was not a mortgage banker because there is no evidence that he  
17 made loans secured by liens on real property using his own money. While Beavor may wish to  
18 deceive the District Court into believing that Herbert Frey used his own money in making the  
19 loan, the harsh reality faced by Beavor is that Herbert Frey was not the lender on the loan. The  
20 Herbert Frey Revocable Family Trust was the lender on the loan and its money was used in  
21 connection with the loan. As a result, Herbert Frey was not a mortgage banker under NRS  
22 645E.100 because there is no evidence that he made loans secured by liens on real property using  
23 his own money.  
24

25 Third, Hefetz's claim was not satisfied in the Toluca Vintage bankruptcy case. Beavor  
26 incredibly asserts that the loan related to the Payment Guaranty was previously satisfied in  
27 connection with a confirmed bankruptcy plan. Nothing could be further from the truth. The loan  
28



1 was not paid in full in the Toluca Vintage bankruptcy case and Beavor cannot prove otherwise.  
2 As a consequence, the Payment Guaranty remains completely unsatisfied and subject to  
3 collection at this time.

4 **C. THE MOTION SHOULD BE GRANTED IN LIGHT OF GOOD FAITH,**  
5 **JUDICIAL ECONOMY, AND THE ABSENCE OF UNFAIR PREJUDICE**

6 As stated in the pending Motion, the District Court is obliged to articulate the legal  
7 standard used by it to justify how it elected to use one statutory remedy over another statutory  
8 remedy even if the Nevada Supreme Court and applicable statute have failed to articulate such a  
9 standard in the past. Such an endeavor is not arbitrary and capricious. It is the essence of the  
10 rule of law.

11 That standard may include the following factors respectively suggested by Hefetz in the  
12 pending Motion: (1) the good faith by Hefetz; (2) the interest in judicial economy; and (3) the  
13 absence of undue prejudice to Beavor. If it does, then such factors plainly suggest that the  
14 prudent selection was not dismissal without prejudice, but the granting of a continuance with a  
15 judicial directive to amend the pleadings to bring them into compliance with the One Action  
16 Rule.  
17

18 **1. Hefetz Has Acted In Good Faith**

19 Beavor contends that Hefetz has not acted in good faith because he has consistently  
20 pursued his claim against Beavor for more than four years. Beavor's contention is, however,  
21 flawed. It completely overlooks the fact that Beavor did not raise the affirmative defense of the  
22 One Action Rule until nearly four years after the commencement of the above-captioned  
23 litigation. Accordingly, the delay in addressing the claim set forth in the above-captioned  
24 litigation is not the result of any lack of good faith by Hefetz, but the complete failure of Beavor  
25  
26  
27  
28

1 to raise the affirmative defense of the One Action Rule until the extremely late stages of the  
2 above-captioned litigation.

3 Additionally, Beavor incredibly asserts that Hefetz's claim is meritless in light of the  
4 results of a preceding trial. Beavor's assertions completely lack merit. As the District Court  
5 fully knows, the verdict in the preceding trial was vacated by the District Court because of  
6 improper comments interjected by Beavor's prior counsel into the prior trial. That verdict did  
7 not reflect whatsoever on the merits of the claim asserted by Hefetz or on the lack of good faith  
8 by Hefetz in pursuing the aforementioned claim.  
9

10 Finally, Beavor contends that Hefetz acted in bad faith for failing to release the deed of  
11 trust related to the Payment Guaranty. Beavor's contention lacks merit. Hefetz has the right to  
12 retain the deed of trust since the One Action Rule plainly contemplates that Hefetz has the right  
13 to foreclose on the deed of trust at issue here. Accordingly, Hefetz's decision to retain that deed  
14 of trust does not indicate any bad faith by him. It simply reflects that Hefetz has acted in good  
15 faith in the pursuit of his legal rights.  
16

17 **2. Judicial Economy Will Be Served By Granting a Continuance with an**  
18 **Order To Amend The Pleadings**

19 Beavor claims that judicial economy will best be served by dismissing the above-  
20 captioned case. He is absolutely wrong. Hefetz presently intends to foreclose on the deed of  
21 trust related to the Payment Guaranty. Accordingly, more litigation will occur in connection  
22 with the above-captioned case notwithstanding Beavor's unrealistic wish for the case to go away.  
23 That litigation will be best handled by the one judge who has lived with the case for nearly four  
24 years as opposed to restarting the entire judicial process with a new judge. In short, judicial  
25 economy will favor a continuance to permit the amendment of the pleadings into ones which  
26 comply with the One Action Rule.  
27  
28

1                   **3. Beavor Will Not Be Unduly Prejudiced By His Continued Participation**  
2                   **In The Above-Captioned Proceedings**

3                   Beavor argues that he will be unduly prejudiced because he will have to pay additional  
4                   legal fees in connection with the above-captioned case. Beavor's contention, however, lacks  
5                   merit. As previously noted, Hefetz presently intends to foreclose on the deed of trust related to  
6                   the Payment Guaranty. That decision assures the fact that Beavor will be incurring legal fees no  
7                   matter what course of conduct is pursued. Accordingly, Beavor will not suffer unfair prejudice  
8                   by his continued participation in the above-captioned proceedings.

9  
10                  **IV. CONCLUSION**

11                 Based upon the foregoing, Hefetz respectfully requests that this Court grant his motion in  
12                 its entirety.

13                 Dated this 14<sup>th</sup> day of July, 2015.

14                                   **COHEN-JOHNSON, LLC**

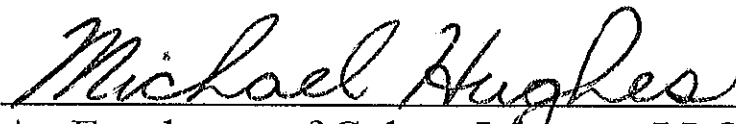
15                   By: Michael Hughes  
16                                 H. Stan Johnson, Esq.  
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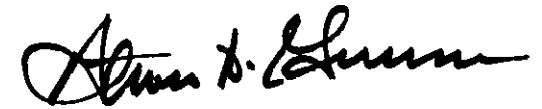
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**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the 14th day of July, 2015, a true and correct copy of the foregoing **PLAINTIFF'S REPLY IN SUPPORT OF THE 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:

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*Attorneys for Christopher Beavor*

  
An Employee of Cohen-Johnson, LLC



CLERK OF THE COURT

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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

YACOV JACK HEFETZ,

Plaintiff,

vs.

CHRISTOPHER BEAVOR,

Defendant.

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

**DEFENDANT'S MOTION FOR LEAVE TO STRIKE REPLY; OR, IN THE  
ALTERNATIVE, MOTION TO FILE SUR-REPLY**

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

Defendant Christopher Beavor ("Beavor"), by and through his counsel, the law firm of Dickinson Wright, PLLC, hereby moves the Court: (1) to strike Plaintiff Yacov Hefetz's ("Hefetz") Reply in Support of Motion to Re-Open the Case and for Reconsideration of an Order of Dismissal Without Prejudice (the "Reply"); or, in the alternative (2) for leave to file a Sur-Reply, a copy of which is attached hereto as **Exhibit A**, in response to the Reply.

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

...

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 In his Reply, Hefetz raises the entirely new argument that he is seeking to amend the June  
5 17, 2015 Order (the “Order”) pursuant to Nevada Rule of Civil Procedure (“NRCP”) 59(e).  
6 Because Hefetz never once mentioned NRCP 59(e) in his initial motion for reconsideration and  
7 has therefore improperly presented an argument for the first time in his Reply, the Court should  
8 either strike the Reply or allow Beavor the opportunity to respond.

9 **II.**

10 **LEGAL ARGUMENT**

11 **1. The Court Should Strike Hefetz’s Reply**

12 The Court may decline to consider an argument that is presented for the first time in a  
13 reply. *United Here Health v. Tinoco’s Kitchen, LLC*, No. 2:11-cv-02025, 2013 WL 79948 (D.  
14 Nev. Jan. 4, 2013). Here, Hefetz failed to present any argument—or even reference to—NRCP  
15 59(e) in his initial motion seeking reconsideration. Therefore, the Court should strike Hefetz’s  
16 Reply as an improper attempt to present new arguments for the first time in a reply.<sup>1</sup>

17 **2. Alternatively, the Court Should Allow Beavor Leave to File a Sur-Reply**

18 The Court may appropriately exercise its discretion and allow the filing of a Sur-Reply to  
19 address issues that could not have been raised in an opposition brief. *See, e.g., Voggenthaler v.*  
20 *Maryland Square, LLC*, No. 08-cv-1618-RCJ-GWF, 2012 U.S. Dist. LEXIS 69395, at \*31 n.9  
21 (D. Nev. May 17, 2012); *Concerned Citizens for a Safe Cmty. v. Office of Fed. Det. Trs.*, No. 09-  
22 cv-1409-DAE, 2011 U.S. Dist. LEXIS 122899, at \*3 (D. Nev. Oct. 24, 2011); *Funches v.*  
23 *McDaniel*, No. 10-cv-127-LRH-VPC, 2011 U.S. Dist. LEXIS 105071, at \*\*7, 14-15 (D. Nev.  
24 July 29, 2011); *Server Tech., Inc. v. Am. Power Conversion Corp.*, No. 06-cv-698-LRH-VPC,  
25 2010 U.S. Dist. LEXIS 49101, at \*30 n. 5 (D. Nev. Apr. 19, 2010); *Ioane v. Comm’r*, No. 09-cv-

26  
27 <sup>1</sup>The Court should also strike the Reply because Hefetz failed to file his motion for relief pursuant to NRCP 59(e)  
28 within 10 days of service of the written notice of entry of the judgment in this matter and therefore missed the  
mandatory deadline contained within NRCP 59(e).

1 243-RCJ-RAM, 2010 U.S. Dist. LEXIS 71808, at \*9 (D. Nev. Mar. 10, 2010); *Visa Int'l Serv.*  
2 *Ass'n v. JSL Corp.*, 533 F. Supp. 2d 1089, 1099 (D. Nev. 2007).

3 Thus, to the extent the Court considers the Reply, Beavor respectfully requests that it also  
4 consider his Sur-Reply because Beavor did not previously have the opportunity or need to  
5 address the issues which were first raised in the Reply.

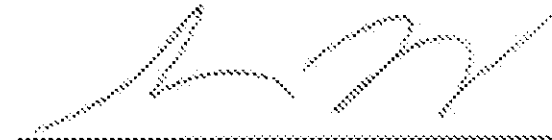
6 III.

7 CONCLUSION

8 Based on the foregoing, the Court should strike the Reply. If the Reply is not stricken,  
9 then Beavor respectfully requests leave to file a Sur-Reply, attached hereto as Exhibit A, in  
10 further support of his opposition to Hefetz's initial motion for reconsideration.

11 DATED this 16<sup>th</sup> day of July 2015.

12 DICKINSON WRIGHT PLLC

13 

14 JOEL Z. SCHWARZ

Nevada Bar No. 9181

15 GABRIEL A. BLUMBERG

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16 8363 West Sunset Road, Suite 200

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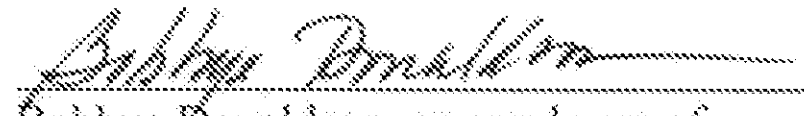
17 Tel: (702) 382-4002

18 *Attorneys for Christopher Beavor*

CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 16<sup>th</sup> day of July 2015, she caused a copy of **DEFENDANT'S MOTION FOR LEAVE TO STRIKE REPLY; OR, IN THE ALTERNATIVE, MOTION TO FILE SUR-REPLY**, 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:

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Bobbye Donaldson, an employee of  
Dickinson Wright PLLC



# EXHIBIT A

**REPL**  
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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

YACOV JACK HEFETZ,

Plaintiff,

vs.

CHRISTOPHER BEAVOR,

Defendant.

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

**DEFENDANT'S SUR-REPLY TO PLAINTIFF'S REPLY IN SUPPORT OF 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**

Defendant Christopher Beavor ("Beavor"), by and through his counsel, the law firm of Dickinson Wright, PLLC, hereby files his Sur-Reply ("Sur-Reply") to Plaintiff's Reply in Support of Motion to Re-Open the Case and for Reconsideration of an Order of Dismissal Without Prejudice (the "Reply").

This Sur-Reply is made and based on the following Memorandum of Points and Authorities and the papers and pleadings on file herein.

...

...

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 The Court undoubtedly understands Beavor's confusion regarding the basis for Hefetz's  
5 initial Motion given that it was titled "Motion to Re-Open the Case and **for Reconsideration** of  
6 an Order of Dismissal Without Prejudice" and never once mentioned Nevada Rule of Civil  
7 Procedure ("NRCPP") 59(e). Now, once Beavor has convincingly explained why reconsideration  
8 is inappropriate, Hefetz reverses course and files an entirely new motion in the guise of a reply,  
9 seeking relief pursuant to NRCPP 59(e). Ultimately, whether Hefetz's moving papers are treated  
10 as a motion for reconsideration or to alter the judgment under NRCPP 59(e), the outcome must be  
11 the same: Hefetz's meritless arguments must be rejected.

12 **II.**

13 **LEGAL ARGUMENT**

14 **A. Legal Standard Governing NRCPP 59(e)**

15 A motion to alter or amend must state with particularity the grounds for relief and the  
16 order sought. *United Pac. Ins. Co. v. St. Denis*, 81 Nev. 103, 111, 399 P.2d 135 (1965). A  
17 motion pursuant to NRCPP 59(e) may be based on the need to correct manifest errors of law or  
18 fact and the need to prevent manifest injustice. *AA Primo Builders, LLC v. Washington*, 126  
19 Nev. 578, 583, 245 P.3d 1190, 1193 (2010). "Such a motion might propose to alter a judgment  
20 of dismissal without prejudice to a dismissal with prejudice and vice versa; to include an award  
21 of costs; or to change the time and conditions of the payment of a master." *Chiara v.*  
22 *Belaustegui*, 86 Nev. 856, 859, 477 P.2d 857 (1970). A motion to alter or amend judgment  
23 under Rule 59(e) is "an extraordinary remedy which should be used sparingly." *Stevo Design,*  
24 *Inc. v. SBR Mktg. Ltd.*, 919 F. Supp. 2d 1112, 1117 (D. Nev. 2013) (citing *McDowell v.*  
25 *Calderon*, 197 F.3d 1253, 1255 n. 1 (9th Cir.1999)).<sup>1</sup>

26  
27 <sup>1</sup> Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority for interpretation of  
28 the Nevada Rules of Civil Procedure. *Exec. Mgmt., Ltd. V. Tico Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876  
(2002).

1 A manifest error is an error “inconsistent with substantial justice.” *Bongiovi v. Sullivan*,  
2 122 Nev. 556, 576, 138 P.3d 433, 447 (2006). “A manifest error of fact or law must be one ‘that  
3 is plain and indisputable, and that amounts to a complete disregard of the controlling law or the  
4 credible evidence in the record.’” See *Teamsters Local 617 Pension & Welfare Funds v. Apollo*  
5 *Grp., Inc.*, 282 F.R.D. 216, 231 (D. Ariz. 2012) (citing *In re Wahlin*, 2011 WL 1063196, at \*2  
6 (Bankr.D.Idaho March 21, 2011) (quoting *In re Oak Park Calabasas Condo. Ass’n*, 302 B.R.  
7 682, 683 (Bankr.C.D.Cal.2003); quoting in turn Black’s Law Dictionary 563 (7th ed. 1999))). A  
8 “manifest error of law is not merely a party’s disagreement with how the trial court applied the  
9 law” or is it “demonstrated by the disappointment of the losing party.” *In re Wahlin*, 2011 WL  
10 1063196, at \*2. Rather, the Ninth Circuit has, at the very least, indicated that there is no  
11 manifest error where the issue is “a debatable one.” *Joe Hand Promotions, Inc. v. Mujadidi*, No.  
12 C-11-5570 EMC, 2012 WL 4901429, at \*1 (N.D. Cal. Oct. 15, 2012) (citing *McDowell v.*  
13 *Calderon*, 197 F.3d 1253, 1256 (9th Cir.1999)).

14 Similarly, a “showing of manifest injustice requires that there exists a fundamental flaw  
15 in the court’s decision that without correction would lead to a result that is both inequitable and  
16 not in line with applicable policy.” *In re Wahlin*, 2011 WL 1063196, at \*3 (citing *In re Henning*,  
17 420 B.R. 773, 785 (Bankr.W.D.Tenn.2009)).

#### 18 **B. Hefetz Fails to Identify Any Valid Reason for Amending the Judgment<sup>2</sup>**

19 Hefetz asks this Court to reverse its prior, well-reasoned judgment based on nothing more  
20 than a hollow, unsupported and legally insufficient argument. Hefetz fails to articulate any  
21 credible basis for finding this Court’s prior order to contain a manifest error of law or fact. Quite  
22 simply, he makes no effort to demonstrate that there has been a complete disregard of the  
23 controlling law or the credible evidence in the record.

24 Instead, Hefetz presents the sole, baseless claim that this Court committed a manifest  
25 error of law by “choosing the statutory remedy.” Reply at 5:1-4. Hefetz provides no legal  
26

27 <sup>2</sup> In the interest of judicial economy, Beavor will merely refer the Court to his initial Opposition concerning Hefetz’s  
28 inability to foreclose due to a violation of the mortgage banking statute and previous satisfaction of the claim in the  
Toluca bankruptcy proceedings.

1 authority for this position, nor can he. It simply is inconceivable that a party could allege that the  
2 Court committed manifest error by imposing a statutorily authorized remedy. This is especially  
3 so in the present matter, wherein Hefetz has admitted that there is no set standard provided by  
4 either the Nevada Supreme Court or Legislature to use when electing which statutory remedy to  
5 impose. Thus, at worst, this case presents a debatable judgment of electing between two  
6 statutory remedies. As clearly indicated in *McDowell*, though, this is legally insufficient to merit  
7 amending a judgment pursuant to NRCP 59(e).

8 Similarly, Hefetz's nonsensical claim that this Court committed a manifest error of fact  
9 must be rejected. Not only did Hefetz stipulate to the facts pertaining to the underlying motion  
10 to dismiss, but he then agreed, in his initial Motion, that the One Action Rule applied to these  
11 specific facts. Motion at 6:6-7. It therefore is preposterous for Hefetz to now argue that this  
12 Court committed a manifest error of fact and this argument must be summarily rejected.

13 Lastly, Hefetz's brief argument relating to manifest injustice must similarly be dismissed.  
14 It is unconscionable for Hefetz to argue that the Court's imposition of a statutory remedy created  
15 an inequitable result not in line with applicable policy. *See In re Wahlin*, 2011 WL 1063196, at  
16 \*3. Instead, to the contrary, the Court rendered a judgment completely in line with legislative  
17 policy by imposing a statutory remedy for Hefetz's violation of the One Action Rule. Thus,  
18 Hefetz's baseless argument regarding manifest injustice also must be denied.

### 19 **C. Even Utilizing Hefetz's Fabricated Standard, the Motion Should Still Be Denied**

20 Once again, Hefetz makes a last ditch effort to implore this Court to arbitrarily and  
21 capriciously accept his self-created standard. Hefetz presents absolutely no case law supporting  
22 the notion that the Court can properly accept an invented standard in considering a motion under  
23 NRCP 59(e). Regardless, the facts remain unchanged and Hefetz still is unable to be afforded  
24 relief even under his own fabricated standard.

#### 25 **1. Hefetz Exemplifies That He Has Exhibited Bad Faith**

26 In attempting to portray his supposed good faith, Hefetz reveals his underlying bad faith.  
27 Hefetz contends that his good faith has been exhibited by him retaining a deed of trust on  
28 Beavor's property. The problem with this contention, of course, is that it marshals the exact

1 opposite conclusion. By holding onto the deed of trust, rather than foreclosing upon the subject  
2 property in the more than six years since Hefetz's alleged breach of guaranty, Hefetz has  
3 demonstrated a calculated plan to pursue this claim in violation of the One Action Rule. This  
4 point is made even clearer when one considers that, despite being placed on notice of the One  
5 Action Rule violation and knowing that he could attempt to foreclose on the property or  
6 reconvey the deed of trust to avoid dismissal, Hefetz chose neither.

7 Suddenly, in a most revealing fashion and only upon his case having been dismissed,  
8 Hefetz now indicates he will attempt to foreclose on the property. *See Reply at 9:20-21.* In  
9 doing so, Hefetz acknowledges that this course of action will result in additional litigation  
10 because there are multiple reasons why Hefetz cannot conduct a legal foreclosure. This pattern  
11 of unacceptable behavior and willingness to instigate additional meritless litigation illustrates  
12 clear bad faith by Hefetz which should preclude any relief.

### 13 **2. Judicial Economy Is Best Served by Keeping Hefetz's Meritless Case Closed**

14 Hefetz also inexplicably clings to the obviously erroneous position that judicial economy  
15 will best be served by reopening this matter. His sole argument is that more litigation will  
16 inevitably occur in connection with this case because he "presently intends to foreclose on the  
17 deed of trust." *See Reply at 9:20-22.* This argument ignores the blatant reality that litigation will  
18 cease in the district court in this matter once this meritless post-judgment motion is denied. Even  
19 if Hefetz could foreclose on the deed of trust—which, as previously indicated, he cannot—the  
20 litigation will still be terminated because the statute of limitations has run on his breach of  
21 guaranty action. Thus, any way this Court looks at it, there will be no further litigation before  
22 this Court following the resolution of the pending motion if it is properly denied.

### 23 **3. Defendant Would Be Unduly Prejudiced If This Matter Were Reopened**

24 Hefetz's brief argument regarding prejudice is similarly erroneous. Hefetz's only claim  
25 is that Beavor will have to endure further attorneys' fees even if this Court's judgment is  
26 affirmed. As noted above, this flawed premise is wholly inaccurate because Hefetz will be  
27 barred from further pursuing his breach of guaranty action, due to statute of limitation issues, if  
28 this case remains closed.

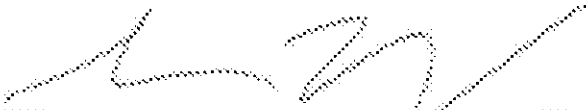
III.

CONCLUSION

Based on the foregoing, Beavor respectfully requests that this Court deny the Motion and Reply in their entirety.

DATED this 16<sup>th</sup> day of July 2015.

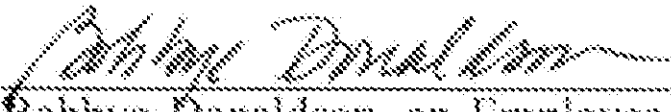
DICKINSON WRIGHT PLLC

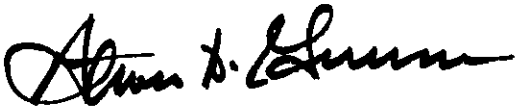
  
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CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the \_\_\_\_ day of July 2015, she caused a copy of **DEFENDANT'S SUR-REPLY TO PLAINTIFF'S REPLY IN SUPPORT OF 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:

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

YACOV JACK HEFETZ,

Plaintiff,

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CHRISTOPHER BEAVOR,

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

**PLAINTIFFS' OPPOSITION TO DEFFENDANT'S  
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND COSTS**

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 files this Opposition to Defendant Christopher Beavor's Motion For Attorneys' Fees and Costs (hereinafter referred to as the "Motion").

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1 This Opposition is based upon the following Memorandum of Points and Authorities, the  
2 pleadings and papers filed in the above-captioned proceedings, and any evidence and oral  
3 argument which is allowed at the time of hearing on the Motion.

4 Dated this 18th day of July, 2015.

5 COHEN-JOHNSON, LLC

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiff Yacov Jack Hefetz (hereinafter referred to as “Hefetz”) commenced the instant action against Defendant Christopher Beavor (hereinafter referred to as “Beavor”) on or about July 21, 2011 by filing a complaint with a single claim for breach of guaranty. The amount of that claim exceeded four million dollars. That complaint was *dismissed without prejudice* on June 17, 2015 on the grounds that the complaint violated the One Action Rule arising under NRS § 40.430. Because of that disposition, Hefetz still has the right to institute an action in compliance with the One Action Rule and then obtain a judgment in excess of four million dollars against Beavor. Accordingly, the Court cannot award legal fees against Hefetz under NRS § 17.115 or NRCP 68 or legal costs against Hefetz under NRS § 18.020 and NRS § 18.110 because Hefetz still has the possibility of obtaining a more favorable judgment than the one set forth in Beavor’s offer of judgment.

### II. STATEMENT OF FACTS

On July 21, 2011, Hefetz commenced the above-captioned action against Beavor by filing a complaint with a single claim for breach of a guaranty. The amount of that claim exceeds four million dollars. That claim proceeded to a jury trial from February 25, 2013 to March 1, 2013. At the conclusion of the trial the jury returned a verdict in the amount of zero dollars in favor of Beavor. On May 21, 2013, the Court entered a judgment on the jury verdict.

On June 10, 2013, Hefetz filed a motion for a new trial on the grounds that Beavor’s prior counsel acted improperly during the trial in connection with references made by him regarding Hefetz’s religious beliefs (Jewish) and national origins (Israeli). The Court granted the motion and ordered a new trial. Beavor’s prior counsel did not properly appeal the granting of the new trial, instead filing a writ of petition which was denied by the Nevada Supreme Court.

On January 21, 2015, Beavor’s current counsel appeared in the above-captioned case.

On April 3, 2015, Beavor served Hefetz with an Offer of Judgment pursuant to which Beavor offered to allow a judgment to be taken against him in the amount of ten thousand dollars, including costs and attorney’s fees.

1 On April 7, 2015, Beavor's counsel announced for the first time and after the close of  
2 discovery his intention to raise the affirmative defense of the One Action Rule arising under  
3 NRS § 40.430. When making that announcement, Beavor's counsel had not served Hefetz with  
4 a copy of his motion to dismiss based on the One Action Rule. Without a copy of the motion to  
5 dismiss on the basis of the One Action Rule, Hefetz did not have an opportunity to examine the  
6 merits of the affirmative defense of the One Action Rule.

7 On April 13, 2015, Hefetz permitted the Offer of Judgment in the amount of ten thousand  
8 dollars to lapse and, therefore, to be rejected.

9 On May 7, 2015, Beavor filed his dispositive motion to dismiss based on the One Action  
10 Rule. On June 17, 2015, the Court granted Beavor's motion to dismiss and entered an order  
11 dismissing the case *without prejudice*. In light of that disposition, Hefetz still has the  
12 opportunity to obtain a judgment in an amount in excess of four million dollars, which is still  
13 substantially more favorable than the offer in the amount of ten thousand dollars set forth in the  
14 Beavor's offer of judgment.

15 On June 25, 2015, Beavor filed his Memorandum of Costs and Disbursements seeking to  
16 recover alleged costs in the amount of \$338.48.

17 On July 8, 2015, Beavor filed his motion for Attorney's Fees and Costs.

### 18 **III. LEGAL STANDARD**

#### 19 **A. LEGAL FEES**

20 The pending motion initially concerns an application for attorneys' fees pursuant to NRS  
21 § 17.115 and NRCP 68. The standard for recovering reasonable attorney's fees is clear under  
22 NRS § 17.115. NRS § 17.115 only authorizes an award of reasonable attorneys' fees if "a party  
23 who rejects an offer fails to obtain a more favorable *judgment*." NRS § 17.115(4) (emphasis  
24 added). NRS § 17.115 also assumes the existence a judgment in order to determine the time  
25 period for which attorneys' fees should be paid. NRS § 17.115(4)(d)(3) ("[The Court may  
26 award] reasonable attorney's fees incurred by the party who made the offer for the period from  
27 the date of service of the offer to the date of entry of the *judgment*.")) (emphasis added). Finally,  
28 NRS § 17.115 requires the existence of a judgment in order to determine whether a party who

1 rejected an offer of judgment failed to obtain a more favorable judgment. NRS § 17.115(5)  
2 (“If the offer precluded a separate award of costs, the court must compare the amount of the offer  
3 with the sum of the principal amount of the *judgment* . . . .”) (emphasis added).

4 NRCP 68 is also clear about the standard for awarding reasonable attorney’s fees. It only  
5 authorizes penalties for the rejection of an offer if the “offeree rejects an offer and fails to obtain  
6 a more favorable *judgment*.” NRCP 68(f) (emphasis added). To invoke such penalties, the  
7 Court must determine if the offeree failed to obtain a more favorable *judgment*. NRCP 68(g)  
8 (emphasis added).

9 As will be discussed below, the Court only entered an order of dismissal without  
10 prejudice against Hefetz and, as a consequence, Beavor has not obtain the requisite judgment  
11 necessary for an award of attorney’s fees. In fact, an order for dismissal without prejudice does  
12 not preclude additional proceedings pursuant to which Hefetz shall obtain a judgment more  
13 favorable than the one set forth in Beavor’s offer of settlement.

#### 14 **B. LEGAL COSTS**

15 The pending motion also concerns an application for the payment of legal costs under  
16 NRS § 18.020 and NRS § 18.110. NRS § 18.020 contemplates the existence of a judgment in  
17 order for costs to be awarded. NRS § 18.020 (“Cost must be allowed of course to the prevailing  
18 party against any adverse party whom *judgment* is rendered . . . .”) (emphasis added).

19 Similarly, NRS § 18.110 expressly assumes the existence of a judgment for an award of  
20 costs to be made. *See* NRS § 18.110 (“The party in whose favor *judgment* is rendered, and who  
21 claims costs . . . .”) (emphasis added).

22 As will be discussed below, the Court only entered an order of dismissal without  
23 prejudice against Hefetz and, as a result, Beavor has not obtained the judgment necessary for an  
24 award of legal costs. In fact, an order for dismissal without prejudice does not preclude  
25 additional proceedings pursuant to which Hefetz shall obtain a judgment more favorable than the  
26 one set forth in Beavor’s offer of settlement.

#### IV. LEGAL ANALYSIS

##### A. ATTORNEY'S FEES

###### 1. BEAVOR IS NOT ENTITLED TO RECOVER ATTORNEY'S FEES BECAUSE HE ONLY OBTAINED AN ORDER OF DISMISSAL WITHOUT PREJUDICE AND NOT A JUDGMENT

Beavor contends that he has a right to recover attorney's fees under NRS § 17.115 and NRCP 68 because he obtained an order of dismissal without prejudice. His contention is flawed. The established common law rule in Nevada is that a court may not award attorney's fees unless authorized by statute, rule or contract. *The State of Nevada Department of Human Resources v. Fowler*, 109 Nev. 782, 858 P.2d 375 (1993). Statutes such as NRS § 17.115 and NRCP 68 which authorize the award of attorney's fees are in derogation of the common law and must, therefore, be strictly construed. *Quinlan v. Camden U.S.A., Inc.*, \_\_\_ Nev. \_\_\_, \_\_\_, 236 P.3d 613, 615 (2010) (citing *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 431, 132 P.3d 1036-1037 (2006)). In this case and as discussed above, NRS 17.115 and NRCP 68 impose a requirement for the existence of a judgment. That requirement must be strictly construed. As a result of such strict construction, Beavor is not entitled to recover attorney's fees because he only obtained an order of dismissal without prejudice and not the statutorily required judgment.

###### 2. BEAVOR IS NOT ENTITLED TO ATTORNEY'S FEES BECAUSE OF THE FACTORS SET FORTH IN BEATTIE V. THOMAS

The Nevada Supreme Court has identified four factors to be considered in determining when and how the Court may award attorney's fees. *See Beattie v. Thomas*, 99 Nev. 579, 588-589, 668 P.2d 268, 274 (1983). When applied here, those factors include:

1. Whether Hefetz claim was brought in good faith;
2. Whether Beavor's Offer of Judgment was reasonable and in good faith in both its timing and amount;

1           3. Whether Hefetz's decision to reject the offer was grossly unreasonable or in bad faith;  
2           and

3           4. Whether the fees sought by Beavor are reasonable and justified in amount.

4           No single factor is determinative and the court has the discretion to deny the request as long as  
5           all appropriate factors are considered. *See Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233,  
6           252 n. 16, 955 P.2d 661, 673 n. 16 (1998).

7  
8           **a. Hefetz brought his claim in good faith.**

9           Beavor initially argues that Hefetz did not maintain his claim in good faith. He bases that  
10          argument on two facts: (1) Beavor obtained a prior jury verdict and (2) Hefetz did not release  
11          deed of trust on Beavor's home. That argument lacks merit for the following reasons. First,  
12          Beavor's prior jury verdict was obtained in a trial filled with improper comments by Beavor's  
13          prior counsel regarding Hefetz's religious beliefs (Jewish) and national origins (Israeli). Such  
14          improprieties ultimately led to the Court to grant a new trial in the above-captioned case.  
15          Notwithstanding the impermissible presence of such bigotry, Beavor incredibly maintains that  
16          Hefetz should have ceased pursuing his claim in excess of four million dollars on the grounds of  
17          a tainted jury verdict. Such a contention is absolutely ludicrous on its face and, more importantly,  
18          does not bear at all on the issue of whether Hefetz brought his claim in good faith.

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20          Second, Beavor's contends that Hefetz acted in bad faith because Hefetz did not remove  
21          the deed of trust on Beavor's home. Such an argument is absolutely nonsensical. The One  
22          Action Rule does not compel Hefetz or anyone else to surrender a deed of trust on Beavor's  
23          home. Instead, it forces a creditor, like Hefetz, to foreclose on the deed of trust before the  
24          creditor can pursue an action for a deficiency judgment against the guarantor. Accordingly,  
25          Hefetz is well within his legal rights not to release the deed of trust on Beavor's home and is  
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1 acting in good faith when pursuing his rights with that deed of trust as well as his claim for the  
2 breach of the Payment Guaranty.

3 Third, Beavor generally implies that Hefetz's maintenance of the above-captioned action  
4 was in bad faith. That argument is also flawed. The standard under *Beattie* is not whether the  
5 creditor (Hefetz) maintained the action in bad faith. The standard under *Beattie* is whether the  
6 creditor (Hefetz) brought the action in bad faith. In this case, Hefetz brought a claim in excess of  
7 four million dollars arising in connection with the Payment Guaranty. That claim had not been  
8 paid and Hefetz was well within his rights to seek judicial relief for such a breach and, therefore,  
9 compel Beavor to assert or waive the affirmative defense of the One Action Rule at some point  
10 prior to the entry of a final judgment. See NRS 40.435(3). In fact, NRS 40.435(3) expressly  
11 contemplates that a debtor may waive the One Action Rule if he does not assert that defense  
12 prior to the entry of a final judgment. Accordingly, Hefetz was well within his rights to pursue  
13 his claim and force Beavor to assert or waive the affirmative defense of the One Action Rule. In  
14 short, Hefetz was acting in good faith when he brought his claim.

17 Fourth, Beavor implies that the applicability of the One Action Rule was readily  
18 apparent. Such an assertion is not true for the following reasons. First, neither the Court nor  
19 Beavor's prior counsel ever raised the affirmative defense of the One Action Rule throughout the  
20 course of the above-captioned litigation. Second, Beavor's current counsel did not formally raise  
21 and pursue the affirmative defense of the One Action Rule until he filed his motion to dismiss on  
22 or about May 7, 2015. Third, Hefetz's deed of trust on Beavor's home is completely unsecured  
23 from an economic standpoint because Beavor placed a first deed of trust and a second deed of  
24 trust on his home long before Hefetz's third deed of trust attached to the home and the first deed  
25 of trust and second deed of trust greatly exceed the value of Beavor's home. Accordingly,  
26 Hefetz's third deed of trust is completely unsecured from an economic perspective and the  
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1 applicability of the One Action Rule was not as readily apparent as Beavor would like to portray  
2 in hindsight.

3 In summary, Hefetz acted in good faith when he brought his claim for breach of a  
4 Payment Guaranty in light of the following facts: (1) Beavor has not articulated a single  
5 legitimate fact suggesting that Hefetz brought the above-captioned action in bad faith and (2)  
6 Hefetz has articulated legitimate facts to show that he brought the above-captioned action in  
7 good faith.  
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9 **b. The Offer of Judgment was unreasonable and made in bad faith in both its**  
10 **timing and amount**

11 Beavor contends that the Offer of Judgment was reasonable and made in good faith in  
12 terms of timing and amount. He bases that contention on the following facts: (1) the timing of  
13 the offer after the close of discovery, (2) the amount of the offer in light of Hefetz's allegedly  
14 meritless claim; and (3) the amount of the offer in light of the amount of a prior judgment.  
15 Beavor's contention is flawed for the following reasons. First, the timing of the offer was not  
16 reasonable and was not made in good faith. Beavor never asserted the affirmative defense of the  
17 One Action Rule prior to the close of discovery and, as a consequence, Hefetz was denied  
18 discovery on that issue. Beavor's counsel also did not formally raise and pursue the affirmative  
19 defense of the One Action Rule until May 7, 2015, which was twenty four days after the Offer of  
20 Judgment was deemed to have been rejected.  
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22 Second, the amount of the offer was plainly unreasonable and made in bad faith. Hefetz  
23 has a claim in excess of four million dollars. That claim will be recovered after Hefetz  
24 forecloses on the deed of trust on Beavor's home notwithstanding the existence of the One  
25 Action Rule. Additionally, Beavor completely forgets the fact that, prior to raising the  
26 affirmative defense of the One Action Rule on May 7, 2015, his principal defense in the above-  
27 captioned case was the purported existence of a settlement between Hefetz's predecessor in  
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1 interest and him which was in an amount in excess of twenty thousand dollars. In short, prior to  
2 the dismissal without prejudice of the above-captioned action, Hefetz would have received an  
3 amount in excess of Beavor's Offer of Judgment in the amount of ten thousand dollars. That  
4 amount would have easily exceeded twenty thousand dollars and would have probably exceeded  
5 four million dollars. Accordingly, the amount of Beavor's Offer of Judgment was not reasonable  
6 and was made in bad faith.  
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8 Finally, Beavor maintains that the amount of the offer was reasonable in light of the prior  
9 judgment entered in the above-captioned case. As previously noted, that prior judgment was set  
10 aside by the Court because of bigoted comments made by Beavor's prior counsel during the  
11 course of the trial. In short, the Offer of Judgment cannot be compared to a tainted jury verdict  
12 to determine its reasonableness.  
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14 **c. Hefetz was not grossly unreasonable in or acting in bad faith when deciding to**  
15 **reject the Offer of Judgment**

16 Beavor next contends that Hefetz was unreasonable in rejecting Beavor's Offer of  
17 Judgment. Beavor bases his argument on the existence of a tainted jury verdict and the One  
18 Action Rule. Beavor's argument is flawed for the following reasons. First, Beavor misconstrues  
19 the applicable *Beattie* standard. It is not whether or not Hefetz was unreasonable in deciding to  
20 reject the offer made by Beavor. It is whether or not Hefetz was grossly unreasonable in or  
21 acting in bad faith when deciding to reject Beavor's Offer of Judgment. As will be discussed  
22 below, Hefetz was not grossly unreasonable or acting in bad faith when he rejected Beavor's  
23 Offer of Judgment.  
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25 Second, and as previously mentioned, Beavor's repeated reliance on a tainted jury verdict  
26 is patently offensive and, more importantly, shows that Hefetz was not grossly unreasonable in  
27 or acting in bad faith when deciding to reject the offer of judgment. Simply put, Hefetz knew  
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1 that the jury verdict was tainted and, therefore, had a right to be heard on his claim in a trial not  
2 marred by bigotry.

3 Third, the application of the One Action Rule was not fatal to Hefetz's claim. The One  
4 Action Rule only resulted in a dismissal without prejudice. Accordingly, Hefetz will proceed  
5 with a foreclosure action on his deed of trust and, after so doing, he will obtain a deficiency  
6 judgment against Beavor in an amount in excess of four million dollars. In light of Hefetz's right  
7 to proceed to foreclosure and obtain a substantial deficiency judgment, he was not grossly  
8 unreasonable or acting in bad faith in rejecting Beavor's Offer of Judgment in the paltry amount  
9 of ten thousand dollars.  
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11 Fourth, Beavor conveniently omits to mention the existence of his main defense prior to  
12 raising the affirmative defense of the One Action Rule: the alleged existence of a settlement  
13 agreement between Hefetz's predecessor in interest and Beavor pursuant to which Beavor was  
14 purportedly supposed to pay more than twenty thousand dollars. In light of the existence of that  
15 defense, Hefetz would have been entitled in a worst case scenario to a judgment of more than  
16 twenty thousand against Beavor, which was a sum more than twice the amount offered in  
17 Beavor's paltry offer of ten thousand dollars. In other words, Hefetz was not grossly  
18 unreasonable or acting in bad faith in rejecting Beavor's Offer of Judgment in the paltry amount  
19 of ten thousand dollars.  
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21 Finally, Heftez was not grossly unreasonable or acting in bad faith with respect to  
22 Beavor's Offer of Judgment. Beavor claims that he asserted and pursued his affirmative defense  
23 of the One Action Rule as early as April 7, 2015. However, he completely omits to mention that  
24 he never served Hefetz with a document asserting that affirmative defense until May 7, 2015.  
25 Accordingly, the period of time to accept Beavor's Offer of Judgment had already lapsed without  
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1 Hefetz having a clear insight into the precise litigation posture of Beavor as it related to the One  
2 Action Rule. Accordingly, Hefetz was not grossly unreasonable or acting in bad faith when  
3 rejecting Beavor's Offer of Judgment because he did not have during the time when the Offer of  
4 Judgment could have been accepted a clear insight into Beavor's defense of the One Action  
5 Rule.

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7 **d. Beavor's attorney's fees are not reasonable in light of the factors set forth  
in Bunzell v. Golden Gate National Bank**

8 In assessing whether or not to award attorney's fees, the Court must apply the factors  
9 set forth in *Bunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

10 The Bunzell factors are:

- 11
- 12 1. The advocate's qualities, including ability, training, education, experience,  
professional standing, and skill;
  - 13 2. The character of the work, including its difficulty, intricacy, importance, as well  
14 as the time and skill required, the responsibility imposed, and the prominence and  
character of the parties when affecting the importance of the litigation;
  - 15 3. The work performed, including the skill, time, and attention given to the work; and
  - 16 4. The result – whether the attorney was successful and what benefits were derived.

17 Under the Bunzell factors, Beavor's attorney's fees are clearly unreasonable.

18 **i. The quality of Beavor's legal counsel is presently unknown.**

19 Beavor seeks to praise the qualities of his counsel. However, Beavor's counsel  
20 submits an affidavit which is wholly insufficient to establish such legal qualities. It does not  
21 identify, as required by *Bunzell*, the education of each counsel, the training of each counsel, or  
22 the professional standing of each counsel. It also does not set forth with specificity the  
23 experience or skill of each attorney as it relates to the subject matter at issue in the above-  
24 captioned litigation. Accordingly, Beavor's legal counsel does not satisfy the first Bunzell factor  
25 and, as a consequence, the request for legal fees must be denied.  
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1           **ii.       The character and difficulty of the work did not require unique skills by**  
2           **Beavor's legal counsel**

3           Beavor claims that his legal counsel's work required unique skills in light of the fact that  
4 Beavor's prior counsel overlooked the affirmative defense of the One Action Rule for the first  
5 few years of the existence of the above-captioned case. Beavor's contention lacks merit. The  
6 work performed did not require unique skills. It only required the work of essentially two civil  
7 litigators (Joel Schwarz and Gabriel Blumberg) regarding the application of an affirmative  
8 defense (the One Action Rule) that did not defeat Hefetz's claim against Beavor, but merely  
9 stayed the final enforcement of the Hefetz's claim against Beavor until the foreclosure of the  
10 deed of trust on Beavor's home. Accordingly, the request for attorneys' fees should be denied.

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12           **iii.       The amount of time spent and corresponding attorney's fees were not**  
13           **reasonable.**

14           Beavor contends that the amount of time spent and corresponding attorney's fees were  
15 reasonable. Beavor's contention lacks merit.

16           The amount of time spent and corresponding attorney's fees accrued by Eric Olson  
17 ("Olson"), Thomas Fell ("Fell"), and Lisa Sifuentes ("Sifuentes") are patently unreasonable.  
18 Olson only expended .20 hours on the above-captioned litigation at an hourly rate of \$495.00.  
19 He was not the lead counsel in the above-captioned case and his efforts were limited to one  
20 conference with Joel Schwarz about a topic which is redacted from Beavor's motion for  
21 attorney's fees and costs. Accordingly, the time spent and corresponding attorney's fees accrued  
22 by Olson are unreasonable.

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24           Similarly, Fell expended 2.30 hours on the above-captioned litigation at an hourly rate of  
25 \$625.00. He was not lead counsel in the above-captioned case and his efforts were limited to  
26 reviewing the Beavor file and participating in meetings with Joel Schwarz on topics  
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1 which are redacted from Beavor's motion for attorney's fees and costs. Accordingly, the time  
2 spent and corresponding attorney's fees accrued by Olson are unreasonable.

3 Finally, Sifuentes expended 2.80 hours on the above-captioned case at an hourly rate of  
4 \$195.00. Her only task was a clerical one. She organized and marked trial exhibits.  
5 Accordingly, the fees accrued by Sifuentes in performing clerical work were unreasonable.

6 Besides the patently unreasonable fees mentioned above, Joel Schwarz charged an  
7 excessively high hourly rate of \$375.00 for the nature of some of the work performed. In  
8 particular, Joel Schwarz charged an hourly rate of \$375.00 for spending nearly five and one-half  
9 hours on drafting a short motion to dismiss. He also charged an hourly rate of \$375.00 for  
10 spending three hours on preparing for and attending a hearing on two short motions in limine.  
11 By way of comparison, Hefetz's counsel only charged an hourly rate of \$250.00 in dealing with  
12 the motion to dismiss and attending the hearing on the motions in limine. Accordingly, Joel  
13 Schwarz's rate was not reasonable for the nature of some of the work performed and must,  
14 therefore, be denied.  
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16 Finally, Gabriel Blumberg ("Blumberg") charged an excessively high amount of time for  
17 some of the work performed by him. Blumberg expended more than twelve hours on drafting a  
18 motion to reopen dispositive motion deadline and then the exhibit to that motion, which was a  
19 draft of a proposed summary judgment motion. The time spent and fees accrued on preparing  
20 the draft summary judgment was completely unnecessary in light of the fact that the dispositive  
21 motion deadline had passed and was in fact never reopened by the Court. Accordingly, the Court  
22 must find such time spent and fees accrued by Blumberg to be unreasonable.  
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- 1           iv.     **The results achieved did not derive any benefits for Beavor other than a brief**  
2                   **delay in the final enforcement of the deficiency judgment to be entered**  
3                   **against Beavor.**

4           Beavor maintains that his counsel triumphed in the above-captioned case. He is  
5           wrong. The order entered in the case only called for a dismissal without prejudice. Accordingly,  
6           Hefetz will be able to resume legal proceedings against Beavor. Ultimately, such proceedings  
7           will result in Hefetz obtaining against Beavor a judgment in excess of four million dollars. In  
8           short, the results achieved by Beavor's counsel did defeat Hefetz's claim, but merely delayed its  
9           final enforcement.

10           **B. LEGAL COSTS**

11                   **1. BEAVOR IS NOT ENTITLED TO RECOVER COSTS IN**  
12                   **THE AMOUNT OF \$338.48 BECAUSE HE HAS NOT**  
13                   **OBTAINED A JUDGMENT**

14           Beavor seeks to recover costs in the amount of \$338.48 on the grounds that he is a  
15           prevailing party on a judgment order. His assertion, however, is incorrect because no judgment  
16           order has ever been entered after the service of Beavor's Offer of Judgment. NRS § 18.020  
17           imposes the requirement of the existence of a judgment in order for an award of costs to be  
18           made. Since NRS § 18.020 is a statute in derogation of the common law, its requirement for a  
19           judgment must be strictly construed. *See Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560,  
20           565-566 (1993). As a consequence of lacking a judgment, Beavor is not entitled to an award of  
21           costs in the amount of \$338.48.

22                   **2. BEAVOR IS NOT ENTITLED TO RECOVER COSTS BECAUSE HE FILED**  
23                   **HIS MEMORANDUM OF COSTS AND DISBURSEMENTS MORE THAN**  
24                   **FIVE DAYS AFTER THE ENTRY OF THE ORDER OF DISMISSAL**

25           Beavor seeks to recover costs in the amount of \$338.48 because he allegedly filed  
26           pursuant to NRS § 18.110 a memorandum of costs and disbursements within five days of the  
27           entry of the order of dismissal without prejudice. His contention, however, is incorrect. The  
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1 Court entered the order of dismissal without prejudice on the docket on June 17, 2015. June 24,  
2 2015 was the fifth judicial day after the entry of that order on the docket. Beavor filed the  
3 memorandum of costs and disbursements on June 25, 2015. Accordingly, Beavor has no right to  
4 recover costs in the amount of \$338.48 because he failed to comply with the deadline set forth in  
5 NRS § 18.110.  
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7 **3. BEAVOR IS NOT ENTITLED TO RECOVER COSTS IN THE AMOUNT OF**  
8 **\$198.00 FOR COMPUTERIZED LEGAL RESEARCH BECAUSE SUCH**  
9 **COSTS ARE NOT AUTHORIZED BY NRS 18.005**

10 Beavor seeks to recover as costs computerized legal research fees in the amount of  
11 \$198.00. He is, however, not entitled to such fees as costs as a matter of law in light of the  
12 Nevada Supreme Court's opinion in *Bergmann v. Boyce*, 109 Nev. 670, 680, 856 P.2d 560, 566-  
13 567 (1993), which specifically excluded computerized legal research fees from the category of  
14 costs under NRS 18.005.

15 **4. BEAVOR IS NOT ENTITLED TO RECOVER COSTS IN THE AMOUNT OF**  
16 **\$40.00 FOR MESSENGER FEES BECAUSE HE HAS FAILED TO SHOW**  
17 **THE REASONABLENESS OF NECESSITY FOR SUCH FEES**

18 Beavor seeks to recover as costs messenger fees in the amount of \$40.00. He is,  
19 however, not entitled to such fees as a matter of law in the absence of any description for the  
20 reasonableness and necessity for such messenger fees. To date, he has not provided an  
21 explanation for each such fee and must, therefore, be denied such fees.  
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Dated this 18th day of July, 2015.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the 18th day of July, 2015, a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFFENDANT CHRISTOPHER BEAVOR'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND COSTS** was served upon the following person pursuant to NRCP 5(b)(2)(D) and EDCR 8.05 via the Odyssey E-Filing system:

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An Employee of Cohen-Johnson, LLC

  
CLERK OF THE COURT

1 **OPPM**  
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14 *Attorneys for Jack Hefetz*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

11 YACOV JACK HEFETZ,

12 Plaintiff,

13 vs.

14 CHRISTOPHER BEAVOR,

15 Defendant.

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

**PLAINTIFFS' OPPOSITION TO DEFFENDANT'S MOTION FOR LEAVE TO STRIKE  
REPLY; OR, IN THE ALTERNATIVE, MOTION TO FILE SUR-REPLY**

18 COMES NOW, Plaintiff, Yacov Jack Hefetz (hereinafter referred to as "Hefetz"), by and  
19 through his counsel of record, H. Stan Johnson, Esq. and Michael V. Hughes, Esq. of the law  
20 firm of Cohen-Johnson, LLC and hereby files this Opposition to Defendant Christopher Beavor's  
21 Motion For Leave To Strike Reply; Or, In The Alternative, Motion To File Sur-Reply.  
22

23 ...

24 ...

25 ...

26 ...

27 ...

28

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

1 This Opposition is based upon the following Memorandum of Points and Authorities, the  
2 pleadings and other papers filed in the above-captioned proceedings, and any evidence and oral  
3 argument which may be allowed at the time of hearing on the Defendant's Motion For Leave To  
4 Strike Reply; Or, In The Alternative, Motion To File Sur-Reply.

5 Dated this 21st day of July, 2015.

6 COHEN-JOHNSON, LLC

7 By:   
8 H. Stan Johnson, Esq.  
9 Nevada Bar No. 00265  
10 Michael V. Hughes, Esq.  
11 Nevada Bar No. 13154  
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17 *Attorneys for Jack Hefetz*  
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28

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiff Yacov Hefetz (hereinafter referred to as “Hefetz”) filed a motion for reconsideration of an order of dismissal without prejudice within two days of the docketing of that order and within one day of the filing of the notice of the entry of that order. The law in Nevada is well established that a motion for reconsideration will almost always be deemed to be a motion for relief under NRCP 59(e) unless the motion seeks to correct clerical errors, which is not the case here. *See AA Primo Builders, LLC v. Washington*, 245 P.3d 1190, 1193 (Nev. 2010). Defendant Christopher Beavor (hereinafter referred to as “Beavor”) and his highly experienced and sophisticated legal team completely failed to recognize the existence of the Nevada Supreme Court’s decision in *AA Primo Builders, LLC v. Washington* and, therefore, completely misconstrued the nature of the motion for reconsideration in his opposition. In fact, he erroneously viewed the motion for reconsideration as one under EDCR 2.24. Hefetz immediately recognized that error and stressed it in his reply memorandum in support of the motion for reconsideration. Upon the discovery of his indisputable error, Beavor’s counsel does not assume responsibility for his professional negligence, but incredibly blames Hefetz for it in connection with a motion to strike the reply or, in the alternative, motion to file a sur-reply. Hefetz opposes Beavor’s motion to strike or, in the alternative, motion to file a sur-reply and, therefore, files this opposition to the Beavor’s motion.

### II. STATEMENT OF FACTS

Hefetz filed a motion for reconsideration of an order of dismissal without prejudice within two days of the entry on the docket of that order and within one day of the entry on the docket of a notice of entry of order. Beavor opposed the motion and, as a consequence, filed an opposition in which he repeatedly characterized the motion for reconsideration as one under EDCR 2.24 and completely omitted to recognize the well-established case law arising under the decision in *AA Primo Builders, LLC v. Washington*. Hefetz immediately recognized the gigantic error in Beavor’s opposition and stressed it in his reply. Beavor’s counsel then filed a motion to strike the reply or, in the alternative, motion to file a sur-reply on the alleged ground that Hefetz

1 was raising a new argument. Hefetz disagrees and, therefore, files this opposition to hold Beavor  
2 accountable for his own negligence in failing to respond properly to a timely filed motion to  
3 reconsider.

4 **III. LEGAL ARGUMENT**

5 **A. THE COURT SHOULD NOT STRIKE HEFETZ'S REPLY**

6 Beavor contends that Hefetz has raised an argument for the first time in his reply and,  
7 therefore, the reply should be stricken. Beavor's characterization of the facts is absolutely  
8 incorrect. Hefetz's reply identified a critical flaw in Beavor's characterization of the motion to  
9 reconsider, namely Beavor's efforts to view it as one under EDCR 2.24 as opposed to one under  
10 NRCP 59(e). Hefetz, therefore, replied to that erroneous characterization and, quite frankly,  
11 crushed Beavor's contentious and erroneous characterization as a matter of law. Accordingly,  
12 the Court should not strike Hefetz's reply because of Beavor's own negligence in performing the  
13 legal research which would have readily disclosed the case law set forth in *AA Primo Builders,*  
14 *LLC v. Washington.*

16 **B. THE COURT SHOULD NOT ALLOW BEAVOR LEAVE TO FILE A**  
17 **SUR-REPLY**

18 Beavor next maintains that the Court has and should exercise discretion in allowing  
19 Beavor leave to file a sur-reply since Beavor allegedly did not have a chance to address the  
20 issues set forth in the motion to reconsider. This Court should not exercise such discretion in  
21 light of the fact that Beavor's own negligence in not researching the law prior to filing his  
22 opposition to the motion to reconsider led to his complete mischaracterization of the motion to  
23 reconsider and the assertion of irrelevant legal arguments. Accordingly, the Court should not  
24 grant Beavor's motion to file a sur-reply, which is a transparent attempt to cover Beavor's own  
25 negligence in responding to a timely filed and properly captioned motion for relief under NRCP  
26 59(e).

1           **IV. CONCLUSION**

2           WHEREFORE, Hefetz respectfully requests that this Court deny the Defendant's Motion  
3 For Leave To Strike Reply; Or, In The Alternative, Motion To File Sur-Reply.

4           Dated this 21st day of July, 2015.

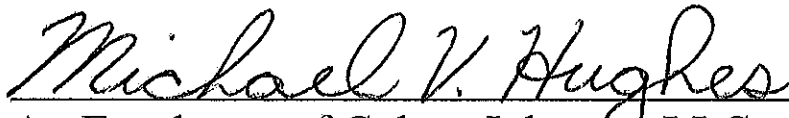
5           COHEN-JOHNSON, LLC

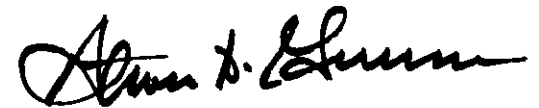
6           By: Michael V. Hughes  
7           H. Stan Johnson, Esq.  
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15          Facsimile: (702) 823-3400  
16          Attorneys for Jack Hefetz

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the 21st day of July, 2015, a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFFENDANT'S MOTION FOR LEAVE TO STRIKE REPLY; OR, IN THE ALTERNATIVE, MOTION TO FILE SUR-REPLY** was served upon the following person pursuant to NRCP 5(b)(2)(D) and EDCR 8.05 via the Odyssey E-Filing system:

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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.  
16

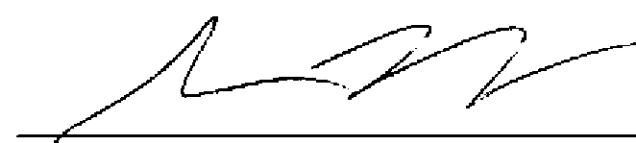
CASE NO. A-11-645353-C  
DEPT. XXVIII

17 **NOTICE OF ENTRY OF ORDER**

18 NOTICE IS HEREBY GIVEN that an Order amending the June 17, 2015 Order was  
19 entered on July 23, 2015, a copy of which is attached hereto.

20 DATED this 24<sup>th</sup> day of July 2015.

21 **DICKINSON WRIGHT PLLC**

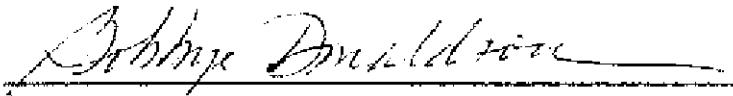
22   
23 **JOEL Z. SCHWARZ**  
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27 8363 West Sunset Road, Suite 200  
28 Las Vegas, Nevada 89113-2210  
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*Attorneys for*



**CERTIFICATE OF SERVICE**

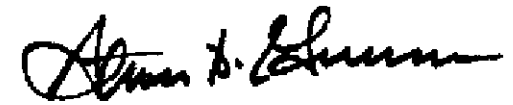
The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 24<sup>th</sup> day of July 2015, she caused a copy of **Notice of Entry of Order** to be served by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey E-File & Serve** system 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

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**ORDR**

Judge Ronald J. Israel  
Eighth Judicial District Court  
Department XXVIII  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89155  
(702)671-3631

DISTRICT COURT

CLARK COUNTY, NEVADA

YACOV JACK HEFETZ,

Plaintiff,

vs.

CHRISTOPHER BEAVOR,

Defendant.

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

**ORDER**

Plaintiff's Motion to Re-Open the Case and for Reconsideration of an Order of Dismissal Without Prejudice and Defendant's Motion for Leave to Strike Reply; or, in the Alternative, Motion to File Sur-Reply, having come before the Court in Chambers on July 22, 2015, the Court having reviewed the parties' motions, oppositions, and replies thereto, and good cause appearing therefor, the Court hereby finds as follows:

A party filing a motion must state with particularity the grounds therefor, the absence of which may be construed as an admission that the motion is not meritorious. NRCP 7(b); EDCR 2.20(c). Plaintiff's motion does not comply with court rules since it fails to state under what rule it is moving. Rather, it is not until Plaintiff's reply that Defendant and Court are apprised that Plaintiff is moving pursuant to NRCP 59(e), to alter or amend the judgment, despite the motion being titled as motion for reconsideration, which would ordinarily be made pursuant to EDCR 2.24.

1           Regardless, the Court has inherent authority to amend and/or clarify its orders and to ensure  
2 the proper administration of justice. Accordingly, in the absence of a clear standard to be used when  
3 determining whether to dismiss a case without prejudice pursuant to NRS 40.435(2)(a) or grant a  
4 continuance to allow the proceeding to be converted to an action which does not violate the One  
5 Action Rule pursuant to NRS 40.435(2)(b), the Court will clarify why it dismissed Plaintiff's case  
6 instead of continuing it. However, in order to do so, the Court must also discuss the troubled and  
7 tortured history of this case.  
8

9           While this Court in no way abused its discretion when it properly applied a statutory remedy,  
10 and Plaintiff confirms that there is no legal standard to specifically guide district courts when  
11 determining whether to dismiss pursuant to NRS 40.435(2)(a) or continue pursuant to NRS  
12 40.435(2)(b), the Court will entertain Plaintiff's suggestion to consider the following factors when  
13 determining which statutory remedy to apply: (1) good faith of the plaintiff; (2) interests of judicial  
14 economy; and (3) unfair prejudice to defendant.  
15

16           First, it is this Court's opinion this case was brought in bad faith. Without specifically  
17 discussing the numerous substantive mistakes that were made by counsel for both sides in this case,  
18 the testimony at trial was unequivocal that a settlement was reached and an enforceable contract was  
19 completed when Mr. Frey (the original real party in interest) authored and delivered a written  
20 settlement agreement to the Defendant who signed the agreement and returned it to Mr. Frey's office  
21 only to be told by his partner, the Plaintiff (who was later assigned the claim), that Mr. Frey changed  
22 his mind. After the trial on the merits and a defense verdict, Defense counsel failed to oppose the  
23 motion for a new trial on the merits and, as this court stated during argument on the motion, it would  
24 not have been granted except for the lack of a timely and written opposition. Defendant's motion for  
25 a new trial was first based on *Lioce* challenges that were not objected to at time of trial, and  
26 therefore waived; and second, that the jury misunderstood the issues in Bankruptcy Court and  
27  
28

1 therefore ignored the Jury Instructions. However, both of these arguments were without merit, and  
2 without an opposition, the Court granted the motion. Plaintiff was well aware of the violation of the  
3 One Action Rule, or should have been, since this action was initiated or at least for the last year, and  
4 never sought to amend his Complaint in a timely manner. Using these criteria, the decision is clear:  
5 Plaintiff's claim was not brought in good faith and if Defense counsel had not made several errors,  
6 including failing to bring a motion to enforce the written settlement agreement and/or failing to file  
7 an opposition to the motion for a new trial, this case would have been concluded several times.  
8

9 Second, dismissing without prejudice does serve judicial economy under the facts of this  
10 case.

11 Third, there is clear prejudice to Defendant to further delay and prolong this case, given the  
12 countless missteps on both sides. Given the Plaintiff's suggested criteria, this Court finds the weight  
13 of factors lies heavily with the more appropriate decision to dismiss without prejudice, the interests  
14 of justice would not be served by allowing the alternative.  
15

16 While Defendant's Motion for Leave to Strike Reply; or, in the Alternative, Motion to File  
17 Sur-Reply was not noticed and set for hearing either in the ordinary course or on order shortening  
18 time, the Court has considered it and Plaintiff's opposition thereto, and DENIES it as moot. Whether  
19 or not Plaintiff's "Motion to Re-Open the Case and for Reconsideration of an Order of Dismissal  
20 without Prejudice" qualifies as a NRCP 59(e) motion to alter or amend judgment or is an EDCR  
21 2.24 motion for reconsideration is immaterial to this Court as discussed above. Determination of a  
22 NRAP 4(a)(4) tolling motion is within the province of the Nevada Supreme Court.  
23

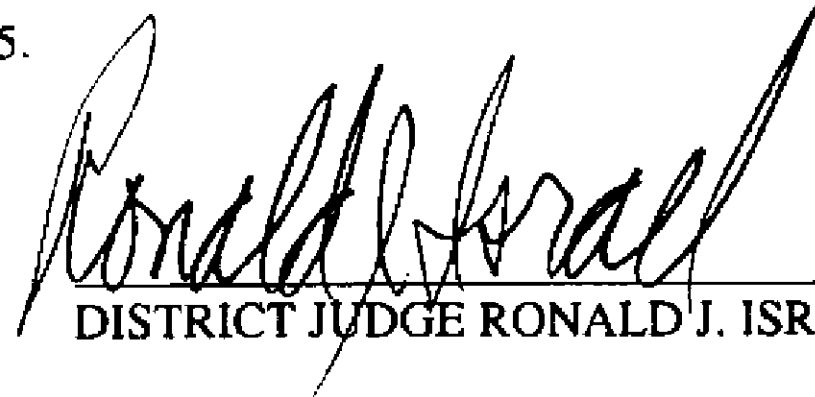
24 IT IS HEREBY ORDERED that the June 17, 2015 Order is amended to incorporate the  
25 clarification and analysis provided in this Decision and Order, noting, however, that this Court  
26 considers its amendment to be for clarification purposes only and not a substantive alteration of the  
27 judgment.  
28

1 IT IS FURTHER ORDERED that Plaintiff's motion is DENIED as lacking merit pursuant to  
2 EDCR 2.20(c).

3 IT IS FURTHER ORDERED Defendant's motion is DENIED as moot.

4 IT IS SO ORDERED.

5 DATED this 23 day of July, 2015.

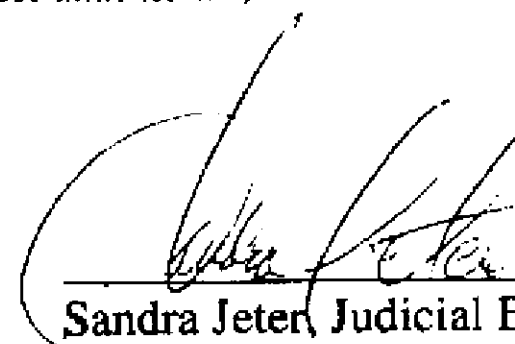
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8   
9 DISTRICT JUDGE RONALD J. ISRAEL

10 **CERTIFICATE OF SERVICE**

11  
12 I hereby certify that on the 23<sup>rd</sup> day of July, 2015, I electronically served a true and  
13 correct copy of the foregoing ORDER as follows:

14 Joel Z. Schwarz, Esq.  
15 Gabriel A. Blumberg, Esq.  
16 DICKINSON WRIGHT PLLC  
17 *All e-service recipients listed in Wiznet/Odyssey (See attached list)*

18 H. Stan Johnson, Esq.  
19 Michael V. Hughes, Esq.  
20 COHEN-JOHNSON, LLC  
21 *All e-service recipients listed in Wiznet/Odyssey (See attached list)*

22  
23   
24 Sandra Jeter, Judicial Executive Assistant  
25 A-11-645353-C  
26  
27  
28

Amount Due: \$3.50 - E-Filing & E-Service Fees

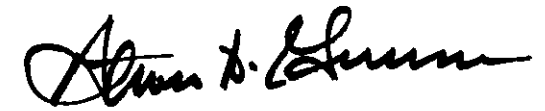
Close Service Recipients

7 of 7 selected

\*

Select All Select None			
<b>Cohen-Johnson, LLC</b>			
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<b>Dickinson Wright PLLC</b>			
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Joel Z. Schwarz	<a href="mailto:jschwarz@dickinsonwright.com">jschwarz@dickinsonwright.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
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Lee Iglody	<a href="mailto:lee@iglody.com">lee@iglody.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Your File Number : A-11-645353-Q



CLERK OF THE COURT

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Fax: (702) 382-1661  
*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 FOR ATTORNEYS' FEES AND  
COSTS**

Defendant Christopher Beavor ("Beavor"), by and through counsel, the law firm of Dickinson Wright PLLC, files this reply in support of his motion for an award of attorneys' fees in the amount of \$21,285.00 against Plaintiff Yacov Jack Hefetz ("Hefetz") pursuant to Nevada Rule of Civil Procedure ("NRC" 68") and Nevada Revised Statute ("NRS") 17.115 and costs in the amount of \$338.48 pursuant to NRS 18.020 and NRS 18.110.

DATED this 12<sup>th</sup> day of August 2015.

DICKINSON WRIGHT PLLC



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*Attorneys for Christopher Beavor*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

In line with his recent motion practice, Hefetz submits an opposition long in rhetoric and short on (or in some cases entirely devoid of) legal authority for his arguments. First, Hefetz makes the flawed and unsupported argument that Beavor cannot recover attorneys' fees because he has not obtained a final disposition. Not only is this argument lacking any case law or statutory authority, it is also ignores the fact that Hefetz has appealed this supposedly non-final disposition. It further ignores the reality that the dismissal in this case effectively acted as one with prejudice given that the statute of limitations bars him from refiling his breach of guarantee claim against Beavor.

Second, Hefetz argues that Beavor should not be awarded fees because he has pursued this matter in good faith and reasonably rejected Beavor's Offer of Judgment. This position has been flatly rejected by this Court, which has held that Hefetz pursued this action in bad faith.

Third, Hefetz makes the argument that the quality of Beavor's counsel is unknown and that Beavor's counsel failed to achieve any desirable result for Beavor. Hefetz has already asserted in *this* case that Beavor's counsel is "highly experienced and sophisticated," and this Court has dismissed Hefetz's case based on Beavor's counsel's legal arguments.

Lastly, sixteen days *after* the statutory deadline for Hefetz to challenge Beavor's Memorandum of Costs, Hefetz for the first time contends that certain costs incurred by Beavor are unreasonable. Hefetz's challenge to costs is barred by NRS 18.110(4) and must be summarily rejected. Furthermore, even if not time barred, Hefetz's request to retax certain costs erroneously relies upon case law which has been superseded by subsequent statute.

For these reasons and those already set forth in Beavor's Motion, Beavor is entitled to recover his requested attorneys' fees and costs.

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II. LEGAL ARGUMENT

A. BEAVOR IS ENTITLED TO RECOVER HIS ATTORNEYS' FEES

1. Obtaining Dismissal of Hefetz's Claim is Sufficient to Trigger the Attorneys' Fee Provision Under the Offer of Judgment Rules

Hefetz mistakenly argues that Beavor is not entitled to attorneys' fees based on the Court's order dismissing this action. Hefetz premises this flawed argument on the notion that NRCP 68 and NRS 17.115 do not allow for an award of attorneys' fees based on an order dismissing a case. Hefetz, however, fails to cite any authority for this novel (and incorrect) position. The case law on this topic is clear: "dismissal without prejudice is nonetheless a final, appealable judgment." *Linear Technology Corp. v. Impala Linear Corp.*, 379 F.3d 1311, 1318 (Fed. Cir. 2004) (citing *United States v. Wallace & Tiernan Co.*, 336 U.S. 793, 795 n.1 (1949)). As such, there can be no question that the dismissal without prejudice in this matter serves as a judgment for purposes of NRCP 68 and NRS 17.115.<sup>1</sup> In fact, Hefetz effectively conceded this issue when he filed a notice of appeal from the order dismissing this action.

Furthermore, Hefetz's request for this Court to strictly construe the fee shifting provision of NRCP 68 ignores the plain language of NRCP 68. NRCP 68 provides that "[i]f the offeree rejects an offer and *fails to obtain a more favorable judgment* . . . the offeree shall pay the offeror's . . . reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of the offer." NRCP 68(f)(2). Thus, by strictly construing the rule as Hefetz requests, he has no basis for presenting this argument. The rule clearly mandates that Hefetz must obtain a more favorable judgment to avoid being liable for attorneys' fees. Not even Hefetz could argue that he has obtained a more favorable judgment than the \$10,000 Offer of Judgment made by Beavor. As such, the governing law clearly allows Beavor to recover attorneys' fees for obtaining dismissal of Hefetz's claims following an offer of judgment for \$10,000.

///

///

<sup>1</sup> This conclusion is especially undeniable in this matter where the dismissal effectively acted as one with prejudice because the relevant statute of limitation bars Hefetz from refiling the claim.

1           **2. The Rules Mandate that Hefetz is Liable for Beavor's Attorneys' Fees**  
2           **Because Hefetz Unreasonably Pursued His Claim in Bad Faith Despite a**  
3           **Genuine Offer of Judgment**

4           By pursuing this action in bad faith, even while on notice that he was violating the One  
5           Action Rule, and in the face of a valid offer of judgment, Hefetz must reimburse Beavor's  
6           reasonable attorneys' fees. NRCP 68(f); NRS 17.115(4)(d)(3).

7           Hefetz spends many pages claiming that he was pursuing his claims in good faith. In  
8           doing so, he exemplifies his bad faith rather than casting doubt on this Court's already entered  
9           finding that he pursued this matter in bad faith.

10          First, Hefetz's arguments regarding bad faith were rendered moot when this Court  
11          entered its July 23, 2015 Order (the "Order"). In the Order, the Court unequivocally stated that  
12          "this case was brought in bad faith." Order at 2:16. The Order further debunked Hefetz's  
13          similarly misguided argument that he supposedly acted in good faith because the "prior judgment  
14          was set aside by the Court because of bigoted comments made by Beavor's prior counsel during  
15          the course of the trial" and those "improprieties ultimately led to (sic) the Court to grant a new  
16          trial in the above-captioned case." *Id.* at 7:15; 10:9-11. The Court clearly found that Hefetz's  
17          arguments pertaining to a tainted jury verdict based on bigoted comments "were without merit"  
18          and that the motion for new trial "would not have been granted except for the lack of a timely  
19          and written opposition." *Id.* at 2-3:23-2.

20          Second, Hefetz admits that the One Action Rule "forces a creditor, like Hefetz, to  
21          foreclose on the deed of trust *before the creditor can pursue an action for a deficiency judgment*  
22          *against the guarantor.*" Opposition at 7:24-25 (emphasis added). Despite acknowledging this  
23          mandate, Hefetz elected to bring his breach of guaranty action against Beavor prior to  
24          foreclosing on the subject property. As his only "justification" for the known violation, Hefetz  
25          claims that he "was well within [his] rights to pursue his claim and force Beavor to assert or  
26          waive the affirmative defense of the One Action Rule." *Id.* at 8:14-15. This position exemplifies  
27          Hefetz's bad faith throughout the litigation. His argument effectively is that he acted in good  
28          faith by attempting to force Beavor to waive his statutory protections. Even if this position were  
29          somehow viable, it ignores the reality that the only relevant period at issue in the Motion dates

1 from service of the Offer of Judgment until notice of entry of the Court's order dismissing  
2 Hefetz's claim. During the window in which Hefetz could have accepted the Offer of Judgment,  
3 he was on notice that Beavor was not waiving the One Action Rule, but rather was affirmatively  
4 asserting it. *See* Opposition at 4:1-3 ("On April 7, 2015, Beavor's counsel announced . . . his  
5 intention to raise the affirmative defense of the One Action Rule"); *see also* Order at 3:2-3  
6 ("Plaintiff was well aware of the violation of the One Action Rule, or should have been, since  
7 this action was initiated or at least for the last year").

8 Similarly, Hefetz was unreasonable in rejecting the Offer of Judgment. The Offer of  
9 Judgment was made in good faith and provided Hefetz with his only opportunity to recover  
10 something in this action. Rather than take it, Hefetz chose to reject it in furtherance of his bad  
11 faith prosecution of this action.

12 Thus, it is clear that Hefetz acted in bad faith during the relevant period and unreasonably  
13 rejected an Offer of Judgment whereby he would have at least recovered \$10,000, as opposed to  
14 a dismissal whereby he recovers nothing.

15 **3. Beavor's Counsel Presented Sufficient Information Pursuant to *Brunzell* for**  
16 **the Court to Determine Beavor is Entitled to Recover Attorneys' Fees**

17 **a. Beavor's Counsel Meets the *Brunzell* Criteria**

18 Hefetz's contention that Beavor's counsel fails to satisfy the *Brunzell* criteria is  
19 unsupported. First, Hefetz asserts that the "quality of Beavor's legal counsel is presently  
20 unknown." Opposition at 12:17. This argument is belied by Hefetz's own filings. In his  
21 Opposition to Beavor's Motion for Leave to Strike Reply (the "Leave Opposition"), Hefetz  
22 clearly asserts that Beavor's counsel is a "highly experienced and sophisticated legal team."  
23 Leave Opposition at 3:9-10.<sup>2</sup>

24 Hefetz's further arguments that this matter did not require skill and that Beavor failed to  
25 obtain a favorable result are similarly groundless. Beavor's counsel raised an issue, previously

26 <sup>2</sup> Hefetz also argues that the initial Motion was unsatisfactory because it omitted the education of Beavor's counsel.  
27 For the sake of completeness, Joel Schwarz attended the University of Illinois College of Law, Gabriel Blumberg  
28 attended Duke University School of Law, Eric Olsen attended Seattle University School of Law, and Tom Fell  
attended Drake University Law School.

1 overlooked by prior counsel, which resulted in dismissal of Hefetz's lawsuit. This legal strategy,  
2 realized and pursued by Beavor's current counsel, demonstrated the skill of Beavor's counsel  
3 and enabled Beavor to obtain a successful resolution of this matter.

4 **b. The Fees are Reasonable**

5 Lastly, Hefetz attacks the reasonableness of the fees. He attacks time entries of 0.2 hours  
6 and 2.3 hours as being "patently unreasonable." This course of action is yet another example of  
7 Hefetz's bad faith in this matter. The 0.2 hours were incurred by Mr. Olsen in a conference with  
8 Mr. Schwarz relating to issues that are at the heart of this Motion. Similarly, the 2.3 hours  
9 incurred by Mr. Fell were incurred analyzing defenses to Hefetz's baseless action.

10 Hefetz next claims that the 2.8 hours expended by Lisa Sifuentes were unreasonable.  
11 While Beavor denies that they were unreasonable, he will concede that they may be removed  
12 from the request given that they pertained to working on trial exhibits for the vacated trial.<sup>3</sup>

13 Hefetz next claims that Mr. Schwarz's rate of \$375 per hour was not reasonable because  
14 his counsel only charged \$250 per hour. As stated in the Schwarz Declaration, an analysis of the  
15 prevailing market rates for attorneys comparable to Mr. Schwarz reveals that \$375 per hour is a  
16 reasonable rate. Mr. Schwarz has more than a decade of experience in complex litigation and it  
17 was his experience and skill that was critical to successfully raising the One Action Rule to  
18 dismiss Hefetz's claim.

19 Hefetz lastly asserts that Mr. Blumberg's time spent on the motion to reopen the  
20 dispositive motion deadline and proposed summary judgment motion was unreasonable because  
21 the dispositive motion deadline had passed and was never reopened. The trial date was readily  
22 approaching at the time the motions were drafted, though, and therefore Beavor had to file them  
23 to ensure that the issues were properly presented and briefed. The proposed summary judgment  
24 motion raised three valid defenses to Hefetz's claims which would have disposed of the need for  
25 trial and preserved the Court's resources.

26 Based on the foregoing, Beavor is entitled to an award of attorneys' fees in the amount of

27 <sup>3</sup> The total cost associated with the 2.8 hours worked by Lisa Sifuentes equates to \$546.00. By subtracting \$546.00  
28 from the initially requested \$21,831.00, Beavor now seeks to recover \$21,285.00 in attorneys' fees.

1 \$21,285.00.

2 **B. BEAVOR IS ENTITLED TO RECOVER \$338.48 IN COSTS**

3 A prevailing party shall recover costs against the party against whom the judgment is  
4 rendered. NRS 18.020. In order to recover costs, a party must file a memorandum of costs  
5 within five days after entry of judgment. NRS 18.110(1).<sup>4</sup> The party opposing the claimed costs  
6 must file any motion to retax costs within three days after service of a copy of the memorandum  
7 of costs. NRS 18.110(4).

8 Here, Beavor, the prevailing party, timely filed his memorandum of costs on June 25,  
9 2015, within five days of notice of entry of judgment. By rule, Hefetz was considered served  
10 with the memorandum of costs on June 29, 2015 and therefore had to file any motion to retax  
11 costs no later than July 2, 2015. Hefetz provides no justification for failing to file a motion to  
12 retax costs within the prescribed period and therefore he has waived his right to dispute Beavor's  
13 costs.

14 Even if Hefetz was allowed to dispute the costs, his argument regarding legal research  
15 costs is wrong as a matter of law. Hefetz, relying on *Bergmann v. Boyce*, 109 Nev. 670, 856  
16 P.2d 560 (1993) and apparently a pre-1995 version of the NRS, asserts Beaver is not entitled to  
17 recover costs incurred for legal research. Hefetz's argument is definitively foreclosed by NRS  
18 18.005(17), which specifically allows a party to recover computerized legal research costs.

19 Thus, Beavor is entitled to recover his costs in the amount of \$338.48.

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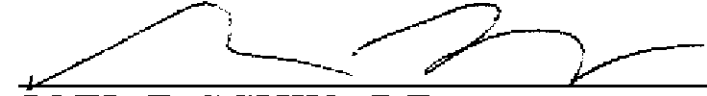
27 <sup>4</sup> The five-day limit is not jurisdictional. Therefore, even if the memorandum of costs was filed late, it would not  
28 bar recovery of costs. See *Franchise Tax Bd. of Cal. v. Hyatt*, 335 P.3d 125, 155, 130 Nev. Adv. Op. 71 (2014)  
("the five-day time limit established for filing a memorandum of costs is not jurisdictional").

## 1 IV. CONCLUSION

2 Based on the foregoing, Beavor respectfully requests that this Court award him attorneys'  
3 fees in the amount of \$21,285.00 and costs of \$338.48.

4 DATED this 12<sup>th</sup> day of August 2015.

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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

Electronically Filed  
Jul 12 2016 12:00 p.m.  
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Clerk of Supreme Court

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**APPELLANT'S OPENING BRIEF – APPENDIX VOLUME VI**

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