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Elizabeth A. Brown  
Clerk of Supreme Court

**THE SUPREME COURT OF THE STATE OF NEVADA**

ROBERT G. REYNOLDS, AN  
INDIVIDUAL; AND DIAMANTI FINE  
JEWELERS, LLC, A NEVADA LIMITED  
LIABILITY COMPANY

Appellants,

vs.

RAFFI TUFENKJIAN, AN  
INDIVIDUAL; AND LUXURY  
HOLDINGS LV, LLC, A NEVADA  
LIMITED LIABILITY COMPANY

Respondents.

CASE NO. 78187

**RESPONSE TO MOTION TO  
SUBSTITUTE AS REAL  
PARTIES IN INTEREST FOR  
THIS APPEAL AND DISMISS**

Appeal from the Eighth Judicial  
District Court, The Honorable  
Mark Denton Presiding.

Appellants, by and through their attorneys of record, the Marx Law Firm, hereby file this Response (“Response”) to Respondent’s Motion to Substitute as Real Parties in Interest for this Appeal and Dismiss (“Motion”). This Response is based on the attached points and authorities, all pleadings and papers on file herein, and any argument by counsel at the time of the hearing on this matter.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This Motion seeks to effectively terminate Appellants’ right to appeal only because they could not afford to satisfy a judgment pending appeal. This practice seeks to strain the construction of creditor’s rights to the detriment of Appellants’ right to appeal as well subverts this Court’s ability to administer justice. In short,

Respondents would have this Court restrict judicial access to those with the financial ability to satisfy a contested judgment. Respondents purport to have acquired Appellants' claims and seek dismissal before the claims and defenses may be heard.

## **II. STATEMENT OF FACTS**

Appellant brought claims for Fraud/Intentional Misrepresentation, Negligent Misrepresentation, Breach of Contract, and Exploitation in District Court against Respondents related to a contract for sale of Diamanti Fine Jewelers. See Third Amended Complaint, **Exhibit 1**. On November 14, 2018, the Trial Court granted Respondents' motion for summary judgment (the decision was slightly amended on January 24, 2019). See Decision, **Exhibit 2**. Respondents then sought and obtained an award of attorney's fees totaling \$57,941.92 and costs totaling \$7,941.92 on February 12, 2019. See Order, **Exhibit 3**. Appellant then timely appealed. Appellant, financially drained because of the fraud and deception caused by Respondent, has no present ability to satisfy the Judgment or post a supersedeas bond to stay execution pending appeal. Respondents then sought to satisfy the judgment, performing a Sheriff's sale on July 11, 2019. Given his financial situation and the financial strength of Respondent, Appellant knew that bidding at the Sheriff's sale would be futile.

It is within that context that Respondents now employ a terribly inequitable procedural maneuver that, if permitted, would result in a complete elimination of Appellant's right to appeal. The resulting harm to Appellant is irreparable as the judgment against him would be unreviewed permanently. Respondents' present Motion must be denied in order to preserve justice.

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### **III. LAW AND ARGUMENT**

#### **a. RESPONDENTS CANNOT BE SUBSTITUTED AS THE REAL PARTIES IN INTEREST FOR THIS APPEAL**

Respondents seek to dismiss the appeal simply because of Appellant's inability to presently satisfy the Judgment or stay execution. Respondents claim that the Sheriff's auction and sale has allowed them to purchase Appellant's claims and given them permission to dismiss this appeal. At issue in this appeal are both claims and defenses. When a judgment debtor successfully obtains a reversal of the judgment, "the appellant is entitled to the restitution from the respondent of all the advantages acquired by the latter by virtue of the erroneous judgment." Wheeler Springs Plaza, LLC v. Beemon, 119 Nev. 260, 267, 71 P.3d 1258, 1262 (2003). Here, that includes the award of attorney's fees resulting from the summary judgment. Therefore, this appeal serves to protect its claims against Respondents for wrongful conduct as well as a defense against the award of fees and costs. If the judgment against Appellants is reversed, the attorney's fees will also be reversed, causing Respondents to return any assets they purchased at auction. This Motion attempts to eliminate the possibility of reversal and Respondents' duty to return the property collected at the Sheriff's auction. The Motion presents an inequitable legal result. Respondents will have eliminated Appellants' right to appeal a judgment by the very results the judgment created. As such, Respondents' Motion must be denied.

#### **b. APPELLANTS' CLAIMS MUST BE DECIDED ON THE MERITS**

NRAP 3A preserves the right of appeal for all final judgments that originate in the district courts. NRAP 3A(b)(1). The Nevada Constitution grants the Nevada Supreme Court appellate jurisdiction over all final judgments, "in all civil cases arising in district courts..." Art. 6 § 4. Appellant has a "constitutional right of appeal, which "may be regulated by the Legislature as to the time and manner of taking an appeal, so long as the regulations do not unreasonably restrict the right." Rickey v.

Douglas Milling & Power Co., 205 P.328 Nev., 1922. Under NRAP 3A, the legislature created a right to appeal “[f]rom a final judgment in an action or proceeding commenced in the court in which the judgment is rendered.” NRAP 3A(b)(1). It is unquestioned that Appellant has a right to appeal, and any restriction on that right may not be unreasonable. Respondents’ Motion is unreasonable as set forth below. As such, Plaintiff’s Motion must be denied.

c. NEVADA DOES NOT PERMIT THE SUBSTITUTION SOUGHT

Respondents employ erroneous and strained statutory interpretation to reach an inequitable result. Respondents claim that because it may execute on “all goods, chattels, money and other property, real and personal of the judgment debtor...” under NRS 10.045, it may deny Appellant of its right to appeal final judgments afforded under NRAP 3A(b)(1). This interpretation is incorrect. In Nevada, “[i]t is well recognized that specific statutes take precedence over general statutes.” Gaines v. State, 116 Nev. 359, 365, 998 P.2d 166, 170 (2000). The right provided by NRAP 3A(b)(1) to appeal a final judgment for cases originating in the District Court is a more specific right than the right to execute provided by NRS 10.045. Therefore, the right to appeal should take precedent over the right to execute.

In recognition of the important right to appeal a final judgment, this Court has applied a policy of construing statutes in favor of allowing appeals. “[A]ppeals as a rule are favored and not to be defeated by strained construction.” Holmes v. Second Judicial Dist. Court in & for Washoe Cnty., 58 Nev. 352, 80 P.2d 907, 909 (1938). In addition, “[t]he right to appeal is a substantial right which should not be taken away unless clearly intended by the statute” and that “any doubt about construction of statutes regulating the right of appeal is to be resolved in favor of allowing appeal.” Thompson v. First Judicial Dist. C, Storey Cnty., 100 Nev. 352, 355, 683 P.2d 17, 19 (1984).


Respondent has not provided any evidence that the Legislature intended for NRS 10.045 to result in the elimination of such a substantial right as the right to appeal. Any interpretation of NRS 10.045 should be in favor of allowing appeal. Indeed, this Court has determined that NRS 10.045 should not be interpreted in a way that violates public policy. For example, medical insurance payments may not be executed. Maxwell v. Allstate Ins. Cos., 102 Nev. 502, 507, 728 P.2d 812, 815 (1986). Also, unasserted attorney malpractice claims may not be assigned. Chaffee v. Smith, 98 Nev. 222, 223-24, 645 P.2d 966, 966 (1982). Likewise, this Court should recognize that assumption of Appellant's right to appeal by execution is contrary to public policy. As such, Respondents' Motion must be denied.

#### **IV. CONCLUSION**

For the foregoing reasons, Appellants respectfully request that this Court deny the Respondents' Motion.

Respectfully submitted this 1st day of August, 2019.

#### **MARX LAW FIRM PLLC**

By   
\_\_\_\_\_  
Bradley M. Marx  
Nevada Bar No. 12999  
601 S. Rancho Dr.  
Las Vegas, Nevada 89106  
*Attorney for Appellants*

**CERTIFICATE OF SERVICE**

I certify that on this 1st day of August, 2019, I caused to be served a true and correct copy of the foregoing **RESPONSE TO MOTION TO SUBSTITUTE AS REAL PARTIES IN INTEREST FOR THIS APPEAL AND DISMISS**, to be served via the Court's electronic filing and service system to all parties on the current service list.

Terry A. Moore, Esq.  
Christian T. Balducci, Esq.  
MARQUIS AURBACH COFFING  
1001 Park Run Drive  
Las Vegas, NV 89145  
*Attorneys for Respondents*

By  \_\_\_\_\_  
Bradley Marx

## Exhibit 1

ROBERT G. REYNOLDS and  
DIAMANTI FINE JEWELERS, LLC

## ///



I.

**PARTIES AND JURISDICTION**

1. Plaintiff Robert G. Reynolds (hereinafter "Reynolds") is an individual residing in Clark County, Nevada. Plaintiff Reynolds is over the age of 60 years old. Plaintiff Reynolds is also the Organizer and Manager of Plaintiff Diamanti Fine Jewelers, LLC.

2. Plaintiff Diamanti Fine Jewelers, LLC (hereinafter "Diamanti"), is a Nevada LLC licensed and doing business in Las Vegas, Clark County, Nevada.

3. Defendant Raffi Tufenkjian (hereinafter "Tufenkjian") is an individual residing in Clark County, Nevada. Defendant Tufenkjian is the Manager of Defendant Luxury Holdings LV, LLC.

4. Defendant Luxury Holdings LV, LLC (hereinafter "Luxury Holdings") is a Nevada LLC formerly doing business in Clark County, Nevada as Diamanti Fine Jewelers.

5. Defendant Great Wash Park, LLC ("Tivoli Village") is a Nevada LLC doing business in Clark County, Nevada as Tivoli Village.

6. Defendant DOES 1-5 and ROE CORPORATIONS 1-5 are fictitious names referring to individuals and entities who managed, controlled, or directed Defendant Tufenkjian and/or Defendant Luxury Holdings at the time of the events set forth in this Complaint. Plaintiffs will request leave of this Court to amend the Complaint to substitute the true names of these unknown parties when their true names and identities become known.

7. Defendant DOES 6-10 and ROE CORPORATIONS 6-10 are fictitious names referring to individuals and entities who caused or contributed to the damages suffered and incurred by Plaintiffs at the time of the events set forth in this Complaint. Plaintiffs will request leave of this

1 Court to amend the Complaint to substitute the true names of these unknown parties when their  
2 true names and identities become known.

3  
4 8. This Court has jurisdiction to hear and rule on the dispute set forth in this Complaint.

5 9. This Court is the proper venue for the dispute set forth in this Complaint.

6  
7 II.

8 **COMMON FACTUAL ALLEGATIONS**

9 **A. Plaintiff Robert Reynolds' Contingent Offer to Purchase and His Due Diligence**

10 10. On or about November 19, 2014, Defendant Tufenkjian and Defendant Luxury  
11 Holdings prepared a Business Opportunity Summary describing the value of Diamanti Fine Jewelers  
12 (hereinafter "the business"), including but not limited to a list of assets, financial statements, and  
13 financial projections.  
14

15 11. From November 19, 2014, through January 12, 2015, Defendant Tufenkjian and  
16 Defendant Luxury Holdings marketed the business for sale, intending that prospective purchasers  
17 would review and rely on their representations concerning the value of the business.  
18

19 12. On or about January 12, 2015, Plaintiff Reynolds reviewed the representations made  
20 by Defendant Tufenkjian and Defendant Luxury Holdings concerning the value of the business.  
21

22 13. On or about January 13, 2015, Plaintiff Reynolds relied on the business value  
23 representations in deciding to make a contingent offer to purchase the business.

24 14. On or about February 22, 2015, Defendant Tufenkjian added approximately 10% to  
25 the cost of inventory listed in the business' computer system.  
26

27 ///

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1           15.     From January 13, 2015 through March 24, 2015, Plaintiff Reynolds conducted and  
2 performed further due diligence relating to the value of the business, including but not limited to  
3 the business' taxable revenue, non-taxable revenue, assets, inventory, and customers.  
4

5           16.     At all times during Plaintiff Reynolds' due diligence, Defendant Tufenkjian, as the  
6 Manager of Defendant Luxury Holdings, had actual knowledge of the business' true and accurate  
7 taxable revenue, non-taxable revenue, assets, inventory, and customers.  
8

9           17.     During Plaintiff Reynolds' due diligence, Defendant Tufenkjian provided Plaintiff  
10 Reynolds with compilation reports, Nevada Sales Tax Returns, and other documents supporting the  
11 valuation of the business represented by Defendant Tufenkjian and Defendant Luxury Holdings.  
12

13           18.     During Plaintiff Reynolds' due diligence, Defendant Tufenkjian withheld and refused  
14 to provide Plaintiff Reynolds with original financial statements from Defendant Luxury Holdings,  
15 but assured Plaintiff Reynolds that the representations concerning the value of the business were  
16 true and accurate.  
17

18           19.     During Plaintiff Reynolds' due diligence, Defendant Tufenkjian and Defendant Luxury  
19 Holdings represented that, in 2014, the business had taxable revenue of \$496,368.76 from jewelry  
20 sales and had non-taxable revenue of \$251,017.96 from jewelry repairs and non-taxable jewelry  
21 sales.  
22

23           20.     During Plaintiff Reynolds' due diligence, Defendant Tufenkjian and Defendant Luxury  
24 Holdings provided a list of 1122 people represented to be customers of the business.  
25

26           21.     During Plaintiff Reynolds' due diligence, Defendant Tufenkjian and Defendant Luxury  
27 Holdings withheld and refused to provide Defendant Luxury Holdings' lease, but represented that  
28

1 all fixtures, furniture and equipment (hereinafter "FF&E") were owned by Defendant Luxury  
2 Holdings.

3  
4 22. During Plaintiff Reynolds' due diligence, Defendant Tufenkjian and Defendant Luxury  
5 Holdings agreed to sell all inventory to Plaintiff Reynolds at cost and without mark-up.

6 **B. Contracts to Purchase Business and Inventory**

7  
8 23. On about March 20, 2015, Plaintiffs purchased the business from Defendants for  
9 \$395,000, excluding inventory.

10 24. On about March 23, 2015, Defendant Tufenkjian executed a Bill of Sale confirming  
11 that Plaintiffs had purchased all of the business' inventory for \$300,691.23 apportioned as follows:

12 A. \$ 28,352.00 to G. Panther, Inc.

13 B. \$ 88,085.79 to National Gold & Diamond Centre, Inc.

14 C. \$ 134,253.44 to Defendant Luxury Holdings, and

15 D. \$ 50,000.00 to Nazareth Tufenkjian (Defendant Tufenkjian's brother)

16  
17  
18 25. On or about March 24, 2015, Defendant Tufenkjian executed a Bill of Sale confirming  
19 that Plaintiffs had acquired title to the FF&E located in the business' leased premises.

20 **C. Assignment and Guaranty of the Lease**

21 26. Defendant Luxury Holdings leased the premises of the jewelry store from Defendant  
22 Tivoli Village.

23  
24 27. Defendant Tufenkjian personally guaranteed Defendant Luxury Holdings' lease with  
25 Defendant Tivoli Village.

26  
27 28. On or about March 25, 2015, Defendant Luxury Holdings assigned to Plaintiff  
28 Diamanti all of its rights and obligations under the Lease with Defendant Tivoli Village; and

1 Defendant Tivoli consented to Plaintiff Diamanti's assumption of the Lease on the condition that  
2 Plaintiff Reynolds personally guarantee Defendant Diamanti's obligations under the Lease.  
3

4 29. On or about March 25, 2015, Plaintiff Reynolds assumed Defendant Tufenkjian's  
5 Personal Guaranty of the Lease; and Defendant Tivoli Village consented to the Plaintiff Reynolds'  
6 assumption of Defendant's Tufenkjian's Personal Guaranty.  
7

8 **D. Discovery of Defendants' Misrepresentations**

9 30. The jewelry business is cyclical and so Plaintiffs did not have reason to suspect  
10 Defendants misrepresentations until late 2016 when the revenue figures from 2015 and 2016 were  
11 noticed to be materially different from those represented by Defendants for 2014 and were known  
12 not to be the cause of a cyclical aberration in consumer spending.  
13

14 **III.**

15 **FIRST CAUSE OF ACTION**  
16 **Fraud / Intentional Misrepresentation**

17 31. Plaintiffs repeat and incorporate paragraphs 1 through 30 of the Complaint herein.

18 32. Defendant Tufenkjian and Defendant Luxury Holdings both:  
19

- 20 A. knew the business' taxable revenue in 2014,
- 21 B. knew the business' non-taxable revenue in 2014,
- 22 C. knew the business' actual customer list,
- 23 D. knew the business did not hold title to the FF&E, and
- 24 E. knew the business' cost of inventory.  
25

26 ///

27 ///

33. Defendant Tufenkjian and Defendant Luxury Holdings both:

- A. intentionally misrepresented the business' taxable revenue in 2014 by overstating the revenue by approximately 2.7 times in the Business Opportunity Summary, compilation reports, Nevada Sales Tax Returns, and other documents,
- B. intentionally misrepresented the business' non-taxable revenue in 2014 by overstating the revenue by approximately 19 times in the Business Opportunity Summary, compilation reports, Nevada Sales Tax Returns, and other documents,
- C. intentionally misrepresented the number of customers by providing a List of Customers, most of whom had never been a customer of the business,
- D. intentionally misrepresented that the business owned the FF&E on the Bill of Sale and closing documents for the purchase and sale of the business, and
- E. intentionally misrepresented the cost of inventory by overstating the cost of inventory and excluding outstanding sales taxes owed on the consignment inventory on the Bill of Sale dated March 24, 2015.

34. Defendant Tufenkjian and Defendant Luxury Holdings misrepresented these material facts concerning the value of the business and the cost of the inventory to induce Plaintiff Reynolds and Plaintiff Diamanti to purchase the business and inventory, to pay substantially more than the true and actual value of the business, and to pay substantially more than the cost of the inventory.

35. Plaintiff Reynolds and Plaintiff Diamanti reasonably relied on the representations of Defendant Tufenkjian and Defendant Luxury Holdings in deciding to purchase the business.

36. As a direct and proximate cause of Defendant Tufenkjian and Defendant Luxury Holdings intentional misrepresentation of the value of the business, Plaintiff Reynolds and Plaintiff Diamanti have suffered and continue to suffer damages in an amount to be proved at trial.

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37. As a direct and proximate cause of Defendant Tufenkjian and Defendant Luxury Holdings intentional misrepresentation of the value of the business, Plaintiff Reynolds and Plaintiff Diamanti are entitled to a judgment for damages in an amount to be proved at trial.

38. As a direct and proximate cause of Defendant Tufenkjian and Defendant Luxury Holdings intentional misrepresentation of the value of the business, Plaintiff Reynolds and Plaintiff Diamanti are entitled to equitable relief rescinding the purchase of the business.

39. As a direct and proximate cause of Defendant Tufenkjian and Defendant Luxury Holdings intentional misrepresentation of the value of the business, Plaintiff Diamanti is entitled to equitable relief rescinding the Lease with Defendant Tivoli Village, and Plaintiff Reynolds is entitled to equitable relief rescinding the Personal Guaranty with Defendant Tivoli Village.

40. As a direct and proximate cause of Defendant Tufenkjian and Defendant Luxury Holdings intentional misrepresentation of the value of the business, Plaintiff Reynolds and Plaintiff Diamanti are entitled to an award of attorneys' fees and costs incurred in this lawsuit.

#### IV.

**SECOND CAUSE OF ACTION**  
**Negligent Misrepresentation**

41. Plaintiffs repeat and incorporate paragraphs 1 through 40 of the Complaint herein.

42. Defendant Tufenkjian and Defendant Luxury Holdings both had a financial interest in selling the business to Plaintiff Reynolds and Plaintiff Diamanti.

43. Defendant Tufenkjian and Defendant Luxury Holdings failed to exercise reasonable care in communicating information to Plaintiff Reynolds and Plaintiff Diamanti regarding:

A. the business' taxable revenue in 2014.

B. the business' non-taxable revenue in 2014,

- C. the business' customer list,
- D. title to the FF&E, and
- E. the business' cost of inventory.

44. Plaintiff Reynolds and Plaintiff Diamanti justifiably relied on Defendant Tufenkjian and Defendant Luxury Holdings' representations regarding the value of the business and inventory.

45. Defendant Tufenkjian and Defendant Luxury Holdings induced Plaintiff Reynolds and Plaintiff Diamanti to purchase the business and inventory due to Defendant Tufenkjian and Defendant Luxury Holdings' representations concerning the value of the business and inventory.

46. As a direct and proximate cause of Defendant Tufenkjian and Defendant Luxury Holdings' negligent misrepresentations concerning the value of the business and inventory, Plaintiff Reynolds and Plaintiff Diamanti have suffered and continue to suffer damages in an amount to be proved at trial.

47. As a direct and proximate cause of Defendant Tufenkjian and Defendant Luxury Holdings' negligent misrepresentations, Plaintiff Reynolds and Plaintiff Diamanti are entitled to a judgment for damages in an amount to be proved at trial.

48. As a direct and proximate cause of Defendant Tufenkjian and Defendant Luxury Holdings' negligent misrepresentations, Plaintiff Reynolds and Plaintiff Diamanti are entitled to equitable relief rescinding the purchase and sale of the business.

49. As a direct and proximate cause of Defendant Tufenkjian and Defendant Luxury Holdings' negligent misrepresentation of the value of the business, Plaintiff Reynolds and Plaintiff Diamanti are entitled to an award of attorneys' fees and costs incurred in this lawsuit.



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V.

**THIRD CAUSE OF ACTION**  
**Breach of Contract**

50. Plaintiffs repeat and incorporate paragraphs 1 through 49 of the Complaint herein.

51. Plaintiff Diamanti and Defendant Luxury Holdings agreed upon terms and conditions for the purchase and sale of the business and the business' inventory.

52. Plaintiff Diamanti performed its obligations under the contracts by timely delivering the full purchase price for both the business and the business' inventory.

53. Defendant Luxury Holdings failed to perform its contractual obligations by failing to deliver the business with the revenue, customers, and FF&E as represented during negotiation and during Plaintiff Reynolds' due diligence.

54. Defendant Luxury Holdings failed to perform its contractual obligations by failing to deliver the inventory at the cost represented during negotiation and during Plaintiff Reynolds' due diligence.

55. As a direct and proximate cause of Defendant Luxury Holdings' breaches of contract, Plaintiff Diamanti has suffered and continues to suffer economic damages in an amount to be proved at trial.

VI.

**FOURTH CAUSE OF ACTION**  
**Exploitation**

56. Plaintiffs repeat and incorporate paragraphs 1 through 55 of the Complaint herein.

57. Plaintiff Reynolds is an older person as defined by NRS 41.1395(4)(d).

1           58.     During negotiation of the purchase and sale of the business, Defendant Tufenkjian  
2 and Defendant Luxury Holdings withheld and refused to provide the business' original financial  
3 statements to prevent Plaintiff Reynolds from learning the true and actual revenue of the business.  
4

5           59.     During negotiation of the purchase and sale of the business, Defendant Tufenkjian  
6 and Defendant Luxury Holdings withheld and refused to provide Defendant Luxury Holdings' lease  
7 to prevent Plaintiff Reynolds from learning that the FF&E was not owned by Defendant Luxury  
8 Holdings, but was owned by the landlord and leased as part of the premises.  
9

10          60.     During negotiation of the purchase and sale of the business, Defendant Tufenkjian  
11 represented to Plaintiff Reynolds that despite the absence of original financial records and the  
12 absence of the lease, Plaintiff Reynolds could trust and rely on Defendant Tufenkjian to provide  
13 accurate information about the value of the business.  
14

15          61.     Defendant Tufenkjian deceived and exploited Plaintiff Reynolds to prevent Plaintiff  
16 Reynolds from learning material facts relating to the business, including the actual revenue, actual  
17 customer list, and title to the FF&E.  
18

19          62.     Defendant Tufenkjian deceived and exploited Plaintiff Reynolds to induce Plaintiff  
20 Reynolds to assume Defendant Tufenkjian's personal guaranty on the lease for the business.  
21

22          63.     Defendant Tufenkjian deceived and exploited Plaintiff Reynolds to deprive Plaintiff  
23 Reynolds of his money.  
24

25          64.     As a direct and proximate cause of Defendant Tufenkjian's exploitation, Plaintiff  
26 Reynolds has suffered and continues to suffer a loss of money in an amount to be proved at trial.  
27

28          65.     As a direct and proximate cause of Defendant Tufenkjian's exploitation, Plaintiff  
Reynolds is entitled to a judgment for double damages in an amount to be proved at trial.

1           66.    As a direct and proximate cause of Defendant Tufenkjian's exploitation, Plaintiff  
2 Reynolds is entitled to an award of attorneys' fees and costs incurred in this lawsuit.  
3

4                               **VII.**

5                               **PRAYER FOR RELIEF**

6           Wherefore, Plaintiff Reynolds and Plaintiff Diamanti pray for relief and judgment as follows:  
7

- 8                   A.    An Order rescinding the purchase and sale agreement for the business,  
9                   B.    An Order rescinding the Lease and Personal Guaranty of the lease,  
10                  C.    An award of damages sufficient to compensate Plaintiffs for the losses  
11                        caused by Defendants' intentional misrepresentations,  
12                  D.    An award of damages sufficient to compensate Plaintiffs for the losses  
13                        caused by Defendants' negligent misrepresentations,  
14                  E.    An award of economic damages sufficient to compensate Plaintiff Diamanti  
15                        for the damages caused by Defendant Luxury Holdings' breaches of contract,  
16                  F.    An award of double damages to compensate Plaintiff Reynolds for his losses  
17                        caused by Defendant Tufenkjian's exploitation,  
18                  G.    An award of damages sufficient to punish and make an example of  
19                        Defendants' oppression, fraud, and malice,  
20                  H.    An award of attorneys' fees, costs, and interest pursuant to Nevada law, and  
21                  I.    Such other and further relief as this Court finds just and proper.

22           Dated this 1<sup>ST</sup> day of November, 2017.

23                               CHASEY LAW OFFICES

24                               

25                               PETER L. CHASEY, ESQ.

26                               Nevada Bar No. 007650

27                               3295 N. Fort Apache Road, Suite 110

28                               Las Vegas, Nevada 89129

Attorney for Plaintiffs

ROBERT G. REYNOLDS and

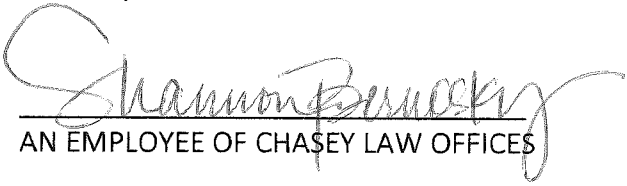
DIAMANTI FINE JEWELERS, LLC

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**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify that on the  
1st day of November, 2017, I served a true and complete copy of **THIRD AMENDED COMPLAINT**  
upon those persons designated by the parties in the E-Service Master List for the above-referenced  
matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory  
electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and  
Conversion Rules:

Terry A. Moore, Esq.  
Christian T. Balducci, Esq.  
MARQUIS AURBACH COFFING  
10001 Park Run Drive  
Las Vegas, NV 89145  
(702) 382-0711 Phone  
(702) 382-5816 Fax  
Attorneys for Defendants

  
AN EMPLOYEE OF CHASEY LAW OFFICES

## Exhibit 2

1 DECN

DISTRICT COURT

2 CLARK COUNTY, NEVADA

3  
4 ROBERT G. REYNOLDS, an individual, )  
5 and DIAMANTI FINE JEWELERS, LLC, a )  
6 Nevada Limited Liability Company, ) CASE NO. A-17-753532-C  
7 ) DEPT. NO. XIII

8 Plaintiff(s), )

9 vs. )

10 RAFFI TUFENKJIAN, an individual, and ) Date: September 27, 2018  
11 LUXURY HOLDINGS LV, LLC, a Nevada ) Time: 9:00 a.m.  
12 Limited Liability Company, )

13 Defendant(s). )

14 **DECISION**

15 THIS MATTER having come before the Court on September 27,  
16 2018 for hearing on Defendants' Motion for Summary Judgment, with  
17 appearances as noted in the Minutes and to be reflected in the  
18 proposed order to be submitted as directed hereinbelow;

19 AND, the Court having heard the argument of counsel and  
20 having then taken such Motion under advisement for further  
21 consideration, and being now fully advised in the premises;

22 NOW, THEREFORE, the Court decides the submitted issues  
23 as follows:

24 Plaintiffs posit the following as being the genuine  
25 issues of material fact that preclude summary judgment:

26 . . .

27 In the case before this Court, the following  
28

CLERK OF THE COURT

NOV 12 2018

RECEIVED

MARK R. DENTON  
DISTRICT JUDGE

DEPARTMENT THIRTEEN  
LAS VEGAS, NV 89155

6

1 questions of fact remains (sic) unresolved:

2 • Did Reynolds reasonably rely on Raffi's  
3 misrepresentations of business revenue, title to the  
4 FF&E, Customers, and cost of inventory during due  
5 diligence?  
6

7 • Is Reynolds entitled to the protection of NRS  
8 41.1395, even though Reynolds' lost his money through  
9 a transaction consummated through Reynolds' 100%  
10 owned Limited Liability Company?  
11

12 . . . .

13 Opposition, p. 3, ll. 4-9.  
14

15 Defendants maintain that disclaimers made within the  
16 "business summary marketing brochure" are part of the parties'  
17 contract which, according to Defendants, is set forth in Exhibits  
18 C and D to the Motion.

19 It appears to the Court that the brochure does indeed make  
20 the disclaimers urged by Defendants with respect to formation of  
21 the parties' contract itself-i.e. that there were no actionable  
22 misrepresentations inducing Plaintiffs to enter into the contract  
23 in the first place. In addition, section 12 of the contract (Ex.  
24 C) states the following:  
25

26 . . . .  
27  
28

1 12. INSPECTION OF ASSETS: ...PURCHASER has relied  
2 solely upon their personal examination of the business  
3 in making this offer and not upon any statements or  
4 representations made by BROKER, or his agents, in  
5 deciding to purchase or value the business. (Emphasis  
6 supplied.)  
7

8 . . .

9 Section 7 within the same item reads as follows:

10 . . .

11 7. DUE DILIGENCE CONTINGENCY: Purchaser's offer **is**  
12 **contingent** upon Seller proving to Purchaser's  
13 satisfaction the financial condition of the business  
14 and/or after review of all the information requested with  
15 regards to the subject business..**Contingency shall be**  
16 **automatically removed 14 days** after execution of this  
17 agreement by both parties unless extended in writing.  
18 (Emphasis in original.)  
19

20 . . .  
21

22  
23 Although there were disclaimers in entering into the  
24 contract and Plaintiffs undertook the obligation to conduct their  
25 own due diligence once the contract was formed, that is not to say  
26 that, in conducting their due diligence, Plaintiffs did not have  
27



1 a right to rely upon the accuracy of things that were presented when  
2 requested. However, as is shown in Exhibit I to Defendants' Motion  
3 ("Business/Bulk Sale Transfer Instructions"):

4 . . .

5 The parties hereto agree that no representations have  
6 been made by either party, or agent/broker if any, other  
7 than those specifically set forth in this agreement and  
8 the sale agreement(s). It is further understood and  
9 agreed that the Buyer has made his own independent  
10 investigation of the subject business and has satisfied  
11 himself with his ability to conduct the same, and is now  
12 purchasing the said business with the clear and distinct  
13 understanding that all profits are future, to be arrived  
14 at from his own resources and labors.

15  
16  
17  
18 Thus, for Plaintiffs to now say that they relied upon  
19 various representations regarding revenue, customer base, costs,  
20 FF& E, etc. is contrary to their express agreement that they were  
21 not so relying, and no such items are "specifically set forth in  
22 this agreement . . ." If, as Plaintiffs maintain, they ". . . moved  
23 forward at closing still believing that the revenue as reflected  
24 in the records reviewed and as presented in the Business Summary  
25 were factual and accurate . . ." (Opposition, p. 12, ll. 6-7), one  
26  
27  
28

1 would expect that they would have been referenced, but they were  
2 not. To say that they are material representations and to then  
3 proceed without reference to them eliminates any genuine issue going  
4 to inducement by representations, particularly in a commercial  
5 transaction of this magnitude.<sup>1</sup>  
6

7 The Court is also persuaded by the other aspects of the  
8 Motion.

9 Accordingly, all things considered the Court determines  
10 that the Motion has merit in its entirety, and it is GRANTED.

11 Counsel for Defendants is directed to submit a proposed  
12 order consistent with the foregoing and with briefing and argument  
13 supportive of the same. Such proposed order should be submitted  
14 to opposing counsel for review and signification of approval/  
15 disapproval. Instead of seeking to clarify or litigate meaning or  
16 any disapproval through correspondence directed to the Court or to  
17 counsel with copies to the Court, any such clarification or  
18 disapproval should be the subject of appropriate motion practice.  
19  
20  
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23 <sup>1</sup> Notably, the language contained in the "Business/Bulk Sale Transfer  
24 Instructions" immediately after the language quoted therefrom hereinabove states  
25 in bold upper case that any misunderstanding of the agreement should be followed  
26 up by seeking legal and/or financial advice. Also, the bold, upper case language  
27 preceding such quoted language makes it clear that only the items listed in (A),  
28 (B), and (C) are deemed not to have merged into the "Business/Bulk Sale Transfer  
Instructions," which are themselves characterized as "this agreement" in such  
language.

1                   This Decision sets forth the Court's intended disposition  
2 on the subject, but it anticipates further order of the Court to  
3 make such disposition effective as an order or judgment.

4                   DATED this 11<sup>th</sup> day of October, 2018.


5  
6  
7                     
8                   MARK R. DENTON  
9                   DISTRICT JUDGE

10                   CERTIFICATE

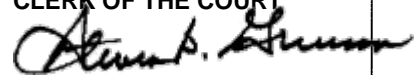
11                   I hereby certify that on or about the date filed, this  
12 document was e-served or a copy of this document was placed in the  
13 attorney's folder in the Clerk's Office or mailed to:

14                   CHASEY LAW OFFICES  
15                   Attn: Peter L. Chasey, Esq.

16                   MARQUIS AURBACH COFFING  
17                   Attn: Christian T. Balducci, Esq.

18                     
19                   LORRAINE TASHIRO  
20                   Judicial Executive Assistant  
21                   Dept. No. XIII

## Exhibit 3



**Marquis Aurbach Coffing**  
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*Attorneys for Defendants*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ROBERT G. REYNOLDS, an individual,  
DIAMANTI FINE JEWELERS, LLC, a Nevada  
limited liability company,

Plaintiffs,

vs.

RAFFI TUFENKJIAN, an individual, and  
LUXURY HOLDINGS LV, LLC, a Nevada  
Limited Liability Company, DOES 1-10, and  
ROE CORPORATIONS 1-10 inclusive,

Defendants.

Case No.: A-17-753532-B  
Dept. No.: XIII

**Hearing Date: January 7, 2019**  
**Hearing Time: 9:00 a.m.**

**ORDER GRANTING DEFENDANTS'**  
**MOTION FOR ATTORNEY'S FEES AND COSTS**

**AND**

**JUDGMENT AGAINST PLAINTIFFS**

THIS MATTER having come before this Court on January 7, 2019, on Defendants' Motion for Attorney's Fees and Costs; Christian T. Balducci, Esq. of the law firm of Marquis Aurbach Coffing appearing on behalf of Raffi Tufenkjian and Luxury Holdings LV, LLC ("Defendants") and Peter L. Chasey, Esq. of the Chasey Law Offices, appearing on behalf of Plaintiffs Robert G. Reynolds and Diamanti Fine Jewelers, LLC ("Plaintiffs").

This Court, having reviewed the papers and pleadings on file herein, the evidence and declarations on file herein, the papers and pleadings filed in this matter, and oral argument of

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1 counsel, hereby ORDERS that Defendants' Motion for Attorney's Fees and Costs is GRANTED  
2 IN PART, and enters JUDGMENT, based on the following:

3 1. Defendants' Motion seeks attorney's fees based on a contractual provision and, in  
4 the alternative, based on rejected offers of judgment under NRCP 68.

5 2. The contract at the heart of this litigation contained an express and unambiguous  
6 provision entitling the prevailing party to recover reasonable attorney's fees and costs incurred in  
7 litigation arising out of the contract. *See* Plaintiff's offer dated January 12, 2015; Defendants'  
8 counter-offer dated January 13, 2015; and Closing Agreement dated March 24, 2015.

9 3. Thus, both Plaintiff Reynolds and Plaintiff Diamanti are contractually bound to  
10 this fee provision.

11 4. Because Plaintiffs filed suit based on allegations that the Defendants  
12 misrepresented material facts about the business's profitability during negotiations of the sale  
13 agreement, as well as for an alleged breach of contract, this litigation arises out of the contract  
14 between the parties, and thus the prevailing party is entitled to reasonable attorney's fees and  
15 costs. Judgment was entered in Defendants' favor on all of Plaintiffs' claims, making  
16 Defendants the prevailing parties. Therefore, Defendants are entitled under the contract to  
17 recover reasonable attorney's fees and costs incurred in this action.

18 5. On May 25, 2017, Defendants served offers of judgment to both Plaintiff  
19 Reynolds and Plaintiff Diamanti Fine Jewelers, LLC for \$250.00 and \$5,000.00, respectively.

20 6. The decision to award attorney fees is within the sound discretion of the Court.  
21 *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990 (1993) (citing *County of Clark v. Blanchard Constr.*  
22 *Co.*, 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982)).

23 7. The Court considers the amounts offered in Defendants' respective offers of  
24 judgment to be unlikely to have elicited serious consideration of acceptance in the context of the  
25 contentions being vehemently advanced by Plaintiffs at the time the offers were made. *See*  
26 *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 753 (1983). Thus, the Court applies the subject  
27 contractual provision in awarding attorney's fees in lieu of NRCP 68.  
28

1           8.     The Nevada Supreme Court has mandated that a district court analyze the  
2 reasonableness of attorney's fees by considering the factors enumerated in *Brunzell v. Golden*  
3 *Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), which are (1) the qualities of the  
4 advocate; (2) the character of the work to be done; (3) the work actually performed; and (4) the  
5 result.

6           9.     The Court has analyzed the *Brunzell* factors as they relate to the instant motion,  
7 and for the most part agrees with Defendants' analysis proffered in the Motion. The Court  
8 further finds that Plaintiff Reynolds has wide experience in business transactions, that Plaintiffs  
9 made serious allegations against Defendants, and that it would reasonably be expected that  
10 Defendants would vigorously defend themselves, which they did in a professional and  
11 appropriate manner. In light of these considerations, the Court awards reasonable attorney's fees  
12 in the amount of \$50,000.00 and costs in the sum of \$7,941.92 per Defendants' Verified  
13 Memorandum of Costs and Disbursements filed November 16, 2018.

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**ORDER AND JUDGMENT**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED

1. Defendants' Motion for Attorney's Fees and Costs is GRANTED IN PART.

2. Defendant Luxury Holdings LV, LLC is awarded attorney's fees in the sum of \$50,000.00, and Defendants Luxury Holdings LV, LLC and Raffi Tufenkjian are awarded costs in the sum of \$7,941.92.

3. Based upon the foregoing, JUDGMENT is hereby entered and against Plaintiffs Robert G. Reynolds and Diamanti Fine Jewelers, LLC, in the total amount of \$57,941.92, with that entire amount being in favor Defendant Luxury Holdings LV, LLC, and \$7,941.92 of that amount being in favor of Raffi Tufenkjian (joint and severally against each of the Plaintiffs).

4. Consistent with this Order and Judgment, the bond posted by Defendants in support of their petition for pre-judgment writ of attachment is hereby released because, by virtue of this Order and Judgment, a Judgment is entered and thus there is no need for a bond to secure pre-judgment relief.

IT IS SO ORDERED this 13<sup>th</sup> day of February 2019.

DISTRICT JUDGE

Respectfully Submitted By:

MARQUIS AURBACH COFFING

By:

Terry A. Moore, Esq.  
Nevada Bar No. 7831  
Christian T. Balducci, Esq.  
Nevada Bar No. 12688  
*Attorneys for Defendants*