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

SUPPLEMENTAL BRIEFING ON RESPONDENTS' MOTION TO DISMISS

Marquis Aurbach Coffing
Terry A. Moore, Esq.
Nevada Bar No. 7831
Christian T. Balducci, Esq.
Nevada Bar No. 12688
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
tmoore@maclaw.com
cbalducci@maclaw.com
Attorneys for Respondents

I. LEGAL ARGUMENT

This Court's November 1, 2019 Order asks that "[t]he parties shall specifically address whether each of appellants' claims was properly assigned as a result of the execution." *Id.* at pg. 2. In connection with that question, the Court cited to *Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737, 917 P.2d 447 (1996) and *Prosky v. Clark*, 32 Nev. 441, 109 P. 793 (1910) in support of the common law rule that personal tort claims cannot be assigned.

The answer to the question boils down to one key inquiry: were the asserted personal tort claims contractually assigned or judicially executed or assigned? At common law, contractual assignments of personal tort claims violate public policy. Judicial executions and assignments, such as the one at issue here, are expressly governed and permitted by statute.

In order to provide a full and complete answer to the Court's question, this supplemental brief covers a number of topics. First, this brief articulates the claims and defenses asserted in the District Court. Second, this brief covers the basis behind the common law rule prohibiting the assignment of personal tort claims. Third, the brief addresses judicial executions, which are governed by statute and trump the common law. Fourth, statutes trump the common law where both cover the same subject matter but require different results. Fifth, this brief covers the

chose in action sale at hand. Last, this brief discusses how a judicial execution should not be considered an assignment, and instead, should be considered a purchase and sale.

As set forth, Raffi and Luxury Holdings properly acquired Reynolds and Diamanti's chose in action, which includes all of the asserted claims.

A. CLAIMS AND DEFENSES

The operative complaint is the Third Amended Complaint filed by Reynolds and Diamanti. *See* Third Amended Complaint, attached hereto as **Exhibit 10**. At its core, the complaint alleges that Raffi and/or Luxury Holdings sold a business that was not worth what Reynolds/Diamanti were led to believe it was worth, and as their remedy, Reynolds/Diamanti want their money back and be made whole.

From a legal claims perspective, the Third Amended Complaint asserts claims for fraud against Raffi and Luxury Holdings by Reynolds and Diamanti, negligent misrepresentation against Raffi and Luxury Holdings by Reynolds and Diamanti, breach of contract against Luxury Holdings, and elder exploitation against Raffi and Luxury Holdings by Reynolds. *Id.* Although Great Wash Park, LLC was a named defendant, neither Reynolds nor Diamanti asserted any affirmative claims against Great Wash Park, LLC. *Id.*

Raffi and Luxury Holdings answered the complaint. *See* Answer to Third Amended Complaint, attached hereto as **Exhibit 11**. Neither Raffi nor Luxury Holdings asserted any counterclaims. *Id.* They asserted defenses which were true affirmative defenses. Meaning, none of the defenses could be construed as a claim for relief.

B. THE RULE CONCERNING CHAMPERTOUS AGREEMENTS

1. The Rule's Common Law Background.

The common law rule is that the right to a personal tort claim cannot be contractually assigned. This stems from the English common law doctrine of "champerty and maintenance." Relying significantly upon this Court's prior decisions, the 9th Circuit Court of Appeals provided a thorough summary of the doctrine of champerty and maintenance in *Del Webb Communites, Inc. v. Partington*:

> "Champerty" generally refers to an agreement in which " 'a person without interest in another's litigation undertakes to carry on the litigation at his own expense, in whole or in part, in consideration of receiving, in the event of success, a part of the proceeds of the litigation.' " *Schwartz v. Eliades*, 113 Nev. 586, 939 P.2d 1034, 1036 (1997) (per curiam) (quoting *Martin v. Morgan Drive Away, Inc.*, 665 F.2d 598, 603 (5th Cir.1982)). "Maintenance" refers to a person assisting in litigation in which he has no interest. *Vosburg Equip. v. Zupancic*, 103 Nev. 266, 737 P.2d 522, 523 (1987); *see also In re Primus*, 436 U.S. 412, 424 n. 15, 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978) ("Put simply, maintenance is helping another prosecute a suit [and] champerty is maintaining a suit in return for a financial interest

> in the outcome....”). The law on champerty and maintenance begins in antiquity with the Greek view that even a party’s advocate should have a personal interest in the litigation, such as family ties. Max Radin, MAINTENANCE BY CHAMPERTY, 24 CAL. L. REV. 48, 48–49 (1935). In feudal England, clerical opposition to litigation, especially in secular courts; fear that lords would purchase land with clouded title to aggrandize their estates; and concerns that the wealthy would purchase meritorious claims for insignificant amounts from plaintiffs too poor to prosecute them drove royal regulation of champerty and maintenance. *Id.* at 64–66. In this country, champerty and maintenance exist under the law of many states, but the doctrines are “most visible” as a contract defense. *See* Paul Bond, Comment, MAKING CHAMPERTY WORK: AN INVITATION TO STATE ACTION, 150 U. PA. L. REV. 1297, 1304 (2002) (conducting a fifty-state survey).

652 F.3d 1145, 1153 – 1155 (2011).

In *Prosky*, this Court explained that “the great weight of authority” recognizes champerty and maintenance only as a defense to enforcing a champertous agreement. *Id.*, 32 Nev. at 441, 109 P. at 794. “[T]he rule rendering contracts void for champerty, cannot be invoked except between the parties to the champertous agreement in cases where such contract is sought to be enforced.” *Id.*

2. <u>The Rule Only Applies to Champertous Agreements</u>

On nearly every occasion where this Court has commented that tort claims cannot be assigned, a contract either assigning the tort claim or its financial recovery were at issue. *Prosky*, for example, included general discussions as to whether a plaintiff was the subject of a champertous contract. 32 Nev. 441, 109 P. 793. At issue in *Gruber* was a contract “made for the purpose of enabling her

[Gruber] to maintain the aforesaid action in her own name." *Gruber v. Baker*, 20 Nev. 453, 23 P. 858 (1890). *Davenport* and *Maxwell* both discussed subrogation provisions in insurance contracts. *Davenport v. State Farm Mut. Auto. Ins. Co.*, 81 Nev. 361, 404 P.2d 10 (1965); *Maxwell v. Allstate Ins. Co.*, 102 Nev. 502, 728 P.2d 812 (1996). *Vosburg* dealt with an attorney fee and cost sharing agreement between four individuals that were each aggrieved by the same defendant. *Vosburg Equipment v. Zupancic*, 103 Nev. 266, 737 P.2d 522 (1987). *Lum* somewhat addresses a similar topic, but in that case, it was a *Mary Carter* agreement that was at issue. *Lum v. Stinnett*, 87 Nev. 402, 488 P.2d 347 (1971) (discussing a *Mary Carter* agreement made between certain defendants' insurers and plaintiff's counsel before trial which resulted a directed verdict for the insurers insureds).

The one case addressing the assignment of a claim via execution as against public policy is *Chaffee*. *Chaffee v. Smith*, 98 Nev. 222, 645 P.2d 966 (1982). That case, however, is factually unique and inapplicable here in that "the transferred interest involves a previously unasserted claim." *Id.*

The conclusion to be drawn from each of these cited examples is that, at common law, contractually assigning away an asserted personal tort claim is void as against public policy.

C. JUDICIAL EXECUTION AND JUDICIAL ASSIGNMENT OF AN ASSERTED CLAIM IS GOVERNED AND AUTHORIZED BY STATUTE

Different than private contractual agreements, judicial execution of asserted claims and assignment are governed by our Nevada statutes, thus removing such procedures from the ambit of the common law. *Gallegos* is the seminal case addressing judicial execution and assignment of choses in action. *Gallegos* expressly confirms that the judicial execution and judicial assignment of claims is a creature of statute authorized by our laws:

> To resolve this appeal, we must determine whether a right of action held by a judgment debtor is property that can be judicially assigned in a proceeding supplementary to the execution of a judgment. Nevada's statutory scheme regarding enforcement of judgments is laid out in NRS Chapter 21. NRS 21.320 provides that a district court "may order any property of the judgment debtor not exempt from execution ... to be applied toward the satisfaction of the judgment." Accordingly, so long as a right of action is "property ... not exempt from execution," it may be judicially assigned in satisfaction of a judgment. NRS 21.320.
>
> To help us determine whether a right of action is "property ... not exempt from execution," we turn to NRS 21.080(1). That statute provides that: "[a]ll goods, chattels, money and other property, real and personal, of the judgment debtor, or any interest therein of the judgment debtor not exempt by law, and all property and rights of property seized and held under attachment in the action, are liable to execution." NRS 21.080(1). NRS 10.045 further defines "[p]ersonal property" as including "money, goods, chattels, *things in action* and evidences of debt." (Emphasis added.) *See also* NRS 10.010 (providing that the definition used in NRS 10.045 applies to the entire statutory title, including NRS 21.080). A "thing in action,"

> alternatively referred to as a "chose in action," is defined as a "right to bring an action to recover a debt, money, or thing." Black's Law Dictionary 1617, 275 (9th ed. 2009).
>
> Based on the above statutory authority, we conclude that rights of action held by a judgment debtor are personal property subject to execution in satisfaction of a judgment.

Gallegos v. Malco Enterprises of Nevada, Inc., 127 Nev. 579, 581–82, 255 P.3d 1287, 1289 (2011).

Ultimately, the key difference between contractual and judicial execution/assignment is that contractual assignment is governed by common law, whereas judicial execution and assignment is governed by statute. And, our statute expressly authorizes execution upon a chose in action in satisfaction of a judgment.

D. WHERE COMMON LAW AND STATUTES CONFLICT, STATUTES TRUMP

Our Legislature makes policy and value choices by enacting laws, and the judiciary's role is to construe and apply those laws. *See, e.g., N. Lake Tahoe Fire Prot. Dist. v. Washoe Cnty. Bd. Of Cnty. Comm'rs*, 129 Nev. 682, 688, 310 P.3d 583, 588 (2013). So, when the Legislature omits language from a statute that lists certain things, courts must assume that the choice was deliberate. *See, e.g., State v. Javier C.*, 128 Nev. 536, 541, 289 P.3d 1194, 1197 (2012) ("Nevada follows the maxim 'expressio unius est exclusio alterius,' the expression of one thing is the exclusion of another"); ANTONIN SCALIA & BRYAN A. GARNER, READING LAW:

THE INTERPRETATION OF LEGAL TEXTS 93 (1st ed. 2012) ("Nothing is to be added to what the text states or reasonably implies (*casus omissus pro omisso habendus est*). That is, a matter not covered is to be treated as not covered."). "Nevada has by statute adopted the principles of the common law and has in a number of instances modified the common law by statutory enactment." *Cunningham v. Washoe Cty.*, 66 Nev. 60, 64, 203 P.2d 611, 613 (1949). This reasoning explains why execution upon a chose in action is permissible (it is addressed in the statute), whereas execution upon a defense is not (it is omitted from the statute). *Butwinick v. Hepner*, 128 Nev. 718, 291 P.3d 119 (2012) (stating legal defenses are not a thing in action, only claims are things in action).

The same holds true with this Court's conclusion in *Chaffee*. As explained by the *Gallegos* court, a chose in action is an actual, tangible, thing. An unasserted claim is not a thing and it is not actual. Since an unasserted claim is one which has not been filed, it is not in action in all. Thus, this Court's conclusion in *Chaffee* is entirely consistent with *Gallegos* and entirely consistent with the statute enacted by our Legislature.

In enacting NRS 1.030, our Legislature decided when the common law would and would not apply. Specifically, the common law applies unless it is repugnant to a law of this State. *Id.* ("The common law of England, so far as it is

not repugnant to or in conflict with the Constitution and laws of the United States, or the Constitution and laws of this State, shall be the rule of decision in all the courts of this State.").

The common law prohibits champertous agreements which assign certain types of claims. However, that is not the case under Nevada's execution statutes. Rather, execution upon a chose in action is expressly authorized. The execution statutes trump common law and apply. Thus, any cases relying upon the common law have little to no application in this instance.

E. RAFFI AND LUXURY HOLDINGS PROPERLY EXECUTED UPON, AND NOW OWN, THE ENTIRETY OF REYNOLDS AND DIAMANTI'S CHOSE IN ACTION

Here, NRS Chapter 21 specifically addresses execution upon a judgment, and expressly authorizes execution upon personal property. As stated in *Gallegos*, NRS 10.045 defines "[p]ersonal property" as including "money, goods, chattels, *things in acti*on and evidences of debt." *See also* NRS 10.010 (providing that the definition used in NRS 10.045 applies to the entire statutory title, including NRS 21.080). "A 'thing in action,' alternatively referred to as a 'chose in action,' is defined as a 'right to bring an action to recover a debt, money, or thing.'" *Gallegos*, 127 Nev. at 581–82, 255 P.3d at 1289 (citing and quoting Black's Law Dictionary 1617, 275 (9th ed. 2009)).

Nowhere within NRS Chapters 21 or 10 is there any provision carving out personal tort claims which have been asserted from execution. As cited above, when the Legislature omits language from a statute that lists certain things, courts must assume that the choice was deliberate. *See, e.g., Javier C.,* 128 Nev. at 541, 289 P.3d at 1197 ("Nevada follows the maxim 'expressio unius est exclusio alterius,' the expression of one thing is the exclusion of another"). This omission is deemed deliberate. Therefore, all of Reynolds and Diamanti's personal property is subject to execution. This includes their asserted chose in action, in its entirety.

By way of example, if our Legislature intended for certain causes of action to be excluded from execution, it would have followed California: "Unlike California, Nevada has not amended its execution statutes to prohibit levy and execution upon causes of action. Instead, Nevada's statutory scheme is strikingly similar to former California law which California courts interpreted to permit execution upon a 'thing in action.'" *Denham v. Farmers Ins. Co.*, 213 Cal. App. 3d 1061, 1071, 262 Cal. Rptr. 146, 152 (Cal. App. Ct. 1989). It has not followed California's example.

Thus, all of Reynolds and Diamanti's claims are subject to execution. Moreover, since Reynolds and Diamanti did in fact assert their claim, it is a thing in action which is personal property to execute upon. This conclusion is consistent

with Nevada's policy that judgment creditor statutes be liberally construed. *Gallegos,* 127 Nev. at 582, 255 P.3d at 1289. Because Luxury Holdings and Raffi now own the chose of action, they have every right to dismiss it, and request that this Court grant their motion and do so.

F. CALLING RAFFI AND LUXURY HOLDING'S ACQUISITION OF THE CHOSE IN ACTION MISCHARACTERIZES THE EXECUTION

While it is true that *Gallegos* refers to the post-execution proceeding as a judicial assignment supplementary to the execution of a judgment, it is respectfully submitted that the result of a successful execution is not an assignment. Instead, it is a sale where the winning bidder is the purchaser and becomes the owner. A review of Chapter 21 reveals that nothing in that chapter characterizes the Sheriff's Sale as an assignment. NRS 21.130 specifically calls the auction a "sale of property on execution." NRS 21.130(1). The word "sale" appears in Chapter 21 no fewer than in fifty different locations. Execution sales are also referred to as "Sheriff's Sales."

This is consistent with the vernacular utilized at auctions. The winning bidder of a classic car at Barrett Jackson Car Auction does not become an assignee. They are the purchaser and owner. On a more basic level, no one is assigned groceries at Albertson's. They buy them. Consequently, it is more appropriate to

say that Raffi and Luxury Holdings purchased and now own the subject chose in action.

II. CONCLUSION

For the foregoing reasons, the motion should be granted and this appeal be dismissed.

Dated this 18th day of November, 2019.

MARQUIS AURBACH COFFING

By */s/ Christian T. Balducci*
Terry A. Moore, Esq.
Nevada Bar No. 7831
Christian T. Balducci, Esq.
Nevada Bar No. 12688
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for Respondents

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☐ proportionally spaced, has a typeface of 14 points or more and contains _____ words; or

☒ does not exceed 15 pages.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 18th day of November, 2019.

MARQUIS AURBACH COFFING

By */s/ Christian T. Balducci*

Terry A. Moore, Esq.
Nevada Bar No. 7831
Christian T. Balducci, Esq.
Nevada Bar No. 12688
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for Respondents

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **SUPPLEMENTAL BRIEFING ON RESPONDENTS' MOTION TO DISMISS** was filed electronically with the Nevada Supreme Court on the 18th day of November, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Bradley M. Marx, Esq.
brad@marxfirm.com
Attorneys for Plaintiffs

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A

/s/ Cheryl Becnel
An employee of Marquis Aurbach Coffing

Exhibit 10

AMCOMP
PETER L. CHASEY, ESQ.
Nevada Bar No. 007650
CHASEY LAW OFFICES
3295 N. Fort Apache Road, Suite 110
Las Vegas, Nevada 89129
Tel: (702) 233-0393 Fax: (702) 233-2107
email: peter@chaseylaw.com
Attorney for Plaintiffs
ROBERT G. REYNOLDS and
DIAMANTI FINE JEWELERS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT G. REYNOLDS, an individual, and DIAMANTI FINE JEWELERS, LLC, a Nevada Limited Liability Company, Plaintiff, vs. RAFFI TUFENKJIAN, an individual, and LUXURY HOLDINGS LV, LLC, a Nevada Limited Liability Company, GREAT WASH PARK, LLC, a Nevada Limited Liability Company d/b/a TIVOLI VILLAGE, DOES 1-10, and ROE CORPORATIONS 1-10 inclusive, Defendants.	CASE NO.: A-17-753532-C DEPT NO.: XIII ***THIRD AMENDED COMPLAINT***

COME NOW Plaintiffs ROBERT G. REYNOLDS, an individual, and DIAMANTI FINE JEWELERS, LLC, a Nevada Limited Liability Company, by and through their counsel of record at Chasey Law Offices, and hereby allege and complain as follows:

///

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

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

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

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

II.

COMMON FACTUAL ALLEGATIONS

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

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

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

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

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

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

///

///

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

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

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

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

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

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

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

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

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

B. Contracts to Purchase Business and Inventory

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

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

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

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

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

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

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

C. Assignment and Guaranty of the Lease

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

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

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

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

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

D. Discovery of Defendants' Misrepresentations

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

III.

FIRST CAUSE OF ACTION
Fraud / Intentional Misrepresentation

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

32. Defendant Tufenkjian and Defendant Luxury Holdings both:

A. knew the business' taxable revenue in 2014,

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

C. knew the business' actual customer list,

D. knew the business did not hold title to the FF&E, and

E. knew the business' cost of inventory.

///

///

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.

///

///

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.

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).

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

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

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

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

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

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

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

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.

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

VII.

PRAYER FOR RELIEF

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

A. An Order rescinding the purchase and sale agreement for the business,

B. An Order rescinding the Lease and Personal Guaranty of the lease,

C. An award of damages sufficient to compensate Plaintiffs for the losses caused by Defendants' intentional misrepresentations,

D. An award of damages sufficient to compensate Plaintiffs for the losses caused by Defendants' negligent misrepresentations,

E. An award of economic damages sufficient to compensate Plaintiff Diamanti for the damages caused by Defendant Luxury Holdings' breaches of contract,

F. An award of double damages to compensate Plaintiff Reynolds for his losses caused by Defendant Tufenkjian's exploitation,

G. An award of damages sufficient to punish and make an example of Defendants' oppression, fraud, and malice,

H. An award of attorneys' fees, costs, and interest pursuant to Nevada law, and

I. Such other and further relief as this Court finds just and proper.

Dated this 1ST day of November, 2017.

CHASEY LAW OFFICES

PETER L. CHASEY, ESQ.
Nevada Bar No. 007650
3295 N. Fort Apache Road, Suite 110
Las Vegas, Nevada 89129
Attorney for Plaintiffs
ROBERT G. REYNOLDS and
DIAMANTI FINE JEWELERS, LLC

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 11

Marquis Aurbach Coffing
Terry A. Moore, Esq.
Nevada Bar No. 7831
Christian T. Balducci, Esq.
Nevada Bar No. 12688
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
tmoore@maclaw.com
cbalducci@maclaw.com
Attorneys for Defendants
Tufenkjian and Luxury Holdings

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT G. REYNOLDS, an individual, DIAMANTI FINE JEWELERS, LLC, a Nevada limited liability company, Plaintiff, vs. RAFFI TUFENKJIAN, an individual, and LUXURY HOLDINGS LV, LLC, a Nevada Limited Liability Company, GREAT WASH PARK, LLC, a Nevada Limited Liability Company d/b/a TIVOLI VILLAGE DOES 1-10, and ROE CORPORATIONS 1-10 inclusive, Defendant.	Case No.: A-17-753532-B Dept. No.: XIII

ANSWER TO THIRD AMENDED COMPLAINT

Defendants Raffi Tufenkjian (hereinafter "Tufenkjian") and Luxury Holdings LV, LLC (hereinafter "Luxury Holdings") by and through their attorneys of record, the law firm of Marquis Aurbach Coffing, hereby answers Plaintiffs' Third Amended Complaint as follows:

1. In answering Paragraph 1 of Plaintiffs' Third Amended Complaint, Tufenkjian and Luxury Holdings hereby admit Paragraph 1 in part as follows. Defendants admit that Robert G. Reynolds is an individual residing in Clark County, Nevada. They are without knowledge or information sufficient to form a belief as to Robert G. Reynolds's age, and thus, the same is denied. Admit that Robert G. Reynolds is the Organizer and Manager of Plaintiff Diamanti Fine Jewelers, LLC.

2. In answering Paragraphs 2, 3 and 4 of Plaintiffs' Third Amended Complaint, Tufenkjian and Luxury Holdings admit the allegations contained therein.

3. In answering Paragraphs 33, 34, 35, 36, 37, 38, 39, 40, 43, 44, 45, 46, 47, 48, 49, 53, 54, 55, 58, 59, 60, 61, 62, 63, 64, 65 and 66 of Plaintiffs' Third Amended Complaint, Tufenkjian and Luxury Holdings deny the allegations contained therein.

4. In answering Paragraphs 5, 6, 7, 8, 9, A, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, B, 23, 24, 25, C, 26, 27, 28, 29, D, 30, 32, 42, 51, 52 and 57 of Plaintiffs' Third Amended Complaint, Tufenkjian and Luxury Holdings are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore, deny the same.

5. In answering Paragraphs 31, 41, 50 and 56 of Plaintiffs' Third Amended Complaint, Tufenkjian and Luxury Holdings repeat and reallege each and every response thereto.

6. As to any remaining allegations not specifically responded to, Tufenkjian and Luxury Holdings deny the same.

AFFIRMATIVE DEFENSES

1. Luxury Holdings did not breach any contract.

2. Luxury Holdings fully performed the contract.

3. The misrepresentation claims, each of them, are barred because it was contractually agreed that plaintiffs did not rely on anything provided by defendants and relied solely upon their own independent investigation.

4. No were no false representations of material facts.

5. There was no intent to defraud.

6. Plaintiffs did not detrimentally rely on any misrepresentations, if any.

7. Plaintiffs have failed to assert claims against necessary and indispensable parties, meaning, no rescission can be granted.

8. No duty to plaintiffs was breached.

9. It was an arm-length transaction.

10. Offset.

11. Reynolds is not a real party in interest.

MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

12. Reynolds suffered no loss.

13. Plaintiffs' damages, if any, are proximately caused by themselves and their inability to run a business.

14. Comparative fault and contribution.

15. The due diligence period was open and provided Plaintiffs with an opportunity to do due diligence, yet, they failed to make a reasonable inquiry or conduct due diligence.

16. The purchase contract provides that Plaintiff(s) shall, in the sole and absolute discretion, may determine whether the business is acceptable and subsequently determined it was acceptable and closed the transaction.

17. Plaintiffs were required to rely exclusively upon their own investigation.

18. Plaintiffs have failed to state a claim upon which relief may be granted.

19. Rescission is impossible because Plaintiffs have destroyed and mismanaged the business, have failed to replace stock with quality pieces and have destroyed the reputation of Diamanti Jewelers.

20. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein, in so far as sufficient facts were not available after a reasonable inquiry upon the filing of Tufenkjian and Luxury Holdings' Answer to Plaintiffs' Third Amended Complaint; therefore, Defendant reserves the right to amend their answer to allege additional affirmative defenses if subsequent investigations so warrant.

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment against Plaintiffs as follows:

1. That Plaintiffs take nothing by way of its Third Amended Complaint and that the same be dismissed with prejudice;

2. For an award of reasonable attorney fees and costs of suit;

3. For a determination that Plaintiffs' suit is frivolous and intended to harass;

4. For interest from the date each attorney fee and cost invoice was paid; and

5. For any further relief as the Court deems to be just and proper.

Dated this 26th day of July, 2018.

MARQUIS AURBACH COFFING

By */s/ Christian T. Balducci*
Terry A. Moore, Esq.
Nevada Bar No. 7831
Christian T. Balducci, Esq.
Nevada Bar No. 12688
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Defendants
Tufenkjian and Luxury Holdings

MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **ANSWER TO THIRD AMENDED COMPLAINT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 26th day of July, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:[1]

Chasey Law Offices	
Contact	**Email**
Peter Chasey	peter@chaseylaw.com
Shannon	shannon@chaseylaw.com

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A

/s/ Cheryl Becnel
An employee of Marquis Aurbach Coffing

[1] Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).