

Case No. 78341

In the Supreme Court of Nevada

In the Matter of the Estate of
MILTON I. SCHWARTZ, deceased.

A. JONATHAN SCHWARTZ, Executor of
the Estate of MILTON I. SCHWARTZ,

Appellant,

vs.

THE DR. MIRIAM AND SHELDON G.
ADELSON EDUCATIONAL INSTITUTE,

Respondent.

Electronically Filed
Jan 29 2020 04:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable GLORIA J. STURMAN, District Judge
District Court Case No. 07-P061300-E

**APPELLANT'S
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DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
DALE KOTCHKA-ALANES (SBN 13,168)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

ALAN D. FREER (SBN 7706)
ALEXANDER G. LEVEQUE (SBN 11,183)
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 853-5483

Attorneys for Appellants

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31	Supplement to Opposition to Motion for Partial Summary Judgment	07/02/14	6	1274–1280
61	Supplement to Opposition to Motion for Summary Judgment Regarding Breach of Contract and Countermotion for Advisory Jury	08/08/18	10	2387–2416
28	Supplement to Petition for Declaratory Relief to Include Remedies of Specific Performance and Mandatory Injunction	05/28/17	5	1159–1165
64	Supplement to the Estate's Motion for Reconsideration of: The Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Oral Contract	08/14/18	11	2624–2646
60	Supplement to the Estate's Opposition to Motion for Partial Summary Judgment Regarding Fraud	08/08/18	10	2353–2386
105	The Adelson Campus' Motion to Re- Tax and Settle Costs	03/06/19	26	6479–6489

53	The Adelson Campus' Opposition to the Estate's Countermotion for Advisory Jury	07/23/18	9	2156–2161
66	The Adelson Campus' Opposition to the Estate's Motion for Reconsideration of the Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Contract and Countermotion to Strike the 8/14/18 Declaration of Jonathan Schwartz and All Attached Exhibits in Support	08/16/18	12	2765–2792
93	The Adelson Campus' Opposition to the Estate's Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	11/21/18	24	5789–5803
59	The Adelson Campus' Pre-Trial Memorandum	08/07/18	10	2275–2352
54	The Adelson Campus' Reply in Support of Motion for Partial Summary Judgment Regarding Fraud	08/02/18	9	2162–2177
55	The Adelson Campus' Reply in Support of Motion for Partial Summary Judgment Regarding Statute of Limitations	08/02/18	9	2178–2209
111	The Adelson Campus' Reply in Support of Motion to Re-Tax and Settle Costs	04/04/19	27	6547–6553
92	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Opposition to the Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered October 4, 2018	11/21/18	23 24	5694–5750 5751–5788
95	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Opposition to the Estate's Post-Trial	12/21/18	24	5817–5857

	Brief Regarding the Parties' Equitable Claims and for Entry of Judgment			
85	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Verified Memorandum of Costs	10/11/18	19	4576–4579
71	The Estate's Motion for Judgment as a Matter of Law Regarding Construction of Will	09/03/18	18	4334–4341
89	The Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered October 4, 2018	10/22/18	21 22	5168–5250 5251–5455
63	The Estate's Motion for Reconsideration of: The Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Oral Contract and Ex Parte Application for an Order Shortening Time	08/14/18	11	2539–2623
110	The Estate's Opposition to the Adelson Campus' Motion to Re-Tax and Settle Costs	03/25/19	27	6522–6546
57	The Estate's Pretrial Memorandum	08/06/18	9 10	2246–2250 2251–2263
58	The Estate's Pretrial Memorandum	08/06/18	10	2264–2274
94	The Estate's Reply to Adelson Campus's Opposition to Motion for Post-Trial Relief from Judgment on Jury Verdict Entered on October 4, 2018	12/21/18	24	5804–5816
96	The Estate's Response to the Adelson Campus' Post-Trial Brief on Outstanding Claims	12/21/18	24	5858–5923
32	Transcript for Motion for Summary Judgment	07/09/14	6	1281–1322
21	Transcript of Proceeding: Motion for Reconsideration	12/10/13	3	639–669
42	Transcript of Proceedings: Motion for Protective Order on Order Shortening Time	04/19/17	6	1465–1482

22	Transcription of Discovery Commissioner Hearing Held on January 29, 2014	01/29/14	3	670–680
136	Trial Exhibit 111		28	6868–6869
152	Trial Exhibit 1116A		29	7008
137	Trial Exhibit 112		28	6870
138	Trial Exhibit 113		28	6871
139	Trial Exhibit 114		28	6872
140	Trial Exhibit 115		28	6873
141	Trial Exhibit 118		28	6874–6876
142	Trial Exhibit 128		28	6877
143	Trial Exhibit 130		28	6878–6879
144	Trial Exhibit 134		28	6880–6882
145	Trial Exhibit 139		28	6683–6884
123	Trial Exhibit 14		27	6626–6628
146	Trial Exhibit 149		28	6885–6998
147	Trial Exhibit 158		28	6999
148	Trial Exhibit 159		28	7000
149	Trial Exhibit 162		28	7001
150	Trial Exhibit 165		29	7002
124	Trial Exhibit 17		27	6629–6638
125	Trial Exhibit 22		27	6639–6645
126	Trial Exhibit 28		27	6646–6647
118	Trial Exhibit 3		27	6607–6609
127	Trial Exhibit 38		27	6648–6649
151	Trial Exhibit 384		29	7003–7007
119	Trial Exhibit 4		27	6610–6611
128	Trial Exhibit 41		27	6650–6675
129	Trial Exhibit 43		27	6676–6679
130	Trial Exhibit 44		27	6680–6682
120	Trial Exhibit 5		27	6612–6620
131	Trial Exhibit 51		27	6683–6684
132	Trial Exhibit 52		27	6685–6686
133	Trial Exhibit 55		27	6687–6713
121	Trial Exhibit 6		27	6621
134	Trial Exhibit 61		27 28	6714–6750 6751–6799

135	Trial Exhibit 62		28	6800–6867
122	Trial Exhibit 9		27	6622–6625
69	Trial Transcripts (Rough Drafts)	09/03/18	12 13 14 15 16 17 18	2903–3000 3001–3250 3251–3500 3501–3750 3751–4000 4001–4250 4251–4304
76	Verdict Form	09/05/18	19	4513–4516
103	Verified Memorandum of Costs of A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz	02/27/19	25	6111–6015

EXHIBIT “2”

MAR-04-2010 12:21

SCHWARTZ OFFICE

7823876770 P. 32-04

THE HEBREW ACADEMY
Minutes of the Board of Trustees
Special Meeting
August 14, 1989

Present:

Elliott Klain
Gerri Rentchler — 388-GIFT / 10AM
Neville Pokroy
Fred Berkley
George Rudiak
Tamar-Lubin
Milton Schwartz
Roberta Sabbath
Susan McGarraugh

Milton Schwartz called the meeting to order at 1:30p.m.

The minutes were approved as read.

Because of the change in format in 1988, the Jewish Federation will not give the Hebrew Academy the \$41,000 allocation for scholarships provided. The Hebrew Academy provided \$28,000 worth of scholarships in 1988 and has a policy not to give the recipient's names to anyone. The Jewish Federation is now requesting this information due to their "new" format.

Milton Schwartz would like to meet with Lenny Schwartz, Tamar-Lubin Saposhnik, and Norm Kaufman tomorrow (8-15-89) to discuss the "new" format of the Jewish Federation because the "rules" for 1988 were changed after the school year. (That is: they now request the recipients names for the scholarships).

George Rudiak moved that the Board accepts, with thanks, the donations from Milton Schwartz, George and Gertrude Rudiak, and Paul Sogg. A letter should be written to Milton Schwartz stating the Academy will be named after him. A letter should be written to Paul Sogg stating that a room or building will be named after him and Mr. Sogg has 60 days in which to choose. A letter should be written to George and Gertrude Rudiak stating that they have until December 31, 1989 as to which room they would like to named after their daughter, Gerri Rentchler.

The Board decided to add six additional class-rooms to the existing plans for an additional \$360,000.

A motion was made by Roberta Sabbath to honor Milton Schwartz at the next Gala (10-28-89). And also to have Milton Schwartz present a special award to Paul Sogg at the Gala. Tamar-Lubin Saposhnik seconded. All approved.

Motion to adjourn meeting at 2:15pm. Seconded and approved.

Susan McGarraugh
Susan McGarraugh
Acting Secretary

MCP-04-2010 12:21

SCHWARTZ OFFICE

7023878770

P.01-04

A. Jonathan Schwartz, Esq.
 MILTSON CONSULTING, INC.

2293 Duneville Street

Las Vegas, NV 89146

(702)383-6767 - Phone

(702)387-8770 - Fax

TO: _____

FROM: _____

DATE: _____

RE: _____

FAX NUMBER: _____

PAGES (INCLUDING COVER): 4

Fred should have
 "Staff" on this issue

I found two more copies of
 the unsigned letter.
 note date of minutes

This message is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If the reader of this is not the intended recipient, or the employee or agent for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is strictly prohibited.

August 14, 1989

Milton I. Schwartz
2120 Silver Avenue
Las Vegas, Nevada 89102

RE: Gift of Milton I. Schwartz to The Hebrew Academy

Dear Mr. Schwartz:

The Hebrew Academy acknowledges with thanks your generous gift of \$500,000 to be used in the Academy's building program for the construction of the new campus at Summerlin.

In appreciation and recognition of this gift, the Board of Trustees of The Hebrew Academy has decided to name the new campus the "Milton I. Schwartz Hebrew Academy," in perpetuity for so long as The Hebrew Academy exists and for so long as may be permitted by law, your name to be appropriately commemorated and memorialized at the academy campus.

Sincerely yours,

EXHIBIT “3”

MAR-04-2010 15:35

SCHWARTZ OFFICE

7023878770

P.03.05

OFFICE OF THE
SECRETARY OF STATE OF THE
STATE OF NEVADA

AUG 22 1990

FRANKIE SUE DEL PAPA, SECRETARY OF STATE

CERTIFICATE OF AMENDMENT OF THE
ARTICLES OF INCORPORATION OF
THE HEBREW ACADEMY
A Nevada Non-Profit Corporation

FILED

AUG 29 2 49 PM '90

NO. 1025

The undersigned, being the President and Secretary of the
Board of Trustees of THE HEBREW ACADEMY, hereby certify as
follows:

1. The original Articles of Incorporation were filed in the Office of the Secretary of State for the State of Nevada on the 27th day of February, 1980.
2. That on the 14th day of August, 1989, at a special meeting of the Board of Trustees of said corporation, duly called and convened, at which a quorum for the transaction of business was present, notice of said meeting having been previously waived by the Trustees of said corporation in writing, the following resolution was adopted by the Board of Trustees of said corporation:

RESOLVED: That it is advisable and in the best interests of this Corporation that its Articles of Incorporation be amended by changing the language of Article I of said Articles to read as follows:

ARTICLE I

This corporation shall be known as:

THE MILTON I. SCHWARTZ HEBREW ACADEMY

IN WITNESS WHEREOF, the undersigned, the President and Secretary of the Board of Trustees of THE HEBREW ACADEMY, a

///

///

///

MAR-04-2010 15:35

SCHWARTZ OFFICE

7023878770

P.04/05

Nevada non-profit corporation, have executed and acknowledged these presents this 14th day of August, 1990.

MILTON I. SCHWARTZ, President

LENARD E. SCHWARTZER, Secretary

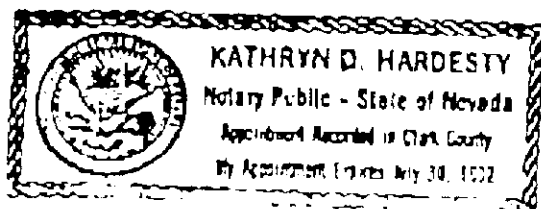
STATE OF NEVADA)

SS:

COUNTY OF CLARK)

On this 13th day of August, 1990, personally appeared before me, a Notary Public in and for said County and State, MILTON I. SCHWARTZ, known to me to be the President, and who is authorized to execute this instrument on behalf of THE HEBREW ACADEMY, a Nevada non-profit corporation. He acknowledged to me that he executed this instrument and, upon oath, did depose and say that he is the officer of the corporation as designated above, that he is acquainted with the seal of the corporation, and that the seal affixed to this instrument is the corporate seal of the corporation; that the signatures on this instrument were made by the officers of the corporation as indicated after their signatures; that the corporation executed this instrument freely and voluntarily, and for the uses and purposes therein mentioned.

WITNESS MY HAND AND OFFICIAL SEAL.



Kathryn D. Hardesty
NOTARY PUBLIC

MAR-04-2010 15:35

SCHWARTZ OFFICE

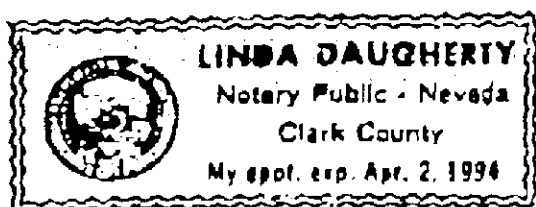
7023878773 P.05/05

STATE OF NEVADA)
 SS:
 COUNTY OF CLARK)

On this 14 day of August, 1990, personally appeared before me, a Notary Public in and for said County and State, LENARD E. SCHWARTZER, known to me to be the Secretary, and who is authorized to execute this instrument on behalf of THE HEBREW ACADEMY, a Nevada non-profit corporation. He acknowledged to me that he executed this instrument and, upon oath, did depose and say that he is the officer of the corporation as designated above, that he is acquainted with the seal of the corporation, and that the seal affixed to this instrument is the corporate seal of the corporation; that the signatures on this instrument were made by the officers of the corporation as indicated after their signatures; that the corporation executed this instrument freely and voluntarily, and for the uses and purposes therein mentioned.

WITNESS MY HAND AND OFFICIAL SEAL.

[Signature]
 NOTARY PUBLIC



TOTAL P.05

EXHIBIT “4”

FEB 04 '91 15:25

P: 2/10

TO: <i>Dr. Ed Goldstein</i>	FROM: <i>Milton Schwartz</i>	DATE: <i>5/19/92</i>
FAX #: <i>749-5505</i>	FAX #:	PHONE #: <i>385-6709</i>
		PAGES INCLUDING THIS PAGE: <i>9</i>

BYLAWS OF

Exhibit A

THE MILTON I. SCHWARTZ HEBREW ACADEMY

ARTICLE I

NAME AND OFFICE

1. Name: The name of this corporation is The Milton I. Schwartz Hebrew Academy (hereinafter referred to as The Academy) and shall remain so in perpetuity.

2. Office: The principal office of the corporation shall be at 9700 W. Hillpointe Road, Las Vegas, Nevada.

ARTICLE II

TRUSTEES

1. The governing board of the corporation shall be known as the Board of Trustees and the membership of the Board of Trustees shall constitute the corporation.

2. The Board of Trustees shall be composed of fourteen members elected by the Board of Trustees and the school head.

3. In the event the parents of the students of The Academy form a parent-teacher organization with dues paying members representing at least fifty percent of the student body, which holds regular meetings, such organization shall be entitled to one representative to the Board of Trustees at the discretion of the Board of Trustees and, dependent upon the activity level and services rendered to The Academy by the parent-teacher organization.

4. In the event of a vacancy during the term of a trustee, the Board of Trustees shall appoint, after due consultation with the nominating committee, a person to fill the unexpired term.

BYLAWS OF

THE MILTON I. SCHWARTZ HEBREW ACADEMY

ARTICLE I

NAME AND OFFICE

1. Name: The name of this corporation is The Milton I. Schwartz Hebrew Academy (hereinafter referred to as The Academy) and shall remain so in perpetuity.
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4. In the event of a vacancy during the term of a trustee, the Board of Trustees shall appoint, after due consultation with the nominating committee, a person to fill the unexpired term.

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P13/10

5. Election of members of the Board of Trustees shall be conducted during the regular June meeting of the corporation or as soon thereafter as possible.

6. The election of the Chairman of the Board of Trustees, president, vice president, secretary and treasurer's offices in both the corporation and the Board of Trustees shall be held at the first meeting of the original Board of Trustees for a one-year term. Subsequent elections shall be held in conjunction with the annual June trustee elections.

7. If, for any reason, any trustee is not elected in the time and manner provided for by these Bylaws, such trustee shall continue to serve until such time as his successor has been elected.

8. A functional quorum of trustees shall consist of forty percent of the total number of trustees then serving, except during such periods of time when the total number of trustees actually serving is twelve or less, in which event a quorum shall consist of a majority of such trustees.

9. In the event a trustee fails to attend three consecutive meetings of the Board of Trustees, the Chairman shall direct a letter to be sent to the last known address of such trustee, requesting a written confirmation as to whether or not he/she desires to continue to serve. In the event that the confirmation letter is not received by the chairman prior to a fourth consecutive meeting, which such trustee has failed to attend, the office of the trustee shall be deemed thereafter vacant. In the

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absence of the chairman, the secretary or treasurer may direct such a letter.

10. The Board of Trustees may, from time to time, elect a person to serve as an honorary trustee. An honorary trustee shall be entitled to attend and participate in all meetings of the Board of Trustees but shall have not vote. An honorary trustee shall serve until removed by the Board of Trustees.

ARTICLE III

1. The Chairman shall preside over all meetings of the Board of Trustees. In case of his/her absence, a chairman selected by Board members present shall preside.

ARTICLE IV

COMMITTEES

1. Chairmen: All chairmen of committees shall be chosen by the president annually for one year terms during which each chairman of each committee shall preside over committee affairs, be responsible for active disposal of committee business and be required to give adequate notice to committee members of all committee meetings.

2. Executive Committee: The Executive Committee shall manage the interim business and affairs of the corporation, excepting the Board's power to adopt, amend or repeal bylaws. The Board of Trustees shall have the power to prescribe the manner in which proceedings of the executive committee and other committees shall be conducted. The executive committee shall be composed of the president, the vice president, the treasurer and the secretary.

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The executive committee shall be the primary management mechanism between meetings of the Board of Trustees.

3. Nominating Committee: Members of this committee shall be appointed by the corporate president and the committee shall consist of three trustees. The committee shall submit a full report to the Board of Trustees no later than thirty days in advance of the June election. Any trustee in good standing may freely submit additional nominations, provided that such nominations are submitted in writing to the nominating committee and to the remaining members of the Board of Trustees no later than thirty days prior to the annual election. There shall be no nomination from the floor at the time of the elections.

4. Student Aid Committee: The student aid committee shall be appointed by the president and shall consist of a minimum of three members of the Board of Trustees. This committee shall review and consider all applications received by the Academy from any child enrolling in the Academy seeking a reduction in tuition fees.

5. Corporate Officers: The elected officers of the corporation shall be the same as the officers of the Board of Trustees.

6. Vacancies: The Board of Trustees of the Academy shall alone determine when a vacancy exists in any corporate or Board position appearing on the annual election slate, and shall report all such vacancies, from time to time, to the chairman of the nominating committee, who shall immediately convene his/her

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committee for the purpose of receiving and submitting recommendations to the Board of Trustees in order to fill such vacancies.

7. Removal of Trustee: Any trustee may be removed from office through an affirmative vote by two-thirds of the total members of the Board, pursuant to a motion registered in person at any regular or special meeting called for that purpose; an adequate basis for removal shall consist of any conduct detrimental to the interest of the corporation. Any trustee, properly proposed to be removed because of conduct detrimental to the corporation, shall be entitled to at least five days notice in writing by mail of the meeting during which such removal is to be voted upon and shall be entitled to appear before and be heard at such meeting.

8. Compensation and Expenses: Trustees shall not receive any salary or compensation for their services as Trustee, nor any compensation for expenses incurred in connection with such services.

9. Standing Committees: The following committees shall be designated permanent committees:

- a. Fund-raising
- b. Nominating
- c. Student
- d. Building Fund

10. Other Committees: The president may establish and appoint members in good standing to additional committees, from

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P.7/10

time to time, as he/she or the Board of Trustees may deem appropriate.

ARTICLE V

DESCRIPTION AND DUTIES OF OFFICERS OF THE BOARD

1. Chairman of the Board: The Chairman shall preside at all meetings of the Board of Trustees. One person may hold the position of Chairman and President.
2. President: The president shall preside at all meetings of the Board of Trustees. He/she is authorized to exercise general charge and supervision of the affairs of the corporation and shall be deemed invested with adequate authority to perform such other duties as may be assigned to him/her by the Board of Trustees. He/she shall serve two consecutive terms.
3. Vice President: At the request of the president or in the event of his absence or disability, the vice president shall perform the duties and possess and exercise the correlative powers of the president. To the extent authorized by law, the vice president may be invested with such other powers as the Board of Trustees may determine, and perform such other duties as may be assigned to him/her by the Board of Trustees.
4. Secretary: The secretary shall attend and keep the minutes of all meetings of the Board of Trustees. He/she shall keep an alphabetically arranged record containing names of all members of the corporation, showing their places of residence; such record shall be open for public and member inspection as prescribed by law. He/she shall perform all duties generally incidental to

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the office of secretary, although such duties are subject to the control of the Board of Trustees, additional duties being properly assignable by the Board to the secretary.

5. Treasurer: The treasurer shall maintain all financial records of the corporation and shall supervise and be responsible for those persons whose duty it will be to receive and disburse all corporate funds and maintain complete records of accounts. The treasurer is additionally charged with the preparation and submission of an annual financial statement and a budget to the Board of Trustees.

ARTICLE VI

MEETINGS OF THE BOARD OF TRUSTEES

The Board of Trustees shall meet monthly in accordance with a regular basis to be determined by Board resolution. Additional meetings may be held at the call of the president upon one week's notice. Such notice shall be given in writing if possible, or otherwise by telephone. Meetings may be held at the call of the Chairman without regard to the aforementioned notice requirements, although subject to good faith duty to attempt notification of all trustees.

ARTICLE VII

ELECTIONS

Except in the case of voting by acclamation, all voting shall be by secret ballot and no ballot shall be deemed valid unless it

FEB 24 '91 15:28

P.9/10

contains a vote for a number of candidates equal to the number of vacancies to be filled. A majority of valid ballots cast shall be required to elect a trustee to office.

ARTICLE VIII

AMENDMENTS

1. The Board of Trustees shall have the power to make, alter, amend and repeal the bylaws of the corporation by affirmative vote of a majority of the full board at a meeting duly noticed therefor.

ARTICLE IX

RULES

1. The Board of Trustees may adopt such Rules of Order and Procedure for the conduct of the business of its meetings as they deem appropriate, provided that such Rules are not inconsistent with these bylaws.

2. In the absence of specific Rules adopted by the Board of Trustees and in all cases not covered by these bylaws, all deliberations and procedures shall be governed by Robert's Rules of Order, Revised.

KNOW ALL MEN BY THESE PRESENT:

That we, the undersigned, being a majority of all the persons appointed in the Amended Articles of Incorporation to act as the first Board of Trustees of The Hebrew Academy hereby assent to the foregoing bylaws and adopt the same as the bylaws of said corporation.

FEB 04 '91 15:29

P.10/10

IN WITNESS WHEREOF, we have hereunto set our hands this 18
 day of December, 1990.

[Signature]
 [Signature]
 [Signature]
 [Signature]
 [Signature]
 [Signature]
 [Signature]
 [Signature]
 [Signature]
 [Signature]

EXHIBIT “5”

10 15 04 THE 12:00 FAX 1 702 4667102

THE HEBREW ACADEMY

RE: 10

given to Bl-
3-24-05

BY LAWS

OF

Exhibit F

THE MILTON I. SCHWARTZ

HEBREW ACADEMY

ARTICLE I

PURPOSE AND POWERS

Section 1.01. Name. The name of the Corporation is the Milton I. Schwartz Hebrew Academy and will remain so in perpetuity.

Section 1.02. Purpose. The Corporation shall have such purposes as are now or may hereafter be set forth in its Articles of Incorporation.

Section 1.03. Powers. The Corporation shall have such powers as are now or may hereafter be granted by the Nonprofit Corporation Act of the State of Nevada.

ARTICLE II

OFFICES

The principal office of the Corporation for the transaction of its business is shall be located at 9700 West Hillpointe Road, Las Vegas, Clark County, Nevada. The Corporation shall have and continuously maintain in the State of Nevada a registered office and a registered agent and may have other offices within or without the State of Nevada as the Board of Trustees may from time to time determine.

ARTICLE III

BOARD OF TRUSTEES

Section 3.01. General Powers. All of the business and affairs of the Corporation shall be managed and controlled by the Board of Trustees.

Section 3.02. Number Election And Tenure. The Board of Trustees shall consist of not less than 12 nor more than 20 members (each member may hereinafter be referred to as a "Trustee" and, collectively, as the "Trustees"). Each of the Trustees of the Corporation shall be elected and appointed to the office at a duly constituted meeting of the Board of Trustees, and shall serve for a

CHUCKERMAN, JAMES W. SECRETARY
MARCH 9, 2004

term of three (3) years. A Trustee's term of office shall commence upon the election and appointment of such Trustee and shall continue until the earlier to occur of the election and appointment of such Trustee's successor or the death, resignation or removal of such Trustee. The election of Trustees shall be staggered. The School Head shall not be eligible for election to the Board of Trustees as a Trustee while serving the Corporation in such capacity.

Section 3.03. Ex Officio Members Of The Board. The Trustees may from time to time, with the consent of a majority of the Board of Trustees, appoint one or more additional persons, including, without limitation, the School Head, as ex officio members of the Board. Ex officio members of the Board of Trustees shall be entitled to all of the rights and privileges of Trustees but shall not have any voting rights nor shall they be counted in determining the existence of a quorum.

Section 3.04. Annual Meeting. Unless action is taken by written consent, an annual meeting of the Board of Trustees shall be held in June of each year, at such time and place as shall be designated by the President of the Corporation in the notice of the meeting for the purpose of electing Officers (as hereinafter defined) and Trustees and for the transaction of such other business as may come before the meeting.

Section 3.05. Regular Meeting. Unless action is taken by written consent, a regular meeting of the Board of Trustees shall be held at least once every ninety (90) days, at such time and place as shall be designated by the President of the Corporation in the notice of the meeting for the transaction of such Corporate business as may come before the meeting, unless otherwise determined by a majority vote of the Board of Trustees. The Board of Trustees may provide by resolution for the holding of additional regular meetings.

Section 3.06. Special Meetings. Special meetings of the Board of Trustees may be called by the Secretary at the direction of the President of the Corporation, or a majority of the voting Trustees then in office, to be held at such time and place, either within or without the State of Nevada, as shall be designated in the notice of the meeting.

Section 3.07. Notice. Notice of the time and place of any meeting of the Board of Trustees shall be given at least three days previously thereto by written notice delivered personally or sent by mail or telegram to each Trustee at this address as shown by the records of the Corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any Trustee may waive notice of any meeting. The attendance of a Trustee at any meeting shall constitute a waiver of notice of such meeting, except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless required by statute or under these Bylaws.

Section 3.08. Quorum. A simple majority of the Board of Trustees shall constitute a quorum of the transaction of business at any meeting of the Board of Trustees. If no quorum is present at any meeting of the Board of Trustees, no business of the Corporation may be conducted, except that a majority of the Trustees present may adjourn the meeting from time to time without further notice.

Section 3.09. Action By Written Consent. Any action which may be taken at any annual, regular or special meeting of the Board of Trustees may be taken without a meeting if a written consent is distributed to the Trustees, setting forth the proposed action, providing an opportunity for the Trustees to specify approval or disapproval of any proposal. The written consent shall be filed with the Secretary of the Corporation and maintained in the corporate records.

Section 3.10. Manner Of Acting.

(a) Formal Action by Trustees. The act of a majority of Trustees present at a meeting at which a quorum is present shall be the act of the Board of Trustees.

(b) Informal Action by Trustees. No action of the Board of Trustees shall be valid unless taken at a meeting at which a quorum is present except that any action which may be taken at a meeting of the Board may be taken without a meeting if a consent in writing (setting forth the action so taken) shall be signed by each Trustee entitled to vote.

(c) Telephonic Meetings. Trustees may participate in a meeting of the Board of Trustees through the use of a conference telephone or similar communications equipment, so long as all Trustees participating in such meeting can hear one another. Participation in a meeting pursuant to this paragraph constitutes presence in person at such meeting.

Section 3.11. Resignations. Any Trustee may resign from the Board of Trustees at any time by giving written notice to the President or the Secretary of the Corporation and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.12. Removal. Any Trustee may be removed from office, with or without cause, by a two-thirds (2/3) vote of the Board of Trustees of the Corporation at any regular meeting of the Board of Trustees of the Corporation or at any special meeting of the Board of Trustees specifically called and noticed for that purpose. A Trustee may be removed for any reason whatsoever, including, without limitation, the following:

(a) The failure of a Trustee to attend three (3) consecutive meetings of the Board of Trustees of the Corporation;

(b) The Trustee commits any act or omission that brings disrepute or embarrassment upon the Corporation;

(c) The Trustee repeatedly and persistently fails to abide by the policies established by the Board of Trustees of the Corporation; or

(d) The Trustee discloses any confidential information concerning the Corporation or any of the schools operated by the Corporation to any third parties without the express or implied consent of the Board of Trustees.

Section 3.13. Vacancies. Any vacancy on the Board of Trustees of the Corporation whether created by the death, resignation or removal of a Trustee or by an increase in the number of Trustees, may be filled at any time by a majority of the remaining Trustees.

Section 3.14. Compensation; Reimbursement for Expenses. Trustees shall not be entitled to receive any salary or other compensation from the Corporation for their services as Trustees of the Corporation. Trustees shall be entitled to reimbursement for actual expenses incurred by the Trustees related to the performance of their duties; provided, that the Board of Trustees shall have the right to establish rules and other guidelines regarding such reimbursements.

ARTICLE IV

STANDING AND SPECIAL COMMITTEES

Section 4.01. Executive Committee. There shall be an Executive Committee which shall be comprised of (i) the Officers of the Corporation, (ii) the School Head and (iii) any other person or persons designated by the Board of Trustees. The School Head and any other person or persons appointed by the Board of Trustees to the Committee (other than the Officers of the Corporation) shall be members of the Committee, ex officio, or without a vote.

The Executive Committee shall advise and aid the Board of Trustees of the Corporation in all matters concerning the Corporation's interests and management of its business and, when the Board of Trustees is not in session, the Executive Committee shall have and may exercise its powers as may be from time to time to expressly delegated to it by the Board of Trustees.

Section 4.02. Nominating Committee. There shall be a Nominating Committee which shall be comprised of at least three Trustees and the School Head. The Nominating Committee shall be responsible for reviewing any candidates for election to the Board as a Trustee and submitting recommendations regarding such candidates to the Board of Trustees. Such recommendations must be submitted to each of the Trustees at least thirty (30) days prior to the date of the meeting of the Board of Trustees at which the election of Trustees is to occur.

Section 4.03. Other Committees. Either the Board of Trustees or the President, subject to the approval of the Board of Trustees, may create such other committees from time to time as it deems necessary.

Section 4.04. Chairpersons. The President, subject to the approval of the Board, shall select the members and designate the Chairperson of any committees created hereunder and shall prescribe their duties which shall not be inconsistent with these Bylaws.

ARTICLE V

OFFICERS

Section 5.01. Officers. The officers of the Corporation shall consist of the President, the First Vice-President, the Second Vice-President, Secretary, and Treasurer, and any subordinate officer or officers to fill such subordinate office or offices as may be created by the Board of Trustees (each officer may hereinafter be referred to as an "Officer" and, collectively, as the "Officers"). Any person may hold more than one office.

Section 5.02. President. The President shall preside at all meetings of the Board of Trustees or the Executive Committee at which he or she may be present; shall perform such other duties as may be prescribed by these Bylaws or assigned to him or her by the Board of Trustees, and shall coordinate the work of the Officers and committees of the Corporation in order that the purposes of the Corporation may be promoted.

Section 5.03. First Vice-President. The First Vice-President shall act as an aid to the President and shall perform the duties of the President in the absence or disability of that Officer to act. He or she shall carry out such additional duties as may be assigned to him or her by the President or the Board of Trustees.

Section 5.04. Second Vice-President. The Second Vice-President shall act as an aid to the President and shall perform the duties of the President in the absence or disability of the President and the First Vice-President to act. He or she shall carry out such additional duties as may be assigned to him or her by the President or the Board of Trustees.

Section 5.05. Secretary. The Secretary shall record the minutes of all meetings of the Board of Trustees and the Executive Committee, and shall perform such other duties as may be delegated to him or her.

Section 5.06. Treasurer. The Treasurer shall have custody of all of the funds of the Corporation; shall keep a full and accurate account of receipts and expenditures, and shall make disbursements in accordance with the approved budget, as authorized by the Board of Trustees or the Executive Committee. The Treasurer shall present interim financial reports when requested by the Board of Trustees or the Executive Committee, and shall make a full report at the annual meeting. The Treasurer shall be responsible for the maintenance of such books of accounts and records as conform to the requirements of the Bylaws.

Section 5.07. Duties. All Officers shall perform the duties prescribed in these Bylaws and such other duties as may be assigned to them from time to time. All Officers shall deliver to their successors all official material not later than ten (10) days following the election of their successors.

Section 5.08. Election. The Officers of the Corporation shall be elected annually as the first order of business at the annual meeting of the Board of Trustees. Officers shall serve for a term of one (1) year and until the election and qualification of their successors. To be eligible for election as an Officer of the Corporation, a person must be serving as a Trustee of the Corporation.

Section 5.09. Vacancy. The Board of Trustees may fill any vacancy created by death, resignation or removal of any Officer, for the unexpired term of such Officer, at any regular meeting of the Board of Trustees of the Corporation or at any special meeting specifically called and noticed for that purpose.

Section 5.10. Removal. The Board of Trustees may remove any Officer at any regular meeting of the Board of Trustees of the Corporation or at any special meeting specifically called and noticed for that purpose. An Officer may be removed for any reason whatsoever, including, without limitation, the following:

- (a) The Officer commits any act or omission that brings disrepute or embarrassment upon the Corporation;
- (c) The Officer repeatedly and persistently fails to abide by the policies established by the Board of Trustees of the Corporation; or
- (d) The Officer discloses any confidential information concerning the Corporation or any of the schools operated by the Corporation to any third parties without the express or implied consent of the Board of Trustees.

ARTICLE VI

INDEMNIFICATION OF TRUSTEES, OFFICERS, EMPLOYEES AND AGENTS INSURANCE

Section 6.01. The Corporation shall indemnify, to the maximum extent permitted by the law, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the Corporation, by reason of the fact that he or she is or was a Trustee, Officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a Trustee, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner which he or she reasonably believed to be in

or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and that, with respect to any criminal action or proceeding, he or she had reasonable cause to believe that his conduct was unlawful.

Section 6.02. The Corporation shall indemnify, to the maximum extent permitted by the law, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a Trustee, Officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a Trustee, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, but no indemnification shall be made in respect of any claim, issue or matter as to which such person has been adjudged to be liable for negligence or misconduct in the performance of his duty to the Corporation unless and only to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

Section 6.03. To the extent that a Trustee, Officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 6.01 and 6.02, or in defense of any claim, issue or matter therein, he or she shall be indemnified by the Corporation against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with such defense.

Section 6.04. Any indemnification under Sections 6.01 and 6.02, unless ordered by a court, shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Trustee, Officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 6.01 and 6.02. Such determination shall be made:

(a) By the Board of Trustees by majority vote of a quorum consisting of Trustees who were not parties to such act, suit or proceeding;

(b) If such a quorum of disinterested Trustees so orders, by independent legal counsel in a written opinion; or

(c) If such a quorum of disinterested Trustees cannot be obtained, by independent legal counsel in a written opinion.

Section 6.05. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Trustees in the specific case upon receipt of an undertaking by or on behalf of the Trustee, Officer, employee or agent to repay such amount unless it is ultimately determined that he is entitled to be indemnified by the Corporation as authorized in this section.

Section 6.06. The indemnification provided by this section:

(a) Does not exclude any other rights to which a person seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested Trustees or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office; and

(b) Shall continue as to a person who has ceased to be a Trustee, Officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 6.07. The Corporation may purchase and maintain insurance on behalf of any person who is or was a Trustee, Officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a Trustee, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this section.

ARTICLE VII

CONTRACTS, LOANS, CHECKS, DEPOSITS AND GIFTS

Section 7.01. Contracts. The Board of Trustees may authorize any Officer or agent of the Corporation, in addition to the Officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 7.02. Borrowing. No loan shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Trustees. Such authority may be general or confined to specific instances.

Section 7.03. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Trustees may select.

Section 7.04. Gifts. The Board of Trustees may accept on behalf of the Corporation any contribution, gift, bequest or devise for the general purposes or for any specific purpose of the Corporation. The Board of Trustees may vary the use to which a specific contribution, gift, bequest or devise can be put in the event the use for which the contribution, gift, bequest or devise is to be used becomes impossible, unnecessary, impractical or contrary to the best interests of the Corporation.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Books And Records. The Corporation shall keep correct and complete books and records of account, and the minutes of the proceedings of the Board of Trustees and Executive Committee. Copies of the minutes of the Board of Trustees and of the Executive Committee shall be regularly distributed to each member of the Board of Trustees and the Executive Committee. The books and records of accounts, and the records of the actions of proceedings of the Board of Trustees and the Executive Committee shall be open to inspection upon the written demand of any Trustee at any reasonable time and for any purpose reasonably related to its interest as a Trustee. Such inspection may be made by any agent or attorney of the Trustee and the right to make such inspection shall include the right to make extracts.

Section 8.02. Intentionally Deleted.

Section 8.03. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of July and end on the last day of June in each year unless otherwise determined by resolution of the Board of Trustees.

Section 8.04. Waiver Of Notice. Whenever any notice is required to be given under the provisions of the Nonprofit Corporation Act of the State of Nevada or under the provisions of the Articles of Incorporation or these Bylaws, a waiver thereof in writing signed by the persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 8.05. Self-Dealing. In the exercise of voting rights by members of the Board, no individual shall vote on any issue, motion, or resolution which directly or indirectly inures to his benefit financially except that such individual may be counted in order to qualify a quorum and, except as the Board may otherwise direct, may participate in the discussion of such an issue, motion, or resolution if he or she first discloses the nature of his or her interest.

Section 8.06. Loans To Officers And Trustees Prohibited. No loans shall be made by the Corporation to its Officers or Trustees. The Trustees of the Corporation who vote for or assent to the making of a loan to an Officer or Trustee of the Corporation, and any Officer or Officers

11-01-10 FAX 1-702-365-1222

THE HEBREW ACADEMY

11-01-10 FAX 1-702-365-1222

THE HEBREW ACADEMY

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participating in the making of such loan, shall be jointly and severally liable to the Corporation for the amount of such loan until the repayment thereof.

Section 8.07. Additional Organizations. The Board of Trustees may authorize the formation of such auxiliary organizations as would in the opinion of the Board assist in the fulfillment of the purposes of the Corporation.

Section 8.08. Rules. The Board of Trustees may adopt, amend or repeal Rules (not inconsistent with these Bylaws) for the management of the internal affairs of the Corporation and the governance of its Officers, agents, committees and employees.

Section 8.09. Conduct of Meetings. Robert's Rules of Order, latest edition, or another similar manual or procedural guide concerning the conduct of meetings which is commonly used by corporations similar to the Corporation shall govern the conduct of meetings when not in conflict with the Articles of Incorporation of the Association, these Bylaws and any rules adopted pursuant to Section 8.08 of these Bylaws.

ARTICLE IX

AMENDMENTS TO BYLAWS

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by vote of two-thirds (2/3) of the Board of Trustees with the approval of two-thirds (2/3) of the Members.

By Carol Lee Fuchs
President

Adopted this 13th day of April, 1999

The undersigned hereby certifies that the foregoing are the Bylaws of the Milton I. Sorkin Hebrew Academy as adopted on the date hereof.

13
at 13th day of April, 1999

By Gene R. Rabinovitch
Secretary

EXHIBIT “6”

RPTT \$

Exhibit G

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That The Hebrew Academy, a Nevada non-profit corporationin consideration of \$ 10.00, the receipt of which is hereby acknowledged, do hereby grant, release and forever quitclaim toP7 The Milton I. Schwartz Hebrew Academy, a Nevada non-profit corporationall that real property situate in the _____ County of Clark

State of Nevada, bounded and described as follows:

All of Lot Fourteen (14) of the AMENDED PLAT OF "SUMMERLIN VILLAGE 1 NORTH" subdivision, situated in the City of Las Vegas, County of Clark, State of Nevada, as shown on the Amended Plat of said subdivision recorded on February 8, 1990 as Instrument No. 00445 in Book 900208 and on file in Book 045 of Plats, Page 0010, in the Office of the County Recorder of Clark County, Nevada.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness _____ hand _____ this 9th day of April, 1991The Hebrew AcademyBy Milton I. Schwartz
Milton I. Schwartz, President

ESCROW NO. _____

WHEN RECORDED MAIL TO: _____

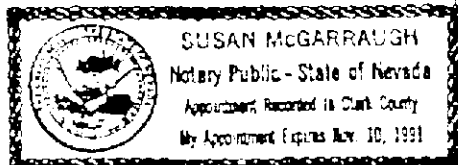
STATE OF NevadaCounty of ClarkOn this 9th day of April, 1991

personally appeared before me, a Notary Public in and for said

County and State,

Milton I. Schwartz,President

known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Susan McGarraugh
Notary Public in and for said County and State.

E-11

EXHIBIT “7”

EXHIBIT “8”

SUPPLEMENTAL AFFIDAVIT OF MICHAEL NOVICK

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

4 MICHAEL NOVICK, being first duly sworn, upon oath, deposes and
5 says:

6 1. This Affidavit is made of my own personal knowledge
7 except where stated on information and belief, and as to those matters,
8 I believe them to be true, and if called as a witness, I would
9 competently testify thereto.

10 2. That Affiant hereby affirms under penalty of perjury that
11 the assertions of this Affidavit are true.

12 3. This Affidavit is submitted in support of Plaintiff's
13 Reply to Defendant's Opposition to Plaintiff's Motion for Declaratory
14 Judgment and Injunctive Relief; Plaintiff's Opposition to Defendant's
15 Countermotion for Sanctions; Plaintiff's Opposition to Defendant's
16 Countermotion to Dismiss or, in the alternative, for a more definite
17 statement; and Plaintiff's Countermotion to Strike Defendant's
18 Opposition.

19 4. That Affiant is a First Vice President of Investments
20 with Dean Witter Reynolds, Inc. and donates Affiant's time to the Board
21 of Directors of the Milton I. Schwartz Hebrew Academy as a public
22 service.

23 5. That Affiant was elected to the Board of Directors in
24 January of 1991.

25 6. That Affiant was a member of the Board of Directors on
26 May 21, 1992 and was present at the Board of Directors meeting that
27 occurred on that date.

28 7. That the minutes of the May 21st meeting that are

1 attached as Exhibit "B" to the Defendant's Opposition To Plaintiff's
2 Motion for Declaratory Judgment and Injunctive Relief And Countermotion
3 For Sanctions; Countermotion To Dismiss Or In The Alternative, For A
4 More Definite Statement is not a true and accurate copy of the minutes
5 of the May 21st meeting. That at the May 21, 1992 meeting, the Board of
6 Directors agreed to hold the elections in June of 1992 only if problems
7 with the Bylaws could be resolved prior to the election occurring. In
8 addition, the Board of Directors also discussed problems with the Bylaws
9 relating to the thirty (30) day requirement and that the nominating
10 committee had recognized that this problem would also have to be
11 resolved prior to the elections being held.

12 8. That on or about June 11, 1992, Affiant received a letter
13 from Milton I. Schwartz, Chairman of the Board and President of the
14 Hebrew Academy and that this letter stated that the Board of Directors
15 would not be having elections at the meeting on June 18, 1992. That as
16 a result of receiving this letter, Affiant did not attend the June 18,
17 1992 meeting due to the fact that another business meeting had also been
18 scheduled for that time.

19 9. That had Affiant not received this letter, Affiant would
20 have rearranged Affiant's schedule to attend the meeting so that Affiant
21 could vote.

22 10. That Affiant has attempted to mediate the dispute between
23 the Plaintiff and the Defendant in the instant action. That the Affiant
24 and Frederic Berkley attempted to attend a board meeting in August of
25 1992. However, Mr. Berkley was barred from entering the meeting and was
26 informed that he was no longer a member of the Board of Directors.
27 Affiant was allowed to attend the meeting, but no progress was made
28 toward resolving the dispute. In addition, Affiant had numerous

1 | conversations with Tamar Lubin in an attempt to resolve this conflict.
2 | Affiant also attempted to arrange a meeting between Tamar Lubin, Ira
3 | Sternberg, Lenard Schwartz, Milton Schwartz and Affiant. However,
4 | they refused to meet with Affiant, Milton Schwartz, and Mr. Schwartz'
5 | attorneys.

6 | 11. That on September 3, 1992, Tamar Lubin instructed Affiant
7 | to offer to return \$500,000 to Milton I. Schwartz.

8 | 12. That Affiant understands that the \$500,000 was the amount
9 | of money Milton I. Schwartz donated to the Hebrew Academy prior to
10 | Milton I. Schwartz being elected Chairman of the Board of Directors of
11 | the MILTON I. SCHWARTZ HEBREW ACADEMY.

12 | 13. That in September of 1992, Affiant received a letter from
13 | the Defendant's stating that Affiant would be removed from the
14 | Defendant, the Second Board of Directors unless: (1) Affiant recognized
15 | that the Defendant, the Second Board of Directors is the true and
16 | correct Board of Directors; (2) Resigned; or (3) came and talked to the
17 | Defendants on September 27, 1992. Affiant responded in writing that
18 | Affiant would be in Phoenix for Rosh Hashana on the 27th and unable to
19 | meet with them. Affiant subsequently received a letter notifying
20 | Affiant that Affiant was removed from the Board of Directors of the
21 | Defendant.

22 | 14. That the Hebrew Academy will suffer irreparable harm if
23 | the actions of the Defendant are not stopped. That as a result of the
24 | actions of the Defendant and in particular Tamar Lubin, Affiant believes
25 | there has been a high turnover of teachers since the Defendants have
26 | wrongfully taken control of the Academy.

27 | 15. That it was the intention of the Board of Directors to
28 | consider not extending Tamar Lubin's contract as the Board of Directors

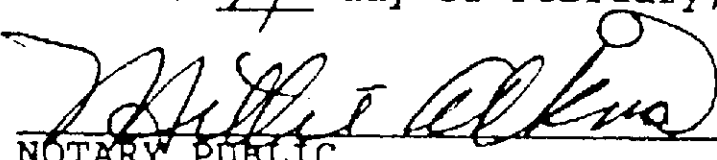
1 had received numerous complaints concerning the conduct of Tamar Lubin
2 in running the Hebrew Academy and that Affiant believes that the
3 Defendant is in the process of negotiating a long term contract with
4 Tamar Lubin to be the Administrator of the MILTON I. SCHWARTZ HEBREW
5 ACADEMY and that this action will cause irreparable harm to the Hebrew
6 Academy.

7 FURTHER AFFIANT SAYETH NAUGHT.

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MICHAEL NOVICK

11 SUBSCRIBED AND SWORN to before
12 me this 19 day of February, 1993.

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NOTARY PUBLIC

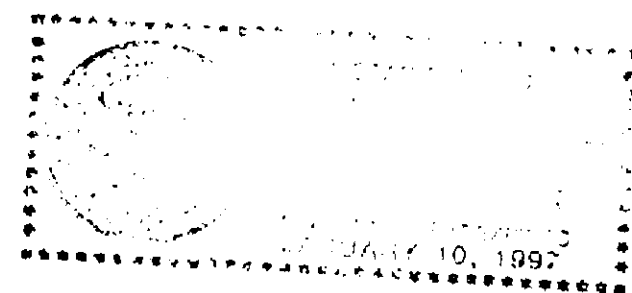


EXHIBIT “9”

Exhibit U

Milton I Schwartz Hebrew Academy									
MIS Contributions/donations									
		Per HA	yes	VGC	loans	return of loans			
1988	\$ 50.00				\$ -	\$ -			
1989	\$ 500,900.00		\$ 1,200.00	\$ 600.00	\$ -	\$ -			
1990	\$ 9,000.00				\$ -	\$ -			
1991	\$ 150.00			\$ 1,300.00	\$ -	\$ -			
1992	\$ 69.66				\$ -	\$ -			
1993	\$ -				\$ -	\$ -			
1994	\$ -				\$ -	\$ -			
1995	\$ -				\$ -	\$ -			
1996	\$ -				\$ -	\$ -			
1997	\$ 2,100.00				\$ -	\$ -			
1998	\$ 22,500.00				\$ -	\$ -			
1999	\$ 26,600.00				\$ -	\$ -			
2000	\$ 7,400.00				\$ -	\$ -			
2001	\$ 88,535.00	\$ 88,535.00	\$ 1,200.00		\$ -	\$ -			
2002	\$ 57,130.00				\$ 150,000.00	\$ -			
2003	\$ 51,323.00				\$ 83,000.00	\$ (40,000.00)			
2004	\$ 135,277.00				\$ -	\$ -			
2005	\$ 9,622.00				\$ -	\$ -			
2006	\$ 100,000.00				\$ -	\$ -			
2007					\$ -	\$ -			
Total	\$ 1,010,656.66	\$ 88,535.00	\$ 2,400.00	\$ 1,900.00	\$ 233,000.00	\$ (40,000.00)			
CLT	\$ 45,247.09								
Grand Total	\$ 1,055,903.75								

Milton I Schwartz Hebrew Academy	
CLT #45 Contributions/donations (12/90 - 2005)	
1991	\$ -
1992	\$ 8,052.09
1993	\$ -
1994	\$ -
1995	\$ -
1996	\$ -
1997	\$ -
1998	\$ -
1999	\$ -
2000	\$ 7,000.00
2001	\$ -
2002	\$ 30,000.00
2003	\$ -
2004	\$ -
2005	\$ 195.00
Total	\$ 45,247.09

EXHIBIT “10”

THE HEBREW ACADEMY

9700 West Hillpointe Road
Las Vegas, Nevada 89134
Tel: (702) 255-4500 Fax: (702) 255-7232



Exhibit AK

Dr. Roberta Sabbath
School Head

May 23, 1996

Milton I. Schwartz
2120 Silver Ave.
Las Vegas, NV 89102

Dear Milton:

On behalf of myself, President, Geri Rentchler and the entire Board of Directors of the Milton I. Schwartz Hebrew Academy, I am pleased to inform you that we will immediately commence action to implement as soon as practicable the following:

- (1) Restore the Hebrew Academy's name to the "Milton I. Schwartz Hebrew Academy."
- (2) Amend the Hebrew Academy's Articles of Incorporation to restore its former name of the "Milton I. Schwartz Hebrew Academy."
- (3) Restore the marker in front of the Hebrew Academy identifying it as the "Milton I. Schwartz Hebrew Academy."
- (4) Change the Hebrew Academy's formal stationary to include its full name, the "Milton I. Schwartz Hebrew Academy", in a form consistent with this letterhead and include our full name on future brochures.
- (5) Where practicable, display the full name of the Hebrew Academy. In print advertising of sufficient size, the full name of the school will be displayed in a design consistent with the letterhead. Where impractical by reason of size, utilization of voice media, informal correspondence, informal memoranda, etc., and in answering the telephone, the school will utilize the shorthand version of its name as Hebrew Academy or simply, its logo. You can rest assured it is the intention of the School Head and the school's Officers and Directors that the utilization of the school's full name will be consistent with an intent to recognize and honor your contribution and assistance.



Accreditation, Northwest Association of Schools and Colleges



Licensed: State of Nevada Department of Education



Member: National Association of Independent Schools

116-125-1996 11:18

116-125-1996

116-125-1996

The restoration of the name of the "Milton I. Schwartz Hebrew Academy" has been taken as matter of "menschlichkeit" in acknowledgement of your contribution and assistance to the Academy; your continued commitment to Jewish education reflected by the establishment of the "Jewish Community Day School" and last but not least, your recent action as a man of "shalom."

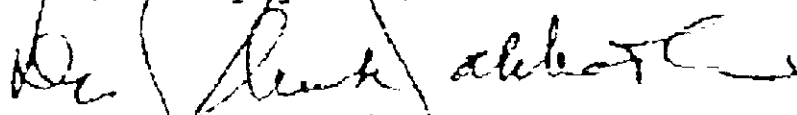
Your invitation to me as new School Head to meet and resolve differences and to work with me and the Board to bring "shalom" to our Jewish community will serve as a much needed example of Jewish leadership.

Please accept our assurance and commitment that we welcome with joy the establishment of the Jewish Community Day School which will provide Jewish parents a choice between the Jewish education offered by the "Milton I. Schwartz Hebrew Academy" during normal school hours and a school composed entirely of students with a Jewish parent and many more hours of Jewish education than can be offered in a normal school day.

You have our pledge that we are committed to make the "Milton I. Schwartz Hebrew Academy" a source of honor and a place of Jewish learning of which you and your family will always justly be able to take great pride.

Please accept our wishes for you and your family to have long, healthy, prosperous and joyous lives.

Very truly yours,



Dr. Roberta Sabbath
School Head

100-109-100-11110

1-101-2-10210

F-61

**The Milton I. Schwartz
HEBREW ACADEMY**

9700 West Hillpointe Road
Las Vegas, Nevada 89134
Tel: (702) 255-4500 Fax: (702) 255-7232



Dr. Roberta Sabbath
School Head



Accreditation: National Association of Schools and Colleges



License: State of Nevada Department of Education



Member: National Association of Independent Schools

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CL 67

EXHIBIT “11”

107

Dear Friends:

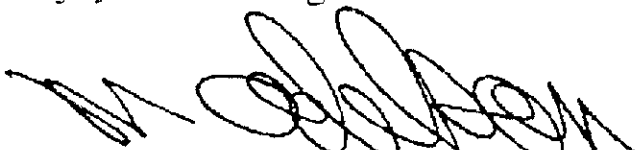
Welcome! It is our pleasure and privilege to chair The Milton I. Schwartz Hebrew Academy Gala. It is an inspiration to see so many in the community supporting not only The M.I.S. Hebrew Academy, but also The Adelson School. At last year's event, we presented plans to create a world class high school adjacent to The M.I.S. Hebrew Academy. We have now taken all key steps towards reaching this important goal. We are pleased to announce that the first graduating class of The Adelson School will begin their studies this fall!

Of course, a world class school needs more than superlative facilities, and it is here that head of school Paul Schiffman has met our extremely ambitious expectations: he searched the country and hired the best and the brightest educators. Paul is fond of saying that there is also a simple final criterion that each teacher must meet: "They must love children." Education, after all, is about guiding and nurturing children as well as educating and preparing them for the future. Many wonderful, extraordinary department heads for The Adelson School have already begun working full time along with our new Adelson School principal, Paul Mahoney (PhD UCLA). As our 9th and 10th grade classes begin their studies this August, we know that these children are beginning an exceptional journey at a school where a passion for learning, respect for Jewish mores, and a truly world class education coincide.


Many people have worked hard to create the success of our current Pre-K through 8th grade program and the beginning of our new high school. Tonight, we come together both to honor our "Pursuit of Excellence" Award winner and to say thank you to our wonderful teaching and administrative staff, our head of school, Paul Schiffman, our campus project director, Rhonda Glyman, our Board of Trustees, and to all the committed parents who have volunteered their time, intelligence and experience to make our school the very best it can be.

Tonight we honor the visionary behind The Hebrew Academy, Milton I. Schwartz. It is our privilege to honor Milton with the "Dr. Miriam and Sheldon G. Adelson In Pursuit of Excellence Award." With vision and foresight, Mr. Schwartz and a few others generously answered the need in Las Vegas for a strong secular and Judaic educational institution for elementary school-aged children by creating and continuously supporting The Milton I. Schwartz Hebrew Academy. The school, established in 1988, has since expanded to include preschool through 8th grade. Mr. Schwartz, an entrepreneur extraordinaire, sits on the Board of Trustees and has generously supported The M.I.S. Hebrew Academy's continued growth. We are truly pleased to bestow this award upon such a visionary leader of our community.

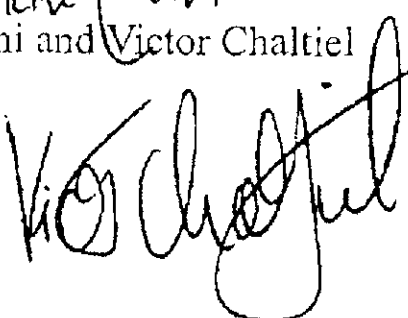
Enjoy the Evening!

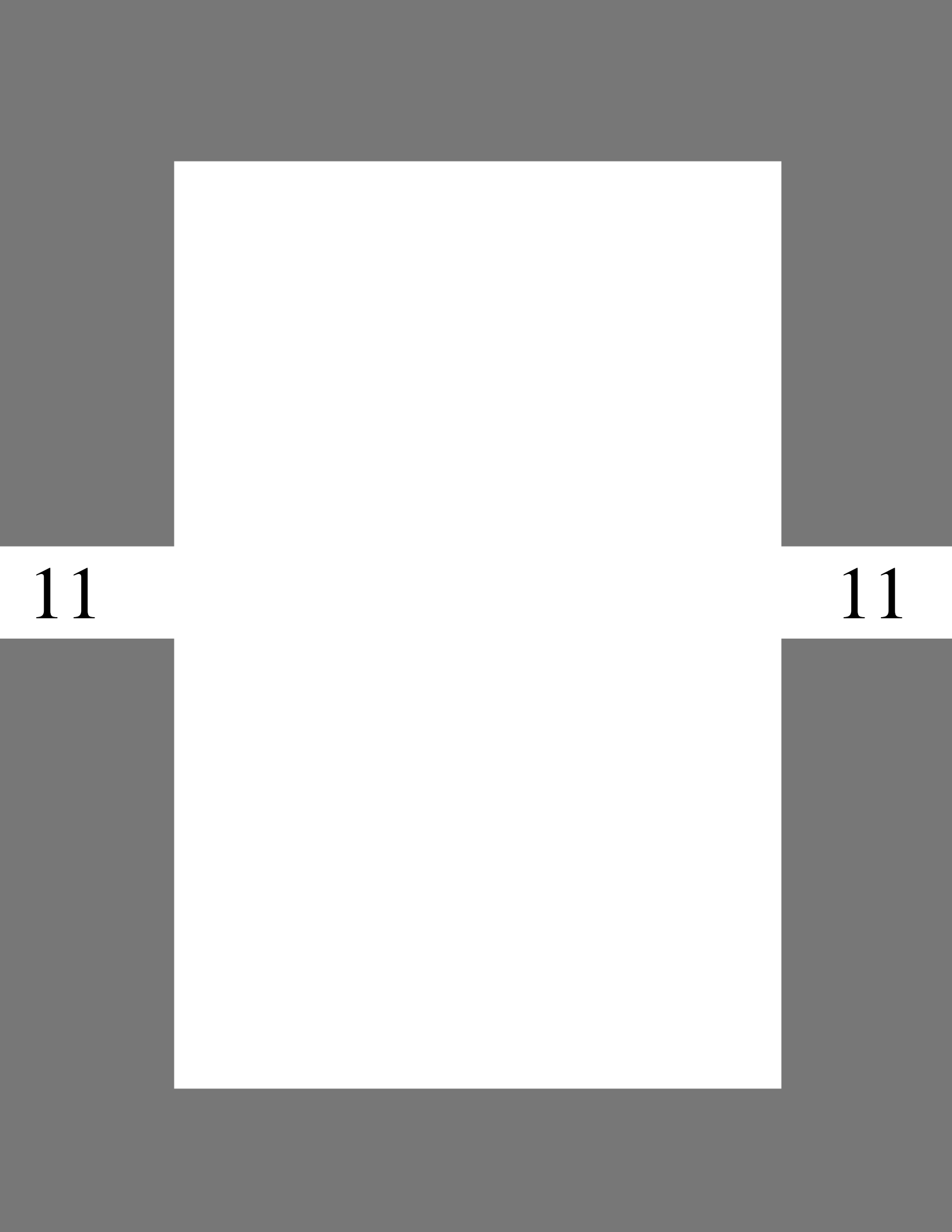


Dr. Miriam and Sheldon G. Adelson



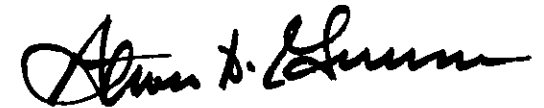
Toni and Victor Chaltiel





11

11



CLERK OF THE COURT

1 **MDSM**
2 Maximiliano D. Couvillier, III (SBN #7661)
3 mcouvillier@lionelsawyer.com
4 Ketan D. Bhirud (SBN #10515)
5 kbhirud@lionelsawyer.com
6 Kendal L. Davis (SBN #11946)
7 kdavis@lionelsawyer.com
8 LIONEL SAWYER & COLLINS
9 1700 Bank of America Plaza
10 300 South Fourth Street, Suite 1700
11 Las Vegas, Nevada 89101
12 (702) 383-8888 (Telephone)
13 (702) 383-8845 (Fax)

14 Attorneys for The Dr. Miriam and
15 Sheldon G. Adelson Educational Institute

16 **DISTRICT COURT**

17 **Clark COUNTY, NEVADA**

18 In the Matter of the Estate of
19
20 **MILTON I. SCHWARTZ,**
21
22 **Deceased**

Case No. P061300
Dept. No.: 26/Probate

Date: 7 / 9 / 2013
Time: 9 : 00 a m

**MOTION TO DISMISS EXECUTOR'S
PETITION FOR DECLARATORY
RELIEF**

23 Pursuant to NRS 137.120, NRS 155.180, and Nevada Rule of Civil Procedure 12(b)(5),
24 the Dr. Miriam and Sheldon G. Adelson Educational Institute (the "Adelson Campus"), devisee
25 of the will of the Decedent in the above-referenced Estate, by and through its attorneys,
26 Maximiliano D. Couvillier, III, Ketan D. Bhirud, and Kendal L. Davis, of the law firm of Lionel
27 Sawyer & Collins, moves to dismiss the Petition for Declaratory Relief filed by the Executor of
28 the Estate of Milton I. Schwartz ("the Executor").

///

///

///

1 This Motion is made and based on all of the pleadings on file, the Court record, the
 2 Memorandum of Points and Authorities that follow and the arguments of counsel at any hearing
 3 convened to consider this motion.

4 LIONEL SAWYER & COLLINS

5
 6 By: 

7 Maximiliano D. Couvillier, III (SBN #7661)

8 Ketan D. Bhirud (SBN #10515)

9 Kendal L. Davis (SBN #11946)

10 Attorneys for The Dr. Miriam and Sheldon G.
 11 Adelson Educational Institute

12 **NOTICE OF MOTION**

13 **TO: ALL PARTIES AND THEIR COUNSEL OF RECORD**

14 PLEASE TAKE NOTICE that the foregoing motion will be heard before the above-
 15 captioned Court on the 9 day of J u l y, 201 3 at 9 0 0 a.m./p.m., or as soon
 16 thereafter as counsel may be heard.

17 LIONEL SAWYER & COLLINS

18 By: 

19 Maximiliano D. Couvillier, III (SBN #7661)

20 Ketan D. Bhirud (SBN #10515)

21 Kendal L. Davis (SBN #11946)

22 Attorneys for The Dr. Miriam and Sheldon G.
 23 Adelson Educational Institute

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In his Last Will and Testament ("Will")¹ dated February 5, 2004, Milton I. Schwartz ("Mr. Schwartz") bequeathed a \$500,000.00 gift for scholarships to the Adelson Campus (the "Bequest"). Mr. Schwarz died on August 9, 2007, and the Executor filed the petition for probate of the Will on October 15, 2007. The Executor, however, did not distribute the Bequest. On May 3, 2013, the Adelson Campus filed a Petition to Compel Distribution of the Bequest. Importantly, up to that date, the Executor had represented to the Adelson Campus that the Estate had sufficient funds to distribute the Bequest. Because the Executor had never filed an accounting required by NRS §§150.080 and 150.105 and never filed the report required by NRS §143.035(2), the Adelson Campus also requested that the Executor be ordered to show cause why he had failed to do so during the 6 years that this Probate matter has been pending. The Executor responded by filing his Petition for Declaratory Relief contesting the Will as grounds to refuse to distribute the Bequest. Interestingly, though the Executor contests the Will and continues to refuse to distribute the Bequest, he also now represents to the Court that the Estate does not have sufficient funds to distribute the Bequest.²

In his Petition for Declaratory Relief, the Executor contests the Will and asks the Court to construe the Will, some *eight years* after-the-fact, so as to deny the Bequest to the students of the Adelson Campus.³ Although the Executor has alleged six "claims for relief," three of those claims for relief (avoidance of bequest, offset of bequest, and revocation of bequest) are not

¹ The Will includes two Codicils, one dated January 27, 2006, and the other July 21, 2006. The Codicils concerned other distributions and Mr. Schwartz elected not to revisit and revise the Bequest to the Adelson Campus. The First and Second Codicils were previously filed with the Court on October 15, 2007, as part of the Executor's Petition for Probate of Will and Codicils. Courtesy copies of the Will and Codicils are attached here as Exhibit 1. On a motion to dismiss, the Court may "take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint" or incorporated by reference therein. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

² See Executor's Objection to Petition to Compel Distribution at p. 8, filed on 5/28/13.

³ As discussed more fully below, the children of the Adelson Campus are in effect the

1 claims for relief, but are remedies.⁴ The remaining three "claims for relief" (construction of will,
2 fraud in the inducement, and breach of contract) merely provide the basis for the Executor's will
3 contest, which is governed by NRS Chapter 137 (Contest of Wills).

4 The Court should dismiss the Executor's Petition. *First*, the Will is clear and
5 unambiguous and absolutely dispositive of the Executor's claims. Tellingly, while the Executor
6 seemingly asks for the Court to "construe the Will," the Executor manifestly runs away from the
7 Will and does not even attach a copy of the Will to his Petition. *Second*, the statute of limitations
8 for the Executor to contest the Will expired over four years ago. *Finally*, there is no evidence—
9 contemporaneous or otherwise—to support the Executor's construction of the Will, and notably
10 the "Milton I. Schwartz Hebrew Academy" continues to exist.

11 II. 12 RELEVANT FACTS

13 On a motion to dismiss, the Court may "take into account matters of public record,
14 orders, items present in the record of the case, and any exhibits attached to the complaint" or
15 incorporated by reference therein.⁵ The underlying facts are more fully stated in the Adelson
16 Campus' Petition to Compel Distribution. For judicial economy and brevity, the Adelson
17 Campus will only discuss the salient facts here.

18 When Mr. Schwartz passed away on August 9, 2007, he left behind an estate worth
19 approximately \$39 million.⁶ Mr. Schwartz's Will bequeathed a \$500,000.00 Bequest to the
20 Petitioner, which corporate name was then known as "The Milton I. Schwartz Hebrew Academy"
21 and was previously known as "The Hebrew Academy."⁷ Today, Petitioner continues to do
22 beneficiaries of the Bequest since it is to be used to fund scholarships for students.

23 ⁴ *U.S. v. Smelser*, 87 F.2d 799, 800-01 (5th Cir. 1937) ("Causes of action should be
24 distinguished from remedies. One precedes and gives rise to the other, but they are separate and
distinct.").

25 ⁵ *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

26 ⁶ <http://www.lasvegassun.com/news/2009/oct/23/multi-million-dollar-battle-waged-over-estate-milt/>

27 ⁷ See Exhibit 1. Since its modest inception in 1980, the school has gone through several
28 different corporate names. The seeds for what is today known as The Dr. Miriam and Sheldon

business as "The Milton I. Schwartz Hebrew Academy," as discussed below.

The express language of the Will imposes *only two conditions* on the Bequest. The *first* condition requires the \$500,000.00 or portions thereof to be applied to any mortgages held by the school at the time of Mr. Schwartz's death for which he was a guarantor. The *second and last* condition requires the Bequest to be used for scholarships to educate Jewish children only.

It is undisputed that those only two conditions of the Will are, or will be, satisfied. Now, some six years after the Will was admitted to Probate, the Executor requests the Court to deny the Bequest by construing an additional condition into the Will that the corporate name of the Adelson Campus would be "The Milton I. Schwartz Hebrew Academy" in perpetuity. Clearly, such condition does not exist in the Will. Moreover, the Executor offers no evidence, contemporaneous or otherwise, to support his construction.

III. LEGAL ARGUMENT

A. Dismissal of the Executor's Petition Is Appropriate

Pursuant to NRS 155.180, "all the provisions of law and the Nevada Rules of Civil Procedure regulating proceedings in civil cases apply in matters of probate, when appropriate, or may be applied as auxiliary to the provisions of this title." NRS 137.010(2) further provides that "[a] person so served [with a will contest] may interpose any defense or objection to the contest by any motion authorized by the Nevada Rules of Civil Procedure in civil actions." Nevada Rule of Civil Procedure 12(b)(5) empowers courts to dismiss a pleading for failure to state a claim upon which relief can be granted. "While a complaint 'does not need detailed factual allegations, a plaintiff's obligations to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action

G. Adelson Education Institute began when "The Hebrew Academy" opened at the original Temple Beth Sholom in eastern Las Vegas. In 1988, the school moved west near the corner of Lake Mead Boulevard and Hills Center Drive, and thereafter changed names several times between "The Hebrew Academy" and "The Milton I. Schwartz Hebrew Academy" and Finally The "Dr. Miriam and Sheldon G. Adelson Educational Institute."

1 will not do."⁸ A pleading is subject to dismissal unless it alleges "enough facts to state a claim
2 to relief that is plausible on its face."⁹ This generally occurs in two circumstances: (i) the
3 absence of a cognizable legal theory, or (ii) there is insufficient facts under a cognizable legal
4 claim.¹⁰ While there is some deference given to a plaintiff when considering a Rule 12(b)(5), the
5 Court need not accept conclusory statements, legal conclusions or unreasonable inferences.¹¹
6 Moreover, it is not "proper to assume that the [plaintiff] can prove facts that it has not alleged."¹²

7 Finally, where, as here, the Petition fails to adequately state a claim, such deficiency
8 should be "exposed at the point of minimum expenditure of time and money by the parties and
9 the court."¹³ This is particularly important here because the Adelson Campus is a non-profit
10 requesting the Bequest for scholarships and the Executor claims there are no funds in the Estate
11 to distribute the Bequest.

12 **B. The Executor's Petition Must Be Dismissed Because the Will Is Clear and**
13 **Unambiguous and Does Not Require That Petitioner to Be Named "The Milton I.**
Schwartz Hebrew Academy" in Perpetuity

14 The Will provides:

15 2.3 The Milton I. Schwartz Hebrew Academy. *I hereby give,*
16 *devise and bequeath the sum of five hundred thousand dollars*
17 *(\$500,000.00) to the Milton I. Schwartz Hebrew Academy (the,*
18 *"Hebrew Academy"). This gift is to be in the form of securities*
(stocks, bonds, or cash) with the largest profit so that my estate can
take advantage of the low cost basis and increased price as directed

19 ⁸ *Straznicky v. Desert Springs Hosp.*, 642 F. Supp. 2d 1238, 1240 (D. Nev. 2009)(quoting
20 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 553-58 (2007)).

21 ⁹ *Twombly*, at 570.

22 ¹⁰ *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984).

23 ¹¹ See *Buzz Stew, LLC v. City of N. Las Vegas*, 181 P.3d 670, 672 (Nev. 2008); *Pareto v.*
24 *Fed. Deposit Ins. Corp.*, 139 F.3d 696, 699 (9th Cir. 1998); *Clegg v. Cult Awareness Network*,
25 18 F.3d 752, 754 55 (9th Cir. 1994); *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir.
26 1981). Because Nevada Rule of Civil Procedure 12(b)(5) and Federal Rule of Civil Procedure
12(b)(6) are nearly identical, the Nevada Supreme Court views cases interpreting the federal rule
as persuasive authority. See *Exec. Mgmt. Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d
872, 876 (2002) (quoting *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776
(1990)) ("Federal cases interpreting the Federal Rules of Civil Procedure 'are strong persuasive
authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal
counterpart.'").

27 ¹² *Assoc. Gen. Contractors v. Cal. State Counsel of Carpenters*, 459 U.S. 519, 526
(1983).

28 ¹³ *Id.* at 558.

by my Executor in his sole discretion. If, at the time of my death, there is a bank or lender mortgage (the "mortgage") upon which I, my heirs, assigns or successors in interest are obligated as a guarantor on behalf of the Hebrew Academy, the \$500,000.00 gift shall go first to reduce and or expunge the mortgage. In the event that the lender will not release my estate or my heirs, successors or assigns, no gift shall be given to the Hebrew Academy. In the event that no mortgage exists at the time of my death, ***the entire \$500,000.00 amount shall go to the Hebrew Academy for the purpose of funding scholarships to educate Jewish children only.***¹⁴

Mr. Schwartz affirmed the Bequest twice in 2006, when he executed a First Codicil on January 27, 2006, and Second Codicil on June 21, 2006.¹⁵

The Executor's "condition" does not exist and cannot be read into the Will. The Will is undisputedly clear and unambiguous and therefore, the testator's intent must be ascertained only from the terms of the Will itself. The Executor is prohibited from offering parol evidence and injecting his 7-year after-the-fact interpretation. The American Jurisprudence, Second Edition, Wills §989 provides:

The intention of a testator is to be ascertained from the words or language of his or her will. The ultimate question for a court construing a will is not what the testator meant to say but what he or she meant by what he or she did say, which necessarily requires a determination of whether the words used by the testator are capable of being expanded to embody the proffered testamentary intent.

When the language of a will is clear and unambiguous, the testator's intent must be ascertained from the express terms of the will itself. In will construction, the testator's intent must be determined and carried out, as nearly as possible, by resort to the will itself and without parol evidence except in case of ambiguity.¹⁶

The American Jurisprudence, Second Edition, Wills §1268 further provides:

Extrinsic evidence is not admissible to vary, contradict, or add to the terms of a will, or to show that the testator had a different intention from that disclosed by the language of the will, but may be introduced to explain an ambiguous will. Therefore, ***parol evidence is not admissible to explain an omission from a will***

¹⁴ See Exhibit 1 at §2.3.

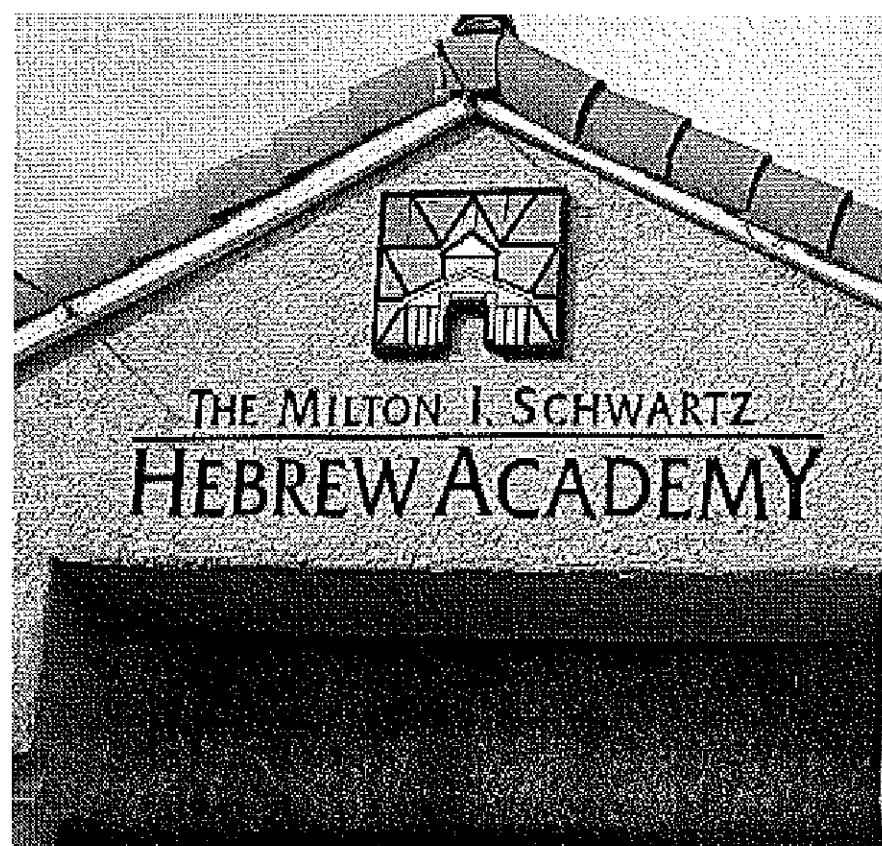
¹⁵ The Codicils concerned other distributions and Mr. Schwartz elected not to revisit and revise the Bequest to the Adelson Campus. See Exhibit 1.

¹⁶ 80 Am. Jur. 2d Wills § 989 (emphasis added).

where the express language of the testamentary disposition reflects the testator's unambiguous intention.¹⁷

C. The Milton I. Schwartz Hebrew Academy Continues to Exist and Moreover, a Bequest to a Charitable, Religious, or Educational Organization Is Valid Even if the Charitable, Religious, or Educational Organization Changes Its Corporate Name

The Executor wants the Court to deny the scholarship Bequest because "The Milton I. Schwartz Hebrew Academy" does not exist. However, as also shown in Adelson Campus' Petition to Compel Distribution at page 4, the Milton I. Schwartz Hebrew Academy continues to exist as the d/b/a of the Adelson Campus and as the name of the lower school for preschool through 4th graders in a building that is identified as "The Milton I. Schwartz Hebrew Academy," as depicted in the following true and correct pictures:



The Bequest for scholarships to deserving children cannot be denied on the grounds that the corporate name of the Adelson Campus has changed. It is well noted that a bequest to a charitable, religious, or educational organization is valid even if the charitable, religious, or educational organization changes its name.¹⁸ Accordingly, the fact that the Adelson Campus

¹⁷ 80 Am. Jur. 2d Wills § 1268 (emphasis added).

¹⁸ See 96 C.J.S. Wills § 1091 ("A testamentary gift to a *charitable organization* is generally valid, even though the object is imperfectly designated, if it can be identified with reasonable certainty from the description in the will and the surrounding circumstances. . . . **The**

changed its corporate name from the Milton I. Schwartz Hebrew Academy to the Dr. Miriam and Sheldon G. Adelson Educational Institute is irrelevant.

D. The Executor's Petition Must Be Dismissed Because He Failed to Timely Contest the Will Within the Statute of Limitations Which Expired over Four Years Ago

Nevada law clearly requires that anyone seeking to contest a will must do so either: (a) before the hearing of the petition for probate; or (b) within 3 months after the order is entered admitting the will to probate. NRS 137.010 (1) provides the pre-probate deadline:

The Attorney General or any interested person, including a devisee under a former will, may contest the will by filing written grounds of opposition to the probate thereof at any time before the hearing of the petition for probate. Personal notice must then be given by a citation directed to the heirs of the decedent and to all interested persons, including minors and incapacitated persons, wherever residing, directing them to plead to the contest within 30 days after service of the citation in the manner provided in NRS 155.050.¹⁹

NRS 137.080, provides the limited circumstances to contest a will after probate:

After a will has been admitted to probate, any interested person other than a party to a contest before probate or a person who had actual notice of the previous contest in time to have joined therein may, at any time within 3 months after the order is entered admitting the will to probate, contest the admission or the validity of the will. The contestant must file with the court in which the will was proved a petition containing the allegations of the contestant against the validity of the will or against the sufficiency of the proof, and requesting that the probate be revoked.²⁰

mere fact that a corporate charity has changed its name does not render a gift to it under its former name void for uncertainty."(emphasis added); 96 C.J.S. *Wills* § 1094 ("A testamentary gift to a religious organization is valid, although the organization is misnamed, if it can be identified with reasonable certainty from the language used and the surrounding circumstances. . . . A change in the name of such an organization does not effect the validity of a gift to it under the former name.")(emphasis added); 96 C.J.S. *Wills* § 1093 ("A devise or bequest to an educational organization is valid although the organization is misnamed, where the language in the will designates the object of the gift with reasonable certainty."); 96 C.J.S. *Wills* § 1090 ("The mere misnomer of a corporation or association as a beneficiary does not invalidate a testamentary gift thereto for uncertainty where the beneficiary is reasonably identified. . . . The merger of a designated corporate beneficiary with another corporate entity does not defeat the bequest if the designated beneficiary survives and continues with the purposes which the testator clearly had in mind, particularly on evidence that the testator likely knew of the merger plans.").

¹⁹ *Id.*(emphasis added).

²⁰ *Id.* (emphasis added).

The hearing on the petition for probate in this matter was held on January 11, 2008, and the order admitting the Will to probate was entered on January 24, 2008. The Executor did not file his Petition contesting the Will and asking the Court to construe it differently than its express, unambiguous terms until May 28, 2013, more than five years later.

Therefore, the Executor is now precluded by NRS 137.120 from contesting the Bequest or the Will. NRS 137.120 provides: "If no person contests the validity of a will or of the probate thereof, within the time specified in NRS 137.080, the probate of the will is conclusive."

E. There Is No Evidence to Support the Executor's Manufactured Condition, and His Petition Contesting The Will Does Not State Any Cognizable Claim, And In Fact Runs Away From The Will

On its surface, the Executor's Petition asks the Court construe the Will, but the Executor does not really discuss the Will at all:

- The Executor does not cite to the Will or the Bequest provision.
- The Executor does not block quote the Bequest provision (as is done here above).
- The Executor does not even attach a copy of the Will to his Petition.

One supposedly petitioning the Court to construe a will would necessarily provide the Court with the will or, at a minimum, the provision of the will sought to be construed. Instead, the Executor only cursorily mentions the Will in a couple of sentences at 4:14-15 and 6:4-5 of his Petition. The Executor clearly hides from the Will because it forecloses all of his arguments and claims.

Instead, the Executor spends all of his time discussing events, matters and documents that occurred decades before the Will, which are not only prohibited by NRS 137.030²¹ but have absolutely nothing to do with the Will. There is nothing in the out-of-date by-laws, correspondence or hearsay affidavits offered by the Executor which mention, refer to, or otherwise concern the Will and the Bequest.

The Executor manufactures his arguments and claims around a \$500,000.00 donation to

²¹ NRS 137.030 allows only evidence that is contemporaneous with the execution of the will. It provides: "In the contest, the testimony as to the declaration of a testator is admissible if contemporaneous with the execution of the will insofar as the declaration relates to the testator's intention, state of mind, feelings, competency, and the existence or nonexistence of duress and undue influence." (emphasis added).

1 the school made by the decedent in 1989, some *15 years before* Mr. Schwartz's Will (2004) and
 2 some *18 years before* his death (2007). Here, the Adelson Campus requests the Court to compel
 3 the Executor to distribute the Bequest, which the decedent bequeathed to the school in his 2004
 4 Will, and confirmed twice in 2006. To further illustrate the Executor's unreasonableness,
 5 however, a discussion of that 1989 donation is fitting.

6 The Executor clearly hides from the language of the Will because it forecloses all of his
 7 arguments and claims. Instead, the Executor manufactures his arguments regarding his
 8 purported condition around a \$500,000.00 donation to the school made by the decedent in 1989,
 9 some *15 years before* his Will (2004) and some *18 years before* Mr. Schwartz's death (2007).
 10 Here, the Adelson Campus requests the Court to compel the Executor to distribute the Bequest,
 11 which the decedent bequeathed to the school in his 2004 Will, and confirmed twice in 2006. To
 12 further illustrate the Executor's unreasonableness, however, a discussion of that 1989 donation is
 13 fitting.

14 The Executor claims that the school purportedly agreed to be named "The Milton I.
 15 Schwartz Hebrew Academy" in perpetuity in exchange for that 1989 donation. The Executor
 16 also argues that the decedent purportedly relied on the school's representation regarding the
 17 perpetual naming to pay the school's debt. The only evidence offered by the Executor is a 1993
 18 self-serving affidavit by the decedent in stating what he recalls the school agreed to in 1989, four
 19 years earlier. There is no written agreement signed by the school.²² And, more importantly, the
 20

21 ²² Straining to manufacture more "issues," the Executor claims that the school somehow
 22 "memorialized" the 1989 "agreement" seven years later, via a May 23, 1996, letter (*see*
 23 Executor's Petition at Exhibit 10). That letter is not a contract. In order to have a valid contract,
 24 it is necessary to have "an agreement which creates an obligation: intent, offer, acceptance,
 25 consideration, mutuality of agreement and obligation." *Matter of Estate of Kern*, 107 Nev. 988,
 26 994, 823 P.2d 275, 278 (1991) (citing Restatement of Contracts §§ 19-24 (1932)). The 1996
 27 letter, however, does not state that the school would be named after Mr. Schwartz pursuant to
 28 any 1989 agreement or that it would remained named after him in perpetuity. The 1996 letter
 merely states that the school (which then only encompassed kinder through eighth grade in a
 single building) would be then named after Mr. Schwartz as an accolade. The letter states: "The
 restoration of the name of the 'Milton I. Schwartz Hebrew Academy' has been taken as a matter
 of 'menschlichkeit' (Yiddish word for person of integrity or honor) in acknowledgement of your
 contribution and assistance to the Academy; your continued commitment to Jewish education
 reflected by the establishment of the 'Jewish Community Day School' and last but not least, your
 recent action as a man of 'shalom.'" It should be reiterated as well that said 1996 letter has

1 Executor's claim fails for at least three reasons:

- 2 • *First*, it is undisputed that Dr. Miriam and Sheldon Adelson paid off the school's
- 3 \$1.8 million debt and not Milton Schwartz or his Estate, even though Mr.
- 4 Schwartz had personally guaranteed that debt and Section 2.3 of his Will required
- 5 the Estate to pay such debt. Indeed, the Executor did not come forth at the time
- 6 that the Adelsons generously paid off the decedent's guarantee and instead offer
- 7 that the Estate pay-off such debt in accordance with his position. The Executor's
- 8 condition and Petition are a sham.
- 9 • *Second*, according to the Executor, the school purportedly breached its so-called
- 10 "agreement" to the decedent in 1994²³ and the statute of limitations had long-
- 11 expired.
- 12 • *Third*, the Adelson Campus continues to operate "The Milton I. Schwartz Hebrew
- 13 Academy," as discussed above.

14 That the Executor has wondered far afield is an understatement.

15 IV. 16 CONCLUSION

17 For the foregoing reasons, this Court should dismiss the Executor's Petition.

18 LIONEL SAWYER & COLLINS

19 By: 

20 Maximiliano D. Couvillier, III (SBN #7661)

21 Ketan D. Bhirud (SBN #10515)

22 Kendal L. Davis (SBN #11946)

23 Attorneys for The Dr. Miriam and Sheldon G.
24 Adelson Educational Institute

25
26
27 nothing to do with the Will (2004).

28 ²³ See Executor's Petition at 3:12.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 12, 2013, I deposited in the United States Mail at Las Vegas, Nevada, a true and correct copy of the foregoing **MOTION TO DISMISS EXECUTOR'S PETITION FOR DECLARATORY RELIEF** enclosed in a sealed envelope upon which first class postage was paid, addressed as follows:

Steven J. Oshins, Esq.
OSHINS & ASSOCIATES
645 Village Center Circle
Las Vegas, NV 89134
Attorneys for Executor

Robert P. Dickerson, Esq.
THE DICKERSON LAW GROUP
1745 Village Center Circle
Las Vegas, NV 89134
Attorneys for Abigail Richlin Schwartz

Eileen Joanna Zarin
9 Steven Lane
King Point, NY 11024

Robin Sue Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Samuel Schwartz
351 Woodlake Drive
Marlton, NJ 08053

Michael Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Zachary Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Benjamin Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

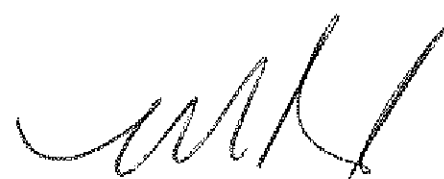
Joshua Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Frances A. Martel
235 Vista Del Parque
Redondo Beach, CA 90277

The Milton I. Schwartz Revocable Family
Trust, A. Jonathan Schwartz, Trustee
2293 Duneville Street
Las Vegas, NV 89146

Medicaid Estate Recovery
1050 E. William Street, Suite 435
Carson City, NV 89701-3199

Mark Solomon, Esq.
Alan D. Freer, Esq.
Steven E. Hollingworth, Esq.
SOLOMON, DWIGGINS & FREER
9060 West Cheyenne Ave.
Las Vegas, NV 89129
Attorneys for Executor



An Employee of Lionel Sawyer & Collins

Exhibit 1

Exhibit 1

LAST WILL AND TESTAMENT

OF

MILTON I. SCHWARTZ

FILED

OCT 11 4 23 PM '07

I, MILTON I. SCHWARTZ, domiciled in Clark County, Nevada, and a citizen of the United States, being of sound and disposing mind memory, do hereby make, publish and declare this to be my LAST WILL AND TESTAMENT, and hereby revoke any and all Wills and Codicils at any time heretofore made by me.

FIRST: MARITAL AND FAMILY STATUS

I am married to ABIGAIL SCHWARTZ and any references to my "spouse" or my "wife" herein is to her. I have four (4) children now living, whose names and dates of birth are:

EILEEN JOANNA ZARIN	July 21, 1948
ROBIN SUE LANDSBURG	January 15, 1951
SAMUEL SCHWARTZ	June 8, 1953
A. JONATHAN SCHWARTZ	August 5, 1970

The terms "my child" and "my children" as used in this Will shall refer to the aforementioned children. The term "descendants" as used in this Will shall mean the blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted who was a minor at the date of adoption, that child or his descendants shall be considered as descendants of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

SECOND: BEQUESTS

2.1 Written Directions. I may leave one or more written directions disposing of items of personal and household articles. Each shall be effective only if (i) executed by me with all the formalities of a deed (i.e., witnessed and notarized), and (ii) delivered to the Trustees of the trust referred to in ARTICLE THIRD hereof prior to my death. Each may be dated before or after the date of this Will, but none shall be effective insofar as I have expressly revoked it by a similarly executed and delivered written instrument. If such a direction exists, (i) it shall be given effect as though its provisions were written here (in this Section) in this Will, and (ii) it shall take precedence over any contrary disposition of the same item or items of property in this Will (or in any Codicil hereto, unless such Codicil expressly overrides such direction). If there be more than one such unrevoked direction, to the extent they are in conflict, the one bearing the most recent date shall control.

2.2 Personal and Household Articles Not Subject to Written Directions. Subject to the foregoing provisions of Section 2.1, I give my jewelry, clothing, household furniture and furnishings, personal automobiles, and any other tangible articles of a personal nature; or my interest in any such property, not otherwise specifically disposed of by this will, or in any other manner, together with any insurance on the property, to my descendants who survive me, per stirpes, such descendants to make their shares as they shall agree. My Executor shall represent any beneficiary under age 18 in matters relating to any distribution under this Section 2.2, including selection of the assets that shall constitute that beneficiary's share, and my Executor in my Executor's discretion sell for the beneficiary's account any part of the beneficiary's share. Any property or its proceeds distributable to a beneficiary under age 18 pursuant to this Section 2.2 may be delivered without bond to any suitable person with whom the beneficiary resides or who has care of the beneficiary.

I direct that the expense of packing, shipping and delivering such property to said legatee, at said legatee's

Testator's Initials

MS

residence or place of business, shall be paid by my Executor as an administration expense of my estate.

2.3 The Milton I. Schwartz Hebrew Academy. I hereby give, devise and bequeath the sum of five hundred thousand dollars (\$500,000.00) to the Milton I. Schwartz Hebrew Academy (the, "Hebrew Academy"). This gift is to be in the form of securities (stocks, bonds or cash) with the largest profit so that my estate can take advantage of the low cost basis and increased price as directed by my Executor in his sole discretion. If, at the time of my death, there is a bank or lender mortgage (the "mortgage") upon which I, my heirs, assigns, or successors in interest are obligated as a guarantor on behalf of the Hebrew Academy, the \$500,000.00 gift shall go first to reduce and or expunge the mortgage. In the event that the lender will not release my estate or my heirs, successors or assigns, no gift shall be given to the Hebrew Academy. In the event that no mortgage exists at the time of my death, the entire \$500,000.00 amount shall go to the Hebrew Academy for the purpose of funding scholarships to educate Jewish children only.

2.4 Landsburg Grandson's Gift. I hereby give, devise and bequeath the total sum of one hundred eighty thousand dollars (\$180,000.00); forty five thousand dollars (\$45,000.00) each to the following of my grandchildren upon my death in recognition of my appreciation and pride that I experienced upon hearing each of the following grandchildren chant a portion of the Torah at Benjamin Landsburg's Bar Mitzvah: Michael Landsburg; Zachary Landsburg; Benjamin Landsburg; Joshua Landsburg.

2.5 Distribution of Trust Assets of THE MILTON I. SCHWARTZ 1991 IRREVOCABLE TRUST. I created THE MILTON I. SCHWARTZ 1991 IRREVOCABLE TRUST on August 21, 1991 (herein, "MIS 1991 Trust"), which presently owns the home in which I reside commonly known as 2120 Silver Avenue, Las Vegas, Nevada (herein, the "home"). Under the terms of the MIS 1991 Trust, if I should die prior to the 13 years and 7 month term, I give, devise and bequeath the home to my wife, ABIGAIL SCHWARTZ, if she survives me, provided that she is married to and living with me at the time of my death.

2.6 Frances A. Martel. I hereby direct my Executor or the Successor-Trustee of the Milton I. Schwartz Revocable Family Trust, dated January 29, 1986 (herein, my "Executor") as the case may be, to give, devise and bequeath the sum of one thousand dollars (\$1,000.00) per month, each month, to Frances A. Martel (herein, "Martel") for so long as she shall live.

2.7 Termination of Gifts. I hereby terminate and revoke any gift to the following: Las Vegas Jewish Federation or any successor thereto; Las Vegas Jewish Federation Day School in Formation or any successor thereto. In the event that the revocation of these gifts in section 2.8 hereof shall be challenged in any way, I hereby give, devise and bequeath the sum of one dollar only (\$1.00) to each organization.

THIRD: RESIDUARY BEQUESTS

3.1 Residue to Trust. I give, devise and bequeath the residue of my estate to A. JONATHAN SCHWARTZ as Successor-Trustee, or any successor Trustees, of the trust designated as "THE MILTON I. SCHWARTZ REVOCABLE FAMILY TRUST" established January 29, 1986 and amended earlier today, of which I am the Grantor and the original Trustee. I direct that the residue of my estate shall be added to, administered and distributed as part of that trust, according to the terms of that trust and any amendments made to it before my death. To the extent permitted by law, it is not my intention to create a separate trust by this Will or to subject the trust or the property added to it by this Will to the jurisdiction of the Probate Court.

3.2 Incorporation by Reference. If the disposition in Section 3.1 is not operative or is invalid for any reason, or if the trust referred to in that Section fails or has been revoked, then I hereby incorporate by reference the terms of that trust, including any amendments thereto, and I give, devise and bequeath the residue of my estate to the Trustee named therein as Trustee, to be held, administered and distributed as provided in that instrument.

Testator's Initials

MIS

FOURTH: EXECUTOR

4.1 Appointment of Executor. I nominate, constitute and appoint A. JONATHAN SCHWARTZ, or in the event of his death, Robin Sue Landsburg, as Executor of this Will. If both shall for any reason fail to qualify or cease to act as such Executor, then I nominate Eileen Joanna Zarin as Executor in their place and stead. The term "my Executor" as used in this Will shall include any personal representative of my estate.

4.2 Waiver of Bond. No bond shall be required of any Executor nominated in this Will.

4.3 Appointment of Ancillary Fiduciaries. Should ancillary administration be necessary or advantageous in any jurisdiction and should my Executor be unable and or unwilling to act as my ancillary fiduciary, I nominate, constitute and appoint as ancillary fiduciary such qualified person or trust institution as my Executor shall from time to time designate (with retained right of removal) in a writing filed in the court having ancillary jurisdiction. Furthermore, all my ancillary fiduciaries shall at all times be subject to the directions of my Executor and the residuary estate of each ancillary administration shall be transmitted to my Executor as promptly as possible.

4.4 Election of Simplified Unsupervised Administration. If independent administration without certain court proceeding and supervision is to any extent permitted under the laws of any jurisdiction in which any part of my estate is being administered, I hereby elect such simplified mode(s) of administration and direct; to the greatest extent possible, settlement of my estate without the intervention of or accountings to any courts.

4.5 General Powers. In addition to, and not in limitation of the Executor's common law and statutory powers, and without order or approval of any court, I give and grant to my Executor the rights and powers to take any action desirable for the complete administration of my estate, including the power to determine what property is covered by general descriptions contained in this Will, the power to sell on behalf of my estate, with or without notice, at either public or private sale, and to lease any property belonging to my estate, subject only to such confirmation of court as may be required by law.

4.6 Power Regarding Tax Returns. My Executor is authorized to file an income tax return for me and to pay all or any portion of the taxes due thereon. If any additional assessment shall be made on account of any income tax return which I have filed, my Executor is authorized to pay the additional assessment. The exercise of authority hereunder by my Executor shall be conclusive and binding on all persons.

4.7 Power to Make Tax Elections. My Executor has the authority to make the following choices

- (a) Elect any valuation date for purposes of federal estate tax permitted by law which my Executor deems to be to the best advantage of the family considered as a whole rather than the advantage of those interested only in my estate, even to the extent of making the election in such a way that the federal estate tax is greater rather than less a result of such election, provided that in my Executor's discretion such is likely to be for the best advantage, present and future, of the family taken as a whole.
- (b) Choose the methods of payment of federal estate taxes or state estate or inheritance taxes.
- (c) Determine whether any or all of the expenses of administration of my estate shall be used as federal estate tax deductions or as federal income tax deductions. No beneficiary under this Will shall have any right to recoupment or restoration of any loss the beneficiary suffers as a result of the use of such deduction for one or the other of these purposes.
- (d) Join with my spouse or the estate of my spouse in filing a joint income or gift tax return or returns for any arrears for which I have not filed returns prior to my death.
- (e) Consent that any gifts made by me or my spouse have been made one-half by me and one-half by my spouse for gift tax purposes even though these actions may subject my estate to additional tax liabilities.

Testator's initials JS

- (f) Allocate in my Executor's sole discretion, any portion of my exemption under Sec. 2631(a) of the Internal Revenue Code, as amended, to any property as to which I am the transferor, including any property transferred by me during life as to which I did not make an allocation prior to my death.
- (g) Exercise any other options or elections afforded by the tax law of the United States or of any other jurisdiction. My Executor may exercise this authority in my Executor's sole discretion; regardless of any other provisions in this Will or the effect on any other provisions of this Will or the effect on any person interested in my estate. No beneficiary under this Will shall be entitled to a compensating adjustment even though the exercise of these tax powers affects the size or composition of my estate or of any disposition under this Will. The determination of my Executor with respect to the exercise of the election shall be conclusive upon all affected persons.

4.8 Power to Select Property to be Distributed. I authorize my Executor, on any preliminary or final distribution of property in my estate, to partition, allot, and distribute my estate in kind, including undivided interests in my estate or any part of it, or partly in cash and partly in kind, or entirely in cash, in my Executor's absolute discretion. Any distribution or division in kind may be made on a proportionate or a non-proportionate basis so long as the respective assets allocated or distributed have equivalent or proportionate fair market values.

4.9 Power to Employ. My Executor may employ and compensate from my estate accountants, brokers, attorneys, investment advisors, custodians and others whose services are, in my Executor's discretion, necessary or convenient to the administration of the estate created herein. My Executor is expressly authorized to employ and compensate any firm with which my Executor may be associated to perform any services that are in my Executor's opinion necessary or convenient to the administration of my estate.

4.10 Continuance of Business. (a) I further authorize my Executor either to continue the operation of any business belonging to my estate for such time and in such manner as my Executor may deem advisable and for the best interests of my estate, or to sell or liquidate the business at such time and on such terms as my Executor may deem advisable and for the best interests of my estate. Any such operation, sale, or liquidation by my Executor in good faith, shall be at the risk of my estate and without liability on the part of my Executor for any resulting losses.

4.10 (b) In connection with the business interests known as Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation, Nevada Star Cab Corporation, Besdew Limited Partnership, National Automotive, Ltd., Star Limousine, L.L.C. and all affiliates and related entities, and any successor companies thereto, and all real estate related thereto (herein "YCS"); as well as the real property commonly known as Jennifer Park, Jonathan Park, Michael Park, as well as any other real estate held by the Grantor's estate or real estate or investments invested in as proceeds from the sale of these properties; any investments whether equities, stocks, bonds, limited partnerships, cash or investments invested in as proceeds from the sale of these investments (herein, "investments"); the management of Americab, Roland Garage, all affiliates and related entities (herein "Americab"), and all related real estate and any successor companies thereto or companies or investments, invested in as proceeds from the sale of Americab; as well as any other real estate or businesses of which the Grantor or his estate held or holds an interest in, the Grantor specifically nominates, constitutes and appoints his son, Executor, and Trustee, A. JONATHAN SCHWARTZ (herein, "JONATHAN"), to serve and represent his, his family's, estate's and Revocable Trust's interests, with respect thereto. A. JONATHAN SCHWARTZ is fully familiar with the details of these business interests and most capable of continuing the management of their affairs. Insofar as the Grantor has personally performed management duties and functions in the past, represented his or his family's interest at Board Meetings, TSA or TA Meetings, JONATHAN is hereby designated to continue in those capacities subject to the following conditions:

4.10 (c) In connection with management duties performed by A. JONATHAN SCHWARTZ for the Grantor, the Grantor's estate and Revocable Trust's interest in YCS and any successor companies thereto, and all real estate related thereto; A. JONATHAN SCHWARTZ shall receive a ninety three thousand eight hundred forty six (\$93,846.00) annual salary, increased by 2% each year (herein, "YCS Salary"). The YCS Salary shall be paid from a combination of both the Payroll and Director's Fees customarily received by the Grantor during his life. Furthermore, A. JONATHAN SCHWARTZ shall receive any medical insurance or other benefits as a Director of YCS as the Grantor received during his lifetime.

Testator's Initials JS

4.10 (d) JONATHAN'S management, control and decision making authority of YCS shall be limited only by the following: In the event that the primary assets of YCS (the taxicab and transportation operations) are to be sold, in order to provide consent to such a sale, JONATHAN must receive two additional votes of the Grantor's three remaining children or their representatives.

4.10 (e) Notwithstanding any provision herein contained to the contrary, all stock held or managed by Milton I. Schwartz at the time of his death or held in the Milton I. Schwartz Revocable Family Trust (January 29, 1986) in YCS, shall continue to be held, after Milton I. Schwartz's death, in the name of the Milton I. Schwartz Revocable Family Trust (January 29, 1986), A. Jonathan Schwartz, Trustee. JONATHAN'S duties as described within this section 4.02 shall continue for his lifetime or permanent disability.

4.10 (f) Notwithstanding any provision herein contained to the contrary, to the extent that the primary assets of YCS are sold, comprised of the entity names and transportation operations so that there are no further operations of YCS or its successors, and if the sales proceeds are distributed out to the respective owners of YCS, the Trustee shall distribute out said sales proceeds to each of the four family units as to twenty-five percent (25%) to each family unit.

4.10 (g) JONATHAN'S management, control and decision making authority on behalf of my estate's interest in YCS shall be limited only by the following: In the event that the primary assets of YCS (the taxicab and transportation operations) are to be sold, in order to provide consent to such a sale, JONATHAN must receive two additional votes of my three remaining children or their representatives.

4.10 (h) With regard to the management of Jennifer Park, Jonathan Park and all other income producing properties in which I or my estate holds an interest, JONATHAN shall receive a management fee in the amount of three percent (3%) of the annual base rent generated by the respective property, as he has received during my life, for property management services.

4.10 (i) In connection with JONATHAN'S property management services of the property commonly known as Michael Park, JONATHAN shall receive monthly compensation of one thousand six hundred sixty seven dollars (\$1,667.00) as he has received during my life.

4.10 (j) JONATHAN shall serve as President of Americab, Roland Garage, all affiliates and related entities (herein, "Americab"), and all related real estate and any successor companies thereto or companies or investments, invested in as proceeds from the sale of Americab.

4.11 Distribution to Minors. In the event any person entitled to receive distributions hereunder shall be a minor, or an incompetent, the distributions to that person shall be to the natural guardian of the legally appointed guardian, conservator or other fiduciary of the person or estate of that person (including, but not limited to, a custodian for the beneficiary under the Uniform Transfers to Minors Act in the state in which the beneficiary or custodian resides or any other state of competent jurisdiction), to be held and used exclusively for the benefit of that person. My Executor shall not be required to see to the application of any funds so paid or applied and the receipt of that guardian, conservator or other fiduciary of the person or estate of that person shall be complete acquittance of my Executor.

4.12 Power to Disclaim. My Executor is authorized to disclaim all or any portion of any bequest, devise or trust interest provided for me under any will or trust instrument. In particular, I authorize my Executor to exercise this authority in order to obtain advantageous results considering, in the aggregate, the taxes to be imposed on my spouse's estate and mine, even though this may cause some beneficiaries of my estate to receive less than they would otherwise have received.

4.13 Power to Transact with Trusts. My Executor is hereby authorized to purchase any property, and to make loans and advances, or to otherwise deal with, the Trustee of any trust, including, but not limited to, trusts wherein the Executor and Trustee shall be the same parties.

FIFTH: TESTAMENTARY DECLARATIONS

5.1. Revocation of Spouse's Right to Receive Annuity Payments. Pursuant to the provisions of Section 4.01 of each of THE ROBIN SUE LANDSBURG 1993 RETAINED ANNUITY TRUST, THE EILEEN JOANNA ZARIN 1993 RETAINED ANNUITY TRUST, THE SAMUEL SCHWARTZ 1993 RETAINED ANNUITY TRUST and THE

Testator's Initials WDS

A. JONATHAN SCHWARTZ 1993 RETAINED ANNUITY TRUST, my wife has the right to receive certain annuity payments, subject to my power of revocation. I hereby revoke my wife's right to receive any such annuity payments.

5.2 Non-exercise of Powers of Appointment. I refrain from exercising any testamentary power of appointment that I may have at the time of my death.

5.3 Presumption of Survivorship. For purposes of this Will, a beneficiary shall not be deemed to have survived me if that beneficiary dies within 90 days after my death.

5.4 Confirmation of Gifts. I hereby ratify and confirm all gifts made by me prior to my death, and I direct that none of those gifts should be deemed or construed to be an advancement to any beneficiary nor shall any gift be taken into account in the settlement of my estate.

5.5 Premarital Agreement. On January 26, 1993 I entered into a Premarital Agreement with my wife. I have made provisions in the trust referred to in ARTICLE THIRD hereof to carry out the provisions of said Agreement. I hereby direct my Executor to take any further actions necessary or appropriate to carry out the terms of said Agreement. I hereby instruct my representatives to fulfill the terms and provisions of the Premarital Agreement in lieu of any other bequests or legacies to Abigail Schwartz, only to the extent agreed to in writing by Abigail Schwartz and myself, or as ordered in a judgment of a court of competent jurisdiction. Abigail Schwartz shall have no further interest in my estate, Will or trusts.

5.5 (b) Abigail Schwartz Outstanding Loan. As of January 7, 2004, an outstanding Promissory Note (herein, the "Note") existed between my wife and myself whereby my wife owes me or my estate two hundred thirty thousand dollars (\$230,000.00). To the extent that any balance is left remaining on the Note at the time of my death, any amounts to be paid to my wife from my estate, in accordance with our Premarital Agreement, shall be reduced by the amount of the balance on the Note.

SIXTH: MISCELLANEOUS

6.1 Incontestability. In the event any person authorized to receive any property hereunder commences, prosecutes, promotes, intervenes in, contributes to or voluntarily participates in, directly or indirectly, or counsels or aids any other person to commence, prosecute, promote, intervene in, contribute to or voluntarily participate in, directly or indirectly, any proceeding or action in any court, agency, tribunal or other forum wherein the person authorized to receive property or the counseled person (1) seeks to void, nullify or set aside all or any part of my Will; (2) seeks to void, nullify or set aside any trust of which I am a grantor or trustee, or both; or (3) makes a claim which is based upon any alleged act or omission by me, individually, or in my capacity as trustee, executor, partner, officer or director, or in any other capacity; or (4) directly or indirectly contests or calls into question the discretionary decisions of the Executor or Trustee hereunder, then I revoke any share or interest in my estate given under this Will or in the trust referred to in ARTICLE THIRD hereof to the person making the claim, to the counseling person, and to the descendants of each of them, and such share or interest shall be immediately disposed of by termination of the appropriate trust or trust or otherwise, as if such claimant or counseling person had predeceased me without descendants. This provision shall remain in effect from my death until no trust under the trust referred to in ARTICLE THIRD hereof is in existence, whether or not the administration of my estate has been completed. If any provision of this Article is held to be unenforceable or void for any reason, the remaining provisions shall be fully effective.

6.2 Tax Contribution. I direct that every specific and general gift, devise or bequest given under this Will or any Codicil hereto shall be delivered free of all estate and inheritance taxes and that such taxes be paid out of the residue of my estate. I further direct that no legatee, devisee or beneficiary hereunder, or beneficiary under any of my life insurance policies, or any surviving joint tenant, or any trustee of any private trust of mine which shall be in existence at the time of my death, shall be called upon to make any contributions toward the payment of any estate or inheritance taxes.

6.3 No Interest on Specific Bequests. I direct that no interest be paid on any specific bequest herein.

Testator's Initials

JS

6.4 Severability If any part or parts of this Will shall be invalid, illegal or inoperative, it is my intention that the remaining parts shall stand and be effective and operative.

6.5 Gender and Number As used in this Will, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

6.6 Headings The headings, titles and subtitles in this Will have been inserted for convenient reference, and shall be ignored in its construction.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of February, 2004.

Milton I. Schwartz
MILTON I. SCHWARTZ

On the date last above written, MILTON I. SCHWARTZ declared to us that the foregoing instrument, consisting of seven (7) pages, including the affidavit signed by us as witnesses, was his Will dated January __, 2004, and requested us to act as witnesses to it. He thereupon signed this Will in our presence all of us being present at the same time. We now at his request, in his presence, and in the presence of each other, subscribe our names as witnesses.

[Signature]
Residing At:
1465 Verde Triandos Dr.
Henderson, NV 89012

Beverly J. Jones
Residing At:
1511 Surf Drive
Henderson, NV 89015

STATE OF NEVADA)
COUNTY OF CLARK) ss.:

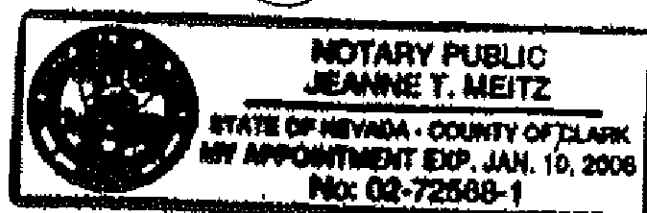
Then and there personally appeared the within named Richard B. Newman and Beverly J. Jones who, being duly sworn, depose and say:

That they witnessed the execution of the within Will of the within named Testator, MILTON I. SCHWARTZ; that the Testator subscribed the Will and declared the same to be his Will in their presence; that they thereafter subscribed the same as witnesses in the presence of the Testator and in the presence of each other and at the request of the Testator; that the Testator at the time of the execution appeared to be of full age and of sound mind and memory and under no constraint; and that they make this Affidavit at the request of the Testator.

[Signature]
SUBSCRIBED and SWORN to before me

This 5th day of January, 2004.

[Signature]
Notary Public



FIRST CODICIL **FILED**

TO

Oct 11 4 23 PM '07

LAST WILL & TESTAMENT

OF

CR. [Signature]
CLERK OF THE COURT

MILTON I. SCHWARTZ
(Will dated February 5th, 2004)

I, MILTON I. SCHWARTZ, declare that I am a resident of Las Vegas, County of Clark, State of Nevada, and that this is the First Codicil to my Last Will and Testament dated February 5, 2004.

DECLARATIONS AND RECITALS

WHEREAS, my currently effective Last Will & Testament was executed on February 5, 2004 in Las Vegas, Nevada (herein "Will").

WHEREAS, I hereby ratify, confirm and republish my Will dated February 5, 2004 in every respect. If any part of the Will or my First Codicil is inconsistent, this First Codicil dated January 27, 2006 shall govern (hereinafter, the "First Codicil").

NOW, THEREFORE, I, MILTON I. SCHWARTZ, being of sound and disposing mind and memory and having heretofore executed my Last Will & Testament, bearing the date of February 5, 2004 and not acting under duress, menace, fraud or undue influence of any person, do hereby make, publish and declare the following to be the First Codicil to my Last Will and Testament:

I.

I hereby amend Article "Second", Section 2.5 of my Will entitled "Bequests" as follows:

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The purpose of the Milton I. Schwartz 1991 Irrevocable Trust, dated August 21, 1991 has been satisfied (hereinafter, "MIS 1991 Trust") as follows: My wife, Abigail Richlin Schwartz (hereinafter, "Abigail") has relinquished all rights to that certain property located at 2120 Silver Avenue, Las Vegas, NV 89102 (hereinafter, the "Residence"). I, Milton I. Schwartz, no longer have any duty to purchase the Residence from the MIS 1991 Trust and gift it to Abigail. Abigail has accepted a payment of One Million Dollars (\$1,000,000.00) less a debt owed from Abigail to me in the amount of Two Hundred Thirty Thousand Dollars (\$230,000.00) for a total payment from me to Abigail in the amount of Seven Hundred Seventy Thousand Dollars (\$770,000.00) (hereinafter, "Consideration"). The Consideration was paid to Abigail August of 2004. Therefore, I hereby cancel, revoke, repudiate and terminate section 2.5 of Article Second of my Will. Abigail shall have no rights to ownership of the Residence. Notwithstanding the foregoing, provided Abigail and I are married and living together at my death, Abigail shall have the right to live at the Residence for a period of one year rent free from the date of my death. Should Abigail choose not to inhabit the residence personally, any right to occupy the Residence shall terminate.

II.

I hereby amend Article Fourth, entitled "Executor", section 4.10 (c) only, of my Will as follows:

In connection with management duties performed by **A. JONATHAN SCHWARTZ** for or on behalf of the Grantor, the Grantor's estate and the Milton I. Schwartz Revocable Trust, dated January 29, 1986, Ninth Amendment dated February 5, 2004 (hereinafter, "Revocable Trust") or any successor entity thereto regarding Yellow, Checker, Star Cab Companies



(hereinafter, "YCS") and any successor companies thereto, and all real estate related thereto; A. JONATHAN SCHWARTZ shall receive that Payroll, Director's fees, medical insurance and all other benefits (hereinafter "YCS Director's Salary") customarily received by me (Milton I. Schwartz) as a Director of YCS during my life. To the extent that the Board of Directors of YCS amends or changes the YCS Director's Salary after my death, A. JONATHAN SCHWARTZ's YCS Salary shall be amended to equal that of the respective YCS Directors. If any portion of this First Codicil shall conflict with the Revocable Trust, this First Codicil shall govern.

III.

I hereby amend Article Fifth of my Will, titled Testamentary Declarations, section 5.5 as follows:

On January 26, 1993 I entered into a Premarital Agreement (hereinafter, the "Premarital Agreement") with my wife, Abigail Richlin Schwartz (hereinafter, "Abigail") which was amended October 26, 1994, (hereinafter, the "October 1994 Amendment"), was the subject of a Reconciliation Agreement dated December 24, 1996 (hereinafter, the "Reconciliation Agreement"), was amended April 9, 1997 (hereinafter, the "1997 Amendment") and amended October of 2004 (hereinafter, the "October 2004 Amendment"). I hereby affirm, ratify confirm and republish the Premarital Agreement, the October 1994 Amendment, the Reconciliation Agreement, the 1997 Amendment and the October 2004 Amendment by reference as if set forth in full hereinafter. I hereby direct my Executor to take any action necessary or appropriate to carry out the terms of the Premarital Agreement, the October 1994 Amendment, the Reconciliation Agreement, the 1997 Amendment and the October 2004 Amendment. I hereby instruct my representatives to fulfill the terms and provisions of the Premarital Agreement, the

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Reconciliation Agreement, the October 1994 Amendment, the 1997 Amendment and the October 2004 Amendment in lieu of any other bequests or legacies to Abigail, only to the extent agreed to in writing by Abigail and myself. Abigail shall have no further interest in my estate, Will or trusts other than what is provided for in the Premarital Agreement, the Reconciliation Agreement, the October 1994 Amendment, the 1997 Amendment and the October 2004 Amendment.

IV.

I hereby amend Article Fifth of my Will, titled Testamentary Declarations, section 5.5 (b) as follows:

As of January 2006, Abigail Schwartz currently has no outstanding loans to me or my estate. The balance on the Note has been satisfied in full.

I subscribe my name to this FIRST CODICIL this 27 day of January, 2006.


MILTON I. SCHWARTZ

On the date last above written, MILTON I. SCHWARTZ declared to us, the undersigned, that this instrument, consisting of five (5) pages, including the page signed by us as witnesses, was his FIRST CODICIL to LAST WILL AND TESTAMENT, and requested that we act as witnesses to it. He thereupon signed this First Codicil in our presence, all of us being present at the same time. We now, at his request, in his presence and in the presence of each other, subscribe our names as witnesses.

William P SHRANKO residing at 2012 Fort Hall Rd Henderson NV
 Witness Name Witness Address 89052

Sheila L Robertson, residing at 4174 Don Bonito, LVNV 89121
 Witness Name Witness Address

STATE OF NEVADA)

)ss.

COUNTY OF CLARK)

Then and there personally appeared the within named William R Shranko and Sheila L Robertson who, being duly sworn, depose and say:

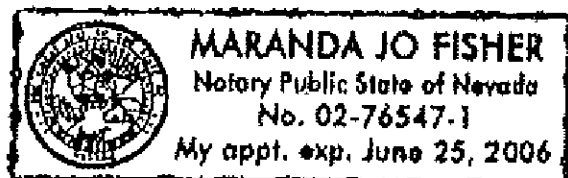
That they witnessed the execution of the within First Codicil to Last Will and Testament, dated February 5, 2004, of the within named Testator, MILTON I. SCHWARTZ, that the Testator subscribed the First Codicil and declared the same to be the First Codicil to his Last Will and Testament in their presence; that they thereafter subscribed the same as witnesses in the presence of the Testator and in the presence of each other and at the request of the Testator; that the Testator at the time of the execution of the First Codicil appeared to them to be of sound mind and memory; and that they make this Affidavit at the request of the Testator.

William P Shranko
 Witness Signature

Sheila L Robertson
 Witness Signature

SUBSCRIBED and SWORN to before me
 this 27th day of January, 2006.

Maranda Jo Fisher
 NOTARY PUBLIC in and for said County and State.



SECOND CODICIL
TO
LAST WILL & TESTAMENT
OF

MILTON I. SCHWARTZ
(Will dated February 5th, 2004)
(First Codicil dated January 27, 2006)

I, MILTON I. SCHWARTZ, declare that I am a resident of Las Vegas, County of Clark, State of Nevada, and that this is the Second Codicil to my Last Will and Testament dated February 5, 2004.

DECLARATIONS AND RECITALS

WHEREAS, my currently effective Last Will & Testament was executed on February 5, 2004 in Las Vegas, Nevada (herein "Will").

WHEREAS, I executed a currently effective First Codicil to my Will dated January 27, 2006 ("First Codicil").

WHEREAS, I married Abigail Richlin Schwartz ("Abigail") on January 28, 1993.

WHEREAS, Abigail and I are parties to both a valid and enforceable Premarital Agreement dated January 26, 1993 (the "Premarital Agreement"), and a Reconciliation Agreement dated December 24, 1996 ("Reconciliation Agreement"), an Addendum to Reconciliation Agreement dated April 9, 1997 ("Addendum to Reconciliation"), a Second Addendum To Reconciliation Agreement dated October 1, 1999 ("Second Addendum To Reconciliation Agreement") and an Addendum to Premarital Agreement dated October 28, 2004 ("Addendum to Premarital Agreement"), all of which shall be incorporated as if set forth in full

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herein by reference and referred to as the "Marital Agreements". I hereby ratify, confirm and republish the Marital Agreements except as modified below herein.

WHEREAS, I executed an Affidavit dated March 30, 2006 stating my decision to divorce Abigail which shall be incorporated by reference as if set forth in full herein ("Affidavit").

WHEREAS, I hereby ratify, confirm and republish my Will dated February 5, 2004 and my First Codicil in every respect. Notwithstanding the foregoing, if any part of the Will or my First Codicil dated January 26, 2006 is inconsistent, this Second Codicil dated July 31, 2006 shall govern and control (hereinafter, the "Second Codicil").

NOW, THEREFORE, I, MILTON I. SCHWARTZ, being of sound and disposing mind and memory and having heretofore executed my Last Will & Testament, bearing the date of February 5, 2004 and my First Codicil dated January 27, 2006 and not acting under duress, menace, fraud or undue influence of any person, do hereby make, publish and declare the following to be the Second Codicil to my Last Will and Testament:

I.

I informed my wife, Abigail Richlin Schwartz ("Abigail") of my decision to divorce her on March 29, 2006. Due to my decision to divorce Abigail, and because we are not living together as husband and wife, I hereby cancel, revoke and terminate any bequest or gift to Abigail whatsoever within my Will, First Codicil, Premarital Agreement, the Reconciliation Agreement, the Addendum to Reconciliation Agreement, the Second Addendum to Reconciliation Agreement, the Addendum to Premarital Agreement, and any other written agreements that may exist between Abigail and myself. Abigail shall share in no part of the various trusts created by me. There are no oral agreements between Abigail and myself. Abigail

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shall share in no part of my estate whatsoever.

II.

Notwithstanding the terms of section 4.9 of my Will, to the extent that my Executor is also a Director of Yellow, Checker, Star Cab Companies (hereinafter, "YCS") and receives Director's Fees, Director's Salary and other direct pecuniary payments as a Director in the amount of \$272,000.00 or more annually, my Executor shall receive no compensation for his or her role as Executor. The foregoing calculation of Director's Fees, Salary and pecuniary payments (\$272,000.00) (hereinafter, "Director's Salary") shall not include any benefits, financial or otherwise, attributable to travel expenses, health insurance, sports box benefits, and any distributions of cash flow or profits as an owner or shareholder of YCS, National Automotive, Besdew or any successors thereto. However, my Executor is authorized to employ any firm with which my Executor may be associated to perform any services that are in my Executor's opinion necessary or convenient to the administration of my estate, but said firm or affiliate of my Executor shall be uncompensated therefor while a Director of YCS receiving the Director's Salary. In the event that my estate is no longer an owner of YCS or the Director receives substantially less than the foregoing Director's Salary, my Executor is expressly authorized to employ and compensate any firm with which my Executor may be associated to perform any services that are in my Executor's opinion necessary or convenient to the

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administration of my estate.

I subscribe my name to this SECOND CODICIL this 2/ day of July, 2006.

MILTON I. SCHWARTZ
MILTON I. SCHWARTZ

On the date last above written, MILTON I. SCHWARTZ declared to us, the undersigned, that this instrument, consisting of five (5) pages, including the page signed by us as witnesses, was his SECOND CODICIL to LAST WILL AND TESTAMENT, and requested that we act as witnesses to it. He thereupon signed this Second Codicil in our presence, all of us being present at the same time. We now, at his request, in his presence and in the presence of each other, subscribe our names as witnesses.

SMH, residing at 1410 W. Scales Way
Witness Name Witness Address

Julia Fuchs, residing at 4174 Don Donto
Witness Name Witness Address

STATE OF NEVADA)


)ss.


COUNTY OF CLARK)

Then and there personally appeared the within
named Lynn Henderson and
Sheila Robertson who, being duly sworn, depose and say:
That they witnessed the execution of the within Second Codicil to Last Will and

WP

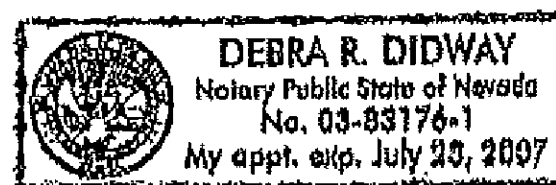
Testament, dated February 5, 2004, of the within named Testator, MILTON I. SCHWARTZ, that the Testator subscribed the Second Codicil and declared the same to be the Second Codicil to his Last Will and Testament in their presence; that they thereafter subscribed the same as witnesses in the presence of the Testator and in the presence of each other and at the request of the Testator; that the Testator at the time of the execution of the Second Codicil appeared to them to be of sound mind and memory; and that they make this Affidavit at the request of the Testator.


Witness Signature

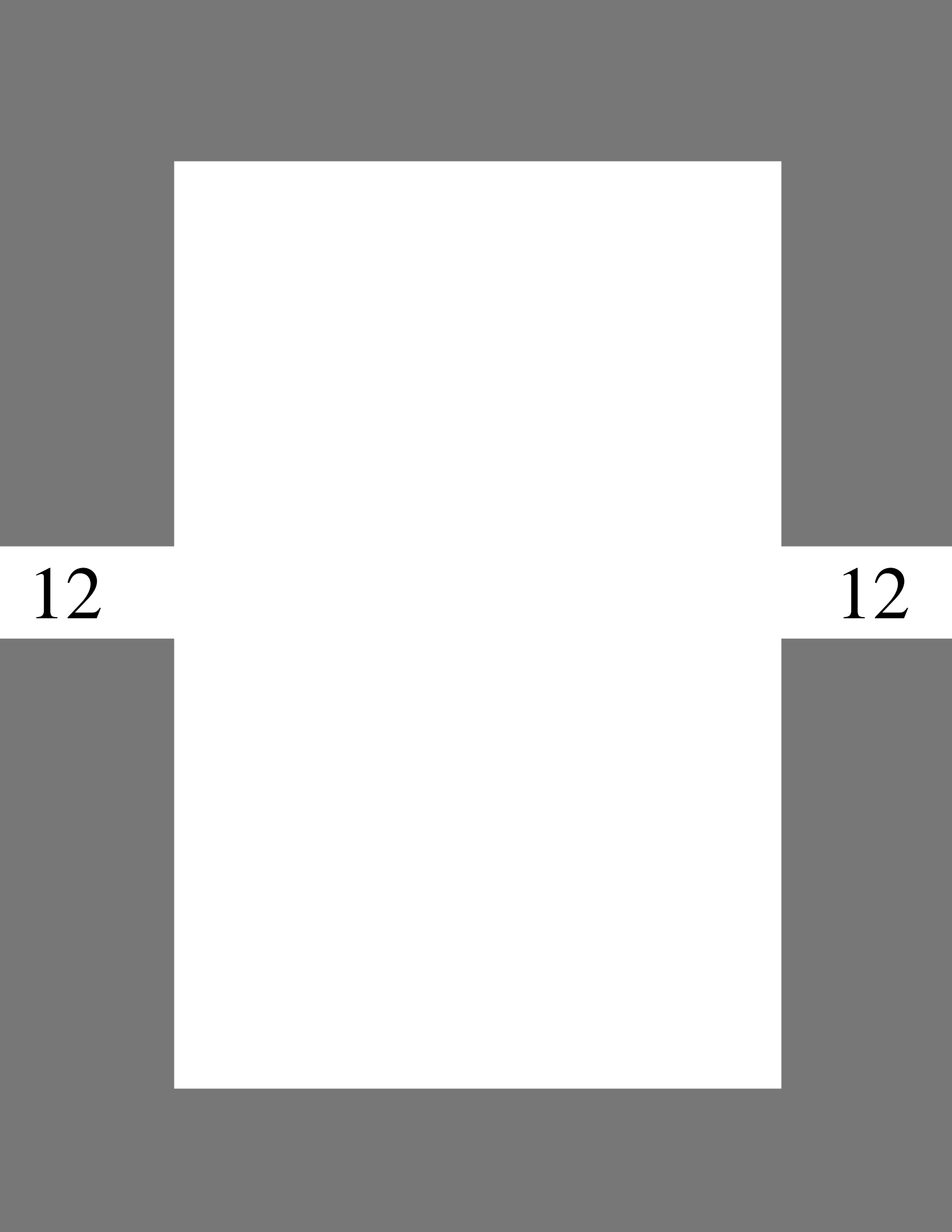

Witness Signature

SUBSCRIBED and SWORN to before me
this 21st day of July, 2006.



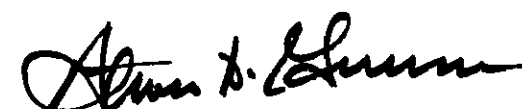


NOTARY PUBLIC in and for said County and State



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CLERK OF THE COURT

RPLY

Maximiliano D. Couvillier, III (SBN #7661)
mcouvillier@lionelsawyer.com
Ketan D. Bhirud (SBN #10515)
kbhirud@lionelsawyer.com
Kendal L. Davis (SBN #11946)
kdavis@lionelsawyer.com
LIONEL SAWYER & COLLINS
300 South Fourth Street, Suite 1700
Las Vegas, Nevada 89101
(702) 383-8888 (Telephone)/(702) 383-8845 (Fax)

Attorneys for The Dr. Miriam and
Sheldon G. Adelson Educational Institute

**DISTRICT COURT
Clark COUNTY, NEVADA**

In the Matter of the Estate of

MILTON I. SCHWARTZ,

Deceased

Case No. P061300
Dept. No.: 26/Probate

Date: June 25, 2013
Time: 9:00 a.m.

**ADELSON CAMPUS' REPLY IN
SUPPORT OF PETITION TO COMPEL
DISTRIBUTION, FOR ACCOUNTING
AND FOR ATTORNEYS' FEES
&
PRELIMINARY OBJECTION TO
ACCOUNTING**

INTRODUCTION

On March 13, 2013, the Executor represented to the Adelson Campus¹ that there were sufficient funds in the Estate to distribute the Will's² bequest for scholarships to the school.³ The Executor, however, refused to distribute the Gift because he claimed the school must first meet certain conditions. Because such conditions are not in the Will but manufactured by the Executor, the Adelson Campus filed its Petition to Compel Distribution of the Gift on May 13,

¹ The Adelson Campus is composed of three schools, including "The Milton I. Schwartz Hebrew Academy." See Adelson Campus petition at p. 4.

² The term "Will" refers to the decedent's Last Will and Testament dated February 5, 2004 (Exhibit 2 to the Adelson Campus' Petition) together with First Codicil dated January 27, 2006, and Second Codicil dated June 21, 2006 (attached to the Adelson Campus' Petition as Exhibits 8 and 9, respectively).

³ See Declaration of Paul Schiffman at ¶ 23, attached to the Adelson Campus' Petition as

2013. In an about face, the Executor now claims that the Estate does not have sufficient funds to distribute the Gift.⁴ This is a dramatic turn and its resolution must take precedence. The Executor's May 29, 2013, accounting ("05/29/13 Accounting")—*which is the only accounting that he has filed since this matter was opened in 2007 and was only filed in response to the Adelson Campus' Petition*—raises some serious concerns which must be further considered and resolved by the Executor to the Court's satisfaction as a matter of priority. The Adelson Campus' preliminary objections to the 05/29/13 Accounting are discussed below. However, the Court should note that Executor offers no explanation why he failed to file an accounting required by NRS Chapter 150 or the report required by NRS Chapter 143 during the past six years.

The Adelson Campus is a non-profit education institute. In great part, it invested time, fees and costs in filing its Petition based on the Executor's representation that the Estate had sufficient funds to distribute the Gift. The Gift is going to be used to fund scholarships for children. Suffice it to say, the Court should respectfully first determine the true, accurate and complete financial status of the Estate—at the Executor's personal expense—before the Adelson Campus incurs additional attorneys' fees and costs (which effectively eat away at the amount of the Gift) should the Court consider further proceedings regarding the Executor's concocted challenges to the Will. Holding the Executor personally responsible is appropriate given his manifested malfeasance by, *inter alia*: (a) failing to account as required by NRS 150.080 & 150.150; (b) failing to report to the Court as required by NRS 143.035(2); and (c) depleting the Estate's assets without permission from this Court.

Besides the Executor's inadequate and vague accounting, his Objection is a sham which conspicuously tries to run away and hide from the Will and delves into immaterial and irrelevant matters in an effort to turn away from the real issue of whether he has wrongfully depleted the assets of the Estate.

Exhibit 1.

⁴ See Executor's Objection to Petition to Compel Distribution at p. 8, filed on 5/28/13.

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY OBJECTION TO ACCOUNTING

The Executor's 05/29/13 Accounting raises several initial concerns, but additional information is required before the Court can evaluate and ascertain the accurate financial status of the Estate and whether the Executor has faithfully performed his duties and obligations. Thus, as a preliminary observation, the Court should compel the Executor to respond and provide additional information regarding the following issues:

(1) The Executor does not provide any explanation or documentation regarding the valuation of several assets, including those assets which the are bequeathed to the Adelson Campus. The bulk of the Estate is composed of stocks and other securities. The Gift bequest to the Adelson Campus includes stocks and other securities, as well as cash. The Executor, however, lists numerous stocks as having no value, without any explanation or documentation whatsoever. Clearly, such omissions are highly prejudicial and prevent a fair and open assessment of the Executor's representations, the value of the Estate and availability of the bequest to the Adelson Campus.

(2) The Executor has not reported whether the Estate filed Federal Estate Tax Returns. This is material because a Federal Estate Tax Return must include values for each asset of the Estate, including the stocks listed in the Estate's 01/08/09 Inventory and the 05/29/13 Accounting. Such inventory and accounting list numerous stocks as having no value, without an explanation or documentation.

(3) The Executor did not seek or obtain permission from this Court or the Probate Commissioner before the Estate borrowed money. On March 14, 2011, the Executor caused the Estate to execute a promissory note and borrow \$400,000 from the Milton I. Schwartz Revocable Trust.⁵ That is a considerable sum. In fact, \$400,000 represented 43% of the value of the Estate per the January 8, 2009, inventory. According to the docket, the Executor neither sought nor

⁵ See 05/29/13 Accounting at p. 2.

1 obtained authorization from this Probate Court to incur such a significant debt to the prejudice of
 2 the Adelson Campus. Under NRS 149.010(1), an executor cannot borrow money and execute
 3 any notes without authorization from the court. NRS 149.010(1) provides:

4 If it appears to be to the advantage of the estate to borrow money
 5 upon a note or notes, unsecured or to be secured by a security
 6 agreement or other lien upon the personal property of the decedent
 7 or any part thereof, or to be secured by a mortgage upon the real
 8 property of the decedent or any part thereof, or to mortgage or
 9 create a security interest or other lien upon the property or any part
 10 thereof, in order to pay the debts of the decedent, or devise, or
 11 expenses or charges of administration, or to pay, reduce, extend or
 12 renew a security interest or agreement or lien or mortgage existing
 upon property of the estate, and as often as occasion arises in the
 administration of the estate, the court may direct the personal
 representative to borrow the money and to execute such note or
 notes and, in a proper case, to execute such mortgage, or to give
 other security by way of security interest or other lien, or may
 authorize, in a proper case, the execution of an extension
 agreement.

13 The stipulation and order from the divorce matter (D354836) which the Executor
 14 attached to his 05/29/13 Accounting as "Exhibit 3" is immaterial. First, it does include the
 15 findings required by NRS 149.010. Second, and more importantly, it was not issued by this
 16 Court (or Probate Commissioner), which has sole jurisdiction over the Estate. *Id.*; *see also*
 17 *Mendive v. Third Judicial District Court*, 70 Nev. 51, 56 (1953) ("[W]hen a court of competent
 18 jurisdiction acquires jurisdiction of the subject matter of a case, its authority continues subject
 19 only to the appellate authority until the matter is finally and completely disposed of, and that no
 20 court of coordinate authority is at liberty to interfere with its action").

21 **(4) *The Executor did not give Notice to the Adelson Campus that the Estate sought to***
 22 ***borrow money.*** The Executor did not give notice to the Adelson Campus that the Estate
 23 intended to borrow \$400,000 from the Milton I. Schwartz Revocable Trust. NRS 149.020(2)
 24 required the Executor to give notice to the Adelson Campus that the Estate sought to borrow
 25 money. The Executor also deprived the Adelson Campus the opportunity to be heard regarding
 26 the Estate borrowing money, as afforded by NRS 149.030(1).

27 **(5) *The Executor did not clearly and unequivocally identify the total sum that the***
 28 ***Estate paid to Abigail Schwartz.*** At page 2 of his 05/29/13 Accounting, the Executor simply

1 stated that the Estate settled with Abigail Schwartz for "\$385,000 plus all interest accrued
2 thereon to the date payment is made to ABIGAIL." According to the stipulation from the
3 divorce matter that the Executor attached to the accounting (as "Exhibit 3"), the total sum to be
4 paid to Abigail Schwartz as of June 12, 2012, was \$418,281.40, with additional interest accruing
5 at a per diem rate of \$55.38. The Executor, however does not clearly and unambiguously identify
6 either (1) the date payment was actually made to Abigail Schwartz; nor (2) the actual total sum
7 paid, which appears to be significantly more than \$385,000.

8 ***(6) The Executor did not seek or obtain permission from this Court or the Probate***
9 ***Commissioner to deplete the Estate of almost half of its purported assets to settle with Abigail***
10 ***Schwartz.*** The docket demonstrates that the Executor neither sought nor obtained authorization
11 from this Probate Court to deplete the Estate (to the prejudice of the Will's beneficiaries) to
12 compromise with Abigail Schwartz. NRS 147.180(1) and (2) required the Executor to first
13 petition this court to approve the proposed settlement with Abigail Schwartz, and then obtain
14 approval from this court before actually paying Ms. Schwartz. NRS 147.108(1) and (2) provide:

- 15 1. After the time for the presentation of claims has expired, the
16 personal representative, with the approval of the court, may
17 compromise any claim against the estate or any action brought
18 against the personal representative as such by the transfer of
specific assets of the estate or otherwise.
2. To obtain such approval, the personal representative shall file a
petition with the clerk showing the advantage of the compromise.

19 The stipulation and order from the divorce matter (D354836) which the Executor
20 attached to his accounting at "Exhibit 3" is immaterial because it is a stipulation and not an order
21 under NRS 147.180, and because it was not issued by this Court, which has sole jurisdiction over
22 the Estate. *Id; see also Mendive*, 70 Nev. at 56 ("when a court of competent jurisdiction acquires
23 jurisdiction of the subject matter of a case, its authority continues subject only to the appellate
24 authority until the matter is finally and completely disposed of, and that no court of coordinate
25 authority is at liberty to interfere with its action").

26 ***(7) The Executor did not give Notice to the Adelson Campus that the Estate intended to***
27 ***deplete its assets to settle with Abigail Schwartz.*** The Executor did not give notice to the
28 Adelson Campus that the Estate intended to compromise with Abigail Schwartz. NRS

1 147.180(2) required the Executor to give such notice to the Adelson Campus. The Executor also
 2 deprived the Adelson Campus of the opportunity to be heard regarding the Estate borrowing
 3 money, as afforded by NRS 147.180(3).

4 ***(8) Information is needed to evaluate whether the Estate and the Adelson Campus,***
 5 ***were prejudiced by the Executor's self-dealing and unauthorized actions.*** There were several
 6 lawsuits concerning Abigail Schwartz and the Executor, the Estate, several trusts of Milton I.
 7 Schwartz 1990 and other related entities,⁶ and the Executor has not provided any information and
 8 documentation necessary to evaluate whether the Estate payment to Abigail Schwartz was, inter
 9 alia, self-dealing or whether the Estate (and effectively the Adelson Campus) unfairly or
 10 disproportionately bore any settlement sums paid to Abigail Schwartz.

11 ***(9) The 05/29/13 Accounting reveals more self-dealing by the Executor.*** The Executor
 12 has inexplicably held on to property of the Estate for *over six years* for apparent personal use, all
 13 the while having the Estate pay maintenance, upkeep and repairs. The 05/29/13 Accounting
 14 further reveals that the Estate is an investor in a company which appears to be solely controlled
 15 by the Executor, Samson Consulting, Inc.⁷ "Where a conflict of interest or self-dealing is
 16 apparent from the circumstances, there is no need to demonstrate that the fiduciary acted in bad
 17 faith or with fraudulent intent. . . . Such a conflict of interest may also justify removal of the
 18 executor." *In re Dobson's Estate*, 490 Pa. 476, 482 n.6, 417 A.2d 138, 142 n.6 (Pa. 1980)
 19 (citations omitted).

20 As the foregoing preliminary objections demonstrate, the Executor must first answer
 21 some serious issues with the 05/29/13 Accounting - the first and only accounting filed by the
 22 Executor - which he cobbled together at the eleventh hour in response to the Adelson Campus'
 23 Petition.

24 _____
 25 ⁶ See e.g., *Milton I. Schwartz v. Abigail Schwartz*, Case D-06-D354836; *Abigail Schwarz,*
 26 *RSL Trust v. Zachery Landsburg 1988 Trust, A. Jonathan Schwartz 1988 Trust et. al.*, Case No.
 CV-08-A567665. Attached as *Exhibit 15* is a true and correct copy of the Court's Register of
 Actions for Case No. A567665 listing the numerous parties involved in that matter alone.

27 ⁷ Attached as *Exhibit 16*, is a true and correct record from the Nevada Secretary of State
 28 showing the Executor as the sole officer of Samson Consulting, Inc.

II.
**THE EXECUTOR'S OBJECTION ASKS THE COURT TO LOOK OUTSIDE THE
 WILL AND CONSTRUE IT SO AS TO DENY THE BEQUEST TO THE SCHOOL'S
 STUDENTS, WHO ARE THE ULTIMATE BENEFICIARIES**

The Executor's Objection glosses right over the Will and spends all of his time discussing events, matters and documents that occurred decades before the Will, which are not only prohibited by NRS 137.030⁸ but have absolutely nothing to do with the Will. There is nothing in the out-of-date by-laws, correspondence or hearsay affidavits offered by the Executor which mention, refer to, or otherwise concern the Will and the Gift.

The Will is clear and unambiguous and does not require that petitioner to be named "The Milton I. Schwartz Hebrew Academy" in perpetuity. The Will provides:

2.3 The Milton I. Schwartz Hebrew Academy. I hereby give, devise and bequeath the sum of five hundred thousand dollars (\$500,000.00) to the Milton I. Schwartz Hebrew Academy (the, "Hebrew Academy"). This gift is to be in the form of securities (stocks, bonds, or cash) with the largest profit so that my estate can take advantage of the low cost basis and increased price as directed by my Executor in his sole discretion. If, at the time of my death, there is a bank or lender mortgage (the "mortgage") upon which I, my heirs, assigns or successors in interest are obligated as a guarantor on behalf of the Hebrew Academy, the \$500,000.00 gift shall go first to reduce and or expunge the mortgage. In the event that the lender will not release my estate or my heirs, successors or assigns, no gift shall be given to the Hebrew Academy. In the event that no mortgage exists at the time of my death, *the entire \$500,000.00 amount shall go to the Hebrew Academy for the purpose of funding scholarships to educate Jewish children only.*⁹

Mr. Schwartz affirmed the Gift twice in 2006, when he executed a First Codicil on January 27, 2006, and Second Codicil on June 21, 2006.¹⁰

⁸ NRS 137.030 allows only evidence that is contemporaneous with the execution of the will. It provides: "In the contest, the testimony as to the declaration of a testator is admissible if contemporaneous with the execution of the will insofar as the declaration relates to the testator's intention, state of mind, feelings, competency, and the existence or nonexistence of duress and undue influence." (emphasis added).

⁹ See Will at §2.3, attached as Exhibit 2 to the Adelson Campus' Petition.

¹⁰ The Codicils concerned other distributions and Mr. Schwartz elected not to revisit and revise the Gift to the Adelson Campus. Copies of the First and Second Codicils are attached to the Adelson Campus' Petition as Exhibits 8 and 9, respectively.

1 The Executor's "condition" does not exist and cannot be read into the Will. The Will is
2 undisputedly clear and unambiguous and therefore, the testator's intent must be ascertained only
3 from the terms of the Will itself. The Executor is prohibited from offering parol evidence and
4 injecting his 7-year after-the-fact interpretation. The American Jurisprudence, Second Edition,
5 Wills §989 provides:

6 The intention of a testator is to be ascertained from the words or
7 language of his or her will. The ultimate question for a court
8 construing a will is not what the testator meant to say but what he
9 or she meant by what he or she did say, which necessarily requires
a determination of whether the words used by the testator are
capable of being expanded to embody the proffered testamentary
intent.

10 *When the language of a will is clear and unambiguous, the*
11 *testator's intent must be ascertained from the express terms of*
12 *the will itself. In will construction, the testator's intent must be*
13 *determined and carried out, as nearly as possible, by resort to the*
14 *will itself and without parol evidence except in case of*
15 *ambiguity.*¹¹

16 The American Jurisprudence, Second Edition, Wills §1268 further provides:

17 *Extrinsic evidence is not admissible to vary, contradict, or add to*
18 *the terms of a will, or to show that the testator had a different*
19 *intention from that disclosed by the language of the will, but may*
20 *be introduced to explain an ambiguous will. Therefore, parol*
21 *evidence is not admissible to explain an omission from a will*
22 *where the express language of the testamentary disposition*
23 *reflects the testator's unambiguous intention.*¹²

24 //

25
26
27 ¹¹ 80 Am. Jur. 2d Wills § 989 (emphasis added).

28 ¹² 80 Am. Jur. 2d Wills § 1268 (emphasis added).

III.

THE MILTON I. SCHWARTZ HEBREW ACADEMY STILL EXISTS AND MOREOVER, A GIFT TO A CHARITABLE, RELIGIOUS, OR EDUCATIONAL ORGANIZATION IS VALID EVEN IF THE CHARITABLE, RELIGIOUS, OR EDUCATIONAL ORGANIZATION CHANGES ITS CORPORATE NAME

The Executor wants the Court to deny the Gift for scholarships to deserving children because he claims the "Milton I. Schwartz Hebrew Academy" does not exist. As more fully shown in the Adelson Campus' Petition to Compel Distribution at page 4, the Milton I. Schwartz Hebrew Academy continues to exist as the d/b/a of the Adelson Campus and as the name of the lower school for preschool through 4th graders in a building that is identified as "The Milton I. Schwartz Hebrew Academy," as depicted in the following true and correct pictures:



That the name of the corporation who operates "The Milton I. Schwartz Hebrew Academy" changed is of no consequence and does not in any way operate to the deny the Gift. It is well noted that a gift to a charitable, religious, or educational organization is valid even if the charitable, religious, or educational organization changes its name.¹³

¹³ See 96 C.J.S. *Wills* § 1091 ("A testamentary gift to a *charitable organization* is generally valid, even though the object is imperfectly designated, if it can be identified with reasonable certainty from the description in the will and the surrounding circumstances. . . . The mere fact that a corporate charity has changed its name does not render a gift to it under its former name void for uncertainty.") (emphasis added); 96 C.J.S. *Wills* § 1094 ("A testamentary gift to a religious organization is valid, although the organization is misnamed, if it can be identified with reasonable certainty from the language used and the surrounding

IV.
**THE EXECUTOR'S REQUEST TO CONSTRUE THE WILL IS UNTIMELY AS THE
 STATUTE OF LIMITATIONS TO CONTEST THE WILL
 EXPIRED OVER FOUR YEARS AGO**

Nevada law clearly requires that that anyone seeking to contest a will must do so either:
 (a) before the hearing of the petition for probate; or (b) within 3 months after the order is entered
 admitting the will to probate. NRS 137.010 (1) provides the pre-probate deadline:

The Attorney General or any interested person, including a devisee under a former will, may contest the will by filing written grounds of opposition to the probate thereof at any time before the hearing of the petition for probate. Personal notice must then be given by a citation directed to the heirs of the decedent and to all interested persons, including minors and incapacitated persons, wherever residing, directing them to plead to the contest within 30 days after service of the citation in the manner provided in NRS 155.050.¹⁴

NRS 137.080, provides the limited circumstances to contest a will after probate:

After a will has been admitted to probate, any interested person other than a party to a contest before probate or a person who had actual notice of the previous contest in time to have joined therein may, at any time within 3 months after the order is entered admitting the will to probate, contest the admission or the validity of the will. The contestant must file with the court in which the will was proved a petition containing the allegations of the contestant against the validity of the will or against the sufficiency of the proof, and requesting that the probate be revoked.¹⁵

The Executor proffered the Will and the hearing on the Petition For Probate in this matter was held on January 11, 2008, and the Order admitting the Will to probate was entered on January 24, 2008. The Executor did not file his Objection Contesting the Will and asking the

circumstances. . . . **A change in the name of such an organization does not effect the validity of a gift to it under the former name.**) (emphasis added); 96 C.J.S. *Wills* § 1093 ("A devise or bequest to an educational organization is valid although the organization is misnamed, where the language in the will designates the object of the gift with reasonable certainty."); 96 C.J.S. *Wills* § 1090 ("The mere misnomer of a corporation or association as a beneficiary does not invalidate a testamentary gift thereto for uncertainty where the beneficiary is reasonably identified. . . . The merger of a designated corporate beneficiary with another corporate entity does not defeat the bequest if the designated beneficiary survives and continues with the purposes which the testator clearly had in mind, particularly on evidence that the testator likely knew of the merger plans.").

¹⁴ *Id.* (emphasis added).

¹⁵ *Id.* (emphasis added).

1 Court to construe it differently than its express, unambiguous terms until May 28, 2013, more
2 than five years later.

3 Therefore, the Executor is now precluded by NRS 137.120 from contesting the Gift or the
4 Will. NRS 137.120 provides: "If no person contests the validity of a will or of the probate
5 thereof, within the time specified in NRS 137.080, the probate of the will is conclusive."

6 **V.**
7 **THERE IS NO EVIDENCE TO SUPPORT**
8 **THE EXECUTOR'S MANUFACTURED CONDITION**

9 Notable about the Executor's Objection is how clearly it runs away from the Will. The
10 Executor does not copy the relevant Section 2.3 of the Will. He does not even attach a copy of
11 the Will to his Objection. The Executor hides from the Will because it forecloses all of his
12 arguments and claims. Instead, the Executor manufactures his arguments regarding his
13 purported condition around a \$500,000 donation to the school made by the decedent in 1989,
14 some *15 years before* Mr. Schwartz's Will (2004) and some *18 years before* his death (2007).
15 Here, the Adelson Campus requests the Court to compel the Executor to distribute the Gift,
16 which the decedent bequeathed to the school in his 2004 Will, and confirmed *twice* in 2006. To
17 further illustrate the Executor's unreasonableness, however, a discussion of that 1989 donation is
18 fitting.

19 The Executor claims that the school purportedly agreed to be named "The Milton I.
20 Schwartz Hebrew Academy" in perpetuity in exchange for that 1989 donation. The Executor
21 also claims the decedent was somehow "defrauded" because he purportedly relied on the school's
22 representation regarding the perpetual naming in exchange for paying off the school's debt. As is
23 well recognized, fraud is a very high burden which the Executor is required to prove by clear and
24 convincing evidence. *See Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 110-11, 825 P.2d 588,
25 592 (1992). The only evidence offered by the Executor is a 1993 self-serving affidavit by the
26 decedent stating what he objectively recalls the school purportedly agreed to in 1989, four years
27 earlier. Aside from the fact that such 1993 affidavit has absolutely nothing to do with the
28

1 decedent's 2004 Will, it does not identify anyone from the school who made any statements to
 2 the decedent. There is also no written agreement signed by the school.¹⁶ In sum, the Executor
 3 fails to articulate any of the circumstances of his alleged fraud in the inducement. *See Brown v.*
 4 *Kellar*, 97 Nev. 582, 584, 636 P.2d 874 (1981)(the circumstances that must be plead in detail
 5 include averments to: (i) the time of the alleged fraud; (ii) the place of the alleged fraud; (iii) the
 6 identity of all the parties involved; and (iv) the nature of the fraud). There is no fraud here and,
 7 besides, the Executor's claim fails for at least three reasons:

- 8 • First, *it is undisputed that Dr. Miriam and Sheldon Adelson paid off the*
 9 *school's \$1.8 million debt and not Milton Schwartz or his Estate*, even though
 10 Mr. Schwartz had personally guaranteed that debt and Section 2.3 of his Will
 11 required the Estate to pay such debt. Indeed, the Executor did not come forth at
 12 the time that the Adelsons generously paid off the decedent's guarantee and offer
 13 that the Estate pay the debt. The Executor's condition and objections are a sham;
- 14 • Second, *the Adelson Campus continues to operate "The Milton I. Schwartz*
Hebrew Academy," as discussed above; and
- 15 • Third, according to the Executor, the school purportedly breached its so-called
 16 "agreement" to the decedent in 1994¹⁷ and the statute of limitations had long-
 17 expired.

18 That the Executor has wandered far afield is an understatement.

19 ¹⁶ Straining to manufacture more "issues," the Executor claims that the school somehow
 20 "memorialized" the 1989 "agreement" seven years later, via a May 23, 1996, letter (*see*
 21 *Executor's Objection at Exhibit 10*). That letter is not a contract. In order to have a valid
 22 contract, it is necessary to have "an agreement which creates an obligation: intent, offer,
 23 acceptance, consideration, mutuality of agreement and obligation." *Matter of Estate of Kern*, 107
 24 Nev. 988, 994, 823 P.2d 275, 278 (1991) (citing Restatement of Contracts §§ 19-24 (1932)). The
 25 1996 letter, however, does not state that the school would be named after Mr. Schwartz pursuant
 26 to any 1989 agreement or that it would remain named after him in perpetuity. The 1996 letter
 27 merely states that the school (which then only encompassed kinder through eighth grade in a
 28 single building) would be then named after Mr. Schwartz as an accolade. The letter states: "The
 restoration of the name of the 'Milton I. Schwartz Hebrew Academy' has been taken as a matter
 of 'menschlichkeit' (Yiddish word for person of integrity or honor) in acknowledgement of your
 contribution and assistance to the Academy; your continued commitment to Jewish education
 reflected by the establishment of the 'Jewish Community Day School' and last but not least, your
 recent action as a man of 'shalom.'" It should be reiterated as well that said 1996 letter has
 nothing to do with the Will (2004).

¹⁷ *See* Executor's Objection at 3:12.

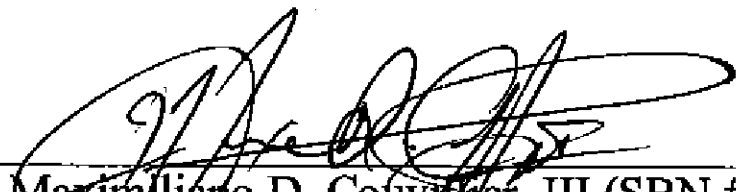
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**VI.
CONCLUSION**

As the foregoing demonstrates, the Court should order the Executor to distribute the bequest to the Adelson School. To the extent the Court believes further proceedings are necessary, the Court should first ascertain the true and complete financial status of the Estate because: (a) the Executor suddenly claims that the Estate purportedly does not have sufficient assets to distribute the bequest; and (b) his 05/29/13 Accounting is vague, incomplete and unforthcoming.

To that end, the Court should order: (1) the Executor to file a complete and unambiguous accounting, together with all supporting documentation; (2) show cause why his letters testamentary should not be revoked for causing the Estate to borrow money and depleting the assets of the Estate without a Court order or for self-dealing; and (3) respond to the Adelson Campus' preliminary objections to the accounting (*supra*) to the satisfaction of the Court. The Court should further order the Executor personally liable for any attorneys' fees and other costs in complying with the Court's order due to his malfeasance heretofore. *See e.g., Alexander v. First Nat. Bank of Fort Smith*, 278 Ark. 406, 646 S.W.2d 684 (1983) (surcharging executor with attorneys' fees and costs is entirely appropriate for the executor's breach or neglect of duties).

LIONEL SAWYER & COLLINS

By: 
Maximiliano D. Couvillion, III (SBN #7661)
Ketan D. Bhirud (SBN #10515)
Kendal L. Davis (SBN #11946)

*Attorneys for The Dr. Miriam and Sheldon G.
Adelson Educational Institute*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 17, 2013, I deposited in the United States Mail at Las Vegas, Nevada, a true and correct copy of the foregoing **ADELSON CAMPUS' REPLY IN SUPPORT OF PETITION TO COMPEL DISTRIBUTION, FOR ACCOUNTING AND FOR ATTORNEYS' FEES & PRELIMINARY OBJECTION TO ACCOUNTING** enclosed in a sealed envelope upon which first class postage was paid, addressed as follows:

Steven J. Oshins, Esq.
OSHINS & ASSOCIATES
645 Village Center Circle
Las Vegas, NV 89134
Attorneys for Executor

Robert P. Dickerson, Esq.
THE DICKERSON LAW GROUP
1745 Village Center Circle
Las Vegas, NV 89134
Attorneys for Abigail Richlin Schwartz

Eileen Joanna Zarin
9 Steven Lane
King Point, NY 11024

Robin Sue Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Samuel Schwartz
351 Woodlake Drive
Marlton, NJ 08053

Michael Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Zachary Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Benjamin Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

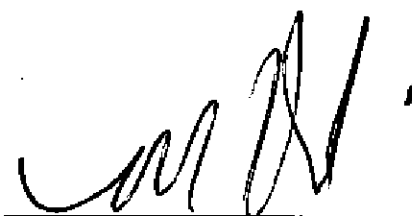
Joshua Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Frances A. Martel
235 Vista Del Parque
Redondo Beach, CA 90277

The Milton I. Schwartz Revocable Family
Trust, A. Jonathan Schwartz, Trustee
2293 Duneville Street
Las Vegas, NV 89146

Medicaid Estate Recovery
1050 E. William Street, Suite 435
Carson City, NV 89701-3199

Mark Solomon, Esq.
Alan D. Freer, Esq.
Steven E. Hollingworth, Esq.
SOLOMON, DWIGGINS & FREER
9060 West Cheyenne Ave.
Las Vegas, NV 89129
Attorneys for Executor



An Employee of Lionel Sawyer & Collins

EXHIBIT 15

EXHIBIT 15

REGISTER OF ACTIONS

CASE NO. 08A567665

Abigail Schwartz, RSL Trust vs Zachary Landsburg 1988 Trust, A Jonathan
Schwartz 1988 Trust, et al

§
§
§
§
§

Case Type: **Breach of Contract**
 Subtype: **Other Contracts/Acc/Judgment**
 Date Filed: **07/18/2008**
 Location: **Department 6**
 Conversion Case Number: **A567665**

PARTY INFORMATION

Lead Attorneys

Defendant	A Jonathan Schwartz 1988 Trust	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	A Jonathan Schwartz 1991 Irrevocable T	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	A Jonathan Schwartz 1993 Retained Annu	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	A Jonathan Schwartz Ltd Partnership	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	AJS Trust	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	Apheresis Medical Investments LLC	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	Benjamin Landsburg 1988 Trust	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	Benjamin Landsburg 1990 Trust	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	David J Zarin 1988 Trust	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	David J Zarin 1990 Trust	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	Eileen J Zarin 1991 Irrevocable Trust	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	Eileen J Zarin Ltd Partnership	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	Eileen Joanna Zarin 1988 Trust	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)

Defendant	Eileen Joanna Zarin 1993 Retained Annu	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	EJZ Trust	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Estate Of Milton I Schwartz	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Frances Martel Trust	
Defendant	Harriett R Schwartz Trust	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Jennifer G Zarin 1988 Trust	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Jennifer G Zarin 1990 Trust	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Jennifer Gayle Zarin Irrevocable Trust	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Jonathan S Zarin 1994 Irrevocable Tr	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Jonathan Zarin 1988 Trust	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Jonathan Zarin 1990 Trust	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Joshua Lanadsburg 1990 Trust	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Joshua Landsburg 1988 Trust	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Landsburg Family 1994 Irrevocable Trus	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Michael Landsburg 1988 Trust	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Michael Landsburg 1990 Trust	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Michelle Martel Irrevocable Trust	Frederic Ira Berkley Retained

702-360-6000(W)

Defendant	Milton I Schwartz 1986 Irrevocable Tr	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Milton I Schwartz 1990 Irrevocable Tr	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Milton I Schwartz Charitable Lead Trus	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Milton I Schwartz Revocable Family Tr	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Robin Sue Landsburg 1988 Trust	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Robin Sue Landsburg 1991 Irrevocable T	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Robin Sue Landsburg 1993 Retained Annu	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Robin Sue Landsburg Ltd Partnership	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Samuel Schwartz 1988 Trust	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Samuel Schwartz 1991 Irrevocable Trust	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Samuel Schwartz 1993 Retained Annuity	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Samuel Schwartz 1995 Irrevocable Trust	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Samuel Schwartz Ltd Partnership	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Schwartz 1990 Family Ltd Partnership	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Schwartz 1991 Family Partnership	Frederic Ira Berkley Retained 702-360-6000(W)
Defendant	Schwartz Children 1993 Irrevocable Tr	Frederic Ira Berkley Retained 702-360-6000(W)

Defendant	Schwartz Family Ltd Partnership	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	Schwartz Investment Partnership	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	Schwartz, A J	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	SS Trust	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	William Landsburg Trust	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	Zachary Landsburg 1988 Trust	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Defendant	Zachary Landsburg 1990 Trust	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Plaintiff	RSL Trust	Frederic Ira Berkley <i>Retained</i> 702-360-6000(W)
Plaintiff	Schwartz, Abigail R	Denise L Gentile <i>Retained</i> 702-608-6868(W)

EVENTS & ORDERS OF THE COURT

DISPOSITIONS

07/13/2012 **Order of Dismissal With Prejudice** (Judicial Officer: Cadish, Elissa F.)
 Debtors: Abigail R Schwartz (Plaintiff), RSL Trust (Plaintiff)
 Creditors: Estate Of Milton I Schwartz (Defendant), A J Schwartz (Defendant), Milton I Schwartz Revocable Family Tr (Defendant), Milton I Schwartz 1990 Irrevocable Tr (Defendant), Milton I Schwartz 1986 Irrevocable Tr (Defendant), Benjamin Landsburg 1988 Trust (Defendant), Joshua Landsburg 1988 Trust (Defendant), Michael Landsburg 1988 Trust (Defendant), Robin Sue Landsburg 1988 Trust (Defendant), Zachary Landsburg 1988 Trust (Defendant), A Jonathan Schwartz 1988 Trust (Defendant), Samuel Schwartz 1988 Trust (Defendant), David J Zarin 1988 Trust (Defendant), Eileen Joanna Zarin 1988 Trust (Defendant), Jennifer G Zarin 1988 Trust (Defendant), Jonathan Zarin 1988 Trust (Defendant), Jennifer Gayle Zarin Irrevocable Trust (Defendant), Benjamin Landsburg 1990 Trust (Defendant), Joshua Landsburg 1990 Trust (Defendant), Michael Landsburg 1990 Trust (Defendant), Zachary Landsburg 1990 Trust (Defendant), David J Zarin 1990 Trust (Defendant), Jennifer G Zarin 1990 Trust (Defendant), Jonathan Zarin 1990 Trust (Defendant), Schwartz 1990 Family Ltd Partnership (Defendant), Schwartz Family Ltd Partnership (Defendant), Michelle Martel Irrevocable Trust (Defendant), Milton I Schwartz Charitable Lead Trus (Defendant), A Jonathan Schwartz 1991 Irrevocable T (Defendant), Eileen J Zarin 1991 Irrevocable Trust (Defendant), Robin Sue Landsburg 1991 Irrevocable T (Defendant), Samuel Schwartz 1991 Irrevocable Trust (Defendant), Schwartz 1991 Family Partnership (Defendant), William Landsburg Trust (Defendant), Frances Martel Trust (Defendant), Harriett R Schwartz Trust (Defendant), SS Trust (Defendant), EJZ Trust (Defendant), Samuel Schwartz Ltd Partnership (Defendant), Robin Sue Landsburg Ltd Partnership (Defendant), A Jonathan Schwartz Ltd Partnership (Defendant), Eileen J Zarin Ltd Partnership (Defendant), Schwartz Investment Partnership (Defendant), Eileen Joanna Zarin 1993 Retained Annu (Defendant), Robin Sue Landsburg 1993 Retained Annu (Defendant), Samuel Schwartz 1993 Retained Annuity (Defendant), A Jonathan Schwartz 1993 Retained Annu (Defendant), Schwartz Children 1993 Irrevocable Tr (Defendant), Landsburg Family 1994 Irrevocable Trus (Defendant), Jonathan S Zarin 1994 Irrevocable Tr (Defendant), Samuel Schwartz 1995 Irrevocable Trust (Defendant), Apheresis Medical Investments LLC (Defendant), AJS Trust (Defendant)
 Judgment: 07/13/2012, Docketed: 07/20/2012

OTHER EVENTS AND HEARINGS

07/18/2008 **Complaint**
 COMPLAINT FILED Fee \$148.00
 08A5676650001.tif pages

07/18/2008 **Initial Appearance Fee Disclosure**
 INITIAL APPEARANCE FEE DISCLOSURE
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09/04/2008 **Answer**
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09/04/2008 **Initial Appearance Fee Disclosure**
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09/05/2008 **Answer**
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09/05/2008 **Summons**
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09/05/2008 **Summons**
SUMMONS - MICHELLE MARTEL IRREVOCABLE TRUST DATED 10 25 1990
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09/05/2008 **Summons**
SUMMONS - JENNIFER G ZARIN 1988 TRUST DATED 10 05 1988
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SUMMONS - ZACHARY LANDSBURG 1988 TRUST DATED 10 05 1988
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SUMMONS - APHERESIS MEDICAL INVESTMENTS LLC
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09/05/2008 **Summons**
SUMMONS - SCHWARTZ INVESTMENT PARTNERSHIP
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SUMMONS - SCHWARTZ 1991 FAMILY PARTNERSHIP
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09/05/2008 **Summons**
SUMMONS - A JONATHAN SCHWARTZ LTD PARTNERSHIP
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09/05/2008 **Summons**
SUMMONS - ROBIN SUE LANDSBURG 1993 RETAINED ANNUITY TRUST DATED 11 30 1993
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09/05/2008 **Summons**
SUMMONS - RSL TRUST DATED 10 02 1991
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09/05/2008 **Summons**
SUMMONS - MILTON I SCHWARTZ 1990 IRREVOCABLE TRUST DATE 3 23 1990
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SUMMONS - MICHAEL LANDSBURG 1988 TRUST DATED 10 05 1988
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SUMMONS - SCHWARTZ CHILDREN 1993 IRREVOCABLE TRUST DATED 12 29 1993
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SUMMONS - MILTON I SCHWARTS REVOCABLE FAMILY TRUST DATED 01 29 1986
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09/05/2008 **Summons**
SUMMONS - SS TRUST DATED 10 02 1991
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SUMMONS - SAMUEL SCHWARTZ 1988 TRUST DATED 10 05 1988
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SUMMONS - A JONATHAN SCHWARTZ LTD PARTNERSHIP
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SUMMONS - MILTON I SCHWARTZ CHARITABLE LEAD TRUST DATED 12 19 1990
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09/05/2008 **Summons**
SUMMONS - ESTATE OF MILTON I SCHWARTZ
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09/17/2008 **Summons**
SUMMONS - MICHAEL LANDSBURG 1990 TRUST
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SUMMONS - JOSHUA LANADSBURG 1990 TRUST
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SUMMONS - JENNIFER G ZARIN 1990 TRUST
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09/23/2008 **Summons**
SUMMONS - DAVID J ZARIN 1990 TRUST
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10/20/2008 **Commissioner's Decision On Request For Exemption**
COMMISSIONERS DECISION ON REQUEST FOR EXEMPTION
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12/31/2008 **Notice**
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04/15/2009 **Motion**
PLTF'S MTN TO STAY PROCEEDINGS/1
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04/20/2009 **Receipt of Copy**
RECEIPT OF COPY
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04/28/2009 **Non Opposition**
Defendants' Non-Opposition to Plaintiffs Motion to Stay Proceedings

05/14/2009 **Motion to Stay** (3:00 AM) (Judicial Officer Cadish, Elissa F.)
PLTF'S MTN TO STAY PROCEEDINGS/1
Minutes
04/30/2009 Reset by Court to 05/21/2009
05/21/2009 Reset by Court to 04/30/2009

Result: Granted

03/09/2010 **Notice**
Notice of Supreme Court Decision

09/02/2010 **Order Scheduling Status Check**
Order Scheduling Status Check

09/21/2010 **Status Check** (8:30 AM) (Judicial Officer Cadish, Elissa F.)
09/21/2010, 10/05/2010, 04/05/2011
Parties Present
Minutes

Result: Continued

01/10/2012 **Status Check** (8:30 AM) (Judicial Officer Cadish, Elissa F.)
01/10/2012, 07/10/2012, 09/11/2012
Parties Present
Minutes
01/10/2012 Reset by Court to 01/10/2012
01/10/2012 Reset by Court to 01/10/2012

Result: Continued

07/13/2012 **Stipulation and Order for Dismissal With Prejudice**

07/16/2012 **Notice of Entry of Order**


FINANCIAL INFORMATION

Conversion Extended Connection Type No Convert Value @ 08A567665			
	Total Financial Assessment		1,809.00
	Total Payments and Credits		1,809.00
	Balance Due as of 06/17/2013		0.00
07/18/2008	Transaction Assessment		1,809.00
07/18/2008	Conversion Payment	Receipt # 01447158	(148.00)
09/04/2008	Conversion Payment	Receipt # 01459115	(1,661.00)
		THE DICKERSON LAW GROUP JENNINGS STROUSS AND SALMON	
Defendant Estate Of Milton I Schwartz			
	Total Financial Assessment		7.00
	Total Payments and Credits		7.00
	Balance Due as of 06/17/2013		0.00
07/16/2012	Transaction Assessment		3.50
07/16/2012	Wiznet	Receipt # 2012-88689-CCCLK	(3.50)
07/16/2012	Transaction Assessment		3.50
07/16/2012	Wiznet	Receipt # 2012-89152-CCCLK	(3.50)
		Estate Of Milton I Schwartz	

EXHIBIT 16

EXHIBIT 16

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ROSS MILLER

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SAMSON CONSULTING, INC.

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Business Entity Information

Status:	Active	File Date:	11/3/1988
Type:	Domestic Corporation	Entity Number:	C8795-1988
Qualifying State:	NV	List of Officers Due:	11/30/2013
Managed By:		Expiration Date:	
NV Business ID:	NV19881026868	Business License Exp:	11/30/2013

Registered Agent Information

Name:	MILTON CONSULTING INC	Address 1:	2293 DUNEVILLE STREET
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89146
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

[View all business entities under this registered agent](#)

Financial Information

No Par Share Count:	2,500.00	Capital Amount:	\$ 0
No stock records found for this company			

Officers

[Include Inactive Officers](#)
President - A. JONATHAN SCHWARTZ

Address 1:	2293 DUNEVILLE STREET	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89146	Country:	
Status:	Active	Email:	

Actions/Amendments

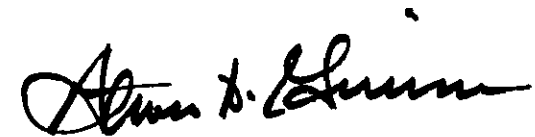
[Click here to view 12 actions/amendments associated with this company](#)

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RTRAN



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

IN THE MATTER OF THE ESTATE
OF MILTON I. SCHWARTZ

CASE NO. P061300

DEPT. XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

TUESDAY, JUNE 25, 2013

**RECORDER'S TRANSCRIPT
ALL PENDING MOTIONS**

APPEARANCES:

For the Petitioner: MAXIMILIANO D. COUVILLIER, III, ESQ.
Lionel Sawyer & Collins

For the Executor: ALAN D. FREER, ESQ.
STEVEN E. HOLLINGWORTH, ESQ.
Solomon Dwiggin & Freer, Ltd.

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 TUESDAY, JUNE 25, 2013, 11:20 A.M.

2 THE COURT: Petition to compel distribution for
3 accounting and for attorneys' fees, ex parte petition for
4 order and issue of citation to appear and show cause,
5 objection to petition to compel distribution for accounting,
6 reply in support of and actually I now have a copy of the
7 first accounting. So counsel.

8 MR. COUVILLIER: Good morning, Your Honor, Max Couvillier
9 on behalf of the Petitioner, the Adelson Campus.

10 MR. FREER: Good morning, Your Honor, Alan Freer. With
11 me is my client Jonathan Schwartz and also Steve Hollingworth
12 on behalf of the executor.

13 THE COURT: Okay.

14 MR. COUVILLIER: Your Honor, we're here to discuss this
15 probate matter. And as the turns of events that have occurred
16 since the Adelson Campus filed its petition for distribution
17 of the bequest.

18 Specifically after we filed our petition, the
19 executor made an about face and suddenly claimed that the
20 estate did not have the assets to satisfy the bequest. When
21 all along including just prior to filing our petition, he had
22 represented that there was sufficient funds to make the
23 bequest.

24 In this response, the Petitioner filed the first
25 accounting, in fact the only accounting that has been filed in

1 this matter which has been open for over six years. The
2 accounting, Your Honor, is incomplete, vague and obfuscates
3 the true financial status of the estate. The Court should
4 require transparency. For example, some of the stocks that
5 the executor identifies which or actually most of the stocks
6 and securities held by the estate which are important to the
7 issue here, but as the will directs that such stocks and
8 securities be given to the school as part of the bequest, as
9 having allegedly no value.

10 But the executor's claim is alarming, Your Honor.
11 The decedent was a successful businessman who amassed
12 considerable wealth especially in the taxi and transportation
13 business. Yet the executor lists such transportation stock
14 such as Star Transit and Fleet Management as valueless. Other
15 stocks that are listed as having no value include
16 pharmaceutical companies which can be very lucrative. Stocks
17 in petroleum companies. Your Honor, with the constantly
18 rising prices, it's hard to imagine that those stocks are
19 valueless.

20 But the executor, Your Honor, did not attach any
21 documentation to his accounting. Did not provide any
22 documentation in his reply. The Court again, Your Honor,
23 should require transparency from the executor and order an
24 appraisal at the executor's expense and order him to produce
25 the estate tax return so that we can examine the value of

1 those stocks.

2 THE COURT: Appraisal of?

3 MR. COUVILLIER: The stocks, Your Honor.

4 THE COURT: Oh, the stocks.

5 MR. COUVILLIER: That are listed as valueless.

6 THE COURT: Well when it's stocks, we've got 29.7
7 interest in Valley Group Constructors, 16.66 interest in Star
8 Limousine valued at 41,000, 200 shares in Fleet Management,
9 zero, 16.66 interest in Star Transit, there's a book value
10 listed at 500 for Sampson Consulting, Fleet Delivery Service
11 Northwest also says zero, Pittsburg LALV, I don't know what
12 that is, MediDox, a dollar.

13 MR. COUVILLIER: That's a pharmaceutical company.

14 THE COURT: Westin LP, doing they both a hotel or
15 something? And Insured Municipal Trust, Petroleum securities
16 and Towner Leveraged Private Program. I don't know. So
17 they're not necessarily -- some of these may not be publicly
18 traded I guess I'm assuming. They're businesses, is that --
19 LLCs and stuff?

20 MR. COUVILLIER: Well, Your Honor, you know the same sort
21 of frustration that you have is the same frustration that we
22 echo is that we don't know anything about these stocks. There
23 isn't the additional information that's provided.
24 Specifically what the valuation, how the valuation has come
25 forth.

1 THE COURT: Uh-huh.

2 MR. COUVILLIER: And that is the precise frustration that
3 the school shares, Your Honor.

4 THE COURT: Okay. So I guess the question then is with
5 respect to the petition for -- to compel distribution for
6 accounting, are you looking for some period in which to do
7 discovery or?

8 MR. COUVILLIER: Well, Your Honor, what we're asking for
9 is there's several issues with the accounting. It's not just
10 the stocks.

11 THE COURT: Uh-huh.

12 MR. COUVILLIER: It's mostly the failure to explain why
13 there's been no accounting for the past six years.

14 THE COURT: Uh-huh.

15 MR. COUVILLIER: And maybe it's perhaps because they were
16 busy hiding from the Court and the beneficiaries that they
17 were settling with other parties, that they were borrowing,
18 causing the estate to borrow money and then come into the
19 Court now with unclean hands and ask the Court to ratify their
20 violations of N.R.S. Chapter 147 and 149.

21 Your Honor, the school is a non-profit educational
22 institute. It's a growing school. It's got a number of
23 growing children, Your Honor. Growing student body. Many
24 students are interested in financial aid. And we're trying to
25 obtain the promised funding for those scholarships under the

1 will. So what we're asking the Court is that the Court first
2 ascertain the true status of the estate before the school
3 incurs additional fees and efforts to expose these other
4 concoctions that the executor has manufactured regarding
5 whether the bequest that was imposed by certain actions that
6 occurred decades before the will, just to find out that the
7 executor misrepresented to the estate the ability to make the
8 bequest.

9 So what we're asking, Your Honor, is that the Court
10 first ascertain the true financial status of the estate before
11 the school incurs additional expenses, before the estate is
12 further depleted and we'll ask the Court that the accounting
13 having not been submitted for the past six years, having
14 raised significant and alarming issues regarding the financial
15 status of the estate be done at the executor's personal
16 expense. And once we're ascertaining what the true value and
17 the true assets and financial picture of the estate is, then
18 we can make a determination whether there is a need to proceed
19 to go forward, Your Honor and determine whether a bequest is
20 going to be made when there may in fact be no assets in the
21 satisfaction of the Court.

22 THE COURT: Okay. So again my question is is there going
23 -- is this going to necessitate some period of time for
24 discovery at which time we'll in the end have an evidentiary
25 hearing? Is that what you're envisioning here?

1 MR. COUVILLIER: Your Honor, whatever would please the
2 Court. I think that what we would suggest is that the
3 executor produce, Your Honor, with the Court's order, again at
4 his expense, all the documentation that is -- that we've
5 requested in our objection regarding how these stocks were
6 valued, the information regarding these particular stocks,
7 Your Honor, the estate tax return and importantly some of the
8 information regarding the settlement in unrelated divorce
9 matter and how that may impact whether the estate unfairly
10 bore a payment of that settlement of a matter which had
11 numerous other defendants, Your Honor, including the executor
12 being named as a defendant there.

13 So we want all that information, Your Honor, to
14 verify and to see if there was any self dealing, to assure the
15 estate was fairly treated and to make sure that all the
16 documentation is backed up so that we can ascertain the true
17 financial status of the estate.

18 THE COURT: Okay. All right. And then it may make more
19 sense then to have Mr. Freer address both that and then his,
20 your countermotion which is, you know, is this even a claim
21 that has any validity because the --

22 MR. FREER: Your Honor, as far as that --

23 THE COURT: -- Milton Schwartz --

24 MR. FREER: -- counter petition, we have moved to dismiss
25 it, Your Honor. And that's on hearing on July 9th.

1 THE COURT: Okay. All right. So I'm not getting into
2 the actual issue of wither or not to dismiss it. But I knew,
3 you know, that there's a counter petition Mr. Freer wished to
4 discuss and we'll let you talk about that, too.

5 MR. FREER: Thank you, Your Honor. As we point out in
6 our reply brief, this really -- his concerns about the
7 accounting places the cart before the horse.

8 THE COURT: Right.

9 MR. FREER: Because before we get to an accounting, we
10 have concern on whether or not they've got standing --

11 THE COURT: Uh-huh.

12 MR. FREER: -- to assert it. Simply put, there is a
13 bequest and this is what they're here on, there's a bequest to
14 the Milton I. Schwartz Hebrew Academy. They do not represent
15 the Milton I. Schwartz Hebrew Academy. They represent the
16 Adelson Educational Campus or Adelson Educational Institute.

17 On its face, that bequest lapsed and that is one of
18 our concerns. And in order to get to some of our concerns
19 with respect to this bequest, I think that a little overview
20 of the history of this case is important.

21 During his lifetime, Milton I. Schwartz made
22 lifetime gifts and had a bequest to Milton I. Schwartz Hebrew
23 Academy, a school which promised to bear his name in
24 perpetuity. Within months after his death, the school
25 scuttles his name and breaks promises and reneges on promises

1 it made to the decedent during his lifetime. We've introduced
2 in our pleadings evidence already including the sworn
3 testimony of the decedent during litigation he had with the
4 board in 1993 that on or about August 1989 he donated 500,000
5 to the Hebrew Academy in return for which it would guarantee
6 that it's name would change in perpetuity to the Milton I.
7 Schwartz Hebrew Academy. Their bylaws, they say the name of
8 the corporation shall be the Milton I. Schwartz Hebrew Academy
9 and shall remain so in perpetuity.

10 I could go on but just quickly, there's litigation
11 in which the actual defendants, there was two competing boards
12 back in '93. The actual defendants of this board recognized
13 that this \$500,000 donation that Mr. Schwartz made earlier
14 actually was in consideration of the naming rights for the
15 school. This wasn't a gratuitous gifts during his lifetime
16 and it wasn't a gratuitous gift at his death. There were
17 naming rights in conjunction with the gifts.

18 We also have included evidence from board members
19 where they acknowledge it's your school, it's got your name on
20 it forever. Now this gets us to 1996, after the litigation in
21 92/93, in '96, the Hebrew Academy presents Milton with a
22 letter. In that letter it says the academy promises in
23 writing to restore the Hebrew Academy's name to the Milton I.
24 Schwartz Hebrew Academy, amend its articles to restore Mr. --
25 to name it Milton I. Schwartz Hebrew Academy. Restore the

1 marker in front of the academy identifying it as the Milton I.
2 Schwartz Hebrew Academy, change of stationery and letterhead
3 and display the full name of the Milton I. Schwartz Hebrew
4 Academy whenever practical. Now this is important because
5 during the period when they took his name off in 1992, he
6 stopped making distributions. He stopped donations. That's
7 consistent until '96. That's when he began making donations
8 again. And the Hebrew Academy amended its articles, it
9 changed its letterhead, it did all of those things that's
10 stated in the letter.

11 That prompted Mr. Schwartz to begin making
12 donations. In 2004, he included a bequest to the Milton I.
13 Schwartz Hebrew Academy. In reliance still on the fact that
14 they were still naming the Hebrew Academy after him. The
15 school continued to honor this until his death. However, six
16 months after his death, after the will was admitted to
17 probate, they take his name off. Unbeknownst to us, they
18 change the articles of incorporation to drop Mr. Schwartz's
19 name.

20 Since then, they've systematically taken steps to
21 erase Milton's name and legacy. They've removed the marker at
22 the entrance to the property. The name's been removed from
23 letterhead and business cards. The school hasn't operated or
24 held out to the public as anything other than the Adelson
25 Educational Campus. Website doesn't refer to any part of the

1 school as the Milton I. Schwartz Hebrew Academy. It only
2 lists the Adelson Educational Institute. There is one vestige
3 of Mr. Schwartz's name and that's a sign on a building but
4 this Hebrew -- but the Adelson Educational Institute hasn't
5 even provided assurance to the estate that that will remain.

6 So despite breaching their promises and
7 representations to Mr. Schwartz, the school now demands
8 payment of its bequest under the guise that it is a successor
9 entity of the Milton I. Schwartz Hebrew Academy. And has the
10 gall to accuse my client of making all sorts of defalcations
11 which don't exist and when we get into the accounting, that'll
12 be all shown.

13 We've attempted to resolve this issue and you know,
14 short of the litigation. That's what's taken a couple of
15 years. This isn't really about the money. It's about the
16 legacy of the decedent.

17 But simply put, the Adelson Educational Campus can't
18 have its cake and eat it, too. It can't change its name,
19 erase all vestiges and expect to receive a bequest on behalf
20 of the Milton I. Schwartz Hebrew Academy.

21 THE COURT: Well I guess then my question I should ask
22 counsel is is this an issue where we need -- it's necessary to
23 do some discovery to have an evidentiary hearing because it
24 seems to me that what we have here is and except for the fact
25 that there's a motion to dismiss it, which we are going to get

1 it to where up there. But you have this whole issue of, you
2 know, what did Mr. Schwartz mean here in paragraph 2.3 of his
3 will. By then the Adelsons were already donating money to the
4 school. And they had built the high school I believe.

5 MR. FREER: Correct.

6 THE COURT: I think at the time of Mr. Schwartz's death,
7 the -- I'm still not real clear on the middle school, but you
8 know they built the high school building. A lovely building.
9 That indoor Olympic pool is fabulous. But you know it's one
10 of the nicest schools I've ever been in.

11 MR. FREER: And correct, and Mr. Schwartz during his
12 lifetime and there's documentary evidence that Adelson and
13 Schwartz were working together. Mr. Schwartz didn't begrudge
14 Adelson getting his fair share of credit.

15 THE COURT: Right. Recognize.

16 MR. FREER: But the problem is is now we're taking an
17 eraser to the entire legacy that Milton Schwartz has built
18 over, you know, 15/20 years.

19 THE COURT: Okay. So I mean he knew that this was going
20 to change, that this was not going to be the nice little
21 school that, you know, him giving that first million dollars
22 or whatever it was, got started. So he knew that. And it
23 just seems to me that this is an issue where there -- it
24 necessarily involves issues of fact.

25 MR. FREER: They're absolutely issues of fact, Your

1 Honor. We do need discovery. And for one very important
2 reason, we've attached a lot of declarations that were filed
3 by board members back during the time that show the decedent's
4 intent.

5 THE COURT: I remember.

6 MR. FREER: But unfortunately, I can't get anything
7 current from them right now because of Palmer versus Pioneer.

8 THE COURT: Uh-huh.

9 MR. FREER: I need the ability to go conduct discovery
10 and have formal discovery with opposing counsel involved.

11 THE COURT: Not all those people are still on the board,
12 are they? I mean --

13 MR. FREER: I don't know the answer to that. But also
14 out of an abundance of caution --

15 THE COURT: And there's all that litigation. They got
16 rid of the previous -- the lady that was running it forever.

17 MR. FREER: Correct. There are some --

18 THE COURT: All the --

19 MR. FREER: -- overlapping individuals from my
20 understanding. But you've still got instances where, you
21 know, obviously whatever these individuals on the prior board
22 say, might have the ability to bind, you know, to adversely
23 impact what promises or representations were made to Mr.
24 Schwartz on behalf of the school as opposed to on behalf of
25 particular board members.

1 We've got discovery issues. That's a horse we can
2 on get down the road. But you know we've got, right now the
3 issues we've got with the bequest itself are whether it's not
4 its lapsed, whether or not the ambiguity in that bequest, you
5 know, really whether Milton I. Schwartz intended to make the
6 bequest to the Milton I. Schwartz Hebrew Academy that's to
7 bear his name in perpetuity or the Milton I. Schwartz Hebrew
8 Academy that's changed its name to the Adelson Educational
9 Institute after he dies. You know, we've got some
10 testamentary intent with respect to that.

11 Also, regardless of the ambiguity or whether it
12 lapses, we also have claims as we've raised in our petition
13 for declaratory relief, claims with respect to fraudulent
14 inducement, breach of representations and promises, also a
15 mistake. You know, when we get into donative intent with
16 respect to lifetime gifts and upon death, there's a body of
17 law that says the grantor's mistaken belief is enough to void
18 out the bequest and in some cases even get back into
19 recovering funds that were donated during lifetime.

20 THE COURT: Well I mean because get back to what
21 initiated this whole thing which was this petition for an
22 accounting. You know, I have a copy of the first accounting.
23 And Mr., going to mispronounce the name.

24 MR. FREER: Couvillier.

25 THE COURT: Couvillier raised some questions, some of the

1 same questions I had and it may just be that, you know, these
2 are quick values. This is what the stuff's carried at because
3 the real assets are, you know, somewhere else. I mean those
4 cab company medallions are wow. Super value. So I don't
5 know. Maybe this really is what the book value is.

6 MR. FREER: Right. You know, we've got some issues with
7 some of those companies simply don't exist --

8 THE COURT: Anymore.

9 MR. FREER: -- or have gone defunct anymore.

10 THE COURT: Uh-huh.

11 MR. FREER: But you know when we get into the accounting,
12 when I talk about getting the cart before the horse, that's
13 really the case. Because it makes no sense to --

14 THE COURT: And that's my question. Do we do these on a
15 parallel track or do we first have to address this issue of do
16 they even have a right to an accounting?

17 MR. FREER: My position and we cite this in our reply
18 brief is while we've got this pending, they're not an
19 interested person with respect to the accounting unless and
20 until we've determined the bequest is valid. That's under
21 150.170, subsection 1. You know and realistically it makes no
22 sense to argue about who gets, you know, the amount of the
23 dollars to be received when we don't even know who it's going
24 to.

25 THE COURT: Uh-huh.

1 MR. FREER: So that's, you know, one of the issues that
2 we've got with respect to that account. And so our request is
3 that the Court stay any matters concerning the accounting.
4 They're the only beneficiary or not even beneficiary, they're
5 the only person that has appeared to object to the accounting.
6 It doesn't -- we're ready to close the estate once this issue
7 is done and once the accounting is. Let's first determine who
8 this bequest goes to.

9 THE COURT: Well I guess my -- one question I had here is
10 that as I read this accounting, there is -- there are assets
11 on hand. And it appears to me, \$633,060 at a minimum on hand.
12 So are there other obligations out there because I -- there's
13 been this whole issue of first they said they had the money
14 and they wanted to resolve this. And then they said they
15 didn't have the money.

16 MR. FREER: Right. And I'll -- my understanding is those
17 representations on behalf of the estate were never made.
18 There is a -- I think they're confusing the estate and the
19 trust. There is a separate revocable trust out here and I
20 believe that the trustee who is also the executor --

21 THE COURT: Right.

22 MR. FREER: -- made those representations in connection
23 with yes, if we're able to resolve these naming right issues,
24 we are more than capable of making the distribution. With
25 respect to the amount of money -- you know it does raise -- we

1 did raise one additional issue with respect to the
2 availability of funds. There is, you know, the accounting --
3 I have to profess I did not prepare the accounting. That was
4 Steve Oshins' firm, very capable. I didn't spend a lot of
5 time poring over the account. But what we did raise is there
6 are other bequests that are set -- that are going to kindred
7 and spouses. Those take priority over non-related bequests.
8 And so that's one of our claims we raise in -- with respect to
9 the objection to the distribution is even if this Court
10 determines that the bequest is valid to the school, there's
11 still an issue of N.R.S. 151.163 that gives priority to the
12 extent there is insufficient funds first to the other
13 beneficiaries that were related by blood.

14 THE COURT: So there's the grandson.

15 MR. FREER: Grandchildren.

16 THE COURT: Okay.

17 MR. FREER: Three grandchildren.

18 THE COURT: Three grandchildren. And who's the jewelry
19 bequests.

20 MR. FREER: So really what we're asking for at this
21 point, Your Honor, is that we set, you know, we have a 16.1.
22 We just kind of put this on an evidentiary hearing path, have
23 an evidentiary, you know, get an NRCP 16.1 scheduling order,
24 open it for discovery to allow us to conduct discovery as to
25 the grantor's intent. And put us on the stack -- we've

1 requested a jury trial with respect to the declaratory relief
2 as we are entitled to under N.R.S. 30. And just set this for
3 evidentiary hearing.

4 THE COURT: And because -- and also well it doesn't
5 really go to intent -- but it is involving a will. So yeah --

6 MR. FREER: Yeah.

7 THE COURT: So that's a problem.

8 MR. FREER: Yeah, under N.R.S. 30 we've requested the
9 declaratory relief which allows us to request a jury trial.
10 We've requested it with respect to two issues. Construing the
11 terms of the will, advising the Court or advising the executor
12 as to administration. But also with respect to supplemental
13 relief that we have asserted over lifetime gifts.

14 THE COURT: And so how -- just so I understand. Would we
15 -- would you do that evidentiary hearing before or after an
16 evidentiary hearing. Are you saying that is the evidentiary
17 hearing?

18 MR. FREER: That is the -- the declaratory relief --

19 THE COURT: Okay.

20 MR. FREER: -- basically, you know, would be the
21 evidentiary hearing in front of a jury.

22 THE COURT: And how long do you anticipate this is going
23 to take?

24 MR. FREER: I think we can wrap this up all within six
25 months max.

1 THE COURT: So 180 days of discovery plus the trial, you
2 know --

3 MR. FREER: Correct.

4 THE COURT: -- two months thereafter.

5 MR. FREER: I mean the only thing I've got impacting my
6 ability to conduct discovery in this case is to conduct the
7 discovery that's going on.

8 THE COURT: Okay. Well now then we have the next
9 question which is technically is this request premature
10 because we have a motion pending to dismiss that we're not
11 going to hear for a couple of weeks.

12 MR. FREER: I would be more than happy to defer the
13 scheduling of this matter to the conclusion of the motion to
14 dismiss.

15 THE COURT: Okay.

16 MR. FREER: As I stated, we've already attached a bunch
17 of, you know, evidence.

18 THE COURT: But just at this point in time, it would be
19 inappropriate to go forward and order the accounting until
20 such time as this other issue is determined which is are you
21 going to be allowed to go forward with your complaint for
22 declaratory relief which is that we don't believe that Mr.
23 Schwartz's bequest stands. So unless and until that's been
24 determined by the Court and/or a jury, their right to an
25 accounting is premature.

1 MR. FREER: You're dead on, Your Honor.

2 THE COURT: I see. Okay. But they should not be doing
3 their accounting at the same time you're doing that other
4 discovery to save us any time and expedite anything?

5 MR. FREER: Our position, you know, it's -- the flip side
6 of the same coin. Their position is they want to sniff around
7 to see what assets are there, to see whether it's worth them
8 pursuing.

9 THE COURT: Uh-huh.

10 MR. FREER: Our position is you're asking the estate to
11 expend money that it might not necessarily have to in
12 providing information and document relative to the accounting
13 when they may not even be a beneficiary.

14 THE COURT: All right. Thank you.

15 MR. FREER: Thank you, Your Honor.

16 THE COURT: Okay.

17 MR. COUVILLIER: Your Honor, I don't want to get into
18 scheduling evidentiary hearings and that sort of issue.

19 THE COURT: Right.

20 MR. COUVILLIER: I mean that's the gameship that is
21 happening here, Your Honor. In their objection or their
22 response to our petition, they unequivocally say that the
23 bequest to the school is abated because the estate has
24 insufficient funds. I'm quoting that directly, Your Honor,
25 from page 8 at line 7 of their response to our objection, Your

1 Honor.

2 With respect, Your Honor, to standing, Your Honor,
3 there's two responses to that. First of all, Your Honor, the
4 accounting and the executor's responsibility to file a
5 complete accounting is separate from whether we brought this
6 forward or not. They neglected to do this, Your Honor. They
7 neglected to do this for over the past six years. They went
8 and settled claims without this Court's permission. They went
9 and borrowed money without this Court's permission. And
10 they're sitting here hiding from the Court saying we need to
11 do all these other things. Why? Because we're hiding from
12 the things that we didn't do.

13 As far as standing, Your Honor, standing --

14 THE COURT: Well their argument that nobody else cares.
15 The only people who care are people who arguably have no claim
16 because they took my dad's name off the building.

17 MR. COUVILLIER: Your Honor, this --

18 THE COURT: Well they didn't take it off the building,
19 it's still there on the building.

20 MR. COUVILLIER: -- Court should care. N.R.S. says that
21 the State cares. N.R.S. requires them to file a complete
22 accounting. They never did that, Your Honor, until it was
23 prompted by our petition.

24 And as far as standing, Your Honor, N.R.S. 151.7
25 says an interested person may appear and file written

1 objections. N.R.S. 132.185 defines an interested person
2 without limitation as a devisee. And N.R.S. 132.100 defines
3 devisee as to mean a person designated in a will to receive a
4 devise. Your Honor, it is unquestionable that we were
5 designated in the will. What they are seeking now is to
6 challenge the will, not the designation, Your Honor. And that
7 is completely separate issue that deals with the merits and
8 not with the issue of standing.

9 But what is interesting, Your Honor, is that the
10 time for them to challenge the will has long since passed
11 under N.R.S. 137.120. This whole argument that they're
12 seeking to construe the will and not challenging the will,
13 Your Honor, is a, to borrow from Mr. Dwiggins' earlier
14 argument, a distinction without a difference. They're simply
15 asking to challenge the will. That statute of limitations has
16 long passed, Your Honor. The will was not challenged within
17 three months after the order admitting the will into probate
18 was admitted. It clearly falls beyond the scope of that.

19 And we're coming back to the Court is to say, Your
20 Honor, they're throwing around these issues about whether the
21 school is intended to honor some legacy. Your Honor, they're
22 talking about events that happened in 1989. Mr. Schwartz was
23 again a sophisticated businessman with lawyers, counselors and
24 other professionals at his disposal. And in 2004, he with the
25 benefit of the people that surrounded him and with his own

1 sophisticated faculty, did his will. And his will provides no
2 conditions whatsoever, none of the conditions that they've
3 made. He affirmed his will again twice in 2006, Your Honor.
4 Again, if he wanted the conditions regarding the naming of the
5 school, the specific naming in perpetuity, all these logos and
6 letterheads, it would have clearly been included in the will.
7 And it was not. Why? Because he did not include it because
8 he did not intend to do it. Now --

9 THE COURT: Well but doesn't a question of fact exist as
10 to whether there really is any entity such as the Milton I.
11 Schwartz Hebrew Academy?

12 MR. COUVILLIER: Your Honor, it's unrefuted in both our
13 reply and in our petition, Your Honor, that one is the school
14 remains. The lower school is still referred to as the Milton
15 I. Schwartz Academy. Paul Schiffman, the head of the school,
16 testified to that. There's still the Adelson Campus still
17 does DBA of that. There's still a building named after Milton
18 I. Schwartz Academy. And the scholarship, Your Honor, will be
19 the Milton I. Schwartz scholarship. And it will go as he
20 directed to the Jewish children to educate them and that's
21 what we're seeking, Your Honor.

22 What they're asking to do is engage in this
23 evidentiary hearing to harass the school and have us incur
24 attorneys' fees when they're saying at the end, they're
25 representing the bequest to the school has abated. Well,

1 let's have them produce these items, Your Honor, within 30
2 days to the satisfaction of the Court that the accounting is
3 true and accurate. That's the horse before the carriage, Your
4 Honor. Why are we going to expend six months in litigation,
5 six months in harassing discovery and trying to find people
6 that are no longer affiliated with the board, no longer on the
7 board, about matters that have absolutely nothing to do with
8 the will? When at the end of the day, gee, I'm so sorry,
9 there is no money.

10 Let's find out first where's the money. Let's order
11 the executor to produce the documents. He's had six years to
12 accumulate them. Let's have him order to produce those
13 documents within 30 days. Let's come back within 30 days,
14 examine what he has produced and if it's to the satisfaction
15 of the Court, then we will deal with it at that point, Your
16 Honor, and determine whether it is worth for both the estate
17 and the school to engage in these discovery gamesmanship if
18 there is no money.

19 THE COURT: Okay.

20 MR. COUVILLIER: Thank you, Your Honor.

21 THE COURT: What we are on today is the petition for an
22 accounting and for attorneys' fees. And you know we -- I
23 think it was a petition for an accounting and we do now have
24 an accounting. And you know the way I read the accounting and
25 granted it's -- it's in -- a substantial portion of the assets

1 appear to be in the form of real property and personal
2 property which I don't know. But it says here that there's
3 \$633,000 in assets on here. So that's the accounting that's
4 been produced. So we do now at least have the accounting. So
5 to the extent that there is a petition for an accounting, you
6 know, we have the accounting. The question -- there are
7 questions about the accounting now that we have it in that you
8 know we have issues with respect to how these issues were
9 actually valued. But you know at this point we have an
10 accounting. And the accounting says there is \$633,000. The
11 bequest is 500,000. We have all these issues about are there
12 other people who would take before the school even if you
13 assume that the school is entitled. Are there other people
14 who take before the school?

15 MR. COUVILLIER: Your Honor, let me answer that question.
16 There are four grandchildren that were named in the will.
17 Michael Langsberg, Zachary Langsberg, Benjamin Langsberg and
18 Joshua Langsberg who are each entitled under the will to
19 45,000 each. So that takes 180,000 off that chunk, Your
20 Honor.

21 THE COURT: Right. So I mean there are other questions
22 here. So at this point I just don't know that compelling
23 anything further I'm, you know, I'm not inclined to do this.
24 I would like to continue this to the hearing on the 9th on the
25 whole issue of the motion to dismiss the petition for

1 declaratory relief. Because I think we have to have a hearing
2 on that. And see where we are on that issue. Because it
3 seems to me that if we're going to do anything, it makes more
4 sense to do it all at one time because I don't know, this just
5 doesn't make any -- doesn't seem like it's cost effective and
6 to do six months of discovery is very time consuming. When
7 I'm just not sure, you know, what the -- would be entitled to
8 with respect to getting our -- a jury trial versus a non-jury
9 trial. I keep losing my will. The copy of the will, where is
10 it?

11 Because it seems to me a lot of it's just a question
12 of how do you interpret this language. Almost. I've lost it
13 again. I've got it here somewhere. So at this point we have
14 an accounting. I understand the issue is now that we have the
15 accounting, we need to be able to understand that the
16 accounting is accurate. You know, I just think that until we
17 know if we're going to go forward with this thing, I'm not
18 going to order anything further at this time. But I, you
19 know, that may change as we get into this in more detail.

20 So we're going to be back here on the 7th. So --

21 THE CLERK: The 9th.

22 THE COURT: The 9th. To compel the accounting -- we have
23 the accounting. So the next question is are we going to
24 compel distribution or are we going to do more discovery and
25 then we have the petition to dismiss the petition for

1 declaratory relief and do we want to do discovery on that. So
2 at this point, I'm not going to grant or deny anything. I'm
3 just moving the issue of the accounting to the same date to
4 consider -- somewhere I've got my --

5 THE CLERK: Do you want the petition for declaratory
6 relief on the same hearing?

7 THE COURT: The petition for declaratory relief isn't
8 actually scheduled for --

9 MR. FREER: There is a motion to dismiss the petition for
10 declaratory relief.

11 THE COURT: The -- it's a motion to dismiss it for the
12 7/9.

13 MR. FREER: Right.

14 THE CLERK: Correct. But the one that's on calendar
15 today, you just want to --

16 THE COURT: The petition for declaratory relief --

17 MR. FREER: I'm fine -- we just kick that to the 9th and
18 then have a scheduling if want to dismiss.

19 THE COURT: To the 9th again. Because we have to
20 discuss, you know, where we're going to go with it. And you
21 know, until that -- the issue of whether or not to dismiss,
22 it's been fully briefed, I want to make a decision.

23 THE CLERK: Okay.

24 THE COURT: So we brief. Okay.

25 THE CLERK: The citation, do we have to do anything with

1 those?

2 THE COURT: No.

3 THE CLERK: Okay.

4 THE COURT: Okay. All right.

5 MR. FREER: Thank you, Your Honor.

6 THE COURT: Oh, maybe it's over here. Okay, yeah. The
7 9th, here it is.

8 MR. FREER: See you on the 9th, Your Honor.

9 [Proceedings Concluded at 11:56 a.m.]

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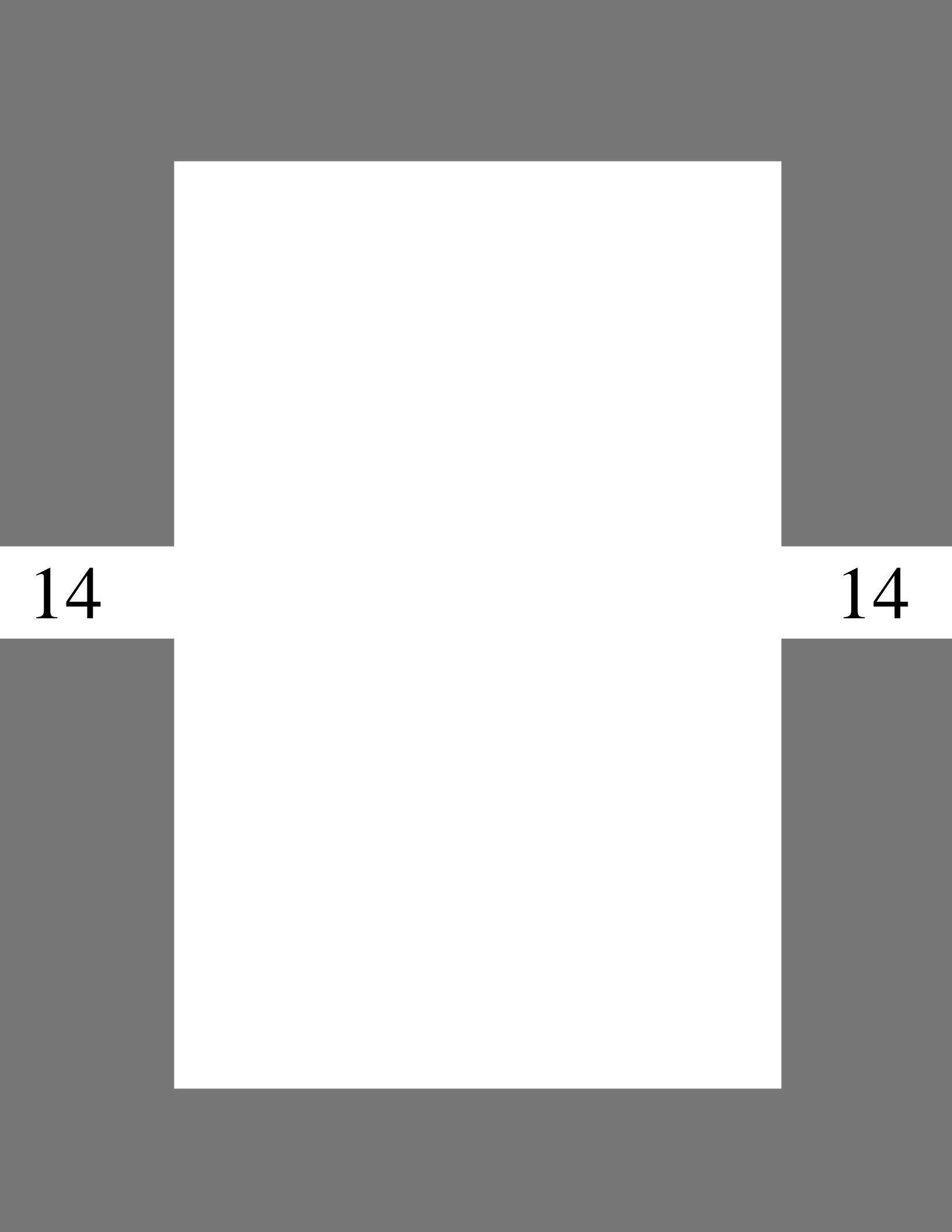
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above entitled case to the best of my ability.

A handwritten signature in cursive script, reading "Dianna Aldom", is positioned above a solid horizontal line.

Dianna Aldom, CET**236, Transcriber



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1 **OPP**

2 MARK A. SOLOMON, ESQ.

3 Nevada State Bar No. 00418

4 msolomon@sdfnvlaw.com

5 ALAN D. FREER, ESQ.

6 Nevada State Bar No. 7706

7 afreer@sdfnvlaw.com

8 STEVEN E. HOLLINGWORTH, ESQ.

9 Nevada State Bar No. 7753

10 shollingworth@sdfnvlaw.com

11 SOLOMON DWIGGINS & FREER

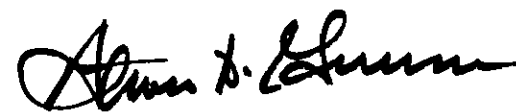
12 9060 West Cheyenne Avenue

13 Las Vegas, Nevada 89129

14 Telephone: (702) 853-5483

15 Facsimile: (702) 853-5485

16 *Attorneys for Respondent, A. Jonathan Schwartz*



CLERK OF THE COURT

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 In the Matter of the Estate of

14 MILTON I. SCHWARTZ,

15 Deceased.

Case No. P061300

Department No. 26/Probate

Date of Hearing: July 9, 2013

Time of Hearing: 9:00 a.m.

17
18 **OPPOSITION TO MOTION TO DISMISS EXECUTOR'S PETITION FOR**
19 **DECLARATORY RELIEF**

20 A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz ("Executor"), by and
21 through his attorneys, Mark A. Solomon, Alan D. Freer, and Steven E. Hollingworth of the law
22 firm of Solomon Dwiggin & Freer, Ltd., does hereby respond to the Motion to Dismiss Executor's
23 Petition for Declaratory Relief (the "Motion") filed by the Dr. Miriam and Sheldon G. Adelson
24 Educational Institute (the "Adelson School" or the "School").

25 **I. INTRODUCTION**

26 Milton I. Schwartz ("Milton") made lifetime gifts and a bequest to the Milton I. Schwartz
27 Hebrew Academy, and in exchange the School promised to bear his name in perpetuity. Within
28 months after Milton's death, the School shed his name, breaking its promises and reneging on its

1 representations to Milton. The Executor has filed a Petition for Declaratory Relief ("Petition") to
 2 request that this Court (through a jury proceeding) determine, *inter alia*, the following issues:

- 3 1. Whether the bequest to the Milton I. Schwartz Hebrew Academy lapses because the
 4 Milton I. Schwartz Hebrew Academy no longer exists;
- 5 2. Whether the bequest to the Milton I. Schwartz Hebrew Academy is void due to
 6 fraudulent inducement or misrepresentation by the Adelson School;
- 7 3. Whether the bequest to the Milton I. Schwartz Hebrew is voidable due to breach of
 8 agreement, promissory estoppel by the Adelson School or mistake by Milton;
- 9 4. Whether the Executor is authorized and directed to offset any bequest against
 10 lifetime donations made by Milton on account of the Adelson School's breach of
 11 agreement and/or promise made by and between the School and Milton;
- 12 5. Whether Milton's Estate is entitled to supplemental relief in the form of a
 13 constructive trust over funds in the hands of the Adelson School which were
 14 contributed by Milton during his lifetime to the Milton I. Schwartz Hebrew
 15 Academy.

16 In support of these requests, the Executor has introduced evidence that Milton's bequest
 17 in his Will was not solely of a gratuitous nature, but was part of a legacy for the specific purpose
 18 of a school bearing his name. This bequest concluded a lifetime of giving to the Milton I. Schwartz
 19 Hebrew Academy in consideration for it bearing his name.

20 II. ALLEGATIONS AND ISSUES OF FACT PRECLUDING DISMISSAL

21 The following allegations and evidence presented in the Executor's Petition preclude
 22 dismissal and warrant that discovery proceed in this matter:

- 23 1. In or about August of 1989 Milton donated \$500,000 to the Academy in return for
 24 a guarantee its name would change in perpetuity to the Milton I. Schwartz Hebrew
 25 Academy." See Petition at Ex. 1.
- 26 2. In August 1989, the Academy amended its bylaws: "The name of this corporation
 27 is the Milton I. Schwartz Hebrew Academy ... and shall remain so in perpetuity."
 28

Petition at Ex. 4.

3. In or around 1992, during a dispute between Milton and the Academy's successor board, the Academy dropped Milton's name and Milton ceased making donations to the school. *See* Petition at Ex. 9.
4. The School's headmaster and board member, Tamar Lubin (who was a defendant in Milton's prior litigation with the Academy): "Milton Schwartz became elected to the Board of Trustees of the Hebrew Academy after making a large gift to the school. Also in consideration of this grant, the school has borne his name since 1989.... I personally solicited Mr. Schwartz's donation to the Academy, the very donation resulting in the school being named for him." Affidavit of Tamar Lubin aka Tamar Lubin Saposnik at ¶¶ 19, 21, attached as Ex. 1 to Reply in Support of First Accounting and Report.
5. School board member Michael Novick acknowledged that Milton's initial gift to the school in \$500,000 was in consideration for it bearing his name and that when litigation arose and his name was removed, the School Head "offered to return the \$500,000 to Milton I. Schwartz." Petition at Ex. 8.
6. Acknowledgment from School board member Lenard E. Schwartzer to Milton that "It's your school, it has your name on it forever...." Petition at Ex. 7.
7. Acknowledgment from School board member Ira Steinberg (also a defendant in Milton's prior litigation with the Academy) that Milton referred to the school as "my school." Reply to Objection to Accounting at Ex. 3.
8. In or about 1996 the School promised to Milton in writing to:
 - a. Restore Hebrew Academy's name to "Milton I. Schwartz Hebrew Academy";
 - b. Amend the Articles to restore name to Milton I. Schwartz Hebrew Academy;
 - c. Restore marker in front of Academy identifying it as Milton I. Schwartz

1 Hebrew Academy;

2 d. Change stationary/letter head to identify it as Milton I. Schwartz Hebrew
3 Academy;

4 e. Display the full name of Milton I. Schwartz Hebrew Academy whenever
5 practicable and include on logo. *See* Petition at Ex. 10.

6 9. Following this promise, the School again amended its articles and bylaws to
7 recognize: "The name of the Corporation is the Milton I. Schwartz Hebrew
8 Academy and will remain so in perpetuity." Petition at Ex. 5.

9 10. In reliance on these promises made by the School, Milton resumed making
10 donations to the school from 1996 until his death in 2007. Petition at Ex. 9.

11 11. In 2004, Milton executed his Will, making a \$500,000 bequest to the Milton I.
12 Schwartz Hebrew Academy, and affirming the same with codicils following in
13 2006. *See* Petition at p. 4, lines 10-15.

14 12. In or around 2006-07, prior to Milton's death the Adelsons pledged \$25 million to
15 build a high school on the site of the School. Milton, the School and Mr. Adelson
16 agreed that the high school would be called the "Adelson School," while grades K-8
17 would continue to be known as the Milton I. Schwartz Hebrew Academy. *See*
18 Petition at p. 4, lines 16-20, and at Ex. 11.

19 13. The School continued to honor Milton's name and be recognized as the Milton I.
20 Schwartz Hebrew Academy, despite the generous donations of the Adelsons. *See*
21 Petition at p. 5, lines 1-11.

22 14. However, approximately (7) months after Milton's death, the School (unbeknownst
23 to the Executor) amended its articles to drop Milton's name and replace it with the
24 Adelsons. *See id.*

25 15. Since Milton's death the School has systematically erased Milton's name and
26 legacy:

27 a. The marker at the entrance to the property has been removed;
28

- b. The name has been removed from letterhead and business cards;
- c. The School not operated or held out to the public as anything other than Adelson Educational Campus;
- d. The website does not refer to any part of school as the Milton I. Schwartz Hebrew Academy; and
- e. The School's website lists the Adelson Educational Campus as Lower, Middle, and Upper. *See* Reply to Objection to Accounting at p. 4, line 14 to p. 5, line 10.

Based on the foregoing allegations and evidence, the Executor has adequately stated claims upon which relief can be granted and, further, has provided evidence sufficient to create issues of fact warranting that discovery proceed in this matter.

III. MEMORANDUM OF POINTS AND AUTHORITIES

A. **The Motion to Dismiss Should Be Denied Because it Fails to Accept all Factual Allegations in the Executor's Complaint as True and Draw All Inferences in Favor of the Executor.**

The School's motion to dismiss should be denied. In reviewing this motion under Nevada Rule of Civil Procedure 12(b)(5), the court must accept all factual allegations in the Executor's complaint as true and draw all inferences in favor of the Executor. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 227-228, 181 P.3d 670, 672 (2008). "The complaint should be dismissed only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Id.*

The School's motion falls far short of meeting this rigorous standard. First, the School's motion does not even address the Estate's multiple claims for relief, including its affirmative claims for damages against the School relating to Milton's lifetime gifts. Second, the Estate's claims for relief are not barred by the statute of limitations. The School's citation to NRS 137.080 is inapposite because that section is expressly applicable only to will contests. Finally, the Executor has detailed facts and submitted substantial evidence supporting his petition for declaratory relief, all of which must be accepted as true for purposes of this motion. The School's blanket denial that

1 such evidence exists is manifestly insufficient.

2 **B. A Plain Reading of the Will Indicates That the Bequest to the Milton I.**
 3 **Schwartz Hebrew Academy Lapses, or, at Minimum, Creates an Ambiguity**
 4 **Concerning Milton's Intent.**

5 Article 2.3 of Milton's Will provides a bequest made to the "Milton I. Schwartz Hebrew
 6 Academy." That entity does not exist any more. The non-existence of the Milton I. Schwartz
 7 Hebrew Academy leads to two possibilities: (1) the bequest lapses because the entity no longer
 8 exists; *See, e.g., In re Estate of Beck*, 649 N.E.2d 1011 (Ill. Ct. App. 1995) or (2) an ambiguity
 9 exists in the Will, which requires a determination as to what Milton I. Schwartz intended. *See In*
 10 *re Paroni's Estate*, 56 Nev. 492, 56 P.2d 754, 755 (1936). Accordingly, the mere non-existence
 11 of the Milton I. Schwartz Hebrew Academy is sufficient to defeat the School's Motion because a
 12 triable issue of fact exists as to whether the bequest to the Milton I. Schwartz Hebrew Academy
 13 lapses and what the decedent intended by making such a gift.

14 **C. The Evidence Demonstrates That the Bequest to the School is Void and That**
 15 **the Estate Has Affirmative Claims Against the School.**

16 The School doggedly insists that the sole issue to be determined by this court is the
 17 interpretation of a single paragraph of the Milton's Will, and that the court should ignore all outside
 18 considerations. However, the School's Motion completely ignores the affirmative claims the Estate
 19 has filed against the School in its Petition for Declaratory Relief.

20 What is at stake is not only whether the School is entitled to the full \$500,000 bequest under
 21 the Will, without offset, but also whether the School is entitled to retain the substantial gifts Milton
 22 made beginning in 1989 until his death. All of these gifts were made in reliance on the School's
 23 representations that it would bear his name in perpetuity, as well as the School's detailed promises
 24 to include his name in signage and written material. The School's rigid focus on the terms of the
 25 Will, to the exclusion of all else, can only be explained by its desire to divert attention from its
 26 unscrupulous conduct with respect to the Estate.

27 Perhaps in recognition of its unsympathetic position, the School has failed even to
 28 acknowledge the fundamental rule of law that a bequest or gift induced by fraud or mistake is void.
 RESTATEMENT (THIRD) OF PROPERTY: WILLS AND OTHER DONATIVE TRANSFERS § 8.3(a). The

1 multiple representations and promises made by the School to Milton in connection with his lifetime
 2 and testamentary gifts are crucial evidence, not only for interpreting the Will, but in determining
 3 whether the bequest to the School is valid and whether his Estate is entitled to restitution.

4 Contrary to the School's repeated mantra, the Executor has provided the court abundant
 5 evidence of the understanding and agreement by the Hebrew Academy, its officers and directors,
 6 and Milton himself, that the Academy not only would bear his name, but would also provide
 7 specific naming rights with respect to signage, stationery, brochures, and other matters. This
 8 agreement was universally acknowledged during his lifetime, as evidenced by the minutes of the
 9 board of directors, changes to the bylaws and articles of incorporation, letters to Milton from
 10 various officers and directors, Milton's own affidavit, and the parties' course of conduct. Even
 11 persons who were in litigation against him testified that the school had agreed to bear his name in
 12 return for his contributions. As Tamar Lubin, a board member and named defendant in a lawsuit
 13 brought by Milton and other board members, stated in a sworn affidavit:

14 "Milton Schwartz became elected to the Board of Trustees of the
 15 Hebrew Academy after making a large gift to the school. Also in
 16 consideration of this grant, the school has borne his name since
 17 1989....I personally solicited Mr. Schwartz's donation to the
 Academy, the very donation resulting in the school being named for
 him."¹

18 Ms. Lubin thus corroborates Milton's own sworn testimony: "Affiant donated \$500,000 to the
 19 Hebrew Academy in return for which it would guaranty that its name would change in perpetuity
 20 to the Milton I. Schwartz Hebrew Academy."²

21 Milton's gifts were never considered purely gratuitous, but had conditions attached relating
 22 to the naming rights. These conditions included a requirement that the school bear Milton's name,
 23 as well as other specific naming rights listed in the letter from Dr. Roberta Sabbath, School Head,
 24 dated May 23, 1996. Executor is informed and believes that discovery could produce additional

25
 26 ¹ Affidavit of Tamar Lubin aka Tamar Lubin Saposnik at ¶¶ 19, 21, attached as Ex. 1 to Reply in
 27 Support of First Accounting and Report.

28 ² Supplemental Affidavit of Milton I. Schwartz at ¶ 4, attached as Ex. 1 to Petition for Declaratory
 Relief.

1 evidence confirming the existence and terms of the agreement made by the School.

2 **D. The Undisputed Evidence Demonstrates That the School Has Breached Its**
 3 **Promises and Representations.**

4 Significantly, the School has yet to provide any evidence that it has complied with its
 5 promises and representations. The School does not deny, nor can it with any credibility, that it
 6 made specific promises to Milton. Neither can the School deny that it has failed to comply with
 7 these promises.

8 Contrary to the School's attempted spin, the title "Milton I. Schwartz Hebrew Academy"
 9 has been so marginalized as to be virtually nonexistent. The former marker that used to exist at the
 10 entrance to the property has been removed. The name has been removed from the letterhead and
 11 business cards, and the School is not operated or held out to the public as anything other than the
 12 Adelson Educational Campus. The School's website does not refer to any part of the School as the
 13 Milton I. Schwartz Hebrew Academy, not even grades K-4.³ Instead, the School refers to its three
 14 divisions as follows:

15 The Adelson Educational Campus consists of three schools:

- 16 • The Lower School provides students from 18 months through 4th
 grade with a highly nurturing academic environment.
- 17 • The Middle School, spanning grades 5–8, offers students
 18 meaningful and exciting opportunities for scholarly and personal
 growth.
- 19 • The Upper School, encompassing grades 9–12, educates students
 20 to hone their critical thinking skills and prepares them for higher
 education.⁴

21 The School's claim that it continues to do business as the Milton I. Schwartz Hebrew Academy is
 22 simply untrue.

23 At best, the School has produced the last existing vestige of the past, specifically, that one
 24

25 ³ See Ex. 2, which is a printout of <http://www.adelsoncampus.org/aboutus.cfm> (visited on
 26 6/21/2013) and <http://www.adelsoncampus.org/lowerschoolwelcome.cfm> (visited on 6/21/2013).
 27 The latter printout states, "Welcome to the Lower School. Our lower school begins with
 28 preschoolers (18 months) and continues through 4th grade."

⁴ *Id.*

1 of the buildings on the campus still bears the name of Milton I. Schwartz. However, the School
 2 has been unwilling even in this instance to provide any written reassurance to the Estate that it will
 3 not remove Milton's name.

4 **E. The Bequest to the School is Void or Offset by Claims, Regardless of Whether**
 5 **the Will is Ambiguous.**

6 The School's insistence that it is free to break its promises to Milton with impunity is, in
 7 itself, a tacit admission that those promises, when made, were in fact fraudulent and misleading.
 8 What cannot be disputed is that, for the purpose of obtaining contributions from Milton, the
 9 Academy and its officers and directors at least led him to believe that such an agreement existed.
 10 Contributions and bequests made under such false pretenses are *void*.⁵ The language of the Will
 11 itself, however clear and unambiguous it may appear, cannot resurrect a void bequest. Even if the
 12 bequest is not void by reason of fraud or misrepresentation, the Estate has the right to offset the
 13 \$500,000 bequest to the School in the amount of the damages due from the School. *See, e.g.,*
 14 *Matter of Estate of Morrell*, 428 S.E.2d 697, 699 (N.C. Ct. App. 1993).

15 **F. The Will Cannot Be Construed to Require a Bequest Contrary to Milton's**
 16 **Intent.**

17 The plain language of the will cannot reasonably be construed to provide a benefit to an
 18 organization not currently named "the Milton I. Schwartz Hebrew Academy." Although the School
 19 does not emphasize the point, its Motion correctly states that "the ultimate question for a court
 20 construing a will is not what the testator meant to say but *what he or she meant by what he or she*
 21 *did say*, which necessarily requires a determination of whether the words used by the testator are
 22 capable of being expanded to embody the proffered testamentary intent." 80 AM. JUR. 2D WILLS
 23 § 989 (emphasis added).

24 It is undisputed that Milton made provision in his Will for an entity he referred to as "the
 25

26 ⁵ *See, e.g.,* RESTATEMENT (THIRD) OF PROPERTY: WILLS AND OTHER DONATIVE TRANSFERS
 27 § 8.3(a); Restatement (Second) of Property, Donative Transfers §34.7, Comment d; Restatement
 28 (Third) of Restitution And Unjust Enrichment, §11(2) ("A donor whose gift is induced by
 invalidating mistake has a claim in restitution as necessary to prevent the unintended enrichment
 of the recipient.")

1 Milton I. Schwartz Hebrew Academy.”⁶ What is at issue is whether this bequest should be
 2 understood as Milton would have understood it, that is, “the Milton I. Schwartz Hebrew Academy
 3 that bears my name in perpetuity,” or, as the School appears to contend, “the Milton I. Schwartz
 4 Hebrew Academy, even if soon after my death it breaches its promise to bear my name in
 5 perpetuity.”

6 The School asks the court to accept its contention that the must be interpreted in a vacuum,
 7 without regard to the agreements and representations made between Milton and the School. Such
 8 a conclusion is neither required by the authorities it cites, nor can it in any way be justified as
 9 carrying out the testator’s true intent.⁷

10 Milton’s intent cannot be correctly understood without reference to the history of the
 11 Hebrew Academy, the Academy’s repeated promises that it would bear his name in perpetuity, and
 12 the Academy’s deep personal importance to him. Indeed, detractors during his lifetime accused
 13 him of referring to the Academy as “my school” and even treating the Academy as if he owned it.⁸
 14 Once informed with this understanding, it is utterly unrealistic to believe that Milton would have
 15 made *any* bequest to the Milton I. Schwartz Hebrew Academy had he known that the Academy
 16 would promptly breach its promises. The Will, therefore, cannot be construed to require a bequest
 17 to an entity that Milton would not have supported.

18 **G. The Executor's Request For Instruction and to Construe the Will is Not**
 19 **Barred By the Statute of Limitations.**

20 The Executor's request for instruction from this court and his claims for relief are not barred
 21

22 ⁶ The School’s accusation that the Estate is hiding the terms of the is, frankly, ridiculous. The Will
 23 has already been filed with the Court.

24 ⁷ NRS 137.030, which the School argues excludes all evidence not contemporaneous with the
 25 execution of the Will , is inapplicable. That section has reference to will contests. This
 26 proceeding is not a contest, but a construction of the will. However, even if NRS 137.030 were
 27 applicable, all of the evidence provided by the Executor is relevant to show Milton’s intent and
 state of mind as of the time he executed his Will.

28 ⁸ See Ex. 3, Affidavit of Ira David Steinberg at ¶ 40 (“In several conversations I’ve had with
 Mr. Schwartz, he has referred to the Academy as ‘my school’.”)

1 by the statute of limitations. Contrary to the School's misguided assertion, NRS 137.080 is
2 inapplicable to the present case. That section expressly applies only to *contests* of wills.

3 The current proceedings are not a contest over the admission of a will to probate. Instead,
4 the Executor has requested this court to instruct the executor how to proceed with respect to a
5 bequest to a beneficiary against whom the estate has substantial claims, and under circumstances
6 that have radically altered the ability of the executor to carry out the testator's known intent.

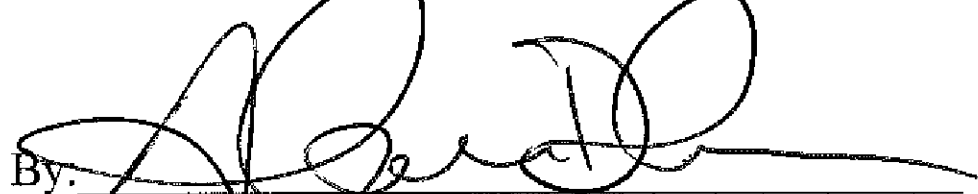
7 Almost as an afterthought, the School appears to argue that its prior breach in 1994,
8 followed by its cure of the breach in 1996, somehow immunizes the School from responsibility for
9 its *current* breach, by reason of the statute of limitations. This position is clearly incorrect and is
10 unsupported by any citation to authority.

11 IV. CONCLUSION

12 **WHEREFORE**, the Executor requests that this Court deny the School's motion to dismiss.

13 **DATED** this 30th day of June, 2013.

14 SOLOMON DWIGGINS & FREER

15
16 By. 

17 MARK A. SOLOMON, ESQ.

Nevada State Bar No. 00418

18 ALAN D. FREER, ESQ.

Nevada State Bar No. 7706

19 STEVEN E. HOLLINGWORTH, ESQ.

Nevada State Bar No. 7753

20 SOLOMON DWIGGINS & FREER

9060 West Cheyenne Avenue

21 Las Vegas, Nevada 89129

Telephone: (702) 853-5483

22 Facsimile: (702) 853-5485

23 *Attorneys for Respondent*

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2013, I mailed a true and correct copy of the *Opposition to Motion to Dismiss Executor's Petition for Declaratory Relief* to the following, by depositing the same in the United States Postal Service, postage fully prepaid and addressed to the last known address as follows:

VIA U.S.P.S. and E-MAIL (as noted below)

Maximiliano D. Couvillier, III

Ketan D. Bhurud

Kendal L. Davis

LIONEL SAWYER & COLLINS

1700 Bank of America Plaza

300 South Fourth Street

Las Vegas, NV 89101

mcouvillier@lionelsawyer.com

kbhurud@lionelsawyer.com

kdavis@lionelsawyer.com

Attorneys for The Dr. Miriam and Sheldon G. Adelson Educational Institute

Eileen Joanna Zarin

9 Steven Lane

Kings Point, NY 11024

Samuel Schwartz

351 Woodlake Drive

Marlton, NJ 08053

Zachary Landsburg

1028 Bobwhite Drive

Cherry Hill, NJ 08003

Joshua Landsburg

1028 Bobwhite Drive

Cherry Hill, NJ 08003

Michael Landsburg

2129 Wallace Street

Philadelphia, PA 19130-3104

Benjamin Landsburg

1028 Bobwhite Drive

Cherry Hill, NJ 08003

Denise L. Gentile, Esq

DENISE L. GENTILE, CHTD.

10161 Park Run Drive, Ste. 150

Las Vegas, NV 89145

Attorneys for Abigail Richlin Schwartz

Robin Sue Landsburg

1028 Bobwhite Drive

Cherry Hill, NJ 08003

Frances A. Martel

235 Vista Del Parque

Redondo Beach, CA 90277

Las Vegas Jewish Federation

(a/k/a Jewish Federal of Las Vegas)

2317 Renaissance Drive

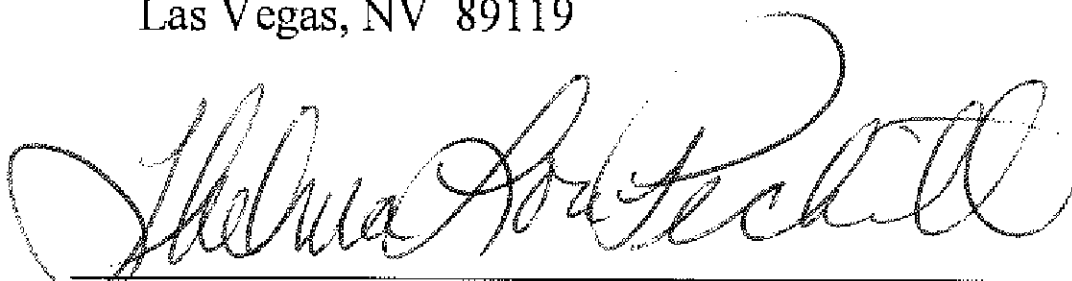
Las Vegas, NV 89119

Las Vegas Jewish Federation

c/o Jewish Federal of Las Vegas)

2317 Renaissance Drive

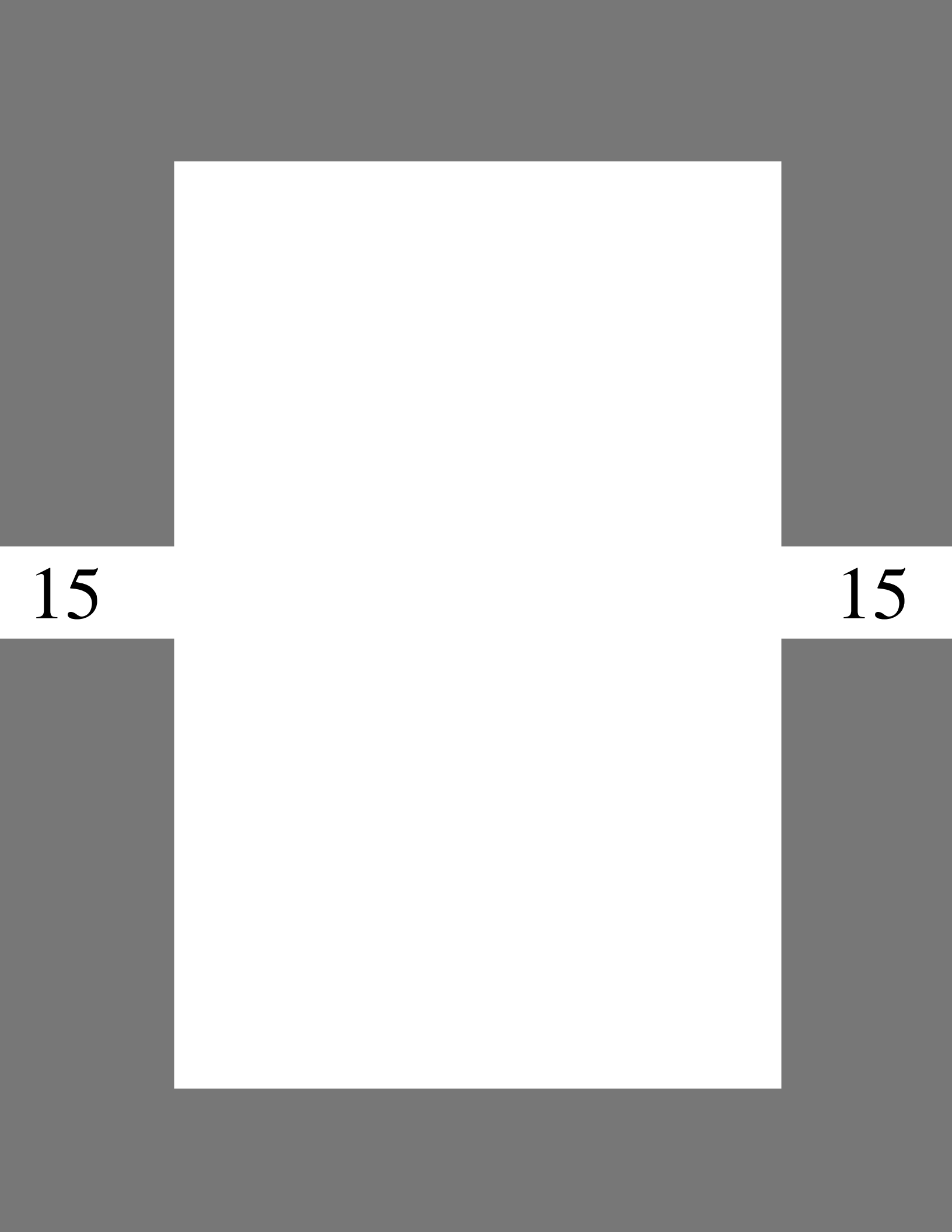
Las Vegas, NV 89119



Thelma Lou Pickett, An Employee of SOLOMON DWIGGINS & FREER, LTD.

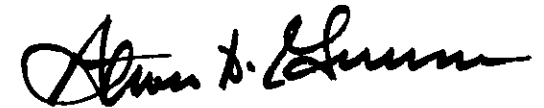
From: Thelma Pickett
To: [Maximiliano Couvillier \(mcouvillier@lionelsawyer.com\)](mailto:Maximiliano.Couvillier@lionelsawyer.com); kbhirud@lionelsawyer.com; kdavis@lionelsawyer.com
Subject: In the Matter of the Estate of Milton I. Schwartz, Deceased
Date: Monday, July 01, 2013 1:11:00 PM
Attachments: [\(tbf\) Opposition to Motion to Dismiss Executor's Petition for Declaratory Relief.pdf](#)

Hard copy to follow via United States Postal Service.



15

15



CLERK OF THE COURT

RIS
Elizabeth Brickfield (SBN #6236)
ebrickfield@lionelsawyer.com
Maximiliano D. Couvillier, III (SBN #7661)
mcouvillier@lionelsawyer.com
Ketan D. Bhirud (SBN #10515)
kbhirud@lionelsawyer.com
LIONEL SAWYER & COLLINS
1700 Bank of America Plaza
300 South Fourth Street, Suite 1700
Las Vegas, Nevada 89101
(702) 383-8888 (Telephone)
(702) 383-8845 (Fax)

Attorneys for The Dr. Miriam and
Sheldon G. Adelson Educational Institute

DISTRICT COURT
Clark COUNTY, NEVADA

In the Matter of the Estate of

MILTON I. SCHWARTZ,

Deceased

Case No. P061300
Dept. No.: 26/Probate

Date: October 8, 2013
Time: 9:00 a.m.

**REPLY IN SUPPORT OF MOTION TO
DISMISS EXECUTOR'S PETITION FOR
DECLARATORY RELIEF**

The Dr. Miriam and Sheldon G. Adelson Educational Institute (the "Adelson Campus"), devisee of the Will of the Decedent in the above-referenced Estate, by and through its attorneys, Elizabeth Brickfield, Maximiliano D. Couvillier, III, and Ketan D. Bhirud, of the law firm of Lionel Sawyer & Collins, submits this Reply in Support of its Motion to Dismiss the Petition for Declaratory Relief filed by the Executor of the Estate of Milton I. Schwartz ("the Executor").

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Tellingly, in his Opposition, the Executor does not dispute that the Will is clear and unambiguous. Instead, the Executor—knowing that parol evidence is unavailable when the language of a will is clear and unambiguous—cries fraud and attempts to malign Southern Nevada's Jewish community leaders as incompetent and inept swindlers. In order to accept the Executor's version of events, this Court would have to believe that the Adelson Campus' leadership repeatedly lied to Mr. Schwartz for almost 20 years, representing that the Adelson Campus would bear Mr. Schwartz's name in perpetuity. However, rather than carry out this elaborate ruse for their own ends (or even that of the school's), the leadership would instead have done this hoping that Mr. Schwartz—who was extremely sophisticated and represented by numerous attorneys—might someday—without placing a condition on the gift that the school bear his name in perpetuity—leave a gift for scholarships for Jewish children. Then, inexplicably, after 20 years of "masterful lies and deceit," this Court would have to believe that the school's leaders foolishly changed the school name before the scholarship bequest was received.

In support of his fantasy, the Executor alleges three claims for relief:¹ construction of will, fraud in the inducement, and breach of contract. However, all three of these claims for relief must be dismissed. First, and most importantly, as all of the claims relate to a will contest dependent upon the executor's parol evidence, they are barred by the Nevada Supreme Court's recent decision in *Frei v. Goodsell*, 129 Nev. Adv. Op. 42, 305 P.3d 70 (2013).² Second, the

¹ Although the Executor has alleged three other "causes of action" (avoidance of bequest, offset of bequest, and revocation of bequest), those "claims for relief" are not claims for relief, but are instead remedies. See *U.S. v. Smelser*, 87 F.2d 799, 800-01 (5th Cir. 1937) ("Causes of action should be distinguished from remedies. One precedes and gives rise to the other, but they are separate and distinct."). Because they are remedies, rather than causes of actions, they must be dismissed as they fail to not "state a claim upon which relief can be granted." See NRCP 12(b)(5); *State Farm Mut. Auto. Ins. Co. v. Jafbros Inc.*, 109 Nev. 926, 928, 860 P.2d 176, 178 (1993) ("it is axiomatic that a court cannot provide a remedy unless it has found a wrong. The existence of a right violated is a prerequisite to the granting of an injunction.").

² A courtesy copy of *Frei v. Goodsell*, is attached hereto as Exhibit 1.

"construction of will" claim is barred by the three-month statute of limitations in NRS 137.120. Third, the claim for fraud in the inducement is barred by the three-year statute of limitations in NRS 11.190(3)(d). Finally, the claim for breach of contract is either based upon a document that is not a contract at all or an oral contract that is barred by the four-year statute of limitations in NRS 11.190(2)(c) and the statute of frauds codified in NRS 111.220(1).

II. LEGAL ARGUMENT

A. The Executor's Entire Petition Must Be Dismissed As "Extrinsic or Parol Evidence Is Not Admissible to Contradict or Vary the Terms of an Unambiguous Written Instrument"³

In July of this year, the Nevada Supreme Court unequivocally stated that "[e]xtrinsic or parol evidence is not admissible to contradict or vary the terms of an unambiguous [will], 'since all prior negotiations and agreements are deemed to have been merged therein.'"⁴ The Executor did not bring this controlling caselaw to the Court's attention.

In *Frei v. Goodsell*, Daniel Goodsell, an attorney, prepared various estate planning documents for the signature of Emil Frei III. The documents, which were prepared at the instruction of Frei's agent, transferred over \$1,000,000 of Frei's assets into his wife's trust. After his wife's death, Frei sought to void the documents and filed an action against his agent, arguing that the documents did not accurately reflect his intent. After the trust litigation settled, Frei brought a legal malpractice action against Goodsell, arguing that Goodsell breached his standard of care by failing to verify Frei's intentions before preparing the documents for his signature. During trial, Goodsell argued that because each document was clear and unambiguous, Frei could not testify to contradict the plain meaning of their contents. Although Frei conceded that all of the documents were unambiguous on their face, he argued that evidence of his intent was essential to prove the documents did not meet his objectives and, as such, constituted a unilateral mistake in execution. The district court rejected Frei's arguments and held that evidence of Frei's intent was precluded by the parol evidence rule.

³ *Frei*, 305 P.3d at 73.

⁴ *Id.* (citing *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001)).

1 The Nevada Supreme affirmed the decision explaining:

- 2 • "Extrinsic or parol evidence is not admissible to contradict or vary the terms of an
- 3 unambiguous written instrument, since all prior negotiations and agreements are
- 4 deemed to have been merged therein;" and
- 5 • Parol evidence "is not admissible for the purpose of proving the meaning the
- 6 testator attributed to specific provisions of an admitted will."⁵

7 Accordingly, the Nevada Supreme Court "conclude[d] that the district court did not abuse

8 its discretion in prohibiting Frei from presenting extrinsic evidence with regard to his specific

9 intent in executing the unambiguous documents."⁶

10 Here, the Executor is also attempting to introduce parol evidence to argue the testator's

11 intent related to specific provisions of the Will. Indeed, the Executor does not dispute—and in

12 fact concedes—that Mr. Schwartz's Will is unambiguous stating "It is undisputed that Milton

13 made provision in his Will for an entity he referred to as the Milton I. Schwartz Hebrew

14 Academy."⁷ Instead, like Frei, the Executor argues that "*Milton's intent cannot be correctly*

15 *understood without reference to* the history of the Hebrew Academy, the Academy's repeated

16 promises that it would bear his name in perpetuity, and the Academy's deep personal importance

17 to him."⁸ However, the Nevada Supreme Court clearly ruled that evidence of a testator's intent is

18 precluded by the parol evidence rule even when the testator is still alive. Moreover, Mr.

19 Schwartz has been deceased for almost a decade. As such, it is even more important to exclude

20 parol evidence as it would be impossible and prohibitively expensive to even attempt to

21 determine Mr. Schwartz's intent outside the Will. Accordingly, the Executor's entire Petition

22 must be dismissed.

23

24

25 ⁵ *Id.* at 73-74.

26 ⁶ *Id.* at 74.

27 ⁷ Petition at 9:23-10:1.

28 ⁸ Petition at 10:10-12 (emphasis added).

B. Regardless of the Executor's Efforts to Dress up His Will Contest as a "Will Construction," It Is Still a Will Contest, and, Accordingly, It Is Barred As the Statute of Limitations to Contest the Will Expired over Two Years Ago

In an attempt to avoid the statute of limitations contained in NRS 137.120, the Executor titles his action as one for "will construction" rather than for "will contest." To that end, the Executor argues that he is not "contesting" the provision of the Will bequeathing the Gift to the Adelson Campus, but rather, he is merely seeking an order "construing" the provision of the Will. However, this is not true. The Petition, in the prayer for relief, specifically asks "[t]hat this Court declare that the bequest to the Milton I. Schwartz Hebrew Academy is void."⁹ This is not a request for a construction, this is a direct contest of the relevant provision of the Will. Indeed, this attempt to disguise a will contest through deceptive naming has been tried before by litigants and has been consistently rejected by courts.¹⁰

For example, in *Odom v. Langston*, the plaintiffs sought to have the residuary clause in a will ruled void.¹¹ In doing so, they sought to avoid the statute of limitations for will contests by also arguing that their claim sought to "construe" the will, not to contest it. The court rejected this argument stating that plaintiffs challenged the residuary clause and "[i]f void, there is nothing to construe. This effort of plaintiffs to have the residuary clause ruled void is subject to the [will contest] statute of limitations."¹²

Similarly, in *Johnson v. Wheeler*, the Missouri Supreme Court held that an attempt to invalidate the will for the purpose of receiving the trust property by intestate succession is a will contest.¹³ The plaintiffs in *Johnson* argued that the trust contained in the will was void and that

⁹ Petition for Declaratory Relief at 10:21-22.

¹⁰ See *In Re Estate of Moore*, 889 S.W.2d 136, 137 (Mo. App. E.D. 1994) (*finding action to construe will really a will contest barred by the six month statute of limitations*); *In Re Estate of Hutchins*, 875 S.W.2d 564, 567 (Mo. App. S.D. 1994) (*finding action to construe will really a will contest barred by six month statute of limitations*); *Williams v. Bryan, Cave, et al.*, 774 S.W.2d 847, 848 (Mo. App. E.D. 1989) (finding action for negligence against drafter of will really an attempt to invalidate one will and replace it with a previous will, an action provided for in a will contest).

¹¹ 355 Mo. 109, 195 S.W.2d 463 (Mo. 1946).

¹² *Id.* at 464.

¹³ 360 Mo. 334, 228 S.W.2d 714 (Mo. 1950).

1 they therefore should receive the property contained therein in accordance with intestate
 2 succession. The court rejected the *Johnson* plaintiffs' claims and found their cause of action was
 3 barred by the applicable statute of limitations.

4 In *In Re Estate of Hutchins*, the plaintiffs, heirs at law of the decedent, filed a petition
 5 they too characterized as an action to "construe a will."¹⁴ At the time the plaintiffs filed that
 6 action, the decedent's will had already been admitted to probate and plaintiffs had not initiated a
 7 will contest within the six month period prescribed by the statute of limitations. In their
 8 petition—just like the Executor here—the plaintiffs prayed that a portion of the will be declared
 9 void and that the property referred to in that portion of the will be distributed according to the
 10 rules of intestate succession. The court found that, although plaintiffs characterized their action
 11 as one for "construction of a will," in essence, their action was in fact a will contest because they
 12 sought to have the residuary clause ruled void. The court, therefore, affirmed the trial court's
 13 dismissal of the petition stating that "the efficacy of the will must be determined in a will contest
 14 action."

15 Here, the Executor's ruse fails no better. NRS 137.120 requires that anyone seeking to
 16 contest a will must do so within 3 months after the order admitting the will to probate is
 17 entered.¹⁵ As the order admitting the Will to probate was entered on January 24, 2008, the final
 18 day to contest the Will was on April 24, 2008. Because the Petition was not filed until May 28,
 19 2013, more than five years later, *the Petition cannot invalidate any provision of the Will. The*
 20 *Executor does not dispute this.* Moreover, the Executor is the executor of the Will and has
 21 known exactly what the Will said for over five years and what the Adelson Campus' position was
 22

23 ¹⁴ 875 S.W.2d 564. (Mo. Ct. App. S.D. 1994).

24 ¹⁵ NRS 137.120 ("If no person contests the validity of a will or of the probate thereof,
 25 *within the time specified in NRS 137.080*, the probate of the will is conclusive."). NRS 137.080
 26 ("After a will has been admitted to probate, any interested person other than a party to a contest
 27 before probate or a person who had actual notice of the previous contest in time to have joined
 28 therein may, at any time *within 3 months after the order is entered admitting the will to probate*,
 contest the admission or the validity of the will. The contestant must file with the court in which
 the will was proved a petition containing the allegations of the contestant against the validity of
 the will or against the sufficiency of the proof, and requesting that the probate be revoked.").

1 with respect to the Will for over five years. Accordingly, the Executor's Petition, which attempts
2 to disguise a will contest as a "will construction," is untimely and must be dismissed.

3 **C. NRS 11.190(3)(d) Bars the Executor's Claim for "Fraud in the Inducement"**
4 **As the Statute of Limitations for Fraud Expired over Two Years Ago**

5 NRS 11.190(3)(d) provides that (1) in an action based upon fraud or mistake, the
6 applicable statute of limitations is three years and (2) the statute of limitations begins running
7 from the time the aggrieved party discovered or should have discovered the facts constituting the
8 fraud or mistake.¹⁶ Here, in addition to the specific claim for "fraud in the inducement," *all of*
9 *Executor's allegations* center around his contention that the Adelson Campus fraudulently
10 induced Mr. Schwartz to make gifts to the Adelson Campus based upon a representation that the
11 Adelson Campus would bear Mr. Schwartz's name in perpetuity.

12 However, the school's name changed several times during Mr. Schwartz's lifetime, and
13 not once did Mr. Schwartz's claim "fraud." Indeed, when the Adelson Campus previously
14 changed its name on October 19, 1994 to "The Hebrew Academy," Mr. Schwartz neither brought
15 suit alleging fraud nor demanded the return of his donations. Moreover, if Mr. Schwartz made
16 his bequest based upon the condition that the school be named after him in perpetuity, Mr.
17 Schwartz would have placed a provision in his Will that tied the gift to the school's name—
18 which he did not. Notably, Mr. Schwartz knew the school name was likely to change as he was
19 on the Adelson Campus Board when Mr. Adelson made his intent to make an \$80,000,000 gift to
20 the school. Indeed, after the Adelson's made their \$80,000,000 contribution, the Adelson
21 Campus, through an Amendment to its Articles of Incorporation filed with the Secretary of State,
22 publically changed its name from "The Milton I. Schwartz Hebrew Academy" to "The Dr.

23
24
25 ¹⁶ NRS 11.190(3)(d) ("Except as otherwise provided in NRS 40.4639, 125B.050 and
26 217.007, actions other than those for the recovery of real property, unless further limited by
27 specific statute, may only be commenced as follows: . . . 3. Within 3 years: . . . (d) Except as
28 otherwise provided in NRS 112.230 and 166.170, an action for relief on the ground of fraud or
mistake, but the cause of action in such a case shall be deemed to accrue upon the discovery by
the aggrieved party of the facts constituting the fraud or mistake.").

1 Miriam And Sheldon G. Adelson Educational Institute."¹⁷ Despite this receipt of constructive
 2 notice on March 21, 2008, the Executor did not bring an action against the school. Accordingly,
 3 as the statute of limitations began running on March 21, 2008, the final day for the Executor to
 4 bring any of his claims was on March 21, 2011, more than two years ago. As such, the Petition
 5 is untimely and must be dismissed.

6 **D. The Executor's Claim for Breach of Contract Must Be Dismissed As It Is**
 7 **Either Based Upon a Document That Is Not a Contract or an Oral Contract**
 8 **That Is Barred by NRS 11.190(2)(c)**

9 **1. The 1996 Letter from Dr. Roberta Sabbath Is Not a Contract**

10 In order to have a valid contract, it is necessary to have "an agreement which creates an
 11 obligation: intent, offer, acceptance, consideration, mutuality of agreement and obligation."¹⁸
 12 With respect to contract formation, preliminary negotiations do not constitute a binding contract
 13 unless the parties have agreed to all material terms.¹⁹ A valid contract cannot exist when
 14 material terms are lacking or are insufficiently certain and definite.²⁰

15 The Executor's claim for breach of contract is based entirely upon a letter from Dr.
 16 Roberta Sabbath to Mr. Schwartz's dated May 23, 1996.²¹ That letter, however, is not a contract
 17 that contains any recital of offer, acceptance, consideration, or mutuality of obligation. Instead,
 18 the letter merely explains that the Board of Directors of the Milton I. Schwartz Hebrew Academy
 19 has undertaken certain actions as a courtesy or gesture of good will.²²

22 ¹⁷ See March 21, 2008 Certificate of Amendment to Articles of Incorporation, attached
 23 hereto as Exhibit 2.

24 ¹⁸ *Matter of Estate of Kern*, 107 Nev. 988, 994, 823 P.2d 275, 278 (1991) (citing
 25 Restatement of Contracts §§ 19–24 (1932).

26 ¹⁹ *May v. Anderson*, 121 Nev. 668, 119 P.3d 1254 (2005).

27 ²⁰ *Id.*

28 ²¹ See Exhibit 10 to Petition, attached hereto as Exhibit 3.

²² *Menschlackeit* is the Yiddish word referring to the qualities that make someone a
 person of integrity and honor. See <http://en.wikipedia.org/wiki/Mensch>

1 The restoration of the name of the "Milton I. Schwartz Hebrew
2 Academy" has been taken as matter of "menschlackeit" in
3 acknowledgement of your contribution and assistance to the Academy;
4 your continued commitment to Jewish education reflected by the
5 establishment of the "Jewish Community Day School" and last but
6 not least, your recent action as a man of "shalom."

7 As can be seen, there are (1) no obligations on the school's part that are required and (2) no
8 obligations on Mr. Schwartz's part that are either required, certain, or definite. Accordingly,
9 there can be (and is) no contract and the Executor's claim for breach of contract must be
10 dismissed.

11 **2. Any Breach of Contract Claim Based Upon an Alleged Oral Contract**
12 **Is Barred by NRS 11.190(2)(c) and 111.220(1) and Belied by Mr.**
13 **Schwartz's Actual Words and Actions**

14 To the extent the Executor suddenly claims that there was an oral agreement between the
15 parties, that oral agreement is barred by both the applicable statute of limitations and the statute
16 of frauds. First, the four-year statute of limitations regarding oral contracts lapsed on March 21,
17 2012 (four years after the Adelson Campus publically changed its name from "The Milton I.
18 Schwartz Hebrew Academy" to "The Dr. Miriam And Sheldon G. Adelson Educational
19 Institute").²³ Second, the statute of frauds (codified as NRS 111.220(1)) states that any
20 agreement that cannot be performed within 1 year is void. As a result, to the extent that the
21 Executor is alleging the existence of an oral agreement requiring the Adelson Campus to be
22 named after Mr. Schwartz in perpetuity, such an agreement would be void as it could not be
23 performed within 1 year.

24 Moreover, it is clear that Mr. Schwartz never believed a contract existed between him and
25 the Adelson Campus. Indeed, contrary to the Executor's claims that Mr. Schwartz made a
26 donation in 1989 to the Adelson Campus based upon an alleged agreement that the school would
27 be named after him in perpetuity, the Adelson Campus previously changed its name several
28 times, including on October 19, 1994 to "The Hebrew Academy."²⁴ Despite this, Mr. Schwartz
never brought suit against the Adelson Campus alleging a breach of contract, never demanded

²³ See NRS 11.190(2)(c).

²⁴ Petition at 3:11-13.

1 the return of his previous donations, and, most importantly, *never subsequently included a*
 2 *condition in his Will regarding the school's name.* Obviously if there was a contract between
 3 the parties, and Mr. Schwartz believed the school's name change was a breach, he would have
 4 either sued the school or, at the very least, demanded return of his donations. Mr. Schwartz did
 5 neither. Moreover, Mr. Schwartz never put a provision in his Will that tied the gift to the
 6 school's name. And the reason is clear: there was neither an agreement nor understanding
 7 between Mr. Schwartz and the Adelson Campus that the school would be named after Mr.
 8 Schwartz in perpetuity. As a result, the Executor's claim for breach of contract must be
 9 dismissed.

10 **E. A Simple Corporate Name Change from "The Milton I. Schwartz Hebrew**
 11 **Academy" to "The Dr. Miriam and Sheldon G. Adelson Educational**
Institute" Is Irrelevant

12 As was explained in detail in the Motion to Dismiss, the mere fact that a charitable,
 13 religious, or educational organization has changed its name does not render a bequest void for
 14 uncertainty.²⁵ Ignoring the relevant case law cited by the Adelson Campus, the Executor argues
 15 that the bequest to the Adelson Campus has lapsed because it changed its name from "The
 16 Milton I. Schwartz Hebrew Academy" to "The Dr. Miriam and Sheldon G. Adelson Educational
 17 Institute."²⁶ In support of this proposition, the Executor cites only one case: *In re Estate of*
 18

19 ²⁵ See 96 C.J.S. *Wills* § 1091 ("A testamentary gift to a *charitable organization* is
 20 generally valid, even though the object is imperfectly designated, if it can be identified with
 21 reasonable certainty from the description in the will and the surrounding circumstances. . . . *The*
 22 *mere fact that a corporate charity has changed its name does not render a gift to it under its*
 23 *former name void for uncertainty.*") (emphasis added); 96 C.J.S. *Wills* § 1094 ("A testamentary
 24 gift to a religious organization is valid, although the organization is misnamed, if it can be
 25 identified with reasonable certainty from the language used and the surrounding circumstances. .
 26 . . . *A change in the name of such an organization does not effect the validity of a gift to it*
 27 *under the former name.*") (emphasis added); 96 C.J.S. *Wills* § 1093 ("A devise or bequest to an
 educational organization is valid although the organization is misnamed, where the language in
 the will designates the object of the gift with reasonable certainty."); 96 C.J.S. *Wills* § 1090
 ("The mere misnomer of a corporation or association as a beneficiary does not invalidate a
 testamentary gift thereto for uncertainty where the beneficiary is reasonably identified. . . . *The*
merger of a designated corporate beneficiary with another corporate entity does not defeat the
bequest if the designated beneficiary survives and continues with the purposes which the
testator clearly had in mind, particularly on evidence that the testator likely knew of the
merger plans.").

28 ²⁶ Opposition at

1 *Beck*.²⁷ The Executor's reliance on *In re Estate of Beck*, however, is misplaced.

2 In *In re Estate of Beck*, the Illinois Court of Appeals held that a gift to the Lutheran
3 Orphan Home of Missouri had lapsed because "the Lutheran Orphan Home of Missouri *has not*
4 *been* succeeded by or merged with another organization," but was instead defunct/non-existent.²⁸
5 In other words, had the Lutheran Orphan Home of Missouri simply changed its name, the
6 bequest would not have lapsed but instead would have been distributed to the organization with
7 the new name. Accordingly, *In re Estate of Beck* stands for the opposite proposition that the
8 Executor has cited it for and the bequest to the Adelson Campus has not lapsed because of its
9 name change.

10 Indeed that result is consistent the decision of the Illinois Court of Appeals in *Hardy v.*
11 *Davis*.²⁹ In that case, Mary Davis McKnight included provisions in her will for a orphanage
12 named "The McKnight Industrial Home."³⁰ Operation of that facility later became
13 impracticable, and the trial court refused to apply the doctrine of cy pres on the basis of its
14 finding that the donor possessed only a narrow or specific charitable intent. The appellate court
15 reversed that decision, reasoning that:

16 We believe that the general charitable purpose of the testatrix is
17 clearly found in her will, when she established a trust "to build and
18 endow in the City of Galesburg, Illinois, a home for orphan
19 children." It is true that the gift is to the trustees, who are to
20 establish, maintain, and control the orphan home "to be called The
21 McKnight Industrial Home," but *these words merely designate the*
22 *mode or manner of carrying out the gift and are not to be*
23 *considered as limiting the broad charitable purpose for which the*
24 *gift was made. . . .*

21 *The fact that [donor] wished to name the home after herself is*
22 *not regarded as a controlling consideration in the matter of*
23 *whether her charitable intent was general as distinguished from*
24 *restricted, narrow, exclusive or particular. It is difficult to*
25 *assume that [the donor] had no interest in orphan children, apart*
26 *from [operation of the specific named facility].*³¹

27 649 N.E.2d 1011 (Ill. Ct. App. 1995) (emphasis added).

28 *Id.*

29 148 N.E.2d 805 (1958).

30 *Id.* at 809.

31 *Id.* at 809, 813 (emphasis added).

1 Here, Mr. Schwartz similarly made a donation to benefit Jewish children in Southern
2 Nevada through the funding of scholarships to the Adelson Campus. A simple corporate name
3 change from the Milton I. Schwartz Hebrew Academy to the Dr. Miriam and Sheldon G.
4 Adelson Educational Institute does not change the fact that the bequest is going to fund
5 scholarships to educate Jewish children and does not override the express language from Mr.
6 Schwartz's Will. Mr. Schwartz's intent and desire were clear through the only condition on his
7 Will: he wanted to help Jewish children in Southern Nevada.

8 Additionally, although Mr. Schwartz bequeathed a gift of \$500,000 to the Adelson
9 Campus, Dr. Miriam and Sheldon G. Adelson have donated approximately \$80,000,000 to the
10 school. It is the epitome of hubris and chutzpah for the Executor to claim that Mr. Schwartz's
11 monetary contributions trump those of the Adelsons and that the Adelsons do not deserve to be
12 recognized for their contributions.

13 III. CONCLUSION

14 For the foregoing reasons, this Court should dismiss the Executor's Petition.

15 LIONEL SAWYER & COLLINS

16
17 By: 

18 Elizabeth Brickfield (SBN #6236)
19 Maximiliano D. Couvillier, III (SBN #7661)
20 Ketan D. Bhirud (SBN #10515)

21 Attorneys for The Dr. Miriam and Sheldon G.
22 Adelson Educational Institute
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 2, 2013, I deposited in the United States Mail at Las Vegas, Nevada, a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION TO DISMISS EXECUTOR'S PETITION FOR DECLARATORY RELIEF** enclosed in a sealed envelope upon which first class postage was paid, addressed as follows:

Steven J. Oshins, Esq.
OSHINS & ASSOCIATES
645 Village Center Circle
Las Vegas, NV 89134
Attorneys for Executor

Robert P. Dickerson, Esq.
THE DICKERSON LAW GROUP
1745 Village Center Circle
Las Vegas, NV 89134
Attorneys for Abigail Richlin Schwartz

Eileen Joanna Zarin
9 Steven Lane
King Point, NY 11024

Robin Sue Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Samuel Schwartz
351 Woodlake Drive
Marlton, NJ 08053

Michael Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Zachary Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Benjamin Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Joshua Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Frances A. Martel
253 Vista Del Parque
Redondo Beach, CA 90277

The Milton I. Schwartz Revocable Family
Trust, A. Jonathan Schwartz, Trustee
2293 Duneville Street
Las Vegas, NV 89146

Medicaid Estate Recovery
1050 E. William Street, Suite 435
Carson City, NV 89701-3199

Mark Solomon, Esq.
Alan D. Freer, Esq.
Steven E. Hollingworth, Esq.
SOLOMON, DWIGGINS & FREER
9060 West Cheyenne Ave.
Las Vegas, NV 89129

Attorneys for Executor


An Employee of Lionel Sawyer & Collins

Exhibit 1

Exhibit 1

129 Nev., Advance Opinion 43

IN THE SUPREME COURT OF THE STATE OF NEVADA

EMIL FREI, III, BY AND THROUGH
HIS GUARDIAN AD LITEM, EMIL
FREI, IV,
Appellant,
vs.
DANIEL V. GOODSSELL, AN
INDIVIDUAL; AND GOODSSELL &
OLSEN, A NEVADA LIMITED
LIABILITY PARTNERSHIP,
Respondents.

No. 58391

FILED

JUL 03 2013

TRACIE K. KNOXMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

Appeal from a district court judgment on a jury verdict in a legal malpractice action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Affirmed.

Blut Law Group, APC, and Elliot S. Blut, Las Vegas,
for Appellants.

John H. Cotton & Associates, Ltd., and John H. Cotton and Christopher G. Rigler, Las Vegas,
for Respondents.

BEFORE HARDESTY, PARRAGUIRRE and CHERRY, JJ.

OPINION

By the Court, PARRAGUIRRE, J.:

In this appeal, appellant Emil Frei, III, challenges the district court's refusal to apply the doctrine of issue preclusion and its application of the parol evidence rule in an attorney malpractice action. Before filing the malpractice action, Frei sued the trustee of his deceased wife's estate,

13-19471

claiming that the trustee had improperly transferred Frei's assets into the trust. In that trust action, Frei successfully sought to disqualify respondent Daniel Goodsell, the attorney who prepared the trust documents, from representing the trustee, based on the district court's conclusion that a prior attorney-client relationship existed between Frei and Goodsell, which created a conflict of interest.

Following resolution of the trust action, Frei sued Goodsell for malpractice. Frei asserted, and maintains on appeal, that the doctrine of issue preclusion prevented Goodsell from denying the existence of an attorney-client relationship with Frei in the legal malpractice lawsuit because he had been disqualified from representing the trustee in the previous trust action. Frei also objected to the district court's application of the parol evidence rule to preclude evidence of Frei's intent in executing a number of unambiguous documents prepared by Goodsell. We conclude that the issue of an attorney-client relationship between Frei and Goodsell was not "necessarily litigated" in the previous trust action, which is essential for issue preclusion to apply, and that the district court did not abuse its discretion in applying the parol evidence rule. Thus, we affirm the district court's judgment in Goodsell's favor.

FACTS AND PROCEDURAL HISTORY

Respondent Daniel Goodsell is an attorney who prepared various estate planning documents for the signature of appellant Emil Frei III.¹ Goodsell prepared the documents at the instruction of Frei's

¹We refer to respondent Goodsell and his law firm, respondent Goodsell & Olsen, collectively as Goodsell. Appellant's son, Emil Frei IV, has been appointed guardian ad litem in this action.

agent, Stephen Brock, who had been appointed as both Frei's attorney-in-fact and as trustee to a trust for Frei's wife. Per Brock's instruction, the documents were intended to correct an imbalance between two separate revocable trusts that benefited the couple's children from prior marriages. The documents included assignments of bank and investment accounts, a deed to Frei's home, two codicils to his will, an amendment to Frei's trust, and a declination to act as successor trustee to the wife's trust. Goodsell did not speak directly to Frei about the documents and delivered them to Brock for Frei's signature. Upon execution, the documents transferred over \$1 million of Frei's assets into his wife's trust.

After his wife's death, Frei sought to void the documents and filed an action against Brock, arguing that he did not understand the impact of what he was signing and that the documents did not accurately reflect his intent. As litigation over the trust ensued, Frei also filed a motion to disqualify Goodsell from representing Brock, arguing that an attorney-client relationship existed to the extent that Goodsell prepared documents for Frei's signature. The district court concluded that Brock had been acting as Frei's agent in obtaining the documents, and it granted Frei's motion to disqualify Goodsell based on a conflict of interest. The trust action was ultimately resolved through a settlement agreement, which was approved in district court.

After the trust litigation settled, Frei brought the underlying legal malpractice action against Goodsell, arguing that Goodsell breached his standard of care by failing to verify Frei's intentions before preparing the documents for his signature.

Before trial, Frei filed a motion in limine to preclude Goodsell from arguing that an attorney-client relationship did not exist.

Specifically, Frei argued that under the doctrine of issue preclusion, Goodsell could not deny the existence of an attorney-client relationship in light of the district court's order disqualifying Goodsell from the trust action. The district court denied Frei's motion, reasoning that the disqualification ruling had not resulted in a final, appealable order.

During trial, Goodsell raised a parol evidence objection in response to questions regarding Frei's intent in executing the documents. Goodsell argued that each document was clear and unambiguous, such that Frei could not testify to contradict the plain meaning of its contents. The district court agreed that evidence of Frei's intent was precluded by the parol evidence rule. Following a general jury verdict, the district court issued judgment in Goodsell's favor.

DISCUSSION

On appeal, Frei argues that the doctrine of issue preclusion should have precluded Goodsell from denying the existence of an attorney-client relationship. Frei also argues that the district court erred by concluding that the parol evidence rule barred testimony regarding his intent and understanding of the documents. We disagree.

Application of the doctrine of issue preclusion

Frei argues that the district court erred in denying his motion in limine because the doctrine of issue preclusion should have precluded Goodsell from arguing that an attorney-client relationship did not exist. We review de novo whether the doctrine of issue preclusion applies to preclude a party from relitigating legal issues that were addressed in a previous action. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1052, 194 P.3d 709, 711 (2008); *Univ. & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 984, 103 P.3d 8, 16 (2004).

In order for issue preclusion to apply, each of the following elements must be met:

“(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; . . . (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation”; and (4) the issue was actually and necessarily litigated.

Five Star, 124 Nev. at 1055, 194 P.3d at 713 (alteration in original) (quoting *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994)); see also *Kahn v. Morse & Mowbray*, 121 Nev. 464, 474, 117 P.3d 227, 234-35 (2005) (noting that “a litigant must show that an issue of fact or law was necessarily and actually litigated in a prior proceeding”).

Focusing on the fourth factor—whether the issue was actually and necessarily litigated, which is dispositive here—we conclude that while the issue of Goodsell’s attorney-client relationship with Frei was actually litigated in the previous trust action, *cf. In re Sandoval*, 126 Nev. ___, ___, 232 P.3d 422, 424-25 (2010) (concluding that a case had not been “actually . . . litigated” without knowledge and participation of both parties and findings of fact established by evidence); see Restatement (Second) of Judgments § 27 cmt. d (1982) (“When an issue is properly raised . . . and is submitted for determination, . . . the issue is actually litigated . . .”), it was not necessarily litigated. Nevada law provides that only where “the common issue was . . . necessary to the judgment in the earlier suit,” will its relitigation be precluded. *Tarkanian*, 110 Nev. at 599, 879 P.2d at 1191 (emphasis added). Thus, for issue preclusion to apply in this case, the issue of whether Frei and Goodsell had an attorney-

client relationship must have been necessary for resolution of the trust action.

In resolving this issue, we look to the Massachusetts Supreme Judicial Court, which addressed a similar issue in *Jarosz v. Palmer*, 766 N.E.2d 482, 486 (Mass. 2002). *Jarosz* involved the preclusive effect of a district court ruling in a wrongful termination action, in which a corporate co-owner and former officer unsuccessfully moved to disqualify the corporation's attorney based on a conflict of interest arising from the attorney's actions in helping the former officer acquire his interest in the corporation. *Id.* at 485. The former officer then filed a subsequent legal malpractice claim against the attorney, who in turn moved for summary judgment on the ground that an attorney-client relationship did not exist as a matter of law. *Id.* The *Jarosz* court declined to apply the doctrine of issue preclusion after concluding that "[t]he issue of [an] attorney-client relationship . . . was clearly not essential to a determination of . . . wrongful termination claims against the [corporation]." *Id.* at 489 (reasoning that the former officer "could have prevailed on those claims regardless of the outcome of his motion to disqualify").

Here, resolution of the prior trust action was not dependent on whether Goodsell had an attorney-client relationship with Frei. Instead, the record indicates that either party to the trust action could have prevailed regardless of the district court's disqualification of Goodsell. Thus, we conclude that the issue of whether Frei entered into an attorney-client relationship was not necessarily litigated in the trust action, thereby rendering the doctrine of issue preclusion inapplicable in the

subsequent legal malpractice action.² *Five Star*, 124 Nev. at 1052, 194 P.3d at 711.

Accordingly, the district court did not err in denying Frei's motion in limine or by allowing the issue of an attorney-client relationship to be determined by the jury.

Parol evidence rule

Frei argues that the district court erred in applying the parol evidence rule to preclude testimony of his actual intent in executing the documents.³ "We review a district court's decision to admit or exclude

²Frei argues that the district court erred in concluding that the disqualification ruling did not result in an appealable, final order. Because we conclude that the underlying issue was not necessarily litigated in the trust action—a point contested in the parties' briefs and at oral argument—we need not address Frei's argument. *Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 403, 632 P.2d 1155, 1158 (1981) (stating that this court may affirm a district court's decision for different reasons than relied upon below).

³We limit our discussion on this issue to the arguments raised by Frei on appeal and therefore assume without deciding that the parol evidence rule is available here. It is unclear whether the parol evidence rule applies to this type of action, where appellant seeks recovery for legal malpractice and is not specifically seeking to contradict the terms of the document. See *Schneider, Smeltz, Ranney & LaFond, P.L.L., v. Kedia*, 796 N.E.2d 553, 555-56 (Ohio Ct. App. 2003) (concluding in a *legal malpractice* case that the parol evidence rule would not preclude a client from introducing evidence that the document prepared by his attorney included different terms than those agreed to prior to execution); *Thomson v. Canyon*, 129 Cal. Rptr. 3d 525, 537 (Ct. App. 2011) ("The parol evidence rule prevents reconstruction of the parties' contractual obligations; it does not immunize real estate agents, attorneys, or other professionals from liability arising from their misconduct in drafting a contract."). We do not address this issue, however, as Frei did not properly raise this argument on appeal. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, *continued on next page...*

evidence for abuse of discretion, and we will not interfere with the district court's exercise of its discretion absent a showing of palpable abuse." *M.C. Multi-Family Dev. v. Crestdale Assocs.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008).

Extrinsic or parol evidence is not admissible to contradict or vary the terms of an unambiguous written instrument, "since all prior negotiations and agreements are deemed to have been merged therein." *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001) (quoting *Daly v. Del E. Webb Corp.*, 96 Nev. 359, 361, 609 P.2d 319, 320 (1980)).

Frei concedes that all of the documents are unambiguous on their face, but he argues that evidence of his intent was essential for proving that the documents did not meet his objectives. For support, Frei primarily relies on *Russ v. General Motors Corp.* for the proposition that the district court should have allowed extrinsic evidence regarding his understanding of the documents' effect in order to show a unilateral mistake in execution. 111 Nev. 1431, 1438-39, 906 P.2d 718, 723 (1995) (stating that "a court should provisionally receive all credible evidence concerning a party's intentions to determine whether the language of a release is reasonably susceptible to the interpretation urged by the party"). We conclude that Frei's reliance on *Russ* is misplaced, as this court has subsequently discredited this language as dictum. *Kaldi*, 117 Nev. at 282, 21 P.3d at 22 (concluding that "*Russ* does not stand for a

...continued

130 P.3d 1280, 1288 n.38 (2006) (noting that this court need not consider an issue not cogently argued or supported by relevant legal authority).

general proposition that evidence of a party's intent may be admissible to create ambiguity in an otherwise unambiguous written contract").

In the alternative, Frei argues that the parol evidence rule should not have applied because, in the context of estate planning, courts routinely admit extrinsic evidence of a testator's intent. *See Ohanneson v. Lambrinidou (In re Sargavak's Estate)*, 216 P.2d 850, 852 (Cal. 1950). In *In re Sargavak's Estate*, the court concluded that extrinsic evidence is admissible to show whether an allegedly testamentary instrument was intended by the testator to be effective as a will. *Id.* However, the court proceeded to modify its holding by explaining that such evidence is not admissible "for the purpose of proving the meaning the testator attributed to specific provisions of an admitted will." *Id.*; *Bowles v. Bradley*, 461 S.E.2d 811, 813 (S.C. 1995) ("If the language of the trust instrument is plain and capable of legal construction, that language determines the force and effect of the instrument... [and] extrinsic evidence will not be admitted to alter the plain language of the instrument."). Accordingly, we conclude that this argument is unpersuasive, as Frei does not argue that he lacked testamentary intent while signing the documents or that he failed to understand the effect of the unambiguous documents at the time of their execution.⁴

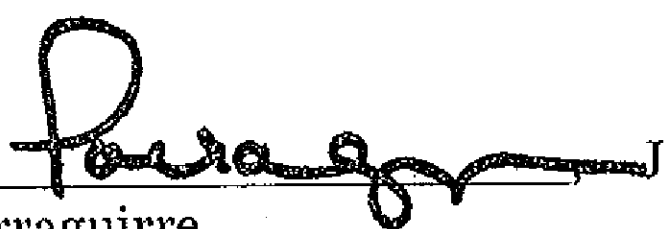
⁴Finally, Frei cites *Massie v. Chatom*, 127 P. 56, 57 (Cal. 1912), for the proposition that the parol evidence rule only applies to actions between parties to the contract or their privies. In rejecting this argument, we note that California law wavers in this position, as recent cases have held that the "key consideration in application of the parol evidence rule, whether invoked by a party or a stranger to the contract, is whether the extrinsic evidence is being offered to reconstruct the parties' contractual obligations." *Thomson v. Canyon*, 129 Cal. Rptr. 3d 525, 536 (Ct. App. 2011). In any event, Nevada has never limited application of the

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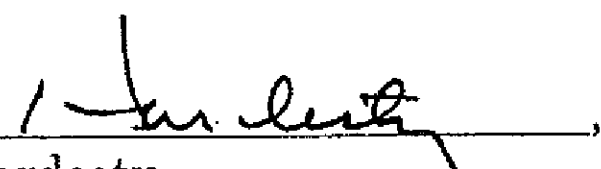
Therefore, we conclude that the district court did not abuse its discretion in prohibiting Frei from presenting extrinsic evidence with regard to his specific intent in executing the unambiguous documents.

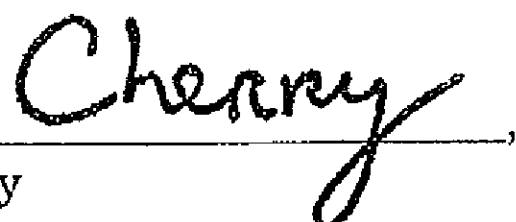
CONCLUSION

We conclude that the district court properly refused to apply the doctrine of issue preclusion because the issue of an attorney-client relationship between Frei and Goodsell was not necessarily litigated in the previous trust action. We also conclude that the district court did not abuse its discretion in applying the parol evidence rule. Accordingly, we affirm the district court's judgment.


Parraguirre

We concur:


Hardesty, J.


Cherry, J.

...continued

parol evidence rule to actions between the parties to a contract or their privies, and we decline to do so here.

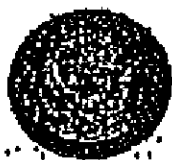
Exhibit 2

Exhibit 2

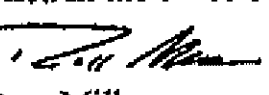
Mar-21-08 02:28pm From-LOURIE & CUTLER,PC

817-742-5720

T-154 P.03/04 F-375



ROSS MILLER
Secretary of State
204 North Carson Street, Ste 1
Carson City, Nevada 89701-4289
(775) 884 5708
Website: secretaryofstate.biz

Filed in the office of 	Document Number 20080195694-74
Ross Miller Secretary of State State of Nevada	Filing Date and Time 03/21/2008 11:20 AM
	Entity Number C1073-1980

**Nonprofit Amendment
(After First Meeting)**
(PURSUANT TO NRS 81 AND 82)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

Certificate of Amendment to Articles of Incorporation
For Nonprofit Corporations
(NRS Chapters 81 and 82 - After First Meeting of Directors)

1. Name of corporation:

The Milton I. Schwartz Hebrew Academy

2. The articles have been amended as follows (provide article numbers, if available):

Article I is hereby deleted in its entirety and replaced with the following: "This Corporation shall be known in perpetuity as 'The Dr. Miriam and Sheldon G. Adelson Educational Institute'."

See attachment for additional amendments.

3. The directors (or trustees) and the members, if any, and such other persons or public officers, if any, as may be required by the articles have approved the amendment. The vote by which the amendment was adopted by the directors and members, if any, is as follows: directors ☒ and members ☒.

4. Officer Signature (Required):

X

Signature

Title

*A majority of a quorum of the voting power of the members or as may be required by the articles, must vote in favor of the amendment. If any proposed amendment would alter or change any preference or any relative or other right given to any class of members, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of a majority of a quorum of the voting power of each class of members affected by the amendment regardless of limitations or restrictions on their voting power. An amendment pursuant to NRS 81.210 requires approval by a vote of 2/3 of the members.

FILING FEE: \$50.00

IMPORTANT: Failure to include any of the above information and submit the proper fees may cause this filing to be rejected.

This form must be accompanied by appropriate fees.

Nevada Secretary of State ASB 81-82 APR 2007
Revised 04/01/07

Mar-21-08 02:26pm From-LOURIE & CUTLER, PC

817-742-5720

T-154 P.04/04 F-375

Attachment to
Certificate of Amendment to Articles of Incorporation
of The Milton L. Schwartz Hebrew Academy

Article II is hereby amended by adding a paragraph at the end of Article II to state the following specific language: "The schools conducted by the corporation shall be community schools of mixed gender, not affiliated with a specific denomination of Judaism. Students in the schools shall not be required to pray. Male students shall be strongly recommended (but not required) to wear a kippa during prayer and other religious ceremonies. Also, no student shall be required to wear a kippa at any time."

Article IV is hereby deleted in its entirety and replaced with the following specific language: "The governing board of the corporation shall be known as the Board of Trustees and the Board of Trustees shall constitute the corporation. The term of office of each Trustee shall be three years. The number of Trustees may from time to time be increased or decreased by the Board of Trustees but in no event shall the number of Trustees be fewer than seven (7) or more than twenty (20). If for any reason a Trustee shall not be elected in the time and manner provided for herein, or in the Bylaws, such Trustee shall continue to serve as Trustee until his or her successor has been elected."

F:\users\jvarela\c:\winnt\delson\var\lycharitablefoundation\schwartz-amended\articles

STATE OF NEVADA

ROSS MILLER
Secretary of State

SCOTT W. ANDERSON
Deputy Secretary
for Commercial Recordings

OFFICE OF THE
SECRETARY OF STATE

Commercial Recordings Division

202 N. Carson Street
Carson City, NV 89701-4069
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April 12, 2013

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Document Number(s)	Description	Number of Pages
C1073-1980-001	Articles of Incorporation	6 Pages/1 Copies
C1073-1980-003	Amendment	4 Pages/1 Copies
C1073-1980-005	Amendment	3 Pages/1 Copies
C1073-1980-007	Amendment	1 Pages/1 Copies
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C1073-1980-010	Amendment	1 Pages/1 Copies
C1073-1980-012	Amendment	1 Pages/1 Copies
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Commercial Recording Division
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Respectfully,

A handwritten signature in dark ink, appearing to read "Ross Miller".

ROSS MILLER
Secretary of State

Certified By: F Lincoln
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Exhibit 3

Exhibit 3

THE HEBREW ACADEMY

9700 West Hillpointe Road
Las Vegas, Nevada 89134
Tel: (702) 255-4500 Fax: (702) 255-7232



Exhibit AK

Dr. Roberta Gabbath
School Head

May 23, 1996

Milton I. Schwartz
2120 Silver Ave.
Las Vegas, NV 89102

Dear Milton:

On behalf of myself, President, Geri Rentchler and the entire Board of Directors of the Milton I. Schwartz Hebrew Academy, I am pleased to inform you that we will immediately commence action to implement as soon as practicable the following:

- (1) Restore the Hebrew Academy's name to the "Milton I. Schwartz Hebrew Academy."
- (2) Amend the Hebrew Academy's Articles of Incorporation to restore its former name of the "Milton I. Schwartz Hebrew Academy."
- (3) Restore the marker in front of the Hebrew Academy identifying it as the "Milton I. Schwartz Hebrew Academy."
- (4) Change the Hebrew Academy's formal stationary to include its full name, the "Milton I. Schwartz Hebrew Academy", in a form consistent with this letterhead and include our full name on future brochures.
- (5) Where practicable, display the full name of the Hebrew Academy. In print advertising of sufficient size, the full name of the school will be displayed in a design consistent with the letterhead. Where impractical by reason of size, utilization of voice media, informal correspondence, informal memoranda, etc., and in answering the telephone, the school will utilize the shorthand version of its name as Hebrew Academy or simply, its logo. You can rest assured it is the intention of the School Head and the school's Officers and Directors that the utilization of the school's full name will be consistent with an intent to recognize and honor your contribution and assistance.



Association, Northwest Association of Schools and Colleges



Member: State of Nevada Department of Education



Member: National Association of Independent Schools

MAY 25 1996 11:18

1 100 255-7232

11:18

The restoration of the name of the "Milton I. Schwartz Hebrew Academy" has been taken as matter of "menschlackeit" in acknowledgement of your contribution and assistance to the Academy; your continued commitment to Jewish education reflected by the establishment of the "Jewish Community Day School" and last but not least, your recent action as a man of "shalom."

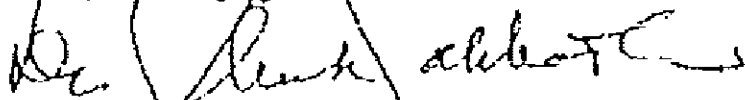
Your invitation to me as new School Head to meet and resolve differences and to work with me and the Board to bring "shalom" to our Jewish community will serve as a much needed example of Jewish leadership.

Please accept our assurance and commitment that we welcome with joy the establishment of the Jewish Community Day School which will provide Jewish parents a choice between the Jewish education offered by the "Milton I. Schwartz Hebrew Academy" during normal school hours and a school composed entirely of students with a Jewish parent and many more hours of Jewish education than can be offered in a normal school day.

You have our pledge that we are committed to make the "Milton I. Schwartz Hebrew Academy" a source of honor and a place of Jewish learning of which you and your family will always justly be able to take great pride.

Please accept our wishes for you and your family to have long, healthy, prosperous and joyous lives.

Very truly yours,



Dr. Roberta Sabbath
School Head

**The Milton I. Schwartz
HEBREW ACADEMY**

9700 West Hillpointe Road
Las Vegas, Nevada 89134
Tel: (702) 255-4500 Fax: (702) 255-7232



Dr. Roberta Sabbath
School Head



Accreditation: Northwest Association of Schools and Colleges



Member: State of Nevada Department of Education

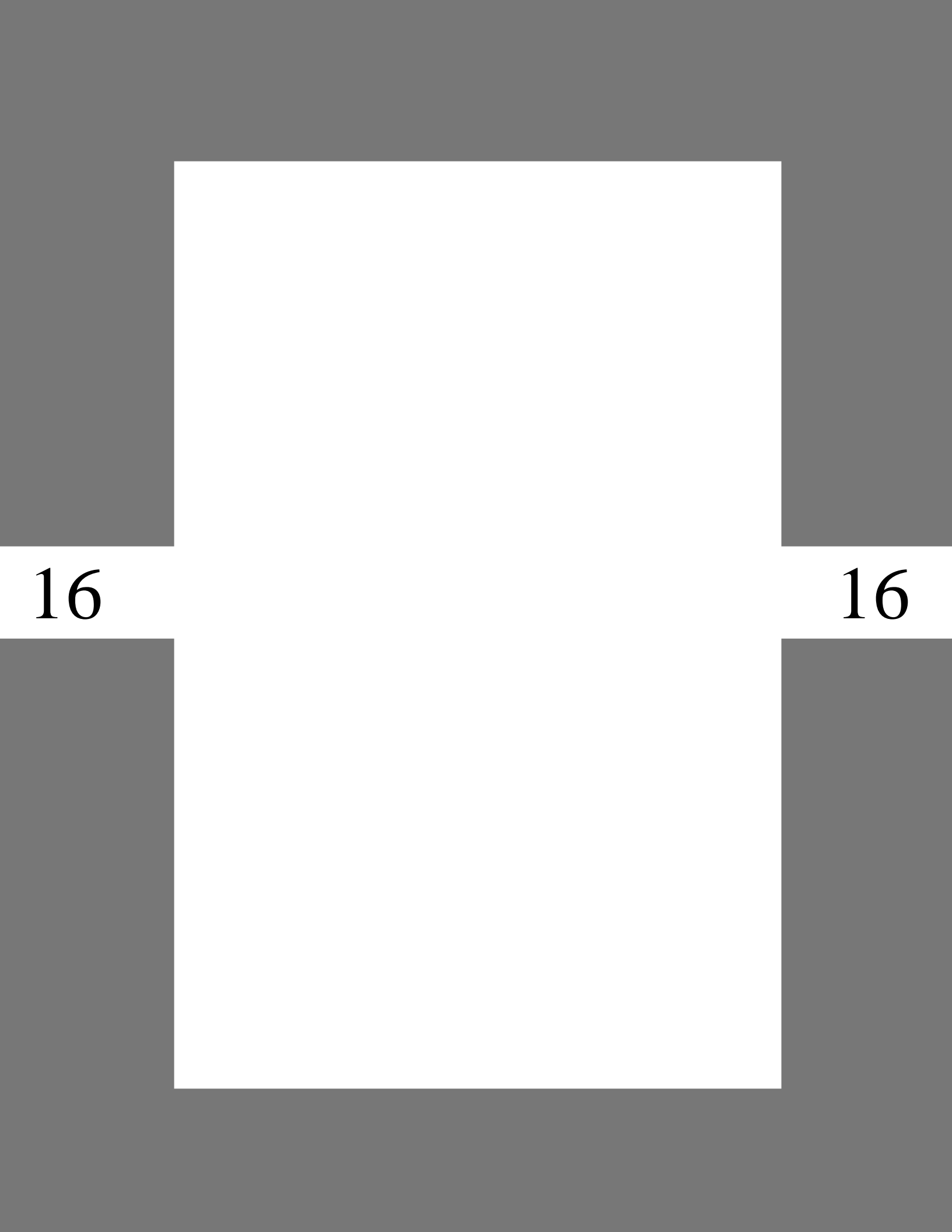


Member: National Association of Independent Schools

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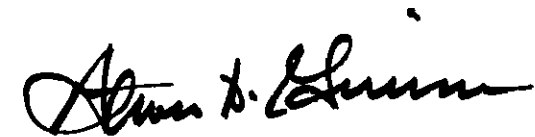
P. 137



16

16

RTRAN



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

IN THE MATTER OF THE ESTATE
OF:

MILTON SCHWARTZ

CASE NO. 07-P-061300

DEPT. XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

TUESDAY, OCTOBER 8, 2013

**RECORDER'S TRANSCRIPT
MOTIONS HEARING**

APPEARANCES:

For the Petitioner: MAXIMILIANO D. COUVILLIER, ESQ.
Lionel Sawyer & Collins

For the Estate: ALAN D. FREER, ESQ.
Solomon Dwiggins & Freer, Ltd.

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 TUESDAY, OCTOBER 8, 2013 AT 9:48 A.M.

2

3 THE COURT: All right. Counsel state their appearances
4 for the record.

5 MR. COUVILLIER: Good morning, Your Honor. Max
6 Couvillier on behalf of the Petitioner, the Adelson's Campus.

7 THE COURT: Okay.

8 MR. FREER: Good morning, Your Honor. Alan Freer on
9 behalf of the Estate.

10 THE COURT: All right. So we're back and I think there's
11 -- we've been here previously on this. There's some time
12 taken to I guess, I don't know, have some discussions or
13 something and now it's back on. So what are you looking for
14 here today?

15 MR. COUVILLIER: Your Honor, we are here today for
16 basically two matters. One is, we have the Adelson's Campus
17 motion to dismiss --

18 THE COURT: Uh-huh.

19 MR. COUVILLIER: -- the Executor's petition. And I think
20 with the points that we've raised therein we've also resolved
21 some of the issues that were previously discussed with the
22 Court with respect to our preliminary objection to the
23 accounting.

24 THE COURT: Right. Because we've got a motion -- another
25 petition to compel a distribution.

1 MR. COUVILLIER: That is correct, Your Honor.

2 THE COURT: Okay.

3 MR. COUVILLIER: So I'd like to start with the Adelson
4 Campus motion to dismiss, Your Honor.

5 THE COURT: Okay, briefly. Because we've heard this all
6 once before so.

7 MR. COUVILLIER: Your Honor, the Executor's petition,
8 Your Honor, the sum and substance of it, is it contests the
9 will. There are six related claims basically to the will.
10 There's a will contest claim, a fraud and the inducement, and
11 three remedies in connection with that. Avoidance of the
12 bequest, offset of the bequest, revocation of the bequest.
13 And then the last six claims for a breach of contract.

14 And, Your Honor, the Court should grant our motion
15 to dismiss some or all of the claims stated. With respect to
16 the claims related to the contest of the will, Your Honor, the
17 executive claims are all dependent on the Executor's parol
18 evidence. And therefore are barred by the Nevada Supreme
19 Court's recent decision in Frei versus Goodsell at 129 NV
20 Advance Opinion 42 305 P.3d 70.

21 The Executor's claim for construction of a will are
22 also barred by the three month statute of limitations pursuant
23 to N.R.S. 137.1.20.

24 Third, the Executor's claim for fraud in the
25 inducement is also barred by the three year statute of

1 limitations under N.R.S. 11.190(3)(d). And the Executor's
2 claim for oral breach of contract fails because there is no
3 contract. And even if the Court were being generous under the
4 motion to dismiss standard that a contract did exist, this
5 claim is barred by the statute of limitations under N.R.S.
6 11.190(2)(c) and the statute of frauds at 111.221.

7 Your Honor, there is no fraud or breach of contracts
8 claim here. The school changed its name several times during
9 Mr. Schwartz's lifetime. Mr. Schwartz knew that the Adelsons'
10 were involved. They knew that the Adelsons' intended to gift
11 the school the \$80 million and that there was a contemplation
12 of the name change. Yet at no time during Mr. Schwartz'
13 lifetime, during the time in which the school changed its name
14 several times, there was a demand to the school to return the
15 gifts that he made. There was claims asserted against the
16 school for breaches of contract, or there was claims against
17 the school for fraud.

18 And most importantly, Your Honor, with respect to
19 the will. Notwithstanding the various name changes.
20 Notwithstanding the Mr. Schwartz is a sophisticated
21 businessman. The will makes no provision regarding the naming
22 of the school perpetuity.

23 So the fact that the school -- the corporate name
24 has changed that it's no longer the Milton I. Schwartz Hebrew
25 Academy; doesn't matter. The purpose of the will, Your Honor,

1 was to make a bequest for the scholarship to educate to Jewish
2 children and that is precisely what is going to happen with
3 that bequest.

4 With respect to our first, Your Honor, grounds to
5 dismiss the Executor's petition regarding the contest of the
6 will, Your Honor. The will is clear and unambiguous. This is
7 undisputed. There's no -- again, no provision in the will
8 regarding the naming of the Milton I. Schwartz Academy
9 remaining in perpetuity.

10 The Executor asked the Court to deny the scholarship
11 bequest because he claims that some 11 years before the will
12 the school somehow clairvoyantly induced Mr. Schwartz to make
13 the bequest. But this is all based on parol evidence. The
14 entirety of the executor petitions flows from that concoction
15 and is entirely dependent on parol evidence, Your Honor. We
16 go back and look at the statements that are made in the moving
17 -- in the papers by the school and in the previous statements
18 made by the Court here that they're seeking to do discovery
19 regarding the intent of Mr. Schwartz with regards to the
20 bequest to the school.

21 But all that evidence, Your Honor, all that intent
22 is barred by the Court's opinion, the Nevada Supreme Court's
23 opinion in Fraye versus Godsell, which bars the executive
24 claims and holds it extrinsic or parol evidence is not
25 admissible to contradict or vary the terms of unambiguous

1 will. It says all prior negotiations and agreements are
2 deemed to have merged there. Fraye, Your Honor, involved
3 similar circumstances in which the parties were contesting
4 estate documents.

5 And in that case, Your Honor, the person that made
6 the certain provisions in those estate documents himself was
7 alleging that his intent was not manifested in those
8 documents. The Nevada Supreme Court barred his testimony
9 regarding the intent saying that the documents itself
10 manifested what the intent were and that his own testimony
11 could not be admissible.

12 It's -- Your Honor, in this case it's even more
13 powerful because Mr. Schwartz is not here. He's not here.
14 And the unequivocal, unambiguous intent that we have is his
15 will. And the will speaks for itself, Your Honor.

16 THE COURT: All right, thanks.

17 MR. COUVILLIER: Your Honor, the second claim is the
18 executor cannot contest the will because the statute of
19 limitations expired over two years ago. The statute of
20 limitations to contest the will is provided under N.R.S.
21 137.120. Here the will was admitted into probate over four
22 and a half years ago on January 24th. The executor did not
23 contest the will until May 28, 2013.

24 Again, Your Honor, the will is admittedly clear and
25 unambiguous. Now we provided in our reply, Your Honor, this

1 dress-up that the Executor attempts to construing saying well,
2 we're not asking for the Court to -- we're not contesting the
3 will. We're asking the Court to construe a will. But there's
4 nothing to construe because the will is admittedly clear and
5 unambiguous. And as we pointed out, Your Honor, we've noted
6 several authorities, Your Honor, that had addressed
7 specifically this same type of ruse as we call it, to dress up
8 a contest claim as far as a construed claim in order to avoid
9 the statute of limitations. But we believe that the Court
10 here should not be fooled by that.

11 Your Honor, the Executor's claim for fraud and the
12 inducement is also barred independently of these other grounds
13 by the statute of limitations provided under N.R.S.
14 111.190(d)(3).

15 Again, Your Honor, the Executor claims at the
16 Adelson Campus somehow induced Mr. Schwartz to make several
17 gifts to the school including the bequest purportedly on
18 representations that this school would bear Mr. Schwartz's
19 name in perpetuity.

20 But, Your Honor, just to begin with, there are no
21 allegations that the purported representations were false at
22 the time they were made. But more importantly the school name
23 again changed several times over Mr. Schwartz's lifetime. And
24 not once did he come out of the woods and say there was fraud.

25 THE COURT: And during that period --

1 MR. COUVILLIER: I want my money back; this is a breach
2 of contract.

3 THE COURT: -- he wrote his original will, he wrote his
4 first codicil and the second codicil.

5 MR. COUVILLIER: That's right, Your Honor.

6 THE COURT: And never changed it.

7 MR. COUVILLIER: That's right, Your Honor. He -- his
8 will was written in 2004 --

9 THE COURT: 2004.

10 MR. COUVILLIER: -- and then the codicils were in 2006.
11 Your Honor, by that time the Adelsons were already involved.
12 Mr. Schwartz is serving on the board with the Adelsons. And
13 this was coming forward. Certainly if he believed that that
14 provision was important he would have included it in the
15 codicils --

16 THE COURT: Right. And --

17 MR. COUVILLIER: -- and he did not.

18 THE COURT: -- his original -- the original purpose was
19 first of all, the money goes to pay off a mortgage. If
20 there's no mortgage then you still get the money but you get
21 it for scholarships.

22 MR. COUVILLIER: That's correct, Your Honor.

23 THE COURT: So he provided for just the eventuality it
24 happened, which is an angel in the fundraising field; people
25 with a lot of money who clear up your debts are called angels.

1 So the school was fortunate in the Adelsons clearing up all
2 their debts. And that meant that Mr. Schwartz who had
3 foreseen something like that might happen still wanted the
4 money to go to the school, but in this instance it would go to
5 pay for Jewish children to be educated.

6 MR. COUVILLIER: That is correct, Your Honor. And that's
7 exactly what's happening.

8 THE COURT: That's was what he'd always wanted his whole
9 life.

10 MR. COUVILLIER: That's what --

11 THE COURT: Everything that he had done.

12 MR. COUVILLIER: -- he always wanted. And so this notion
13 of the name change, Your Honor, as we pointed out is
14 irrelevant, because the purpose of the gift as you hit it, is
15 to -- the gift is going to go to scholarships. It's going to
16 go to scholarships to fund the education of Jewish children --

17 THE COURT: Since it's not needed to pay off the
18 mortgage.

19 MR. COUVILLIER: That's correct. That's correct.

20 THE COURT: I mean --

21 MR. COUVILLIER: And the reason it wasn't needed to pay
22 for is because the Adelsons --

23 THE COURT: Right.

24 MR. COUVILLIER: -- extinguished the debt that Mister --

25 THE COURT: He clearly wanted the school to be

1 financially healthy. So first pay off the mortgage, help pay
2 off the mortgage. And if there's no mortgage then that's
3 great, but you still get the money, but this time let's use it
4 to educate the Jewish children of Las Vegas.

5 MR. COUVILLIER: That's correct, Your Honor. That's
6 correct.

7 THE COURT: Clearly stated never -- nothing indicates
8 that he ever changed that philanthropic purpose.

9 MR. COUVILLIER: Correct, Your Honor. And those were the
10 only conditions that he had on the will. And Mr. Adelson
11 helped him make the first condition because he eradicated all
12 the debt.

13 THE COURT: Uh-huh.

14 MR. COUVILLIER: And so we -- you know, we're still here
15 to help Mr. Schwartz fulfill his gift to help educate Jewish
16 children.

17 THE COURT: Right.

18 MR. COUVILLIER: That's the purpose of the will.

19 THE COURT: I mean, if he had just left the money to pay
20 off a debt and there was no debt, then that would be a
21 different thing.

22 MR. COUVILLIER: That's correct.

23 THE COURT: But he provided in the eventuality there's no
24 debt then we're going to just use it to educate children.

25 MR. COUVILLIER: That is correct, Your Honor.

1 THE COURT: Okay.

2 MR. COUVILLIER: And so we're here to ask the Court to
3 dismiss the petition. Some -- again, some or all the claims
4 based upon the reasons that I have set forth here.

5 And how we jump in, Your Honor, and with respect to
6 the accounting because I wanted to close that loop, is that
7 there was some discussion last time we were before the Court
8 about whether the school had, you know, some standing to
9 challenge the accounting based upon the notion that the
10 bequest would somehow be voided.

11 But again, Your Honor, that is the same premise that
12 we're here with respect to our motion to dismiss is that the
13 challenge on the accounting standing is that the bequest would
14 be void and it's doing two things. It's asking the Court to
15 allow the introduction of parol evidence --

16 THE COURT: Uh-huh.

17 MR. COUVILLIER: -- to attack the will and attack the
18 provision to make it void, which is clearly barred by Frei.
19 And it's also contesting the will, which is clearly barred by
20 the three year statute of limitations.

21 And therefore, Your Honor, we believe we do have the
22 standing. We believe that the Court should dismiss some or
23 all the claims, allow and instruct the executor to make a more
24 full accounting. I mean, you know, we were talking about
25 discovery going forward. And we can go with that, Your Honor,

1 but at this stage in the proceedings we believe that we'll
2 move forward with discovery, but notwithstanding that the
3 Court should order the executor to make a more fuller
4 disclosure of the accounting to provide some of the items that
5 we've previously requested including the tax returns, an
6 update on the accounting, Your Honor.

7 You'll see that the house that is listed on the
8 accounting, Your Honor, it has the same value as when the
9 house was first disclosed in 2008 of 200 and some thousand
10 dollars. Your Honor, it's been seven years. The housing
11 market, and the Court can take judicial notice, has turned.
12 And we believe that the increase, that that has increased.

13 So we're asking the Court, Your Honor, to dismiss
14 some or all of the claims. Certainly all of the claims
15 regarding the contest of the will. We also believe that the
16 last breach of contract claim should be dismissed. Again,
17 Your Honor, there is the statute of limitations has passed on
18 that. Mr. Schwartz was alive during the many changes of the
19 school name and never once claimed a breach of contract.
20 Never once claimed that a contract existed and never once
21 claimed for fraud. And that the Court would allow us to
22 proceed with our petition for distribution and allow discovery
23 with respect to that.

24 THE COURT: Thank you.

25 MR. COUVILLIER: Thank you, Your Honor.

1 MR. FREER: Well, Your Honor, unfortunately there's a lot
2 of conflated facts in law in the argument that was just
3 presented. So we're going to have to go through and untangle
4 a lot of those. But I want to start with the will itself.
5 Article 2.3 of the will states, "A bequest is made to the
6 Milton I. Schwartz Hebrew Academy." That entity doesn't exist
7 anymore.

8 That leads us to two possibilities. The bequest
9 lapses because it no longer exists, or there is a latent
10 ambiguity in the will which requires a determination of what
11 Milton I. Schwartz expected.

12 To outline, you know, their argument that there is
13 no ambiguity can be summarized by their conclusion. They say,
14 "Mr. Schwartz made a donation to the Jewish -- to benefit
15 Jewish children in Southern Nevada through funding of
16 scholarships to the Adelson campus." That's in their
17 conclusion of their reply brief. Nowhere in the will does it
18 say that. In fact, the only way they even try to assert that
19 they have standing is by admitting extrinsic evidence.

20 So they cannot on the one hand say there was no
21 ambiguity and yet at the same time produce evidence showing
22 that they have standing to assert that there was no ambiguity.
23 The issue is what did Milton Schwartz intend by making --

24 THE COURT: Well, I guess I'm trying to understand what
25 the problem is. Is the Executor's problem that he doesn't

1 want to pay the \$500,000, or is it the Executor's problem is
2 this should only be paid if you change the name back to my
3 father's name?

4 MR. FREER: That's it.

5 THE COURT: Okay.

6 MR. FREER: The second.

7 THE COURT: Okay.

8 MR. FREER: And we'll go -- you know, we've got to go
9 through some of the facts here, because the facts have been
10 conflated, okay.

11 During Milton I. Schwartz's lifetime he made a
12 bequest to Milton I. Schwartz Hebrew Academy. He made
13 lifetime gifts to a school that promised to bear his name in
14 perpetuity. That's in the documents. Within months after his
15 death after the will had been admitted, after the time to
16 contest the validity of the will, the school changes its name
17 to the Adelson Campus.

18 We've introduced in the petition allegations that
19 must be for purposes of their motion to dismiss accepted as
20 true. That Milton's bequest was not solely of a gratuitous
21 nature, but was part of a legacy for a specific purpose of a
22 school bearing his name. And the bequest concluded a lifetime
23 of gifts to the academy in consideration for bearing its name.

24 We have alleged and we have included in the petition
25 for declaratory relief. The testimony of Milton Schwartz

1 himself where he says, "On or about August 1989 he donated
2 500,000 to the Hebrew academy in return for which it would
3 guarantee his name in perpetuity".

4 The academy recognized this. And the one name
5 change that occurred during his lifetime occurred in 1993.
6 That was in context of litigation where a new board came
7 onboard, scuttled Milton Schwartz, changed his name. Milton
8 Schwartz sued the academy to gain control of the board.
9 During that period of time he ceased making all distributions
10 to the school.

11 In that lawsuit, even his detractors, members of the
12 second board that Milton considered broke, testified under
13 oath that Milton referred to this school as "my name" because
14 it bore his name.

15 There's sworn testimony from Tamara Lubin who was on
16 the board stating, "Milton Schwartz became elected to the
17 board of trustees of the Hebrew academy after making a large
18 gift to the school."

19 Also in consideration of this grant the school has
20 borne his name since 1989. There's sworn testimony from
21 Michael Novak, another member of the board that says, during
22 this whole flat between the board Tamara Lubin instructed him
23 to return the \$500,000 because the \$500,000 was in
24 consideration for bearing his name.

25 There's acknowledgment from another member of the

1 board, Lenny Schwartzer stating to -- in writing to Milt,
2 "It's your school. It has your name on it forever."

3 After this litigation was resolved in 1996 the
4 academy promised Milt in writing to restore Hebrew Academy's
5 name to Milton I. Schwartz Hebrew Academy. Amend the articles
6 to restore the name to Milton I. Schwartz Hebrew Academy.
7 Restore the marker in front of the academy to identify it as a
8 Milton I. Schwartz Hebrew academy. Change the stationary.
9 Display the full name of the Milton I. Schwartz Hebrew Academy
10 wherever practical.

11 But Hebrew Academy then in 1996 amended its articles
12 and its bylaws to change it to the Milton I. Schwartz Hebrew
13 academy.

14 We allege in our petition we provide evidence that
15 in reliance on those promises Milton resumed making payments.
16 We have a chart at Exhibit 9 of our petition that outlines the
17 payments made. After this promise was made in 1996, in 2004
18 he executes his will as we've already talked about, to the
19 Milton I. Schwartz Hebrew Academy.

20 And made codicils in 2006 where he didn't make that
21 change because the Hebrew academy was still named the Milton
22 I. Schwartz Hebrew Academy.

23 In fact, the school continued to honor his name and
24 be recognized as the Milton I. Schwartz Hebrew Academy until
25 his death despite the generous donations of the Adelsons.

1 In fact the last written document provided to Milt
2 prior to his death was in 2007. It was signed by the Adelsons
3 themselves where they signed, and acknowledged, and
4 represented that despite their generous donations there would
5 be two separate schools. The Milton I. Schwartz Hebrew
6 academy for the elementary students and the Adelson school for
7 the high school. In fact, this is what the signed letter that
8 Mariam and Sheldon Adelson stated.

9 "It is an inspiration to see so many in the
10 community supporting not only the Milton I. Schwartz Hebrew
11 Academy, but also the Adelsons' School. At last year's events
12 we presented plans to create a world class high school
13 adjacent to the Milton I. Schwartz Hebrew Academy.

14 We've now taken all the steps towards reaching this
15 important goal. We're pleased to announce the first
16 graduating class. The Adelson School will begin their studies
17 this fall. It is our privilege to honor Milton with a Dr.
18 Miriam and Sheldon G. Adelson in pursuit of excellence award.
19 With vision and Judaic educational institution for elementary
20 school aged children by creating and continually supporting
21 the Milton I. Schwartz Hebrew academy. The school established
22 in 1998 has since expanded to include preschool through eighth
23 grade."

24 That's Exhibit 11 to our position for declaratory
25 relief.

1 Those facts stated in our petition for declaratory
2 relief must be accepted as true for purposes of the motion to
3 dismiss.

4 Then we get to the issue of Milton passing away.
5 Six months after his death after the will's been admitted to
6 probate, after the three month period has expired to contest
7 any will. And by the way, our motion to construe the will
8 I'll talk about in a minute is not a contest of the will.
9 That is when the Milton I. Schwartz Hebrew Academy breached
10 its promise and changed its name and its bylaws to the Adelson
11 Education Campus.

12 In addition we allege in the petition the school
13 systematically taking steps to erase Milton's name and legacy
14 removing markers at the entrance. Removing the name from the
15 letterhead and business cards. Not operating or holding
16 itself out to the public as anything other than the Adelson
17 Educational Campus.

18 The website does not refer to any part of the school
19 as Milton I. Schwartz Hebrew Academy, not even grades
20 kindergarten through four. The website only lists Adelson
21 Education Campus as lower, middle and upper. The school's
22 even refused --

23 THE COURT: The name's still on the building, isn't it?

24 MR. FREER: The name is on the building, but that doesn't
25 comply with any of the promises made in '96 to which Milton

1 relied on in continuing to make his gifts. But the school's
2 even provided -- refused to provide assurance that that name
3 on the building itself will remain.

4 In short, my client and the connecting trust would
5 love to make the contribution of \$500,000, except they
6 breached his promise. The promise made to Milt. The legacy
7 that he worked for, for 20 years prior to his death, doesn't
8 bear his name. It's as if he didn't exist anymore on all but
9 the one sign on the building that they won't promise to keep
10 up.

11 We have no objection to keeping the high school
12 named Adelson Educational Institute. That's exactly how it
13 was communicated by the Adelsons to Milt prior to his death.
14 But the simple issue is the Adelson Education Campus can't
15 come in here and try to compel a distribution to the Milton I.
16 Schwartz Hebrew Academy when they violated all the promises
17 that they made to Milt during his lifetime.

18 Now we already talked about the ambiguity a little
19 bit. Their contention is there is no ambiguity. As I already
20 pointed out, the gift can only go if you read section 2.3 to
21 the Milton I. Schwartz Hebrew Academy. The discussion of
22 paying off the mortgage and making gifts or directing the gift
23 go to the purpose of funding scholarships. It's not
24 additional charitable intent. It is directing the Milton I.
25 Schwartz Hebrew Academy -- it's limiting how the Milton I.

1 Schwartz Hebrew Academy can use those funds.

2 So it's not a situation where you have a normal Side
3 Pray issues of direction by the testator that says, I want it
4 to go to the American Cancer Society and if for some reason
5 that doesn't work, to any cancer institution. That is not the
6 case. It says it goes to Milton I. Schwartz Hebrew Academy.
7 Here's what the Hebrew Academy can do with the money.

8 So despite arguing that it's clear and unambiguous
9 they're asking this Court to interpret the plain language of
10 the will which says Milton I. Schwartz Hebrew Academy as
11 meaning the Adelson Educational Institute. That's parol
12 evidence. That's question of fact. We are entitled to
13 introduce evidence that shows Milton I. Schwartz intended for
14 that to be his namesake.

15 THE COURT: So since we're here on a motion to dismiss
16 and the motion to dismiss standard being what it is in Nevada,
17 the issue is, do you have a cause of action that there is a
18 potential claim there that you should be allowed to pursue?
19 So you're saying typically that you should be allowed to do
20 the discovery to be able to prove that when Mr. Schwartz said,
21 I'm leaving this money to the Milton I. Schwartz Hebrew
22 Academy paren, (Hebrew Academy), that it must be an entity
23 under that name. And the direction that it be one of two
24 things. Pay off the mortgage. If there's no mortgage,
25 educate Jewish children of Las Vegas.

1 Then you should be allowed to do discovery in order
2 to establish that but for the name Milton I. Schwartz being on
3 the school whether it's on a physical building, or on the
4 school itself, that he would not have made that gift.

5 MR. FREER: That is absolutely correct.

6 THE COURT: So you want to be able to do that discovery
7 and that's your position is you should -- your client should
8 be allowed to proceed with this discovery, that the motion to
9 dismiss is premature because we have this issue of fact. As
10 the Court ultimately is going to have to interpret this
11 language you need to bring all the evidence forward.

12 MR. FREER: Correct.

13 THE COURT: So what have you guys been doing for the last
14 several months? That's why I'm kind of puzzled by why you're
15 back here.

16 MR. FREER: Well, we tried to engage in settlement and
17 actually I don't necessarily know if it's appropriate.

18 THE COURT: No. But I mean, I just -- well, that's my
19 point is why are we back here?

20 MR. FREER: The settlement has failed.

21 THE COURT: Okay.

22 MR. FREER: Settlement negotiations have failed.

23 THE COURT: All right. So we're back to just the issue
24 of should you be able to litigate over this \$500,000, yes or
25 no?

1 MR. FREER: Correct.

2 THE COURT: And the Academy is taking the position that
3 no need, this is simply an action to contest a will. You're
4 not really contesting the will. Nobody's saying that Mr.
5 Schwartz was in any way under any kind of influence here? The
6 issue is when he said Milton I. Schwartz Hebrew Academy did he
7 mean only an entity that was named after him, or did he mean
8 this school that he had worked on, as you had pointed out for
9 something like 20 years, to establish and to make sure it was
10 in good financial condition. And that grew over those years
11 to even include a high school. And he'd play the very
12 valuable and important role too.

13 MR. FREER: And during his lifetime Milton Schwartz
14 acknowledged the Adelsons. The concept that he understood and
15 that he continued to rely on. High school's separate; it'll
16 bear Adelsons' name. That was the understanding Milton
17 operated under.

18 THE COURT: Okay. So you're just saying that this --
19 Because I mean, this isn't something that can be decided
20 today. This is something where we need to do this discovery.
21 And then the school has its own separate petition which is, we
22 think your accounting's bad.

23 MR. FREER: Exactly. And as we -- as from the last
24 hearing I argued that's putting the cart before the horse
25 because if they don't have standing because they don't --

1 aren't able to step in place of the Milton I. Schwartz Hebrew
2 Academy. They have no standing to assert any deficiencies
3 with the accounting.

4 THE COURT: Okay. So until we determine if this gift has
5 lapsed because there is no such thing as Milton I. Schwartz
6 Hebrew Academy and his stated goal that if there's no mortgage
7 on this academy then we need to educate Jewish children will
8 just go away and the Estate keeps the \$500,000. And they've
9 got no right to --

10 MR. FREER: Right.

11 THE COURT: -- contest the Academy.

12 MR. FREER: And then the trust can use that 500,000 for
13 whatever charitable donation it wants to make.

14 THE COURT: Or to pay the beneficiaries, thank you.
15 Okay.

16 MR. FREER: If Your Honor has any additional questions
17 about additional factual issues that you want to raise I can
18 address those, but --

19 MR. COUVILLIER: Your Honor, we're not asking the Court
20 to dismiss their petition on the basis of facts. We're not
21 asking the Court to consider extrinsic evidence. We're asking
22 the Court to apply the law. The will says what the will says.
23 The Milton I. Schwartz Hebrew Academy has changed. The
24 corporate name is now the Dr. Miriam Sheldon Adelson
25 Educational Institute. But the naming is not a condition in

1 the will. There's no language in the will that says that the
2 school shall remain in perpetuity named the Milton I. Schwartz
3 Hebrew Academy.

4 THE COURT: Okay. Well, do you have any case law for me
5 that says well --

6 MR. COUVILLIER: Yes, I do, Your Honor.

7 THE COURT: -- if you've got -- you know, if I want to
8 leave this money to the Gloria Sturman school and it gets
9 bought by Stanford. And so all of a sudden in my will it says
10 well, gosh, Gloria wanted to leave all her money to the Gloria
11 Sturman school but there's no such thing, it's been brought by
12 Stanford, or let's be a little bit more realistic, the
13 University of Phoenix. You know, something that's just, you
14 know, totally off the wall then well, the money still goes
15 there because she really cared about that school. And it's
16 not so much that it had her name, it's that she cared about
17 the school.

18 MR. COUVILLIER: Your Honor --

19 THE COURT: So --

20 MR. COUVILLIER: -- and I'm glad --

21 THE COURT: -- that's their position is that's a question
22 of fact. It's not a question of law; it's a question of fact.
23 Because if you interpret this will when he says Milton I.
24 Schwartz Hebrew Academy does he mean a school named after him
25 or does he simply mean I worked really hard to get a Jewish

1 school up and off the ground and it's there, and it's
2 continuing to grow and during my lifetime it's now got a high
3 school, it's named after some other people, but this is
4 awesome. So the will doesn't say now you can only use this
5 for the portion of the school that's named after me. You
6 can't use it at the high school, you can only educate the
7 little children; not the big children.

8 MR. COUVILLIER: And, Your Honor, I'm glad you asked that
9 question. I'm glad you framed it the same way because several
10 courts have also addressed that issue as a matter of law and
11 we did provide that authority. Most recently we provided that
12 authority at page 11 of our reply brief, Your Honor. I'll
13 direct the Court to the -- one of the cases that we cited
14 there, which was Hardy versus Davis at 148 N.E.2d 805, Your
15 Honor.

16 And in that case a similar situation happened.
17 There was a provision in a will that the purpose of the will
18 was to establish a trust to build and endow the City of
19 Galesburg, Illinois a home for orphan children.

20 There's an additional provision that the home be
21 called the McKnight Industrial Home. However, Your Honor, for
22 various reasons there was an orphanage built. That the -- it
23 was not named the McKnight Industrial Home. And the Court
24 there found that the words that the home be called the
25 McKnight Industrial Home were words merely to designate the

1 mode or manner of carrying out the gift. The gift was to
2 establish an orphanage, a home for orphans.

3 Your Honor, the purpose of the gift here is to make
4 scholarships available for Jewish children.

5 THE COURT: Okay. But the question is in Nevada using --
6 applying Nevada law, which has a very low standard on motions
7 to dismiss. If they have a cause of action that they can
8 arguably assert it involves questions that they can, through
9 discovery, establish. They're allowed to do that kind of
10 discovery.

11 MR. COUVILLIER: Right.

12 THE COURT: And to establish that. Now, that's why I ask
13 what went on. Nobody's told me any new discovery's been going
14 on; simply that there are negotiations. So --

15 MR. COUVILLIER: Yes.

16 THE COURT: -- there's no new evidence, we aren't getting
17 new discovery. So the point is --

18 MR. COUVILLIER: The point is that --

19 THE COURT: -- under Nevada's very low pleading standard,
20 have they stated enough to go forward? Is this -- as a matter
21 of law the Court can rule at this preliminary stage well
22 before any discovery's been done.

23 MR. COUVILLIER: Correct, Your Honor. And we're almost
24 at a similar stage of Frei where they're at a point in
25 preparation where they want to proceed and go forward and

1 introduce evidence. Get all this evidence to introduce as to
2 what is the intent of Mr. Frei, including Mr. Frei who's
3 sitting in the background saying, I want to talk. I want to
4 say what my intent was. And the Court said no. You cannot
5 proceed. You cannot introduce parol evidence. We're at a
6 similar junction, Your Honor. They want to go and do
7 discovery. We're talking about the low standards of Nevada
8 law with respect to pleading, but we're also talking as
9 matters of law. And what they want to do is go forward and
10 say, we want to do discovery regarding his intent. We want to
11 go do discovery what he meant, what happened two decades ago.
12 And what we're saying, Your Honor, is that Frei says no. You
13 must stop.

14 The intent is evident from the will. We're not
15 saying the will is ambiguous. There's no question again the
16 naming of the school, but we've also cited authorities that
17 say it's a matter of law. Your Honor, this happens all the
18 time. Institutions change after the gifter has died. They
19 change, it happens, but they continue to do business, they
20 continue to operate; they continue to fulfill the mission. We
21 are in exactly that same position. And as a matter of law --

22 THE COURT: And so --

23 MR. COUVILLIER: -- the authorities have said it doesn't
24 matter --

25 THE COURT: If the rule said --

1 MR. COUVILLIER: -- that the name change.

2 THE COURT: -- so long as the Milton Schwartz Hebrew
3 Academy continues to bear my name then the scholarship fund
4 bearing my name will be there to educate Jewish children. If
5 it changes for any reason then I want my money to go to a
6 general scholarship fund for Jewish children through, I don't
7 know, pick something, APAC.

8 MR. COUVILLIER: It doesn't say that.

9 THE COURT: And --

10 MR. COUVILLIER: And that's why we're here, Your Honor.
11 It's a small universe. It's a small world. And as a matter
12 of law we believe the Nevada Supreme Court has already weighed
13 in that they can't proceed. We can't do discovery because
14 they can't introduce any of this evidence.

15 THE COURT: Okay. Thank you.

16 MR. FREER: I strongly disagree with a couple of the
17 points made. Number one, you know, the renaming allowing a
18 gift to go to a different charity other than the one that's
19 named in the will is called the Side Pray Doctrine.

20 Now the case he cites to that's what the Court ended
21 up applying the Side Pray Doctrine after it received evidence.
22 There are cases that we could cite innumerable that I didn't
23 have a chance to talk about because they talked about the Side
24 Pray Doctrine in the reply. I haven't had a chance to file
25 and substantive brief. But there are innumerable cases that

1 say the Side Pray Doctrine, those proceedings are factual
2 determinations. You have to introduce evidence and you have
3 to give both sides the opportunity to introduce extrinsic
4 evidence to show why the bequest would or would not be
5 appropriate to the new entity.

6 And that's the way it's been going on in this court
7 for years. When you have three or four charities, when a gift
8 would otherwise lapse and three or four charities come in and
9 say, I'm the successor, or interpret the will to have it go to
10 me, there are evidentiary hearings to determine that. Each
11 party is allowed to bring its evidence in.

12 Now on top of that we've got two issues of fact
13 here. Number -- in addition to the --

14 THE COURT: Okay. Well, let's talk about Frei then in
15 that context because --

16 MR. FREER: Okay, yeah. Let's talk about --

17 THE COURT: -- because looking -- I was looking for --
18 "The Court concluded that extrinsic evidence is admissible to
19 show whether an allegedly testamentary instrument was intended
20 to be effective as a will, however court modified its holding
21 explaining that such evidence is not admissible for the
22 purpose of proving the meaning that the testator attributed to
23 specific provisions of an admitted will." So --

24 MR. FREER: Correct. Here's the issue with Frei though,
25 is if you read in the factual summary the party seeking to

1 introduce intrinsic -- or seeking to introduce the extrinsic
2 evidence admitted that there was no ambiguity in the will.
3 The Supreme Court notes in footnote 3 on page 7 that because
4 of the way the parties pled the action it could have come up
5 with a different holding, but it was limited to what the
6 parties pled. In fact it --

7 THE COURT: So the conclusion ultimately is, "We conclude
8 the District Court did not abuse its discretion in prohibiting
9 Frei from presenting extrinsic evidence with regard to his
10 specific intent in executing the unambiguous documents."

11 MR. FREER: Correct. Because there was no ambiguity.

12 THE COURT: Okay. So your position there is an ambiguity
13 here and that ambiguity is, was this gift intended to be
14 specifically to an entity known as the Milton I. Schwartz
15 Hebrew Academy or can we name it something else --

16 MR. FREER: Correct. And --

17 THE COURT: -- like --

18 MR. FREER: -- what we have here is what's called --

19 THE COURT: -- Red Rock school.

20 MR. FREER: What we have here is called --

21 THE COURT: Some random name.

22 MR. FREER: Correct. What we have here is called a
23 latent ambiguity.

24 THE COURT: Uh-huh, okay.

25 MR. FREER: The words itself in the will don't create any

1 ambiguity. It's there is no entity named the Milton I.
2 Schwartz Hebrew Academy for the gift to go to.

3 THE COURT: Okay, right. So then -- but it seems to me
4 that nevertheless what Frei does seem to imply is that there
5 is some limit on what this kind of evidence can go to.

6 MR. FREER: Right. But if you look at the prior Supreme
7 Court cases that deal with ambiguity.

8 THE COURT: Uh-huh.

9 MR. FREER: You get into Atkins versus Opion. There the
10 Nevada Supreme Court says, we're four corners jurisdiction
11 unless and until there's an ambiguity. Then we allow
12 extrinsic evidence to come in. And then it becomes a factual
13 determination as to what is made and what was the grantor's
14 intent?

15 Here in Frei everybody's saying there's no ambiguity
16 in the will, but --

17 THE COURT: So --

18 MR. FREER: -- we still want to introduce extrinsic
19 evidence.

20 THE COURT: Okay. So your position is that keeping in
21 mind Nevada has very low pleading standards. We're at a
22 motion to dismiss phase, but there is the need to do discovery
23 to determine whether when Mr. Schwartz wrote his will did he
24 really intend -- well --

25 MR. COUVILLIER: We're getting back to Frei, Your Honor.

1 THE COURT: I will get it. Did he really intend that
2 this would only go to the school so long as it kept his name,
3 the Milton -- because it doesn't say that. It doesn't say, so
4 long as the school keeps the name Milton I. Schwartz Hebrew
5 Academy on it, then I'm going to give them my \$500,000.

6 I mean, because what happens if the \$500,000 was
7 given and they said, okay. Thanks, bye-bye. Changing our
8 name now.

9 MR. FREER: Actually there are cases that address that.

10 THE COURT: I mean, here's my --

11 MR. FREER: And we can cite to those. That actually
12 allows you to assert a constructive trust back over those
13 cases.

14 THE COURT: Okay. Well I guess this --

15 MR. FREER: Or back over those gifts.

16 THE COURT: -- this is my problem here. I mean, it seems
17 pretty clear to me what Mr. Schwartz wanted to do. He had a
18 genuine interest demonstrated throughout his life in educating
19 the Jewish children of Nevada in a parochial school setting.
20 He wanted it to be a Hebrew school. That was what was
21 important to him. Because the will -- the way the will read
22 it's the Milton I. Schwartz Hebrew Academy parens (Hebrew
23 Academy). That was what was important to him; it was a Jewish
24 school. Not the Milton I. Schwartz -- he doesn't say the
25 Milton I. Schwartz school, he says the Hebrew Academy.

1 MR. FREER: He says the Milton I. Schwartz Hebrew Academy
2 and then defines that term as Hebrew Academy. And if you look
3 further in the will --

4 THE COURT: Right. And so that's why I'm looking for
5 something that tells me, so long as they keep my name. He may
6 have been satisfied that during his lifetime they had changed
7 their name and that was satisfactory to him. I'm just -- you
8 know, I'm just at a loss as to, you know, what this discovery
9 would show.

10 Because the whole point of -- in Nevada on a motion
11 to dismiss, which is a very low pleading standard, if there's
12 anything possible that you can assert, go forth and see if you
13 can litigate this and figure it out. And the Court has to let
14 you do your discovery.

15 Where for me, the thing that I'm just struggling
16 with here is that Mr. Schwartz had so clearly stated that he
17 wanted Jewish children educated in a Jewish school and that
18 was what was important to him.

19 MR. FREER: Well, and that's what --

20 THE COURT: And that school bore his name and he was
21 really proud of that. And I think it's great. And I
22 appreciate that the trustee and the executor wants to honor
23 his father's memory. And it's important to the family that
24 the role Mr. Schwartz played in establishing that school,
25 which had a fabulous reputation even before the Adelsons got

1 involved. That was really important to that family and it
2 should be honored.

3 And I appreciate the sincere belief that the family
4 has that this is what their dad wanted. He wanted that school
5 to continue, but he wanted it to continue in a way that
6 honored the role he played in its founding and in its health,
7 and security, and stability for the first 20 years of its
8 existence.

9 There's -- I wonder if it would even had been there
10 for the Adelsons to rescue if it hadn't been for Milton
11 Schwartz. I think that's the whole point. And that's what
12 happened in the '90s when they had all their turmoil is he was
13 their angel then. And he was the one who saved them. And
14 they were there for the Adelsons to come along years later and
15 say hey, we're going to step in and we're going turn this into
16 -- take this to the next level.

17 And that's wonderful that they've been there and
18 that they have turned this into the institution that it is
19 today. But Mr. Schwartz, throughout all of it, what he wanted
20 was to educate the Jewish children of Las Vegas in a Jewish
21 school. And I don't -- for me, what I'm struggling to say is,
22 how are you going to, through any kind of parol evidence,
23 prove that he would only have wanted to do that? His only
24 goal in doing that was to have his name on it. That seems
25 entirely contrary to what Mr. Schwartz had done. He was

1 honored. I understand that, he was proud of that, but he
2 didn't educate Jewish children in order to have his name
3 recognized. He educated Jewish children because he wanted
4 Jewish children educated in Jewish school. He didn't want his
5 name. It was about educating the children.

6 Where is there anything that's going to be able to
7 prove through parol evidence that the only reason that
8 mattered was because he was able to have his name recognized
9 in perpetuity. I understand his children what a monument to
10 them. But to me, their dad, what he wanted was children
11 educated.

12 MR. FREER: Okay. We've had limited -- we've had no
13 chance to do discovery and here's three examples of parol
14 evidence. Number one, as soon as they changed his name off he
15 discontinued making any gifts during his lifetime until they
16 put his name back on.

17 THE COURT: But did they only do it because they put his
18 name on, or did they do it because he was unhappy with the
19 administration. There was a lot of turmoil at that school.

20 MR. FREER: There was a lot of turmoil. The lawsuit was
21 resolved I believe in 1993.

22 THE COURT: I mean, if somebody can come in and say the
23 only reason they gave us money was because we were going to
24 recognize him. I mean, to me that just seems -- to me, I
25 don't see that as what Mr. Schwartz was doing, but okay. All

1 right. If you -- so it's your positions --

2 MR. FREER: Number two --

3 THE COURT: -- is that's what discovery could show.

4 MR. FREER: Number two, Tamara Lubin --

5 THE COURT: Uh-huh.

6 MR. FREER: Informed one of the affiants that she was

7 going to return the money because the idea was Milton I.

8 Schwartz would not have given that money if it hadn't been his

9 name recognized.

10 THE COURT: Uh-huh.

11 MR. FREER: Number three, the gift was only made in his

12 will after his name was put back on the building.

13 THE COURT: Right. Ten years after.

14 MR. FREER: And it remained that way until his death.

15 THE COURT: Okay. I just -- you know, I'm trying to
16 understand what kind of discovery you can possibly do that
17 will explain that Mr. Schwartz was primarily concerned about
18 his name. And not primarily motivated by educating Jewish
19 children?

20 But the pleading standard in Nevada is so low that
21 when we get to the issue of is this a question of fact or law
22 that I can -- because essentially what it would be would be a
23 motion for summary judgment at this point in time. I can't
24 say they can't prove a cause of action. For me, my problem
25 here is I'm struggling to understanding what you can -- I

1 mean, it's fact. I understand the facts, but I'm trying to
2 understand how any of that helps us understand what he was
3 doing in his will when he specifically said, I want this to go
4 to support the school. But if the school's -- if the debt's
5 been paid off then that's awesome. I'm still supporting the
6 school, but I'm going to do it in a way that educates Jewish
7 children, because his goal throughout was to educate the
8 Jewish children.

9 THE COURT: I understand --

10 MR. FREER: And I understand the family's wish to have
11 their father's legacy and the role he played in that school
12 maintained in a permanent fashion.

13 But I'm just trying to understand how through
14 discovery you can hope to show that he -- when it doesn't say
15 as the school has released it, it doesn't say so long as you
16 leave my name on there you can have this money. It doesn't
17 say that. And that's the thing I'm struggling with.

18 I understand that because the school's technically
19 not named that there's a question of fact as to whether that's
20 what he would have intended. So you know, I'll deny the
21 motion without prejudice to renew it at a later date, because
22 for me a lot of what you're talking about here to me, it just
23 -- it doesn't show that he only intended to do this if they
24 honored him. The fact that he says if there's no mortgage,
25 then scholarships, to me demonstrates an intent to educate

1 Jewish children.

2 And here's the school, the Jewish school that will
3 educate Jewish children. And I want this -- that's what I
4 want. I want to educate Jewish children.

5 And I think that people are getting hung up on this
6 idea that Mr. Schwartz somehow only wanted to do that if in
7 the course of educating these children his name was somehow
8 prominent.

9 MR. FREER: And I know Your Honor set a mountain for me
10 to climb, but I get to climb the mountain with the evidence.
11 I also get -- we will also have an opportunity to show the
12 Court the differences in this type of naming versus other
13 situations where courts have applied the Side Pray --

14 THE COURT: Right.

15 MR. FREER: -- Doctrine.

16 THE COURT: Okay.

17 MR. COUVILLIER: Your Honor, just one point of
18 consideration for the Court. Is my -- the school's a non-
19 profit. We're expending attorney's fees here is to obtain
20 money for a scholarship for Jewish children.

21 THE COURT: Exactly.

22 MR. COUVILLIER: I have not heard any discovery that
23 needs to be had that hasn't already been introduced. Your
24 Honor, I would submit we -- I would submit to convert the
25 motions for a motion for summary judgment and ask the Court to

1 enter judgment in our favor.

2 THE COURT: Okay.

3 MR. FREER: Well, then at that point I would get to do a
4 56F.

5 THE COURT: Right. So how much time do you think you
6 need? Because --

7 MR. FREER: Probably three months.

8 THE COURT: I was going to say 90 days because that's --
9 it seems to me like it's this really narrow issue. I
10 understand all that went on, all the drama in the 20 years.
11 And they fired this board, and they hire -- they fired Ms.
12 Lubin. I mean, that was an interesting litigation. I can't
13 tell you how many people I knew that were involved in that
14 litigation.

15 I mean, it's just -- if somebody can come in here
16 and convince me that Milton Schwartz only wanted to educate
17 Jewish children so long as he got the credit for it, okay. I
18 mean, I don't think that's what Mr. Schwartz wanted to do. I
19 think he wanted to educate Jewish children. I don't think he
20 wanted his own permanent legacy or he would have put that in
21 there. So but you know, you can do your discovery and we'll
22 -- so it's without prejudice to be renewed but it would
23 probably be renewed I think in a summary judgment.

24 So 90 days for discovery and at the conclusion of
25 that then the school can re-notice their motion.

1 [Court and Clerk confer]

2 THE COURT: So then how much time after that? Like 30
3 days after that? Because if we've got 30 days of discovery
4 and then -- so we'd be looking at the probate calendars in
5 February are the 10th and the 24th.

6 So you know, the 30 days for discovery is January
7 and then to renew -- for the school to renew the motion.

8 What about the accounting? Do you have anything to
9 say about the -- your position is until such time as it's
10 determined in fact they're entitled to this money, this is
11 premature?

12 MR. FREER: And in fact --

13 THE COURT: Okay, thanks.

14 MR. FREER: -- at the last -- yeah. And at the last
15 hearing we had produced the accounting and they've got issues
16 with the accounting, but it's premature.

17 MR. COUVILLIER: Your Honor, at this point I would say
18 we're doing the 90 days. The accounting one is I think at our
19 level of standard to get the accounting. We've proved that we
20 do have standing.

21 THE COURT: Correct.

22 MR. COUVILLIER: We're devisee, it's clearly stated under
23 the statute that we have the standing for it.

24 THE COURT: So you want the same period of time to do
25 discovery --

1 MR. COUVILLIER: Yes, Your Honor.

2 THE COURT: -- on the accounting? Okay, fine.

3 MR. COUVILLIER: Thank you, Your Honor.

4 THE COURT: So we'll do discovery on both the accounting
5 and the issue of is this only going to go to the school if
6 they put his name on it?

7 [Court and Clerk confer]

8 MR. COUVILLIER: We'll prepare the order, Your Honor.

9 THE COURT: Okay.

10 MR. COUVILLIER: Thank you.

11 [Court and Clerk confer]

12 MR. FREER: So do we have a status check. Is that what
13 you were --

14 THE COURT: I think it was just a status check on that
15 because -- yeah. We're -- they'd move to dismiss the
16 Executor's petition. And I'm not dismissing it. I'm saying
17 I'm denying it without prejudice to be renewed after 90 days
18 of discovery.

19 THE CLERK: Okay. So I think like three things on --

20 THE COURT: Right, yeah. The Executor's petition there's
21 actually -- there wasn't anything actually on. I mean, it's
22 -- the motion was to dismiss the Executor's petition.

23 MR. FREER: Right. We had the petition --

24 MR. COUVILLIER: That's correct.

25 MR. FREER: -- on at the last calendar and then we

1 continued that pending the motion to dismiss.

2 THE CLERK: So the status check is February 25th, 9:00.

3 MR. COUVILLIER: Thank you.

4 THE COURT: Okay.

5 MR. FREER: Thank you, Your Honor. Can I get the order
6 run by me please?

7 MR. COUVILLIER: Absolutely. February 25th is the status
8 check?

9 MR. FREER: 24.

10 MR. COUVILLIER: 24, thank you.

11 THE CLERK: No, 25.

12 THE COURT: 25, yeah.

13 MR. FREER: 25th, I had it wrong. I apologize.

14 THE COURT: Tuesday.

15 MR. COUVILLIER: Tuesday February 25th.

16 MR. FREER: Not the first time I've been wrong.

17 MR. COUVILLIER: Thank you.

18 MR. FREER: Thank you, Your Honor.

19 THE COURT: Are you going to do -- is somebody going to
20 do an order?

21 MR. COUVILLIER: Yeah. We'll send it --

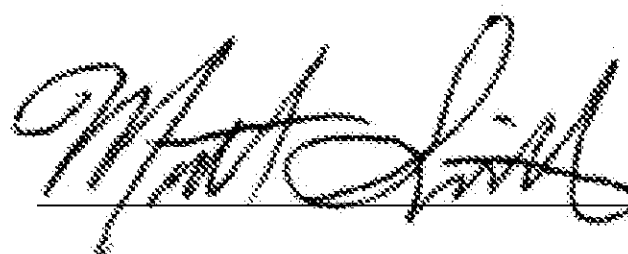
22 MR. FREER: Yeah.

23 MR. COUVILLIER: -- and I'll run it by Mr. Freer.

24 THE COURT: Okay, thanks. Thanks.

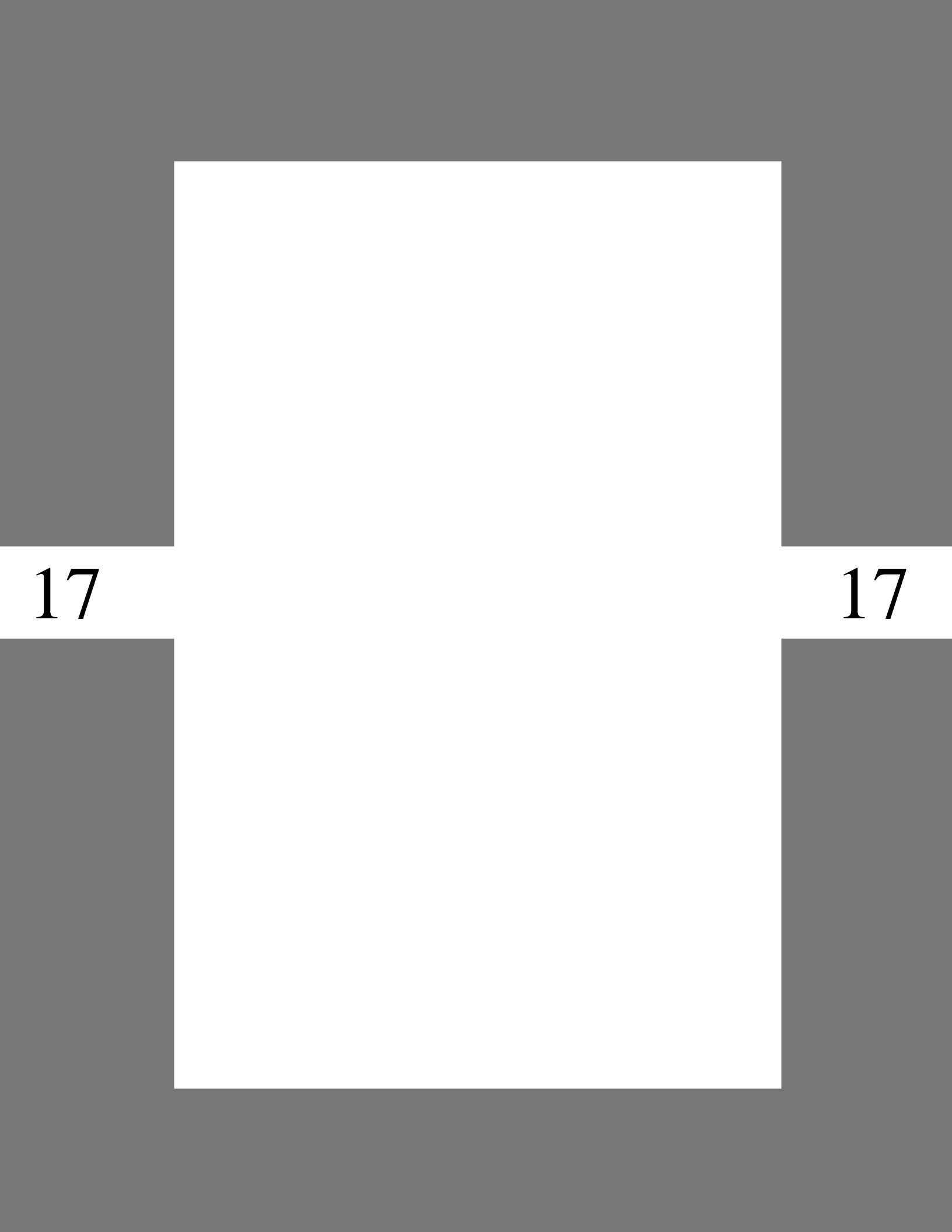
25 [Proceedings Concluded at 10:42 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.

A handwritten signature in black ink, appearing to read 'Matthew Smith', is written over a horizontal line.

Matthew Smith

Certified Transcriber



17

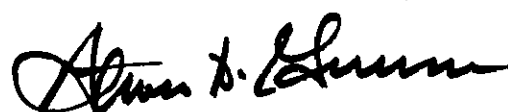
17

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1 **NEOJ**

2 Elizabeth Brickfield (SBN #6236)
3 ebrickfield@lionelsawyer.com
4 Maximiliano D. Couvillier, III (SBN #7661)
5 mcouvillier@lionelsawyer.com
6 Ketan D. Bhirud (SBN #10515)
7 kbhirud@lionelsawyer.com
8 LIONEL SAWYER & COLLINS
9 1700 Bank of America Plaza
10 300 South Fourth Street, Suite 1700
11 Las Vegas, Nevada 89101
12 (702) 383-8888 (Telephone)
13 (702) 383-8845 (Fax)

14 Attorneys for The Dr. Miriam and
15 Sheldon G. Adelson Educational Institute



CLERK OF THE COURT

DISTRICT COURT

Clark COUNTY, NEVADA

16 In the Matter of the Estate of

17 MILTON I. SCHWARTZ,

18 Deceased

Case No. P061300
Dept. No.: 26/Probate

**NOTICE OF ENTRY OF ORDER
DENYING ADELSON CAMPUS'
MOTION TO DISMISS EXECUTOR'S
PETITION FOR DECLARATORY
RELIEF WITHOUT PREJUDICE &
ALLOWING LIMITED DISCOVERY**

19 PLEASE TAKE NOTICE that an **ORDER DENYING ADELSON CAMPUS'**
20 **MOTION TO DISMISS EXECUTOR'S PETITION FOR DECLARATORY RELIEF**
21 **WITHOUT PREJUDICE & ALLOWING LIMITED DISCOVERY** was entered on this
22 Court's docket on November 12, 2013. A copy of the same is attached.

23 Dated: November 13, 2013.

24 LIONEL SAWYER & COLLINS

25 By: 

26 Elizabeth Brickfield (SBN #6236)
27 Maximiliano D. Couvillier, III (SBN #7661)
28 Ketan D. Bhirud (SBN #10515)

Attorneys for The Dr. Miriam and Sheldon G.
Adelson Educational Institute

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 13, 2013, I deposited in the United States Mail at Las Vegas, Nevada, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING ADELSON CAMPUS' MOTION TO DISMISS EXECUTOR'S PETITION FOR DECLARATORY RELIEF WITHOUT PREJUDICE & ALLOWING LIMITED DISCOVERY** enclosed in a sealed envelope upon which first class postage was paid, addressed as follows:

Steven J. Oshins, Esq.
OSHINS & ASSOCIATES
645 Village Center Circle
Las Vegas, NV 89134

Robert P. Dickerson, Esq.
THE DICKERSON LAW GROUP
1745 Village Center Circle
Las Vegas, NV 89134

Attorneys for Executor

Attorneys for Abigail Richlin Schwartz

Eileen Joanna Zarin
9 Steven Lane
King Point, NY 11024

Robin Sue Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Samuel Schwartz
351 Woodlake Drive
Marlton, NJ 08053

Michael Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Zachary Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

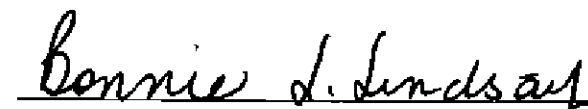
Benjamin Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

Joshua Landsburg
1028 Bobwhite Drive
Cherry Hill, NJ 08003

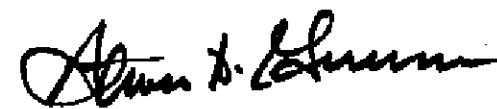
Frances A. Martel
235 Vista Del Parque
Redondo Beach, CA 90277

The Milton I. Schwartz Revocable Family
Trust, A. Jonathan Schwartz, Trustee
2293 Duneville Street
Las Vegas, NV 89146

Medicaid Estate Recovery
1050 E. William Street, Suite 435
Carson City, NV 89701-3199


An Employee of Lionel Sawyer & Collins

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CLERK OF THE COURT

ORDR

Elizabeth Brickfield (SBN #6236)
ebrickfield@lionelsawyer.com
Maximiliano D. Couvillier, III (SBN #7661)
mcouvillier@lionelsawyer.com
Ketan D. Bhirud (SBN #10515)
kbhirud@lionelsawyer.com
LIONEL SAWYER & COLLINS
1700 Bank of America Plaza
300 South Fourth Street, Suite 1700
Las Vegas, Nevada 89101
(702) 383-8888 (Telephone)
(702) 383-8845 (Fax)

Attorneys for The Dr. Miriam and
Sheldon G. Adelson Educational Institute

DISTRICT COURT

Clark COUNTY, NEVADA

In the Matter of the Estate of

MILTON I. SCHWARTZ,

Deceased

Case No. P061300
Dept. No.: 26/Probate

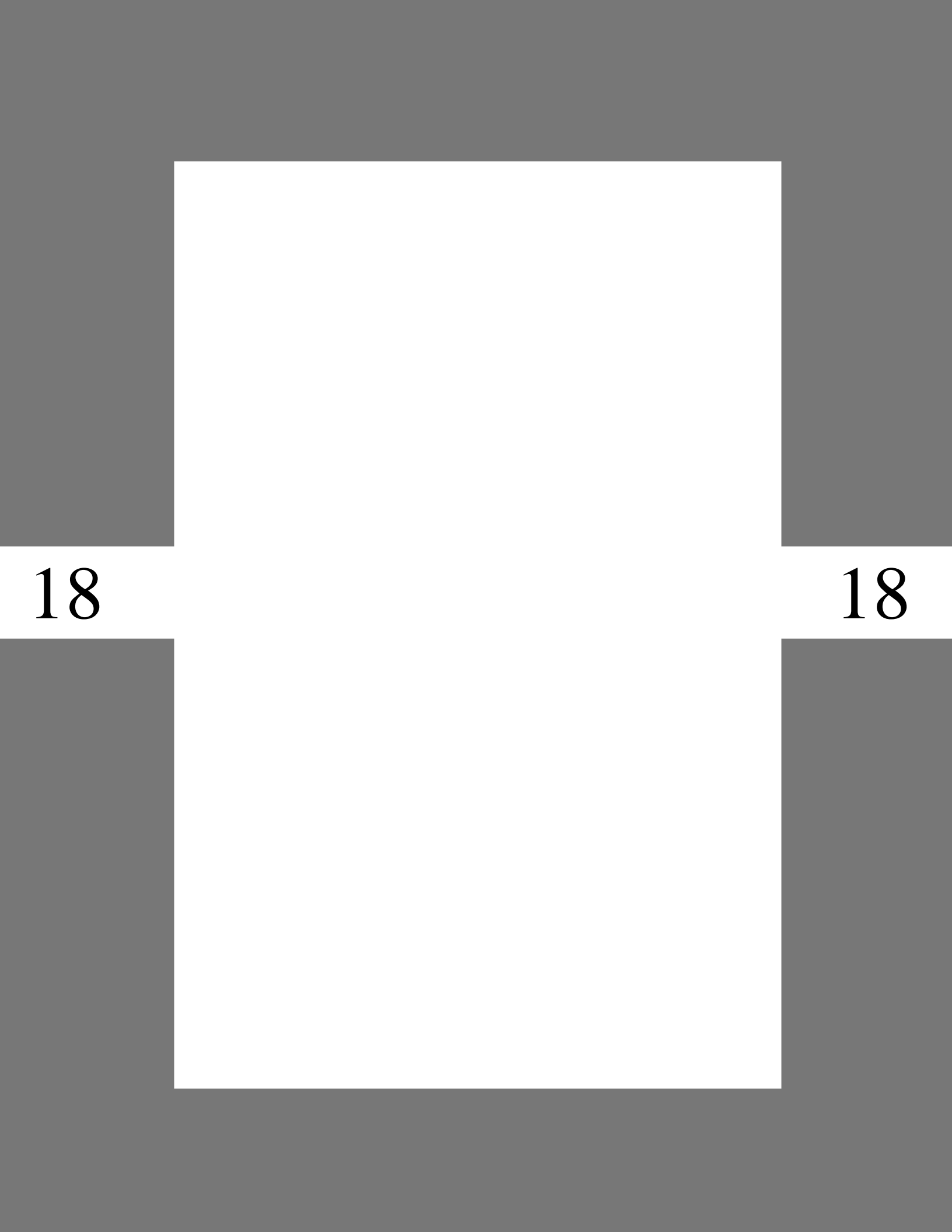
**ORDER DENYING ADELSON CAMPUS'
MOTION TO DISMISS EXECUTOR'S
PETITION FOR DECLARATORY
RELIEF WITHOUT PREJUDICE &
ALLOWING LIMITED DISCOVERY**

On October 8, 2013, the Court heard the following matters: (1) The Motion to Dismiss the Executor's petition for declaratory relief ("Motion to Dismiss") by Dr. Miriam and Sheldon G. Adelson Educational Institute (the "Adelson Campus"), devisee under the Will of the Decedent in the above-referenced Estate; and (2) the Adelson Campus' Preliminary Objection to Accounting. Maximiliano D. Couvillier III appeared on behalf of the Adelson Campus and Alan D. Freer appeared on behalf of the Executor A. Jonathan Schwartz ("Executor").

The Court has reviewed the record, all papers on file, considered the argument of counsel, and good cause appearing, it is **ORDERED** as follows:

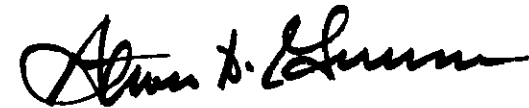
1. The Adelson Campus' Motion to Dismiss is **DENIED WITHOUT PREJUDICE** and may be renewed as a motion for summary judgment after the conclusion of the limited discovery provided herein;

000479



18

18



CLERK OF THE COURT

DMJT
MARK A. SOLOMON, ESQ.
Nevada State Bar No. 00418
msolomon@sdfnvlaw.com
ALAN D. FREER, ESQ.
Nevada State Bar No. 7706
afreer@sdfnvlaw.com
STEVEN E. HOLLINGWORTH, ESQ.
Nevada State Bar No. 7753
shollingworth@sdfnvlaw.com
SOLOMON DWIGGINS & FREER
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
Facsimile: (702) 853-5485

Attorneys for A. Jonathan Schwartz

DISTRICT COURT

COUNTY OF CLARK, NEVADA

In the Matter of the Estate of

MILTON I. SCHWARTZ,

Deceased.

Case No. P061300

Dept. No.: 26/Probate

DEMAND FOR JURY TRIAL

Pursuant to Nev. R. Civ. P. ("NRCP") Rule 38(b) and the Jury Demand initially requested in the Petition for Declaratory Relief previously filed on May 28, 2013, Respondent, A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz ("Executor"), by and through his attorneys the law office of Solomon Dwiggins & Freer, Ltd., hereby reaffirms the request for trial by jury in the above-entitled matter. Entry of order setting this case for trial has not been entered in this action. Submitted concurrently with this Demand for Jury Trial is a check in the amount of \$400.00 as a

///

///

///

///

1 deposit for jurors' fees as required by NRCP 38(d).

2 DATED this 27 day of November, 2013.

3
4 SOLOMON DWIGGINS & FREER, LTD.

5
6 By: 

MARK A. SOLOMON, ESQ.

Nevada State Bar No. 00418

msolomon@sdfnvlaw.com

ALAN D. FREER, ESQ.

Nevada State Bar No. 7706

afreer@sdfnvlaw.com

STEVEN E. HOLLINGWORTH, ESQ.

Nevada State Bar No. 7753

shollingworth@sdfnvlaw.com

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

Telephone: (702) 853-5483


Facsimile: (702) 853-5485

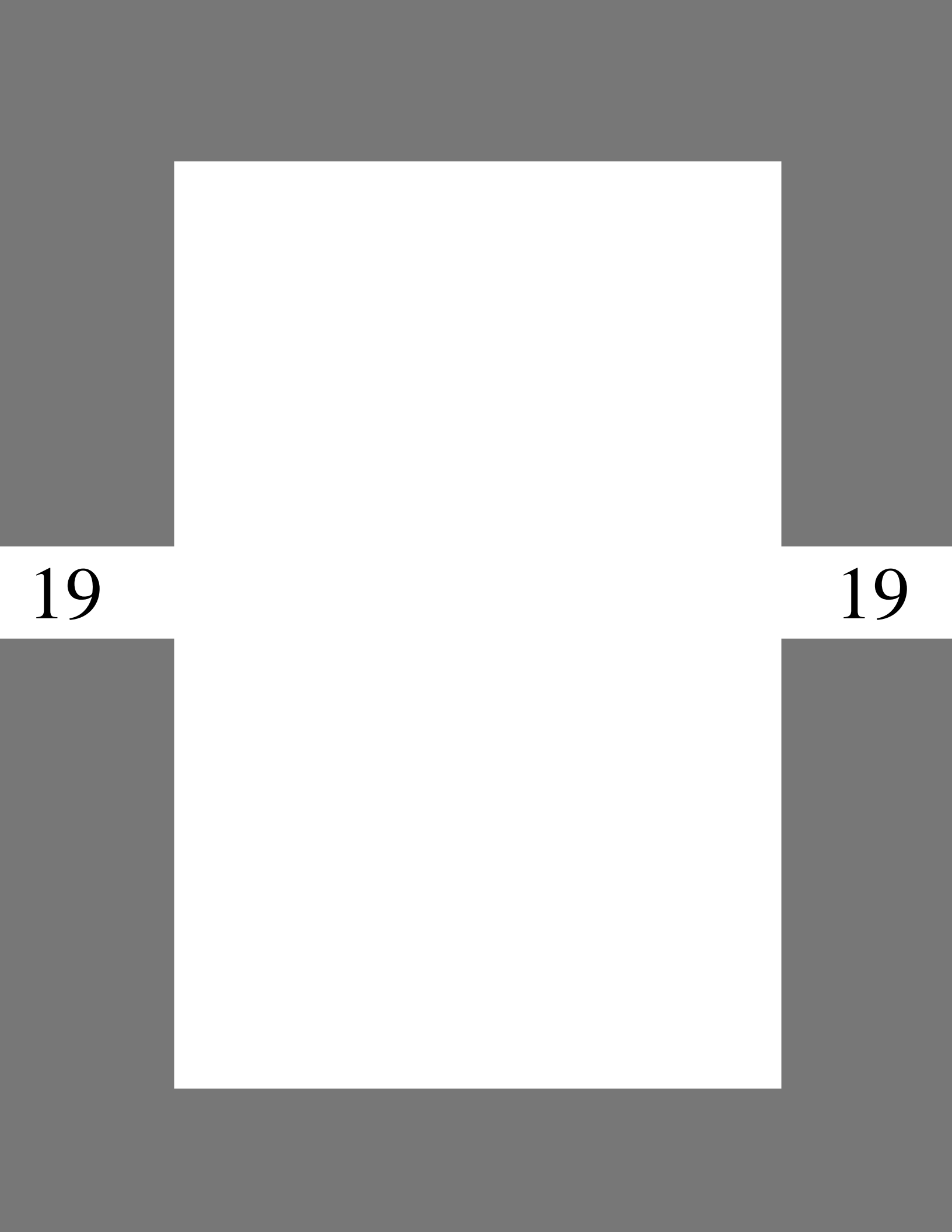
Attorneys for A. Jonathan Schwartz

14
15 **CERTIFICATE OF MAILING**

16 I HEREBY CERTIFY that on November 27, 2013, I deposited a true and correct copy of the
17 **DEMAND FOR JURY TRIAL** in the United States Mail, postage prepaid, to the following
18 individuals:

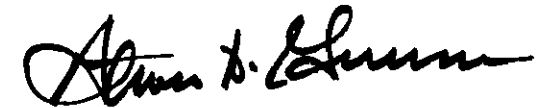
19 Elizabeth Brickfield, Esq.
20 Maximiliano D. Couvillier, III, Esq.
21 LIONEL SAWYER & COLLINS
22 1700 Bank of America Plaza
300 South Fourth Street, Suite 1700
Las Vegas, NV 89101

23
24 
25 An employee of Solomon Dwiggins & Freer, Ltd.



19

19



CLERK OF THE COURT

MOT
MARK A. SOLOMON, ESQ.
Nevada State Bar No. 00418
msolomon@sdfnvlaw.com
ALAN D. FREER, ESQ.
Nevada State Bar No. 7706
afreer@sdfnvlaw.com
STEVEN E. HOLLINGWORTH, ESQ.
Nevada State Bar No. 7753
shollingworth@sdfnvlaw.com
SOLOMON DWIGGINS & FREER
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
Facsimile: (702) 853-5485

Attorneys for Respondent, A. Jonathan Schwartz

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of)	Case No. P061300
)	Department No. 26/Probate
MILTON I. SCHWARTZ,)	
)	
Deceased.)	Date of Hearing: 12 / 20 / 13
)	Time of Hearing: 9:00 a.m.

MOTION FOR RECONSIDERATION

A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz ("Executor"), by and through his attorneys, Mark A. Solomon, Alan D. Freer, and Steven E. Hollingworth of the law firm of Solomon Dwiggins & Freer, Ltd., hereby files his Motion for Reconsideration of this Court's Order Denying Adelson Campus' Motion to Dismiss Executor's Petition for Declaratory Relief Without Prejudice & Allowing Limited Discovery entered November 13, 2013 ("Order").

By entry of its Order, this Court has inadvertently denied the Estate of Milton I. Schwartz ("Estate") due process by limiting the scope of discovery to only one of the six claims set forth in the Estate's Petition for Declaratory Relief, namely the limitation that discovery occur only "as to whether the purpose and condition of the bequest under Section 2.3 of the Will was for the school to be named 'The Milton I. Schwartz Academy' in perpetuity." The Court's Order needs to be

1 expanded to allow the Estate to conduct discovery on issues such as the conduct, promises and
2 representations made by the Hebrew Academy to the Decedent. Without such discovery, the Estate
3 will be unable to have a meaningful opportunity to present its case regarding the remaining claims
4 for fraud in the inducement, breach of contract and revocation of Milton's inter vivos gifts, voiding
5 of bequest due to mistake and offset of bequest.

6 This Motion is based upon the paper and pleadings on file, the following Memorandum of
7 Points and Authorities, and any oral argument at the time of the hearing of this matter.

8
9 DATED this 2nd day of December, 2013.

10 SOLOMON DWIGGINS & FREER

11 By:  #9619 For

12 MARK A. SOLOMON, ESQ., NSB #00418

13 ALAN D. FREER, ESQ., NSB #7706

14 STEVEN E. HOLLINGWORTH, ESQ., NSB #7753

15 SOLOMON DWIGGINS & FREER

16 9060 West Cheyenne Avenue

17 Las Vegas, Nevada 89129

18 Telephone: (702) 853-5483

19 Facsimile: (702) 853-5485

20 *Attorneys for Respondent, A. Jonathan Schwartz*

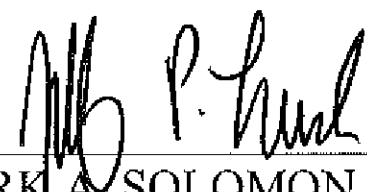
NOTICE OF MOTION

TO: The above-named parties; and
TO: Their respective counsel of record

PLEASE TAKE NOTICE that the undersigned will bring the **MOTION FOR RECONSIDERATION** before this Court at 200 Lewis Avenue, Las Vegas, Nevada 89101, on the 20th day of December, 2013, at the hour of 9:00 a.m./p.m., or as soon thereafter as counsel can be heard.

DATED this 2nd day of December, 2013.

SOLOMON DWIGGINS & FREER

By:  #9019 For
 MARK A. SOLOMON, ESQ., NSB #00418
 ALAN D. FREER, ESQ., NSB #7706
 STEVEN E. HOLLINGWORTH, ESQ., NSB #7753
 9060 West Cheyenne Avenue
 Las Vegas, Nevada 89129
 Telephone: (702) 853-5483
 Facsimile: (702) 853-5485
Attorneys for Respondent, A. Jonathan Schwartz

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND STATEMENT OF FACTS**

3 Milton I. Schwartz ("Milton") made lifetime gifts and a bequest to the Hebrew Academy, and
4 in exchange the Hebrew Academy promised to bear his name in perpetuity: "Milton I. Schwartz
5 Hebrew Academy." Within months after Milton's death, the name of the "Milton I. Schwartz
6 Hebrew Academy (the Hebrew Academy and Milton I. Schwartz Hebrew Academy are hereinafter
7 collectively referred to as the "Hebrew Academy") changed to "The Dr. Miriam and Sheldon G.
8 Adelson Educational Institute ("Adelson Campus")."

9 The Estate has filed a Petition for Declaratory Relief against the Adelson Campus asserting
10 the following claims for relief: (1) Construction of Will; (2) Fraud in the Inducement; (3) Bequest
11 Void for Mistake; (4) Offset of Bequest Under Will; (5) Breach of Contract; and (6) Revocation
12 of intervivos Gifts made during Milton's lifetime. See Petition for Declaration of Relief,
13 previously filed May 28, 2013. In support of the Petition for Declaratory Relief, the Estate
14 introduced evidence that Milton's bequest in his Will was not solely of a gratuitous nature, but was
15 part of a legacy for the specific purpose of the Hebrew Academy bearing his name. This bequest
16 concluded a lifetime of giving to the Hebrew Academy in consideration for it bearing his name.

17 On or around June 2, 2013, the Adelson Campus filed a Motion to Dismiss Executor's
18 Petition for Declaratory Relief. The Motion sought to dismiss all of the claims set forth in the
19 Petition for Declaratory Relief. At the hearing, the Court denied the Motion to Dismiss and
20 provided both Parties an opportunity to conduct discovery for a limited period. While the Court
21 specifically mentioned the issue of conducting discovery as to the naming rights at the hearing, the
22 Court denied the Motion to Dismiss in its entirety, and allowed the Petition for Declaratory Relief
23 to proceed.

1 Thereafter, the Adelson Campus submitted an Order that limits discovery to only one of the
2 claims set forth in the Petition for Declaratory Relief, thereby preventing the Estate from gathering
3 evidence to support the remaining claims. The Estate submitted a competing order with an
4 explanation as to why its proposed order was correct, *see* Correspondence dated October 16, 2013,
5 and October 18, 2013, attached hereto as **Exhibits 1** and **2** respectively, but the Court entered the
6 Adelson Campus' Order on November 12, 2013, which provides in part:
7

- 8 1. The Adelson Campus' Motion to Dismiss is DENIED WITHOUT
9 PREJUDICE and may be renewed as a motion for summary judgment after the
10 conclusion of the limited discovery provided herein;
- 11 2. The Adelson School has standing under the Last Will and Testament ("Will")
12 of Milton I. Schwartz dated February 5, 2004;
- 13 3. The Parties may conduct the following limited discovery, which must be
14 completed on or before January 6, 2014:
 - 15 a. The Adelson Campus may conduct discovery concerning the
16 Accounting filed by the Executor on May 29, 2013; and
 - 17 b. The Executor may conduct discovery as to whether the purpose and
18 condition of the bequest under Section 2.3 of the Will was for the
19 school to be named "The Milton I. Schwartz Academy" in perpetuity.
20 *See* Notice of Entry of Order, previously filed November 13, 2013,
21 attached hereto as **Exhibit 3**. (Emphasis Added).

22 The Estate only seeks the reconsideration of Section 3(b) of the Order because such provision
23 improperly limits his right to conduct discovery to the sole issue of whether the purpose and
24 condition of the bequest under Section 2.3 of Milton's Will was for the Hebrew Academy to be
25 named "The Milton I. Schwartz Academy" in perpetuity. The limitation on the Estate's right to
26 conduct discovery is surprising as this Court never stated that it was going to limit discovery at the
27 October 8, 2013, hearing. To the contrary, this Court made it clear that it was going to deny the
28 pending Motion to Dismiss and allow the Estate to conduct discovery.

1 Denying the Estate the right and opportunity to conduct discovery on the aforementioned
2 claims deprives the Estate of due process and the ability to litigate such claims, especially since
3 the Estate has requested a jury trial on said claims. See Petition for Declaratory Relief, previously
4 filed on May 28, 2013, and Demand for Jury Trial, previously filed November 27, 2013. Indeed,
5 what is at stake is not merely whether the Adelson Campus is entitled to the full \$500,000 bequest
6 under the Will, without offset, but also whether the Adelson Campus is entitled to retain the
7 substantial gifts Milton made beginning in 1989 until his death. All of these gifts were made in
8 reliance on the Hebrew Academy's representations that it would bear his name in perpetuity, as
9 well as the Hebrew Academy's detailed promises to include his name in signage and written
10 material. Milton's intent cannot be correctly understood without reference to the history of the
11 Hebrew Academy, the Hebrew Academy's repeated promises that it would bear his name in
12 perpetuity, and the Hebrew Academy's deep personal importance to him.

13
14
15
16 Once again, by entry of its Order, this Court has inadvertently denied the Estate due process
17 by limiting the scope of discovery to only one of the six claims set forth in the Estate's Petition for
18 Declaratory Relief, namely the limitation that discovery occur only "as to whether the purpose and
19 condition of the bequest under Section 2.3 of the Will was for the school to be named 'The Milton
20 I. Schwartz Academy' in perpetuity." The Court's Order needs to be expanded to allow the Estate
21 to conduct discovery on issues such as the conduct, promises and representations made by the
22 Hebrew Academy to the Decedent. Without such discovery, the Estate will be unable to have a
23 meaningful opportunity to present its case regarding the remaining claims for fraud in the
24 inducement, breach of contract and revocation of gift, voiding of bequest due to mistake, and offset
25 of bequest. For these reasons, and those set forth below, this Court should reconsider its Order
26 and allow the Estate the opportunity to conduct discovery regarding its claims for relief.

II. LEGAL STANDARD

A party may move a court to amend its findings and conclusions pursuant to NRCP 52(b) and/or NRCP 59(e).¹ Likewise, EDCR 2.24(b) states a party may seek reconsideration of a ruling of the court. Additionally, a court has the inherent authority to reconsider its prior orders.² A Court properly reconsiders its order where “there is reasonable probability that the court may have arrived at an erroneous conclusion, or overlooked some important question, which was necessary to be determined in order to arrive at a full and proper understanding of the case.”³

Pursuant to NRCP 26(b)(1), parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. The fundamental purpose of due process is to give “both parties ‘a meaningful opportunity to present their case.’” *J.D. Construction v. IBEX Int’l Group*, 126 Nev.-----, -----, 240 P.3d 1033, 1040 (2010) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 349, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)). A denial of an opportunity to conduct discovery violates a parties’ due process rights.

¹ NRCP 52(b) states “[u]pon a party’s motion filed not later than 10 days after service of written notice of entry of judgment, the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59. When findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting the findings may later be questioned whether or not in the district court the party raising the question objected to the findings, moved to amend them, or moved for partial findings.” NRCP 59(e) states “[a] motion to alter or amend the judgment shall be filed no later than 10 days after service of written notice of entry of the judgment.”

² *Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975) (Expressly authorizing the district court “for sufficient cause shown, amend, correct, resettle, modify or vacate, as the case may be, an order previously made and entered on the motion in the progress of the cause or proceeding”); see also *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244 (1976).

³ *Parks v. Western Union Telegraph Co.*, 45 Nev. 411, 204 P. 884, 885 (1922) (Citations omitted).

III. LEGAL ARGUMENT

A. The Order Precludes the Estate from Conducting Discovery Regarding its Second Claim for Relief: Fraud in the Inducement.

The Court inadvertently arrived at an erroneous conclusion in Section 3(b) of the Order thereby impeding the Estate's ability to conduct discovery regarding the misrepresentations made to Milton by the Hebrew Academy. The Hebrew Academy tactically waited until after Milton's death to remove his name from its corporate documents, and ultimately the Hebrew Academy, despite the fact that its Board maintained its assurances to Milton, as early as 1996, that the Hebrew Academy would bear his name in perpetuity. For this reason, the Estate asserted a fraud in the inducement claim seeking to invalidate the purported gift from Milton to the Hebrew Academy and for an "award for damages caused by the Hebrew Academy's fraudulent inducement of Milton's lifetime and testamentary gifts." As written, the Order precludes the Estate from conducting any discovery regarding the claims asserted in its Petition for Declaratory Judgment. Importantly, this claim focuses on the conduct of the board members and officers/directors of the Hebrew Academy, which cannot be obtained under the current order. Specifically, the Estate intends to conduct discovery on issues pertaining to the Hebrew Academy's actions, internal documents and/or discussions, including, but not limited to the following the following actions and/or issues:

1. In August 1989, the Hebrew Academy amended its bylaws: "The name of this corporation is the Milton I. Schwartz Hebrew Academy ... and shall remain so in perpetuity." See Bylaws of The Milton I. Schwartz Hebrew Academy, attached hereto as **Exhibit 4**.

- 1 2. In or around 1992, during a dispute between Milton and the Hebrew Academy's
2 successor board, the Hebrew Academy dropped Milton's name and Milton ceased
3 making donations to the school. *See Spreadsheet of Contributions, attached hereto*
4 as **Exhibit 5**.
- 5
6 3. The Hebrew Academy's headmaster and board member, Tamar Lubin (who was a
7 defendant in Milton's prior litigation with the Academy): "Milton Schwartz became
8 elected to the Board of Trustees of the Hebrew Academy after making a large gift
9 to the school. Also in consideration of this grant, the school has borne his name
10 since 1989.... I personally solicited Mr. Schwartz's donation to the Academy, the
11 very donation resulting in the school being named for him." *See Affidavit of Tamar*
12 Lubin aka Tamar Lubin Saposnik at ¶¶ 19, 21, attached hereto as **Exhibit 6**.
- 13
14 4. Hebrew Academy board member Michael Novick acknowledged that Milton's
15 initial gift to the school of \$500,000 was in consideration for it bearing his name and
16 that when litigation arose and his name was removed, the Hebrew Academy Head
17 "offered to return the \$500,000 to Milton I. Schwartz." *See Supplemental Affidavit*
18 of Michael Novick, attached hereto as **Exhibit 7**.
- 19
20 5. Acknowledgment from Hebrew Academy board member Lenard E. Schwartzer to
21 Milton that "It's your school, it has your name on it forever...." *See Letter from*
22 Lenard E. Schwartzer dated July 17, 1992, attached hereto as **Exhibit 8**.
- 23
24 6. Acknowledgment from Hebrew Academy board member Ira Steinberg (also a
25 defendant in Milton's prior litigation with the Academy) that Milton referred to the
26 school as "my school." *See Affidavit of Ira David Sternberg, attached hereto as*
27 **Exhibit 9**.
- 28

- 1 7. In or about 1996, the Hebrew Academy promised Milton in writing to:
- 2 a. Restore Hebrew Academy's name to "Milton I. Schwartz Hebrew
- 3 Academy";
- 4 b. Amend the Articles to restore name to Milton I. Schwartz Hebrew Academy;
- 5 c. Restore marker in front of Academy identifying it as the Milton I. Schwartz
- 6 Hebrew Academy;
- 7 d. Change stationary/letter head to identify it as Milton I. Schwartz Hebrew
- 8 Academy;
- 9 e. Display the full name of Milton I. Schwartz Hebrew Academy whenever
- 10 practicable and include on logo. *See* Letter from The Hebrew Academy to
- 11 dated May 23, 1996, attached hereto as **Exhibit 10**.
- 12
- 13
- 14 8. Following this promise, the Hebrew Academy again amended its articles and bylaws
- 15 to recognize: "The name of the Corporation is the Milton I. Schwartz Hebrew
- 16 Academy and will remain so in perpetuity." *See*, Bylaws of the Milton I. Schwartz
- 17 Hebrew Academy, attached hereto as **Exhibit 11**.
- 18
- 19 9. In or around 2006-07, prior to Milton's death the Adelsons pledged \$25 million to
- 20 build a high school on the site of the Hebrew Academy. Milton, the Hebrew
- 21 Academy and Mr. Adelson agreed that the high school would be called the "Adelson
- 22 School," while grades K-8 would continue to be known as the Milton I. Schwartz
- 23 Hebrew Academy. *See* Petition at p. 4, lines 16-20, and Gala Announcement,
- 24 attached hereto as **Exhibit 12**.
- 25
- 26
- 27
- 28

1 10. The Hebrew Academy continued to honor Milton's name and be recognized as the
2 Milton I. Schwartz Hebrew Academy, despite the generous donations of the
3 Adelsons. *See* Petition for Declaratory Relief at 5:1-11.

4
5 11. However, approximately (7) months after Milton's death, the Hebrew Academy
6 (unbeknownst to the Executor) amended its articles to drop Milton's name and
7 replace it with the Adelsons. *See id.*

8 12. Since Milton's death the Hebrew Academy has systematically erased Milton's name
9 and legacy:

- 10
11 a. The marker at the entrance to the property has been removed;
12 b. The name has been removed from letterhead and business cards;
13 c. The Hebrew Academy has not operated or held out to the public as anything
14 other than the Adelson Educational Campus;
15 d. The website does not refer to any part of school as the Milton I. Schwartz
16 Hebrew Academy; and
17 e. The Hebrew Academy's website lists the Adelson Educational Campus as
18 Lower, Middle, and Upper. *See* Reply to Objection to Accounting at 4:14 -
19 5:10.
20
21

22 Discovery on the aforementioned issues is necessary for the Estate to prove its Second
23 Claims for Relief: Fraud in the Inducement. Notwithstanding, the Order precludes the Estate from
24 seeking such discovery without violating this Court's Order. Consequently, the Estate respectfully
25 requests that this Court reconsider the Order so as to allow him to conduct the discovery regarding
26 such claim.
27
28

B. The Order Precludes the Estate from Conducting Discovery Regarding its Third Claim for Relief: Bequest Void for Mistake, and Fourth Claim for Relief: Offset of Bequest Under Will.

Section 3(b) of the Order precludes the Estate from conducting discovery regarding its Third and Fourth Claims for Relief. In light of the promises and misrepresentations and/or acts identified *supra*, the Estate respectfully requests a declaration from this Court that the \$500,000 bequest is void by reason of mistake or that the Estate has the right to offset the \$500,000 bequest in the amount of damages due from the Hebrew Academy. Contributions and bequests made under such false pretenses are *void*.⁴ The language of the Will itself, however clear and unambiguous it may appear, cannot resurrect a void bequest. Even if the bequest is not void by reason of fraud or misrepresentation, the Estate has the right to offset the \$500,000 bequest to the Hebrew Academy in the amount of the damages due from the Hebrew Academy.⁵ Once again, the Order precludes the Estate from seeking discovery regarding the Hebrew Academy's promises and misrepresentations without violating this Court's Order. Consequently, the Estate respectfully requests that this Court reconsider the Order so as to allow it to conduct the discovery necessary for its Third Claim for Relief: Bequest Void for Mistake and Fourth Claim for Relief: Offset of Bequest Under Will.

C. The Order Precludes the Estate from Conducting Discovery Regarding its Fifth Claim for Relief: Breach of Contract.

⁴ See, e.g., RESTATEMENT (THIRD) OF PROPERTY: WILLS AND OTHER DONATIVE TRANSFERS § 8.3(a); Restatement (Second) of Property, Donative Transfers §34.7, Comment d; Restatement (Third) of Restitution And Unjust Enrichment, §11(2) ("A donor whose gift is induced by invalidating mistake has a claim in restitution as necessary to prevent the unintended enrichment of the recipient.").

⁵ See, e.g., *Matter of Estate of Morrell*, 428 S.E.2d 697, 699 (N.C. Ct. App. 1993).

1 Section 3(b) of the Order is erroneous because it precludes the Estate's ability to conduct
2 necessary discovery regarding its breach of contract claim. The gifts and bequests made by Milton
3 were conditioned on the Hebrew Academy bearing his name perpetually and fulling its promises
4 as memorialized in its May 23, 1996, letter to: (1) Restore Hebrew Academy's name to "Milton
5 I. Schwartz Hebrew Academy"; (2) Amend the Articles to restore name to Milton I. Schwartz
6 Hebrew Academy; (3) Restore marker in front of Academy identifying it as Milton I. Schwartz
7 Hebrew Academy; (4) Change stationary/letter head to identify it as Milton I. Schwartz Hebrew
8 Academy; and (5) Display the full name of Milton I. Schwartz Hebrew Academy whenever
9 practicable and include on logo. The Hebrew Academy's agreement necessitates the Estate to
10 conduct discovery regarding the Hebrew Academy's actions, internal documents and/or
11 discussions; however, the Estate is precluded from doing so under the restrictive Order. For this
12 reason, this Court should reconsider its Order and allow the Estate the opportunity to conduct
13 discovery regarding its claim for breach of contract.
14
15
16

17 **D. The Order Precludes the Estate from Conducting Discovery Regarding its Sixth**
18 **Claim for Relief: Revocation of Inter Vivos Gifts by Milton.**

19 The Court inadvertently arrived at an erroneous conclusion in Section 3(b) of the Order
20 thereby impeding the Estate's ability to conduct discovery regarding the revocation of inter vivos
21 gifts by Milton. As indicated *supra*, the gifts and bequests made by Milton were conditioned on
22 the Hebrew Academy bearing his name perpetually and fulling its promises as memorialized in its
23 May 23, 1996 letter, which it has failed to do thereby entitling the Estate to the revocation of such
24 gifts. Just like its other claims however, the Estate needs to conduct discovery regarding the
25 Hebrew Academy's actions, internal documents and/or discussions. Milton's intent cannot be
26 correctly understood without reference to the history of the Hebrew Academy, the Hebrew
27
28

1 Academy's repeated promises that it would bear his name in perpetuity, and the Hebrew
2 Academy's deep personal importance to him.

3 IV. CONCLUSION

4
5 In light of the foregoing, the Estate respectfully requests that this Court grant the instant
6 Motion and allow it to conduct discovery regarding any and all claims alleged in its Petition for
7 Declaratory Relief. Such expanded discovery is necessary to afford the Estate due process and a
8 meaningful opportunity to present its case. Specifically, the Estate respectfully requests that this
9 Court strike Section 3(b) of the Order and insert the following language in such Order: "The
10 Executor may conduct discovery concerning any and all of his claims asserted in his Petition for
11 Declaratory Relief."
12

13 Finally, if this Court grants the instant Motion the Executor respectfully requests that this
14 Court extend the January 6, 2014, Discovery Deadline to allow the Estate adequate opportunity
15 to pursue discovery on its claims.
16

17 **DATED** this 2nd day of December, 2013.

18 SOLOMON DWIGGINS & FREER

19 By:  #9019
20 For

21 MARK A. SOLOMON, ESQ.

22 Nevada State Bar No. 00418

23 ALAN D. FREER, ESQ.

24 Nevada State Bar No. 7706

25 STEVEN E. HOLLINGWORTH, ESQ.

26 Nevada State Bar No. 7753

27 SOLOMON DWIGGINS & FREER

28 9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

Telephone: (702) 853-5483

Facsimile: (702) 853-5485

Attorneys for Respondent, A. Jonathan Schwartz

EXHIBIT “1”

SOLOMON DWIGGINS & FREER, LTD.

Attorneys At Law

Mark A. Solomon
Dana A. Dwiggins
Alan D. Freer
Brian K. Steadman

Cheyenne West Professional Centre
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Telephone: (702) 853-5483
Facsimile: (702) 853-5485

Brian P. Eagan
Robert D. Simpson
Jeffrey P. Luszeck
Ross E. Evans
Jordanna L. Evans
Alexander G. LeVeque
Joshua M. Hood
Bri F. Issurdutt

Of Counsel
Steven E. Hollingworth

Direct : (702) 589-3555
afreer@sdfnlaw.com

October 16, 2013

Via Hand Delivery

Gloria J. Sturman, Department XXVI
Regional Justice Center, Courtroom 3H
200 Lewis Avenue
Las Vegas, NV 89155

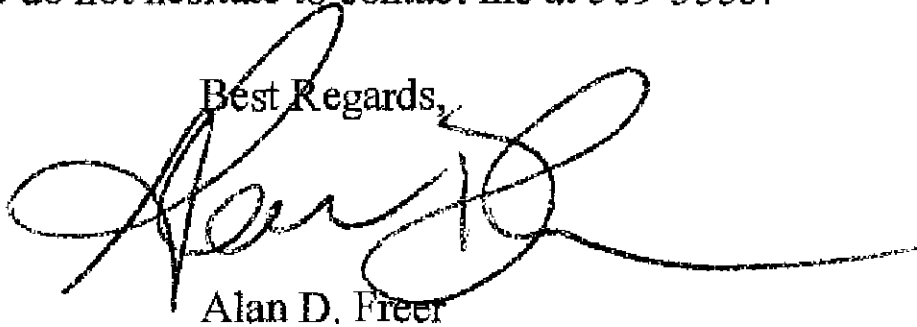
Re: ***In the Matter of the Estate of MILTON I. SCHWARTZ, Deceased***
Eighth Judicial District Court Case No. 07P061300

Dear Judge Sturman:

Enclosed please find a competing order in the above-referenced matter. This order is being presented due to disagreeing aspects of Mr. Couvillier's proposed order as such: (1) the Court did not confirm the Adelson Campus as a devisee under the will (that issue was neither before the court nor addressed during the hearing); and (2) the Court placed no limitation on the scope of discovery to be conducted, but only limited the time frame in which to conduct the same.

Should you have questions, please do not hesitate to contact me at 589-3555.

Best Regards,



Alan D. Freer

Enclosure

cc: Client
Maximiliano D. Couvillier III, Esq. (via email)

From: Thelma Pickett
To: [Maximiliano Couvillier \(mcouvillier@lonelsawyer.com\)](mailto:mcouvillier@lonelsawyer.com)
Bcc: [Alan Freer](#)
Subject: In the Matter of the Estate of MILTON I. SCHWARTZ
Date: Wednesday, October 16, 2013 3:23:00 PM
Attachments: [13 10-16 Ltr to Sturman re proposed order.pdf](#)

For your file.

1 ORDR**2 MARK A. SOLOMON, ESQ.****3 Nevada State Bar No. 00418****4 msolomon@sdfnlaw.com****5 ALAN D. FREER, ESQ.****6 Nevada State Bar No. 7706****7 afreer@sdfnlaw.com****8 STEVEN E. HOLLINGWORTH, ESQ.****9 Nevada State Bar No. 7753****10 shollingworth@sdfnlaw.com****11 SOLOMON DWIGGINS & FREER****12 9060 West Cheyenne Avenue****13 Las Vegas, Nevada 89129****14 Telephone: (702) 853-5483****15 Facsimile: (702) 853-5485****16 *Attorneys for Respondent, A. Jonathan Schwartz*****17 DISTRICT COURT****18 CLARK COUNTY, NEVADA****19 In the Matter of the Estate of****20 MILTON I. SCHWARTZ,****21 Deceased.****22) Case No. 07P061300****23) Dept. No. XXVI/Probate****24 ORDER DENYING MOTION TO DISMISS****25 WITHOUT PREJUDICE AND SETTING DISCOVERY DEADLINE****26 Date of Hearing: October 8, 2013****27 Time of Hearing: 9:00 a.m.**

28 On October 8, 2013, the Court heard the following matters: (1) The Motion to Dismiss the
29 Executor's petition for declaratory relief ("Motion to Dismiss") by Dr, Miriam and Sheldon G. Adelson
30 Educational Institute (the "Adelson Campus"), devisee under the Will of the Decedent in the
31 above-referenced Estate; and (2) the Adelson Campus' Preliminary Objection to Accounting. Maximiliano
32 D. Couvillier III appeared on behalf of the Adelson Campus and Alan D. Freer appeared on behalf of the
33 Executor A. Jonathan Schwartz ("Executor").

34 The Court has reviewed the record, all papers on file, considered the argument of counsel, and good
35 cause appearing, it is ORDERED as follows:

36 1. The Adelson Campus' Motion to Dismiss is DENIED WITHOUT PREJUDICE and may be
37 renewed as a motion for summary judgment after the conclusion of the discovery period provided herein;

1 2. The parties shall have ninety (90) days to conduct discovery, which must be completed on
2 or before January 6, 2014;

3 a. The Adelson Campus may conduct discovery concerning the Accounting filed by the
4 Executor on May 29, 2013; and

5 b. The Executor may conduct discovery concerning the Petition for Declaratory Relief.

6 IT IS SO ORDERED this _____ day of October, 2013.

7
8

DISTRICT COURT JUDGE

9 Respectfully submitted by:

10 SOLOMON DWIGGINS & FREER, LTD.

11
12 By 

Mark A. Solomon, Esq., State Bar No. 00418

13 Alan D. Freer, Esq., State Bar No. 7706

14 Steven E. Hollingworth, Esq., State Bar No. 7753

15 *Attorneys for Respondent A. Jonathan Schwartz*