

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.

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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 APPENDIX

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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

1 Schwartz.

2 Do you have any notes regarding
3 Mr. Schwartz' will?

4 A. No.

5 Q. Do you recall taking any notes at the
6 time that you witnessed Mr. Schwartz signing the
7 first codicil?

8 A. I did not take any notes.

9 Q. Do you recall exchanging any
10 correspondence with anyone regarding Mr. Schwartz's
11 will?

12 A. I never exchanged any correspondence
13 with anyone on Milton Schwartz' will.

14 Q. Did you exchange any correspondence with
15 anyone regarding Mr. Schwartz first codicil to his
16 will?

17 A. Repeat that, again, Counselor.

18 Q. Yes. Did you exchange any
19 correspondence with anyone regarding the first
20 codicil to Mr. Schwartz's will?

21 A. No, I never exchanged any correspondence
22 on that issue either.

23 (Exhibit B marked.)

24 BY MR. COUVILLIER:

25 Q. Mr. Shranko, did you know that

1 Mr. Schwartz had a will?

2 A. Yes.

3 Q. How did you know that?

4 A. When I was asked to witness signing the
5 first codicil.

6 Q. Have you ever seen a copy of
7 Mr. Schwartz' will?

8 A. No.

9 Q. I've handed to you what has been marked
10 as Exhibit Number B, which I represent to you is a
11 copy of Mr. Schwartz' will dated February 5th, 2004.
12 Have you ever seen this document?

13 A. No.

14 Q. Do you know who prepared this document?

15 A. No.

16 Q. Did Mr. Schwartz ever discuss his will
17 with you?

18 A. No.

19 Q. Did you ever discuss Mr. Schwartz' will
20 with anyone?

21 A. No.

22 Q. Did Mr. Schwartz ever discuss with you
23 that he intended to leave the Hebrew Academy in his
24 will?

25 A. Repeat that, Counselor.

1 Q. Did Mr. Schwartz, did you ever have any
2 discussions with Mr. Schwartz regarding
3 Mr. Schwartz' intention to leave the Hebrew Academy,
4 then known as the Milton I. Schwartz Hebrew Academy
5 a gift under his will?

6 A. No.

7 Q. Did Mr. Schwartz ever discuss with you
8 including the Hebrew Academy in his will?

9 A. Excuse me, Counselor, I didn't hear
10 that.

11 MR. COUVILLIER: Sure. Karen, could you
12 please read that back.

13 (The record is read by the reporter.)

14 THE WITNESS: No.

15 BY MR. COUVILLIER:

16 Q. Did Mr. Schwartz ever approach you for
17 any advice regarding his will?

18 A. No.

19 Q. Did anybody ever approach you regarding
20 any advice regarding Mr. Schwartz' will?

21 A. No.

22 Q. Did you ever give Mr. Schwartz any
23 advice regarding his will?

24 A. No.

25 Q. Do you know Marc Gordon, attorney Marc

1 BY MR. COUVILLIER:

2 Q. And you can still answer.

3 A. No.

4 Q. Was Ms. Robertson present at the time
5 that you executed this document, Exhibit Number C?

6 A. Yes, she was.

7 Q. Who else was present at that time?

8 A. I believe Cathy Olendorf and Maranda
9 Fisher was the notary.

10 Q. Was Mr. Schwartz present?

11 A. Yes.

12 Q. Anybody else?

13 A. Not that I could recall, Counselor.

14 Q. Are there any documents or anything that
15 I could show you to help refresh your recollection
16 about who might have been present at the time that
17 you signed this First Codicil?

18 A. I don't know, but I'll look at any
19 documents you want me to look at.

20 Q. Anything that comes up off the top of
21 your head?

22 MR. LUSZECK: Objection, form.

23 THE WITNESS: No.

24 BY MR. COUVILLIER:

25 Q. Did Mr. Schwartz sign this First Codicil

1 in your presence?

2 A. Yes.

3 Q. At the time that Mr. Schwartz executed
4 this First Codicil, did he talk to you about the
5 contents of the documents?

6 A. No.

7 Q. Did he discuss with you the contents of
8 his Will?

9 A. No.

10 Q. Did he discuss with you the topic of the
11 Milton I. Schwartz Hebrew Academy?

12 A. No.

13 Q. Did you give Mr. Schwartz any advice
14 regarding this First Codicil?

15 A. No.

16 Q. Did he ask you for any advice?

17 A. No.

18 Q. Did Mr. Schwartz ask you for any
19 suggestions or ideas regarding this First Codicil?

20 A. No.

21 Q. Did he ask you for your thoughts or what
22 you believed about the First Codicil?

23 A. No.

24 Q. Did you offer any ideas regarding the
25 First Codicil to Mr. Schwartz?

1 A. No.

2 Q. Did you offer Mr. Schwartz any
3 suggestions?

4 A. No.

5 Q. Did you share any thoughts with
6 Mr. Schwartz regarding the First Codicil?

7 A. No.

8 Q. Do you know if Mr. Schwartz discussed
9 this First Codicil with anybody from the school,
10 from the Hebrew Academy?

11 A. No.

12 Q. Have you ever discussed this First
13 Codicil with Marc Gordon?

14 A. No.

15 Q. Have you ever discussed this First
16 Codicil with Cathy?

17 A. I don't recall.

18 Q. Did you -- do you recall discussing the
19 First Codicil with Sheila?

20 A. No. The only conversation that I can
21 recall at all is that they wanted me to witness the
22 signatures.

23 Q. And at that time, were there any
24 discussions that you recall?

25 A. No.

Adelson Campus

EXHIBIT 16

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of)
) CASE NO. P061300
)
MILTON I. SCHWARTZ,)
)
)
Deceased.)
)
)
_____)

DEPOSITION OF SHEILA ROBERTSON
LAS VEGAS, NEVADA
TUESDAY, MARCH 4, 2014

REPORTED BY: KAREN L. JONES, CCR NO. 694
JOB NO.: 203832-B

1 DEPOSITION OF SHEILA ROBERTSON, taken at
2 Solomon Dwiggins & Freer, located at 9060 West
3 Cheyenne Avenue, Las Vegas, Nevada, on Tuesday,
4 March 4, 2014, at 3:02 p.m., before Karen L. Jones,
5 Certified Court Reporter, in and for the State of
6 Nevada.

7
8 APPEARANCES:

9 For A. Jonathan Schwartz:

10 SOLOMON DWIGGINS & FREER
11 BY: JEFFREY P. LUSZECK, ESQ.
12 9060 West Cheyenne Avenue
13 Las Vegas, Nevada 89129
14 (702) 853-5483
15 jluszeck@sdfnvlaw.com

16 For The Dr. Miriam and Sheldon G. Educational
17 Institute:

18 LIONEL SAWYER & COLLINS
19 BY: MAXIMILIANO D. COUVILLIER III, ESQ.
20 300 So. Fourth Street, Suite 1700
21 Las Vegas, Nevada 89101
22 (702) 383-8888
23 mcouvillier@lionelsawyer.com

24 Also Present: A. Jonathan Schwartz
25

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I N D E X

WITNESS: SHEILA ROBERTSON

EXAMINATION PAGE

BY: Mr. Couvillier 4

E X H I B I T S

NUMBER DESCRIPTION PAGE

Exhibit B Last Will and Testament of Milton I. Schwartz 24

Exhibit C First Codicil to Last Will and Testament 24

Exhibit D Second Codicil to Last Will and Testament 24

Exhibit E Subpoena Duces Tecum of Sheila Robertson 9

SHEILA ROBERTSON - 3/4/2014

Page 4

1 LAS VEGAS, NEVADA; TUESDAY, MARCH 4, 2014

2 3:02 P.M.

3 -oOo-

4 Whereupon --

5 SHEILA ROBERTSON,
6 having been first duly sworn to testify to the
7 truth, the whole truth, and nothing but the truth,
8 was examined and testified as follows:

9

10 EXAMINATION

11 BY MR. COUVILLIER:

12 Q. Ms. Robertson, thank you, again, for
13 coming in. My name is Max Couvillier and I
14 represent the Adelson campus.

15 Can you state your full name for the
16 record?

17 A. Sheila Louise Robertson.

18 Q. And would you please state your current
19 address?

20 A. 4174 Don Bonito, Las Vegas, Nevada
21 89121.

22 Q. Ms. Robertson, what do you do for a
23 living?

24 A. I'm a paralegal at Nevada Yellow Cab
25 Company.

SHEILA ROBERTSON - 3/4/2014

Page 13

1 Q. Did you call him or did he call you?
2 How did the conversation come about?

3 A. I passed by his office to tell him I was
4 leaving.

5 Q. What else did you talk about?

6 A. That's it.

7 Q. Did Mr. Gordon tell you about his
8 preparation of the will?

9 A. No.

10 Q. Did you ever discuss the topic of a will
11 in general with Mr. Milton Schwartz at any time?

12 A. No.

13 Q. Did Mr. Milton Schwartz ever discuss
14 with you an intent to leave a gift to the Milton I.
15 Schwartz Academy?

16 A. No.

17 Q. Did Mr. Schwartz ever discuss with you
18 his intent to leave the Milton I. Schwartz Hebrew
19 Academy in a will or provide for it in other estate
20 planning?

21 A. No.

22 Q. Do you know if Mr. Schwartz had any
23 discussions with anyone at the Milton I. Schwartz
24 Hebrew Academy about his will?

25 A. No.

SHEILA ROBERTSON - 3/4/2014

Page 14

1 Q. Do you know if Mr. Milton Schwartz had
2 any discussions with the Milton I. Schwartz Academy
3 about leaving a gift to the school?

4 A. No.

5 Q. Do you have any knowledge of Mr. --
6 whether Mr. Milton I. Schwartz contributed any money
7 to the Milton I. Schwartz Hebrew Academy?

8 A. No.

9 Q. Ms. Roberts -- Ms. Robertson, I
10 apologize, if I could have you turn to what's
11 previously marked as Exhibit Number C, and I'll
12 represent to you that that is a copy of the First
13 Codicil to Mr. Milton Schwartz' will and this First
14 Codicil is dated January 27, 2006.

15 Have you seen this document before?

16 A. Yes.

17 Q. Let me have you please, Ms. Robertson,
18 turn to page number 5 of Exhibit C. Do you see your
19 signature anywhere on this page?

20 A. Yes.

21 Q. Where do you see your signature?

22 A. I see my signature -- my signature at
23 the lower bottom across from Bill Shranko.

24 Q. Right on top of the notary's stamp?

25 A. Yes.

1 Q. To the right of that?

2 A. Yes.

3 Q. Did Mr. Milton Schwartz ever discuss
4 with you his intentions to amend or change his will?

5 A. No.

6 Q. Did you prepare this document,
7 Exhibit C, the First Codicil?

8 A. No.

9 Q. Do you know who did?

10 A. No.

11 Q. Why did Mr. Milton Schwartz select you
12 to be a witness?

13 A. I was available.

14 Q. You happened to be in the office?

15 A. (Nods head in the affirmative.)

16 Q. How long had you known Mr. Schwartz by
17 2006?

18 A. I -- no, it wasn't a whole year.
19 Maybe -- I went to work December the 1st, 2005, so a
20 month.

21 Q. Do you know why Mr. Schwartz selected
22 Bill Shranko to be the other witness?

23 A. He was available.

24 Q. Who else was -- well, strike that.
25 Where did you execute this document?

SHEILA ROBERTSON - 3/4/2014

Page 16

1 A. In general counsel's office.

2 Q. And who is general counsel?

3 A. At that time Cathy Olendorf.

4 Q. And where is her office located?

5 A. Right next to mine.

6 Q. And for the record, where is your office
7 located, address?

8 A. 5225 West Post Road, Las Vegas, Nevada
9 89118.

10 Q. Do you know whether Cathy had anything
11 to do with the preparation of this document,
12 Exhibit Number C?

13 A. No.

14 Q. Do you know who prepared this document?

15 A. No.

16 Q. Who else was present at the time that
17 you executed this document?

18 A. Cathy Olendorf, myself, Bill Shranko and
19 Maranda Fisher.

20 Q. Was Mr. Schwartz present?

21 A. Yes, I'm sorry, and Mr. Schwartz.

22 Q. Anybody else?

23 A. No, that was it.

24 Q. Did anyone discuss with you the contents
25 of this document, Exhibit C, the First Codicil?

1 A. No.

2 Q. Did you ask any questions about the
3 contents of this document?

4 A. No.

5 Q. Did anybody say anything about the
6 Milton I. Schwartz Hebrew Academy at the time you
7 executed this document?

8 A. No.

9 Q. Did Mr. Schwartz ask you for your
10 thoughts regarding this document?

11 A. No.

12 Q. Did he ask you for any advice?

13 A. No.

14 Q. Any discussions?

15 A. No.

16 Q. Just basically sign as a witness?

17 A. Uh-huh. Yes.

18 Q. Do you know whether Mr. Milton Schwartz
19 ever had any discussions with anyone from the Milton
20 I. Schwartz Hebrew Academy regarding this document,
21 this First Codicil?

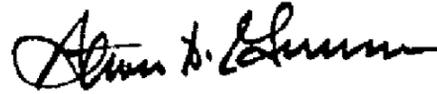
22 A. No.

23 Q. Did you have any discussions with anyone
24 about this document, this First Codicil at the time
25 that you executed?

Adelson Campus

EXHIBIT 17

Electronically Filed
04/11/2014 01:10:41 PM



CLERK OF THE COURT

1 SAO
 2 MARK A. SOLOMON, ESQ.
 Nevada State Bar No. 00418
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9 *Attorneys for A. Jonathan Schwartz,*
 10 *Executor of the Estate of Milton I. Schwartz*

DISTRICT COURT

COUNTY OF CLARK, NEVADA

13 In the Matter of the Estate of
 14 MILTON I. SCHWARTZ,
 15 Deceased.

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

DEPARTMENT XXVI
 NOTICE OF HEARING
 DATE 3/8/14 TIME 9:00 am
 APPROVED BY AFW

STATUS REPORT AND STIPULATION AND ORDER REGARDING BRIEFING SCHEDULE

19 A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz ("Estate"), by and through
 20 his Counsel of Record, Alan D. Freer, Esq. of the Solomon Dwiggins & Freer, Ltd., and The Dr.
 21 Miriam and Sheldon G. Adelson Educational Institute ("Adelson Campus"), by and through its
 22 Counsel of Record, Maximiliano D. Couvillier, III, Esq. of the law firm of Lionel Sawyer & Collins,
 23 hereby submit this Status Report and Stipulation and Order Regarding Briefing Schedule.

24 The Parties completed discovery regarding the "First Phase of Discovery" on March 11, 2014,
 25 pursuant to the Court's November 12, 2013, Order. Counsel for the Adelson Campus has advised
 26 Counsel for the Estate that it intends to file a Motion for Summary Judgment. Although the Parties
 27

1 disagree as to the merits of the Motion for Summary Judgment, they have agreed to the following
2 briefing schedule:

3	Motion for Summary Judgment to be filed by:	April 22, 2014
4	Opposition to Motion for Summary Judgment:	May 20, 2014
5	Reply to Opposition to Motion for Summary Judgment:	June 17, 2014
6	Hearing on Motion for Summary Judgment:	July 8, 2014 <i>✓</i>

7
8 In light of the foregoing, the Parties stipulate and request that the Status Check currently
9 scheduled for April 8, 2014, be vacated. The Parties further request that this Court grant the
10 Stipulation and Order Regarding Briefing Schedule to reflect the agreed upon dates referenced above.

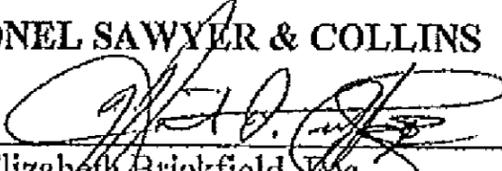
11 DATED this 7th day of April, 2014.

DATED this 7th day of April, 2014.

12 **SOLOMON DWIGGINS & FREER**

LIONEL SAWYER & COLLINS

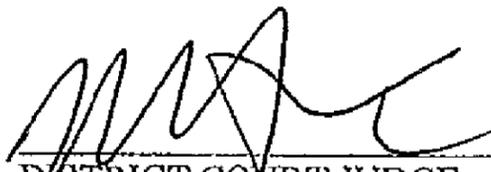
13 By:  
 14 Mark A. Solomon, Esq., NSB #00418
 15 Alan D. Freer, Esq., NSB #7706
 16 Steven E. Hollingworth, Esq., NSB #7753
 9060 West Cheyenne Avenue
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 Attorneys for A. Jonathan Schwartz,
 Executor of the Estate of Milton I. Schwartz

13 By: 
 14 Elizabeth Brickfield, Esq.
 15 Maximiliano D. Couvillier, III, Esq.
 1700 Bank of America Plaza
 300 South Fourth Street, Suite 1700
 Las Vegas, NV 89101
 Attorneys for The Dr. Miriam and Sheldon
 G. Adelson Educational Institute

18
19
20 ORDER

21 IT IS SO ORDERED.

22 Dated this 7th day of April, 2014.

23 
 24 _____
 DISTRICT COURT JUDGE

31

31



CLERK OF THE COURT

1 **SUPP**
MARK A. SOLOMON, ESQ.
2 Nevada State Bar No. 00418
msolomon@sdfnvlaw.com
3 ALAN D. FREER, ESQ.
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Telephone: (702) 853-5483
7 Facsimile: (702) 853-5485

8 *Attorneys for Respondent, A. Jonathan Schwartz*

10
11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 In the Matter of the Estate of) Case No. P061300
14 MILTON I. SCHWARTZ,) Department No. 26/Probate
15 Deceased.) **Date of Hearing: July 9, 2014**
16) **Time of Hearing: 9:00 a.m.**

17 **SUPPLEMENT TO OPPOSITION TO**
18 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

19 A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz ("Estate"), by and
20 through his counsel of record, the law firm of Solomon Dwiggin & Freer, Ltd., hereby
21 supplements his Opposition to Motion for Partial Summary Judgment to include pertinent excerpts
22

23 ///

24 ///

25 ///

26 ///

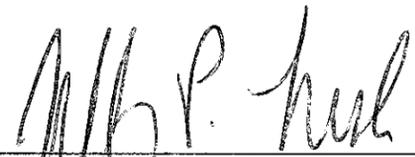
27
28

1 of video taped interview, between Milton I. Schwartz and Dr. Miriam Adelson, conducted on June
2 12, 2007, see Ex. PP, attached hereto, which have since been transcribed.

3 The Adelson Campus' Complaint that the Estate should have produced this earlier should
4 be disregarded because it had copies of the video taped interview as early as March, 2014.

5 **DATED** this 2nd day of July, 2014.

7 SOLOMON DWIGGINS & FREER, LTD.

8 By: 

9 MARK A. SOLOMON, ESQ.
10 Nevada State Bar No. 00418
11 ALAN D. FREER, ESQ.
12 Nevada State Bar No. 7706
13 JEFFREY P. LUSZECK, ESQ.
14 Nevada State Bar No. 9619
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18 Telephone: (702) 853-5483
19 Facsimile: (702) 853-5485

20 *Attorneys for Respondent, A. Jonathan Schwartz*

21
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CERTIFICATE OF SERVICE

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I hereby certify that on July 2, 2014, I caused the above and foregoing document entitled Supplement to Opposition to Motion for Partial Summary Judgment to be electronically served through the Eighth Judicial District Court's electronic filing system, pursuant to EDCR 8.05(a) and 8.05(f), with the date and time of the electronic service substituted for the date and place of deposit in the mail; to the last known designation as follows:

Maximiliano D. Couvillier, III
LIONEL SAWYER & COLLINS
1700 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101
mcouvillier@lionelsawyer.com

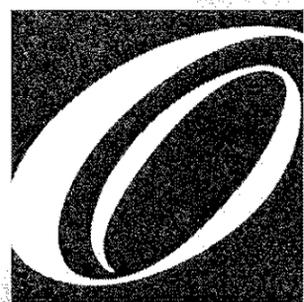
and a hard copy to follow via United States Postal Service to their last known address.


An Employee of Solomon Dwiggin & Freer, Ltd.

EXHIBIT PP

Partial DVD Transcription of Milton I. Schwartz Interview

06/12/2007



OASIS

REPORTING SERVICES

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12 PARTIAL DVD TRANSCRIPTION OF
13 INTERVIEW BETWEEN MILTON I. SCHWARTZ
14 AND DR. MIRIAM ADELSON
15
16 June 12, 2007
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24 Transcribed by:
25 William C. LaBorde, RPR, CRR, CCR 673

Page 2

1 PROCEEDINGS
2 (DVD 1 plays.)
3 (00:57:38)
4 DR. ADELSON: So Tamar came with the idea
5 to build a school, a Hebrew school, in Las Vegas?
6 MR. SCHWARTZ: Well, later on, Tamar
7 Lubin came to me -- oh, I had on my board at the
8 hospital -- some of these answers are --
9 DR. ADELSON: Great, Milton. We can
10 edit. Fantastic.
11 MR. SCHWARTZ: Okay. I had on my board a
12 fellow by the name of John Goolsby. He was
13 president of Howard Hughes Company at the time, and
14 he got the job as president because he was on my
15 board. He was very, very appreciative that I put
16 him on a board. I put him on a board because Alan
17 Miller asked me to. Alan Miller was --
18 DR. ADELSON: On the board of which
19 company, of the taxi?
20 MR. SCHWARTZ: On the board of Valley
21 Hospital.
22 DR. ADELSON: Oh, right.
23 MR. SCHWARTZ: Our Board of Governors.
24 Then when Tamar Lubin came to me -- I'm
25 giving you long answers.

Page 3

1 DR. ADELSON: You should.
2 MR. SCHWARTZ: She said, "I need a
3 million dollars, and I can get the land from John
4 Goolsby." She didn't know that I was working on the
5 land at the time and that John Goolsby -- I don't
6 know the answer, whether he gave me the land for me
7 or for her. I don't know why he would give it to
8 her, but he owed me.
9 I decided to give her a half a million
10 dollars. I -- I -- I didn't feel I could afford a
11 million dollars at the time, and I raised a half a
12 million dollars: 300,000 from one man, Paul Saag;
13 100,000 from -- from Cohen, Joe Cohen, who's still
14 alive. I think he's 95 now. 25,000 from Jerry
15 Rentschler's father, I still remember, George
16 Rudiak, who was my lawyer at the hospital.
17 So that's 825. And other -- I raised a
18 million doll- -- the half a million and I gave a
19 half a million, and they agreed to make the name of
20 the school Milton I. Schwartz Hebrew Academy in
21 perpetuity.
22 I answered you how I went and started it,
23 and --
24 DR. ADELSON: Did the Federation give any
25 money for this?

Page 4

1 MR. SCHWARTZ: No.
2 DR. ADELSON: So it wasn't a project of
3 the Federation?
4 MR. SCHWARTZ: Did not.
5 (End of transcription of DVD
6 1 at 01:00:04.)
7 (DVD 2 plays.)
8 (00:02:32)
9 DR. ADELSON: Okay. And we were talking
10 about high school just a year and a half, two years,
11 and then --
12 MR. SCHWARTZ: And it's going to --
13 they're --
14 DR. ADELSON: -- this year --
15 MR. SCHWARTZ: -- they're putting in the
16 first class in August, next month.
17 DR. ADELSON: In September we are
18 starting the --
19 MR. SCHWARTZ: No, the end of August.
20 DR. ADELSON: August, August, August the
21 twenty --
22 MR. SCHWARTZ: 27th.
23 DR. ADELSON: -- seventh, yeah.
24 MR. SCHWARTZ: I said that in my speech.
25 DR. ADELSON: Yeah. Yeah, I remember.

1 That was great.
 2 (00:02:57)
 3 (DVD 2 plays.)
 4 (00:03:31)
 5 DR. ADELSON: How does it feel when you
 6 walk during the day in school and you see the kids
 7 being educated in Milton Schwartz Hebrew Academy?
 8 MR. SCHWARTZ: I feel like I'm the
 9 greatest guy in the world. I get so much nachas
 10 from that. Like every child is my child, that's how
 11 it feels.
 12 DR. ADELSON: Wonderful. And the
 13 children knows you. They know you.
 14 MR. SCHWARTZ: Of course. Most of them
 15 know my name. They come over to me. They shake my
 16 hand and I want to kiss every one, and I do.
 17 (End of transcription of DVD
 18 2 at 00:04:03.)
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1 TRANSCRIBER'S CERTIFICATE
 2 STATE OF NEVADA)
 3)^{SS}
 4 COUNTY OF CLARK)
 5 I, William C. LaBorde, do hereby certify:
 6 That I transcribed the foregoing audio
 7 recording to the best of my ability and that the
 8 typewritten transcript of said audio recording is a
 9 complete, true and accurate record to the best of my
 10 ability.
 11 I further certify that I am not a relative,
 12 employee or independent contractor of counsel of any
 13 of the parties; nor a relative, employee or
 14 independent contractor of the parties involved in
 15 said action; nor a person financially interested in
 16 the action; nor do I have any other relationship
 17 with any of the parties or with counsel of any of
 18 the parties involved in the action that may
 19 reasonably cause my impartiality to be questioned.
 20 IN WITNESS WHEREOF, I have hereunto set my
 21 hand in the County of Clark, State of Nevada, this
 22 28th day of May 2014.
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1 LAS VEGAS, NEVADA, WEDNESDAY, JULY 9, 2014, 9:51 A.M.

2 (Court was called to order)

3 THE COURT: P061300.

4 (Off-record colloquy)

5 THE COURT: Okay. All right. So this is a motion for
6 partial summary judgment filed by the Adelson Campus. Will
7 counsel state their appearances.

8 MR. FREER: Good morning, Your Honor. Alan Freer on
9 behalf of the Executor, and I have with me Jonathan Schwartz,
10 the Executor.

11 THE COURT: Uh-huh.

12 MR. COUVILLIER: Good morning, Your Honor. Max
13 Couvillier on behalf of the Adelson Campus.

14 THE COURT: All right. Okay. It's your -- your
15 motion.

16 MR. COUVILLIER: Thank you, Your Honor. Your Honor,
17 we're here just on the limited issue which the Court couched in
18 its November 11, 2013, order, which is whether the purpose and
19 condition of the bequest under Section 2.3 of Mr. Milton's
20 Schwartz's will was for the school to be named the Milton I.
21 Schwartz Hebrew Academy in perpetuity. And the answer is a
22 resounding no. As the Court recognized during that October 8,
23 2013, hearing, the purpose of Section 2.3 is to fund
24 scholarships for Jewish children.

25 There the Court said that the will doesn't say so long

1 as the school keeps the name Milton I. Schwartz Hebrew Academy
2 on it, then I'm going to give my 500,000. The Court went on to
3 say that it seems pretty clear to me that Mr. Schwartz wanted to
4 do, he had a genuine interest demonstrated throughout his life
5 in educating the Jewish children of Nevada in parochial school
6 setting. And that's at the transcript page 32, 1 through 5 and
7 16 through 9.

8 Your Honor, the dispositive facts here are undisputed.
9 Milton Schwartz cared about education, and the sole purpose of
10 2.3 of his will, which Milton Schwartz prepared himself, and in
11 his words he said the purpose is -- he said it's for the purpose
12 of funding scholarships to educate Jewish children only. There
13 is no naming rights provision or condition in Section 2.3 or
14 anywhere else in the will. The will is clear, unambiguous, and
15 speaks for itself.

16 No lapse has occurred. The corporate entity that was
17 formerly the Milton I. Schwartz Hebrew Academy continues to
18 exist. It merely changed its corporate name, the same way that
19 an individual changes her name and still continues to exist.
20 And we've cited numerous authorities, Your Honor, at pages 12
21 and 13 of our reply, and page 9 -- 4 of our motion to that
22 affect. And that is unrefuted, Your Honor.

23 The last dispositive fact is that Milton I. Schwartz
24 did not intend for Section 2.3 to include a naming right or
25 condition. Because it's undisputed and clear that if Milton

1 Schwartz did not intend, he did not memorialize it. This is
2 what the Executor admitted during his deposition, that Milton
3 Schwartz never let time lapse between creating an intent and
4 memorializing it in some fashion. We cite that in Executor depo
5 at page 27, lines 2 to 5, which was attached to our motion as
6 Exhibit 5.

7 Therefore, Your Honor, we ask that the Court grant our
8 motion, order the release of the blocked funds to the school,
9 and deny the Executor's counter-request for 66(f) discovery. As
10 the Court has seen, we've conducted the discovery that was
11 needed, the Court was early skeptic about what could change. I
12 think that the undisputed facts have demonstrated that nothing
13 has changed and that the Court's initial reaction about this
14 case was correct.

15 Your Honor, the real beneficiaries here are the Jewish
16 children. The school here is merely a vehicle to deliver the
17 scholarship funds and we ask that the Court grant our motion.

18 THE COURT: Well, the -- the two different pleadings,
19 they're really interesting. And I read all of the depositions
20 because I pretty much knew everybody. So it was kind of
21 interesting to read what they had to say. The -- it's very
22 interesting to me that there's this whole history, previous
23 history, and I saw that throughout all of the depositions there
24 was a dispute over we really shouldn't be going into what
25 happened in 1990 and 1994 and 1996. It's not got anything to

1 do with what was Mr. Schwartz intended when he wrote his will,
2 and he wrote it.

3 MR. COUVILLIER: That's correct, Your Honor.

4 THE COURT: That's really -- real -- I mean, he is
5 unique in that respect in that he actually wrote this will
6 himself. He wrote his will in 2004. So that seemed to be sort
7 of a dispute between the party as to what was intended here, and
8 I think that there was some vision that the -- that the trustee
9 had, I guess, that -- well, I guess it's more -- it's the --
10 we're talking about the Estate here. That he had somehow --
11 that this was sort of litigating to enforce an agreement that
12 his father had for permanent -- permanent naming rights versus
13 what the petitioner had which is the view that this is just
14 about what did Mr. Schwartz intend when he wrote his will in
15 2004. So that's the first question.

16 MR. COUVILLIER: Uh-huh.

17 THE COURT: And the second question is that -- the
18 simple point that the Executor makes which is that there is no
19 successor clause. As you point out, you cite to authority that
20 says if there's a successor they make it -- you know, the
21 successor takes it. Because it's not as if the Milton I.
22 Schwartz Academy closed and there is no more Jewish school in
23 Las Vegas. There is and it's just called by a different name
24 now. So that's the second question.

25 And then the third one is this whole issue of what was

1 going on after he wrote the will and before he passed away. And
2 there was the whole period of time where they were doing the --
3 the dinner to honor him and the discussions with how much of Mr.
4 -- the principal or whatever they call him, Mr. Schiffman,
5 during that period of time that he was being hired and there was
6 this -- this plan going forward that there was going to be --
7 the high school was going to be built and what it was,
8 apparently, that Mr. Schwartz viewed as his understanding was
9 with Mr. Chaltiel and Mr. Adelson and how the thing actually got
10 renamed. So that's the third one.

11 Let's see, then I had a fourth one, but that'll
12 probably -- so taking those things in order, our first issue
13 what are we really litigating about? I mean, because the --
14 because the disputes seem to always be, you know, are we -- why
15 are we talking about 1990, 1994, 1996. This is just about what
16 Mr. Schwartz intended in 2000. So how does that history inform
17 in any way the Court's decision or is it your position that none
18 of that matters, it's just historical?

19 MR. COUVILLIER: Your Honor, none of that matters.
20 This is a motion for a partial summary judgment. There are
21 other issues that have been raised through counterclaims that
22 have been asserted by the Executor, but those aren't before the
23 Court today.

24 THE COURT: Uh-huh.

25 MR. COUVILLIER: What is before the Court today is

1 just the issue of what Mr. Milton -- what -- what the will says.
2 And the will says, it's clear, it's unequivocal, what the
3 purpose of Section 2.3 is and we've demonstrated that. For the
4 purposes of this motion and what we're asking the Court to
5 decide, none of that 1980s historical turmoil matters. It
6 doesn't matter because it's not relevant. It doesn't matter
7 because the evidence itself demonstrates that it has nothing to
8 do with the will. Nothing. There has been no talks about the
9 will, none of the -- the documentary evidence talks about the
10 will. It has nothing to do with the will.

11 And it doesn't matter for the third reason that the
12 Supreme Court says you cannot consider it. Under *Frei versus*
13 *Goodsell*, you cannot consider it. So we're only here to ask
14 what Mr. Milton Schwartz intended when he prepared his will in
15 2004. And the language clearly says, Mr. Milton Schwartz said
16 it himself, it's for the purpose of educating Jewish Children.
17 Those were his words.

18 We also know what was going on around at that time.
19 In 2004 Mr. Schwartz was on the school board. And there was a
20 meeting in March of 2004 and there was a proposal made. And the
21 proposal was made that that school was contemplating offering
22 naming rights to the various schools, the preschool, to the
23 elementary school, to the junior high, and eventually to the
24 high school as a way to raise money, as a way to take this
25 school to the next level, to the level it has achieved now.

1 And that was discussed in March, and Mr. Schwartz then
2 had over a month to consider the minutes, to review the
3 proposal, and contemplate. And in April, Your Honor, he
4 affirmed the minutes. He affirmed that discussion. He affirmed
5 the accuracy of what was discussed, and that was the April 20,
6 2004, board minutes which is at our reply in Exhibit 14. And he
7 never went back and changed his will and he had several
8 opportunities to do that.

9 In fact, in 2006 he revisited and affirmed his will
10 when he executed two codicils. The first one in January of 2006
11 and the second one in June of 2006, but he elected not to
12 revisit and revise the bequest to the Adelson Campus. So even
13 if we were to look at what was going on outside the four corners
14 of the will at the time that he executed the will, you know that
15 Mr. Schwartz was aware that the school was contemplating naming
16 rights and didn't go back and change the will. We also know
17 that Mr. Schwartz had the capacity to do so. He -- he is an
18 astute business man. He had the legal acumen that excelled most
19 lawyers. He prepared his own will.

20 And even the evidence that is submitted by the Estate
21 in the affidavit of Dr. -- or Rabbi Wyne in which he said in
22 2004, the same year that Mr. Schwartz executed his will, Mr.
23 Schwartz contacted Mr. Wyne about making a donation to the shul.
24 And he said I will give you a donation on the condition that it
25 be named after me. He knew. It's not rocket science. It's

1 very simple language. On the condition that it be named
2 so-and-so in perpetuity. And he expressed that to Rabbi Wyne
3 and he made his gift.

4 He did not do so in his will. He had a greater
5 purpose, Your Honor, and the greater purpose is emphasized by
6 his own words, which was to provide for scholarships for
7 educating Jewish children. And that's what we know, Your Honor.
8 And so the historical turmoil, that's for another day, Your
9 Honor. What we're asking the Court here is to rule on the will.

10 THE COURT: And so then the 2000 -- what happened
11 after that? As you have pointed out he made modifications to
12 his will, a couple modifications. One was dealing with like I
13 think it was the Executor who said, yeah, the minute he had this
14 dispute over the house with his ex-wife, all that worked out,
15 and he put in the codicil to make it very clear.

16 And about that same time they were in the phase of
17 hiring the new head of school and there were some discussions
18 with -- with the other board members, Mr. Adelson and Mr.
19 Chaltiel, about, you know, their expansion. I saw they talked
20 about, you know, should it be separate, two separate companies
21 running two separate schools. So all -- but all that happens
22 after the fact. Again, it cannot be considered interpreting
23 what did he mean in 2004.

24 MR. COUVILLIER: That is correct.

25 THE COURT: Because all of that comes after the fact.

1 MR. COUVILLIER: That is correct, Your Honor.

2 THE COURT: Okay. All right. All right. Okay. And
3 then I think I had my fourth one. I still don't remember my
4 fourth question. Okay.

5 MR. COUVILLIER: And then your second question, Your
6 Honor, had to do with the successor clause. But we're not --

7 THE COURT: Yeah.

8 MR. COUVILLIER: And, again, as you said, Your Honor,
9 we're not dealing with a successor clause because the school --
10 the school continues to exist and all that it did is change its
11 name. I think it's very instructive the law that we cited.
12 Again, Your Honor, it's unrefuted. But even if that wasn't
13 enough, Your Honor, we cite a case that is particularly sort of
14 on point factually with what's happening here, and that's the
15 *Walsh versus Fidelity and Deposit Co. of Maryland*, which is a
16 New York Supreme Court case at 227 N.Y.S. 96.

17 And in that case, Your Honor, the executor in that
18 case like the executor here challenged distribution to a
19 charitable company. In that case the bequest was named -- named
20 a beneficiary corporation in the will which was named after the
21 decedent's brother. She wanted to honor her brother, his name,
22 in perpetuity. But after the decedent died the beneficiary
23 corporation changed its name. And like the executor does here,
24 the executor in *Walsh* claimed that the corporation ceased to
25 exist and that the name changes violate the condition of the

1 will because it was the intention of the decedent to honor her
2 brother.

3 The court disagreed and then took a look at the
4 language of the will in that case which was similar to our case,
5 at will condition. In that case the will simply read I give and
6 bequeath \$10,000 to the Henry McCadden [phonetic] Junior Fund
7 for the Education of Candidates for the Roman Catholic
8 Priesthood. The court said there's no condition in there and it
9 rejected the argument without hesitation. It determined that
10 the name change did not cause the request to lapse. It cited an
11 adoptive rule from other -- you know, other statements of rule
12 that says we have found nothing on the record to support this
13 monstrous doctrine that a religious society before us has lost
14 title to its property by a change of its corporate name.

15 The -- the court also rejected the executor's claim
16 that the will somehow imposed a name rights condition. The
17 court recognized that the executor -- and here you have Milton
18 Schwartz as an astute businessman with a legal acumen. But in
19 that case the court recognized that if it had been decedent's
20 intention to give only on the condition that the name remain the
21 same, it would have been a simple matter for the decedent to
22 have inserted the express condition in the will, the same thing
23 as in this case and it's not expressed. There is no lapse in
24 the legal change.

25 THE COURT: Okay. All right. Anything else?

1 MR. COUVILLIER: No, Your Honor.

2 THE COURT: Okay. So then just so it's clear before
3 Mr. Freer gets up here, exactly what you're looking for is
4 partial summary judgment. You're just looking to have the funds
5 that have been sequestered released, and then the issue
6 continues with respect to the counterclaims and that is was
7 there a violation of some sort of an agreement.

8 MR. COUVILLIER: That is correct, Your Honor.

9 THE COURT: Got it. Okay. Thanks.

10 MR. COUVILLIER: Thank you, Your Honor.

11 THE COURT: Mr. Freer.

12 MR. FREER: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MR. FREER: To start, this isn't a partial summary
15 judgment issue with respect to -- the releasing the funds is the
16 main issue that's set forth in our motion for declaratory
17 relief. We have six claims. Claims 2 through 6 include
18 offsets, etcetera, and I'll get into that a little bit later.
19 But I just want to make it clear, just releasing the money here
20 today completely obviates all of our other claims that we've
21 raised and we haven't had a chance to do discovery.

22 THE COURT: Okay. That's why I wanted to make very
23 clear exactly the relief that Mr. Couvillier is looking for.

24 MR. FREER: Right.

25 THE COURT: Okay.

1 MR. FREER: So what we have here, Your Honor, is in
2 Section 2.3 of the will, Milton I. Schwartz -- Milton I.
3 Schwartz made a request to the Milton I. Schwartz Hebrew
4 Academy. There's no entity that exists by that name and that
5 leaves us to two possibilities, neither of which are appropriate
6 for summary judgment. Either this Court confines its inquiry to
7 the four corners of the will without resorting to any extrinsic
8 evidence, in which case it's required under Nevada law that the
9 bequest is lapsed. In which case, the Adelson Campus is not
10 entitled to judgment as a matter of law. I'll get into that in
11 a second.

12 The second option is that the Court does allow
13 extrinsic evidence in to be introduced to resolve the late
14 ambiguity of what Milton Schwartz intended when he directed a
15 bequest to the Milton I. Schwartz Hebrew Academy. That is a
16 question of fact for the jury to determine at trial because we
17 have requested a jury trial in this matter.

18 First, with respect to the four corners issue, I think
19 the briefing on it is a little bit strange in terms of passing
20 the night and I'm a little baffled by the Adelson Campus's
21 insistence on the application of the four corners because it
22 favors us. Confined to the four corners under Section 2.3
23 without resort to any evidence, the gift lapses because there is
24 no Milton I. Schwartz Hebrew Academy.

25 Under Nevada law, absent any latent ambiguity, a gift

1 to an unascertainable or a non-existent beneficiary lapses
2 absent an anti-lapse statute or language in the will itself.
3 That's recognized in the *Gianoli* case that we cited. There the
4 Nevada Supreme Court recognized the concept of common law lapse
5 and that its application would cause the bequest to fail. The
6 only statutory exception or anti-lapse statute that's found in
7 this case, in Nevada law, is NRS 133.200. That only applies to
8 the descendants of a decedent. It does not apply to
9 non-relatives, entities, or charities.

10 Thus, if you're constrained to look at the four
11 corners of this document or Section 2.3, the only other means in
12 which an anti -- or means in which a lapse can be presented
13 without resorting to extrinsic evidence is for the testator to
14 include specific language in the will itself. That's the
15 consensus of the common law that we cite in our brief. It can
16 be found in Am. Jur. 2d Wills, Section 1412. Should a testator
17 desire to prevent a lapse -- prevent a lapse, the testator must
18 express an intent that the gift not lapse or must provide for
19 the substitution of another devisee to receive the gift.

20 We explain in our brief that that's typically done
21 with successor clauses or successor language, as such in ABC
22 charity or its successors or to ABC charity or its successors in
23 interest. Milton Schwartz did not do that in Section 2.3. So
24 here we've got Section 2.3 without any containment of or
25 successor clause. There's no Nevada anti-lapse statute because

1 Milton I. Schwartz Hebrew Academy is not a descendent. So if
2 the Court's limited to the four corners of the will without
3 extrinsic evidence, the only permissible ruling is let it lapse.

4 THE COURT: Okay. Now, how -- with respect to
5 successor clauses Mr. Couvillier's point is that it's not really
6 a successor. It wasn't as if they transferred their assets to
7 somebody else, that they -- you know, the Hebrew Academy of San
8 Diego moved in and took them over. It's the same entity, it's
9 the same location, it's the same board, they just changed their
10 name.

11 MR. FREER: Right. And how do --

12 THE COURT: So --

13 MR. FREER: And how do we know that? They have to
14 provide extrinsic evidence of the name change and that's where
15 we get into the question of fact. The only means by which they
16 can even proceed is by resorting the introduction of that
17 extrinsic evidence. That -- that is where the latent ambiguity
18 lies.

19 So if this Court finds the latent ambiguity and allows
20 -- or allows that extrinsic evidence in, then it must also
21 determine what Milt was intending by his gift to the Milton I.
22 Schwartz Hebrew Academy. All extrinsic evidence at that point
23 comes in concerning Milt's understanding and intent. This is
24 the application of the common law, and it's quite
25 straightforward.

1 Adelson Campus can't have it both ways. It can't
2 introduce extrinsic evidence and then at the same time say, oh,
3 no other extrinsic evidence with respect to what Milton wanted
4 or intended with respect to his gift to the Milton I. Schwartz
5 Hebrew Academy is admissible. Courts are quite clear. It says
6 where a bequest is made to an entity and that entity does not
7 exist by a particular name specified in the will and a
8 beneficiary comes forward claiming the right to that interest,
9 such a claim creates a latent ambiguity requiring the
10 introduction of extrinsic evidence for two reasons. One, to
11 clarify not only the name and existence of the beneficiary, but
12 also the testator's intent as to whether that gift should lapse.

13 Those concepts are found in Restatement of Third of
14 Property Section 11.1, 80 Am. Jur. 2d Wills Section 1412, and
15 C.J.S. Wills Section 1091. All of this recognizes two prominent
16 approaches, that when you have a name change you must also
17 couple that with an analysis of the intent of the decedent and
18 whether that would somehow thwart the intent.

19 Nevada law allows all evidence concerning the
20 testator's intent to be admissible when resolving an ambiguity.
21 We cite that in the Jones -- *In Re Jones Estate* case, 72 Nev.
22 121. The concept with respect to the scope of evidence that's
23 admissible is probably most eloquently stated by a Connecticut
24 Court of Appeals. It says since the object is to discover the
25 intention of the testator, the rule is well settled that any

1 testimony is admissible for that purpose, which is relevant
2 under the general principles of evidence. Any fact or
3 circumstance from which experience or observation may be fairly
4 presumed to have had an influence on his mind and inducing him
5 to make the bequest or legacy is admissible to prove his
6 intention.

7 Further, their instance with respect to the *Frei* case
8 doesn't bar the Estate's introduction with extrinsic evidence.
9 There are two huge distinctions in *Frei* that make that case not
10 applicable and not a bar in this situation. First, it was
11 conceded in that case that the estate plan contained no
12 ambiguities. Clearly, here if Adelson Campus is bringing in
13 extrinsic evidence, there is a latent ambiguity and that
14 ambiguity allows the introduction of extrinsic evidence.

15 Second, the *Frei* case only stands for the proposition
16 that the testator could not testify to contradict the plain
17 meaning of the will's contents. The Estate is making no attempt
18 here to introduce evidence that is inconsistent with the plain
19 language of the will. All evidence produced is consistent with
20 the wording of the will without resort to the insertion of
21 additional language. If anything, *Frei* would really only bar
22 their intention if the Court is going to apply it because
23 they're asking the Court to insert the Adelson Campus in
24 exchange for the Milton I. Schwartz Hebrew Academy.

25 In essence, once the Adelson Campus introduces

1 evidence to claim their status as a purported beneficiary, the
2 door opens to all extrinsic evidence in order to determine
3 Milton's intent as to the use of the term Milton I. Schwartz
4 Hebrew Academy. And here is where the Estate has gathered a
5 mountain of evidence that leads to the only conclusion that
6 Milton intended the gift only to go to the Milton I. Schwartz
7 Hebrew Academy, an entity which bore his name. Since
8 bifurcating this first phase of the proceeding, the evidence of
9 Milton's intent more than creates a genuine issue of fact. It's
10 overwhelmingly been one way.

11 Milton's intent and understanding, I think, is
12 probably best stated in a statement he made two months prior to
13 his will as to what his understanding was with respect to the
14 Milton I. Schwartz Hebrew Academy and his name being attached.
15 He states, quote, I raised a half a million and I gave half a
16 million and they agreed to name the school the Milton I.
17 Schwartz Hebrew Academy in perpetuity.

18 MR. SCHWARTZ: His death.

19 MR. FREER: I'm sorry?

20 MR. SCHWARTZ: His death. Not before the will, before
21 his death.

22 MR. FREER: Oh, I'm sorry. Before his death. Thank
23 you for correcting me.

24 So two months prior to his death he issues that
25 statement. His clear understanding and his clear intent was

1 that the name was to be in perpetuity in consideration for the
2 donations provided, that he provided and continued to provide
3 during his lifetime. We introduced evidence that this
4 understanding was first formulated in 1989 when the school
5 promised and agreed to be named the Milton I. Schwartz Hebrew
6 Academy.

7 We produced evidence and Your Honor said you read it
8 that the promise and agreement was -- was recognized by the
9 board of trustees in the depositions of Roberta Sabbath, Neville
10 Pokroy, and Lenny Schwartz. This evidence was also
11 established in the bylaws and articles where it states the name
12 of the corporation is the Milton I. Schwartz Hebrew Academy and
13 shall remain so in perpetuity.

14 In fact, Mr. Schwartz testified that the name of the
15 school was changed to the Milton I. Schwartz Hebrew Academy in
16 light of Mr. Schwartz's financial fundraising contributions
17 stating, quote, in consideration of that it was our
18 understanding and I believe it was our agreement that the school
19 would be named the Milton I. Schwartz Hebrew Academy as long as
20 -- as long as it remained the Hebrew Day School.

21 We also introduced evidence that having Milton's name
22 on the school was more than just a gratuitous recognition to
23 him. It was vitally important to him for personal and religious
24 reasons. We provided the testimony of Rabbi Wyne who was
25 Milton's rabbi and administered the Jewish equivalent of the

1 last rights to Milton before his death. Rabbi Wyne testified
2 that Milt held religious beliefs that rendered it vitally
3 important for him to have his charitable giving associated with
4 his name to enable his soul to progress.

5 In essence, it was Milton's belief that when a
6 charitable institution bore his name it was credit to his soul
7 and enabled him to further develop by doing good works in his
8 name post death. That same testimony is accurate by his
9 children, and Dr. Sabbath also testified that the name was very
10 important to him as expressed to her. She said --

11 THE COURT: But she just only -- she said the
12 building.

13 MR. FREER: Well, and -- and --

14 THE COURT: She specifically said we agreed to name
15 the building after him.

16 MR. FREER: And that gets into the 2007. What we have
17 here, though, is everything has been removed. That she states
18 that the importance to Milton is it was very important to
19 Milton. I do remember that. He expressed it and I remember him
20 saying make sure that it stays in perpetuity. So what we have
21 here is a situation where it's not just somebody's name and he's
22 happy because he donated some money and it's on there. These
23 were personal important items to him not only for the personal
24 reasons, but also for religious reasons.

25 THE COURT: That's my -- but that's my question is is

1 it important that the school be named after him or that the
2 building be named after him or that the scholarship be named
3 after him? Don't they all have essentially the same effect?

4 MR. FREER: No.

5 THE COURT: Okay.

6 MR. FREER: It doesn't. Milton understood in the
7 bylaws, etcetera, it said that the entity would be named after
8 him in perpetuity, so the Milton I. Schwartz Hebrew Academy in
9 perpetuity. So that is his understanding. In 2007, after the
10 execution of the will, the understanding is that when the
11 Adelson High School comes in, and this was testified to by
12 Schiffman, that it would still be the Milton I. Schwartz Hebrew
13 Academy, and that name would specifically tie to the grades K
14 through 8 and there would be an associated high school. That
15 was what Mr. Schiffman testified to.

16 That's what all of the children testified to what
17 Milt's understanding was as conveyed to them, and that is
18 actually what is shown by the records that the school produced
19 or, you know, documents from the school at the time. It's
20 recognizing that there's an Adelson school, specifically an
21 Adelson high school, and the Milton I. Schwartz Hebrew Academy.
22 There -- right now there is nothing. It's the Adelson Campus,
23 the lower campus, upper campus. That is not what Milton would
24 have intended and that evidence is overwhelming in terms of how
25 important it was to him.

1 I mean, we've got examples that we provided that over
2 the 20-year period when he did not have names associated with
3 his giving he wouldn't contribute. And we've provided that by
4 way of testimony from his personal secretary and provided two
5 specific instances in '94 and in 2004 when the will was
6 introduced. We also provided evidence that when his name was
7 temporarily removed in 1994 he ceased affiliation with the
8 school and he ceased making distributions. That prompted
9 Roberta Sabbath to come back in 1996 and make amends, basically,
10 through that 1996 letter that we attached.

11 Actually, it's basically a 1996 agreement. In there
12 it states that the Milton I. Schwartz Hebrew Academy would be
13 restored in that name in perpetuity. The school would restore
14 the marker with the name of the school in front of it. It would
15 change its stationary and its references to the school MISHA.
16 The board ratified that in '96 and changed the bylaws to state
17 that the name of the corporation is the Milton I. Schwartz
18 Hebrew Academy and will remain so in perpetuity.

19 THE COURT: Well, this kind of gets us to my question
20 with Mr. Couvillier which is if we're talking about the will in
21 2004, what is the historical relevance of what happened
22 historically before and after? I mean, like I said, I read all
23 of this stuff. So it's all very interesting, but it's -- how
24 does that aid in interpretation of what he meant in 2004?

25 MR. FREER: It is -- it is vitally important from the

1 standpoint that his understanding of the Milton I. Schwartz
2 Hebrew Academy when he used it in Section 2.3 was that it was
3 the Milton I. Schwartz Hebrew Academy in perpetuity. That is
4 all the representations that was made to amend, all the
5 statements that is made, that was what was important to him.
6 And that understanding, those representations made to him
7 formulated his intent when he executed Section 2.3.

8 And that's right on point with the prior statement --
9 or quote that I read that says any fact or circumstance from
10 experience or observation may be fairly presumed to have an
11 influence on the mind of the testator is admissible to prove
12 intention.

13 THE COURT: Well, if we could talk, then, about the
14 will itself because what struck me about the will is you start
15 with paragraph 2.3 where he talks about the Milton I. Schwartz
16 Hebrew Academy. And if there is a mortgage, pay off the
17 mortgage, if there is no mortgage -- because he had guaranteed
18 the mortgage and he wanted a release. Very clearly the idea was
19 give this \$500,000 to get me and my -- and my heirs off this
20 guarantee with this \$500,000. They didn't have to worry about
21 that because by that time the mortgage has been paid off. But
22 if the mortgage is paid off, then give it to scholarships for
23 Jewish children.

24 And this corresponds to, you know, even the supplement
25 that was provided where he talks to Dr. Adelson about I just

1 love going to the school and the little children come up to me
2 and I feel that they're my children because I'm helping to
3 educate them. So, I mean, that was -- that's what he intended.

4 But -- and he goes on in the next paragraph in 2.4 and
5 he talks about I'm going to give specific dollar amounts,
6 \$45,000 each to his grandchildren who had done such a good job
7 at their brother's Bar Mitzvah with their Torah portions and how
8 proud he was of how well they had done at that Bar Mitzvah. And
9 he gave them each \$45,000 for that. Again, just reiterating
10 this pride that he feels in -- in children with a good Jewish
11 education.

12 And then he, on a different topic, he talks about the
13 house that was to go to his then wife, if she survives me,
14 provided she is married to and living with me. I mean, very
15 clear. These are the requirements. She's got to survive me,
16 she's got to be married to me, she's got to be living with me at
17 the time of my death. She isn't, and so he comes in with a
18 codicil and he makes -- immediately he fixes that because he
19 wants to make it really clear that's not going to be dealing --
20 we're not going to be dealing with that anymore.

21 He fixes it because, as his son testified, that's how
22 he was. If there was a change, he took care of it, he
23 acknowledged it, he dealt with it. Paragraph 2.7 he talks about
24 terminating gifts because he had talked at one point in time in
25 helping the Jewish Federation maybe starting an alternate

1 school. He wanted to make it really clear, if I offered them
2 anything, if I made any pledges to them, I'm revoking them. And
3 if they challenge it, they get a dollar. I mean, a very clear
4 provision. So this just gets me back up here to 3. I mean --

5 MR. FREER: All right. And why didn't he include any
6 type of condition in the will?

7 THE COURT: Right.

8 MR. FREER: It's because it already existed at the
9 time he did the 2004 will. It was already promised to him. He
10 had already secured that promise twice that it would be there in
11 perpetuity. And this is where we got basically, you know, every
12 shred of evidence points to that's what Milton understood, that
13 the school would bear his name in perpetuity. It's basically
14 reverse logic imposing a burden upon Milton to make sure that
15 the Hebrew Academy doesn't breach its obligations that were
16 owing to him, its promises and representations to him. It
17 basically flips kind of the law and logic on its head.

18 What was he supposed to say? That, you know,
19 basically I leave my money to the Milton I. Schwartz Academy so
20 long as they don't breach their agreement and promises to me to
21 keep my name on it in perpetuity? It was already there in the
22 existence of the '89 -- you know, '89 agreement, in the
23 existence of the '96 agreement, in the existence of the
24 testimony of the other board of directors. It was already in
25 existence. And so his reference to Milton I. Schwartz Hebrew

1 Academy encapsulated his understanding that it was his baby. It
2 was his. It was not going to change.

3 Similarly, when he made the 2007 agreement to allow
4 Adelson to put his name on the high school, it still had
5 perpetuity in the bylaws. It was still named the Milton I.
6 Schwartz Hebrew Academy in perpetuity. And that was with
7 respect to the name being on the lower school. So now for no
8 reason to change the will, you know, there is no reason to
9 change the will because everything was as it was at the time he
10 executed it in 2004. There were no facts coming to light in
11 which it would cause him to become upset and to change it
12 because he had already settled those issues.

13 You know, the other evidence with respect to -- you
14 know, we pointed out why the earlier evidence was relevant with
15 respect to formulating Milton's intent. We also provided
16 evidence by way of testimony of Jonathan Schwartz with respect
17 to the drafting of the 2004 will. Obviously the Court
18 recognizes that Milton drafted the will for himself. Jonathan
19 was the scrivener for that. Jonathan testifies that Milton
20 intentionally omitted any successors from receiving the Section
21 2.3 bequest.

22 He says, quote, Milton made it clear that there was no
23 successor clause to be added to Section 2.3. He was adamant
24 that there was to be no successor in 2.3 because the bequest was
25 supposed to go only to Milton I. Schwartz Hebrew Academy to be

1 used for the benefit of children who attended the Milton I.
2 Schwartz Hebrew Academy.

3 So we have evidence right there that coupled with his
4 understanding that Milton I. Schwartz Hebrew Academy was going
5 to be there in perpetuity, also coupled with lack of the
6 successor clause Milton thought that he had adequately provided
7 for. That's the only inference that the evidence can present,
8 and that inference is for the jury to decide because there's a
9 question of fact as to what Milton intended.

10 THE COURT: Okay. So then it's your position that
11 summary judgment is inappropriate at this time and -- and/or
12 that even if the Court were to find that, you know, the doctrine
13 of cy pres or whatever that it's reasonable to assume that what
14 Mr. Schwartz wanted was just to educate Jewish children in one
15 of the following two fashions, pay off the mortgage first, then
16 pay for scholarships, that even if the Court finds that it's not
17 appropriate to grant the relief that Mr. Couvillier wanted,
18 which was to distribute the funds, because the counterclaims are
19 for -- would prevent that, that the jury still has to make a
20 determination as to whether, in fact --

21 MR. FREER: Correct.

22 THE COURT: -- they're entitled to some offsets.

23 MR. FREER: You're absolutely right, Your Honor. And
24 with respect to the whole issue with respect to the purpose of
25 the funds being used, you know, what the Adelson Campus tries to

1 do when they -- when they get into their thing is they try to
2 just gloss over to whom the money is supposed to be given to.

3 Obviously, the purpose is for the education of Jewish
4 children, but that is -- it's a limitation on what the Milton I.
5 Schwartz Hebrew Academy could use that money for. Just because
6 there's a statement in there that it can be used for Jewish
7 education doesn't mean that we completely ignore Milton's intent
8 with respect to whom he wanted the distribution being made.

9 There was a peculiar affection here for Mr. Schwartz
10 wanting the name of the school to be named the Milton I.
11 Schwartz Hebrew Academy, and that gets right into why the case
12 law cited by the Adelson Campus is inapplicable. You know, this
13 isn't just a name change case. This is basically an affront to
14 what Milton's intent was. During his lifetime he had twice
15 going through the issue of getting it changed.

16 The cases they cite, most of them, don't even deal
17 with name change in the context of estate proceedings. They're
18 more licensing issues with respect to estate. It has nothing to
19 do with what was intended by the inclusion of the name.
20 Further, the one -- they cite two cases that do deal with it.
21 One of them, *Hagen's* [phonetic] will, is misleading because it
22 states, and they omit this from there, but *Hagen* states the mere
23 change of a name, unless some peculiar affection for the name is
24 indicated by the donor, means nothing. And that is the question
25 of fact for us to determine, what was his intent with respect to

1 that?

2 I've spoken quite a bit of time. Did I answer all the
3 Court's questions at this point?

4 THE COURT: Yes, I guess, except for a couple of
5 procedural questions. And as we indicated, the -- the -- if
6 summary judgment is -- is -- even if summary judgment is granted
7 at this time there would still be these other issues to be
8 determined at trial. Two things the clerk has pointed out to
9 me. One, we don't have a trial. And, two, we don't have a jury
10 demand. So --

11 MR. FREER: Actually, we submitted the jury demand and
12 I believe I've got one right here. We submitted that November
13 23, 2013.

14 THE COURT: Okay. Well, the clerk's office didn't
15 pick it up. I don't know if it's because it's submitted to the
16 clerk's office in Family Court and we just don't have any such
17 thing as a jury demand in Family Court. I don't know.

18 MR. FREER: If I may approach I'll provide the Court
19 with what we've got, the file stamped copy.

20 THE COURT: And we'll see if we can get it flagged for
21 a jury trial because right now it's not -- you know, we do have
22 to deal with the Family Court people. So that's the other --
23 the point of the question is that, you know, what, then, is your
24 understanding would be left for trial? It's this whole issue of
25 -- your position is the whole thing should be heard by a jury?

1 MR. FREER: Exactly. If this Court --

2 THE COURT: If it isn't a question of law.

3 MR. FREER: If this Court allows extrinsic evidence --

4 THE COURT: Uh-huh.

5 MR. FREER: -- in to determine to allow the Adelson
6 Campus to show that they are a successor entity and to allow the
7 Estate to show that name change has everything to do with
8 Milton's intent, that is a question of fact for a jury.

9 Actually, I anticipated that question. I've got a
10 couple of cases I can provide the Court where courts basically
11 say a will construction to determine a testator's intent as a
12 question of fact and appropriate for a jury trial. One exemplar
13 case of that is found in *Raft versus United States*, 780 F Supp.
14 572. That's a District of Illinois case 1991. It states where
15 the terms of a will are unclear and ambiguous, the testator's
16 intent becomes a question of fact for the jury.

17 The same type of holding is in *Mercantile National*
18 *Bank*, that's a 488 S.W.2d 605. That's a Texas Appellate Court
19 decision. It holds to the same thing. So our position is, yes,
20 once the Court allows extrinsic evidence in, those become issues
21 of fact. That's appropriate for the jury to decide. We've
22 raised all of these issues with respect to intent. The jury is
23 one that gets to weigh those issues. The remaining claims we
24 have are offsets against the amounts due and owing under the
25 bequest in our prior briefing.

1 Obviously we didn't brief this much because it's not
2 the issue right now, but there are courts and there is case law
3 that says where we have claims, the Estate has claims against
4 third parties who are also beneficiaries, it's appropriate for
5 the Court -- for the Estate to seek an offset against those
6 amounts. So basically this whole ball of wax needs to be tried
7 together and it needs to be tried by a jury.

8 THE COURT: Thank you.

9 Mr. Couvillier.

10 MR. COUVILLIER: Thank you, Your Honor. I'll start
11 with the basic principle here under NRS 137.030. If we were to
12 even look at extrinsic evidence --

13 THE COURT: Uh-huh.

14 MR. COUVILLIER: -- it's only contemporaneous
15 evidence. That's what I -- you know, to address some of the
16 points about Milton Schwartz's understanding and so forth, I had
17 to harken back, Your Honor, again, to the 2004 minutes that were
18 done at the same time that he executed his will in which the
19 school said we're contemplating naming rights changes. And Mr.
20 Schwartz did not change his will in 2004 or when he revisited it
21 in 2006.

22 And I just want to belie one claim that was raised
23 earlier that, you know, Mr. Schwartz was so sure of these
24 things. But I'll go to Exhibit 5 of our motion, which is the
25 Executor's deposition, and at page 27, starting at line 13, the

1 Executor talks about why Mr. Schwartz executed the second
2 codicil. And the -- and his testimony is, well, he was
3 republishing his intent that his premarital agreement and
4 various agreements were to remain effective.

5 So Mr. Schwartz already had various agreements. He
6 had a premarital agreement, but yet he found it necessary to,
7 for the third time, restate his intent clearly and unequivocally
8 in a codicil. Now we go back to 2004. He's sitting in a board
9 meeting where he is being told we should consider name changes
10 to the school as a way to raise capital. Yet he never went back
11 and revisited his will.

12 Your Honor, and I -- and I'll cite to the Executor.
13 The Executor pointed out in one of his cases, which is *Tennessee*
14 *Division of United Daughters to the Confederacy versus*
15 *Vanderbilt*, which is a Tennessee case. And that case expressly
16 recognized that when donors impose conditions on gifts, the
17 conditions are generally contained in the terms of the donor's
18 will. And then I go back to the case that we cited, which is
19 the *Wright* case out of New York, which said if there was a
20 naming right condition he simply would have stated it. Very
21 simple words, on the condition that it remained "X" in
22 perpetuity. It's not named here.

23 THE COURT: So the argument that the Executor makes
24 that he thought that was all done because he -- he had gone
25 through this previously, he was promised this originally, and

1 then when he had the falling out he came back because he was
2 promised it again so it didn't need to be stated because it was
3 known to everybody. I mean, I don't know. I just don't know
4 how you bind people in perpetuity unless you --

5 MR. COUVILLIER: Put it in writing.

6 THE COURT: -- put it in writing.

7 MR. COUVILLIER: Put it in writing. And, Your Honor,
8 we're not -- we're not talking about extrinsic evidence from the
9 school on Mr. Schwartz's intent. We're saying his intent is
10 clearly manifested in the words of the will. We're not talking
11 about what he intended or what he didn't intend, Your Honor.
12 We're saying we're the Hebrew Academy. There's no ambiguity
13 about that. We all know who we are. We changed our name.

14 And the law says that that doesn't change who the
15 identity of the corporation is. It doesn't change it. There is
16 -- so we're not talking about an ambiguity. And the -- you
17 know, even the Executor recognizes that we're talking about a
18 lapse. A lapse only occurs when the beneficiary has died, which
19 is not the case here, when a corporation ceases to exist, which
20 is not the case here, or the corporate beneficiary has abandoned
21 its corporate purpose. We're still educating Jewish children,
22 Your Honor. And so we're here on the limited purpose for the
23 Court to rule summary judgment that the school is entitled to
24 the bequest under Section 2.3 and that the -- and that the funds
25 be released.

1 Now, I do want to address the issue of the blocked
2 funds remaining blocked. Your Honor, essentially what they're
3 asking for is a pre-judgment lien of attachment which is not
4 before the Court and which is something that we did not agree
5 to. The Executor agreed to deposit the funds for our purpose
6 and our purpose only.

7 And in his motion he said, on his motion of December
8 12th, page 3, the deposit is for the purpose of the Adelson
9 Campus. It's the proposal would save the Adelson Campus time
10 and money by guaranteeing the funds would be available to
11 satisfy any bequest ordered by the Court. There is nothing
12 mentioned of, well, if we lose at summary judgment, the funds
13 should remain there because we have an offset claim. The offset
14 claim is not before the Court.

15 We did not agree to keep the funds remaining there.
16 This is -- this is extraneous fugitive request of a judgment
17 lien of attachment. We're asking the Court to have those funds
18 released or summary judgment in our behalf. And after that Mr.
19 Freer and I can sit down and talk about the next steps in
20 discovery to address their counterclaims and propose a plan to
21 the Court.

22 THE COURT: Okay. Well, I think that -- I guess the
23 issue is that essentially what we're -- you're talking about
24 here is the application under essentially the cy pres doctrine
25 or just the admission of evidence under 134. But we have this

1 -- this paragraph that as the Executor points out doesn't have a
2 successor clause, doesn't say the Milton I. Schwartz Hebrew
3 Academy or any successors. It just says the Milton I. Schwartz
4 Hebrew Academy, and the argument being, well, it is still the --
5 it's the same Hebrew Academy. The name changed. You know, is
6 that -- so I guess the question is -- your position is that is
7 not a question of fact for a jury, but it is a question for the
8 Court.

9 MR. COUVILLIER: Yes, Your Honor. It's not a question
10 of fact for the jury. In the *Wright* case in New York there was
11 no problem with the court saying, no, your argument about this
12 corporation ceasing to exist merely because it changed its name
13 is wrong as a matter of law, as a matter of established law that
14 a corporate name change does not change the identity of the
15 beneficiary. We're not asking here of any issue of fact.

16 THE COURT: So that -- so the -- unless the will
17 specifically said that the name is important, that there's --
18 that you can determine that as a matter of law?

19 MR. COUVILLIER: Yes, Your Honor.

20 THE COURT: Got it. Thanks.

21 Mr. Freer is standing, so --

22 MR. FREER: Yeah.

23 THE COURT: -- if he's got something else to say,
24 we'll let him say something.

25 MR. FREER: I've got to clear up --

1 THE COURT: You'll have the last word, Mr. Couvillier.

2 MR. FREER: -- a couple things, Your Honor. First,
3 this wasn't addressed in any of the briefings. The application
4 of the cy pre doctrine, which they have not raised --

5 THE COURT: Uh-huh.

6 MR. FREER: -- if I understand the Court is -- I would
7 even probably agree that it probably is something that should be
8 looked at. That application of cy pres doctrine is a question
9 of fact. There are tons of cases out there that say the cy pres
10 doctrine because you allow in evidence of intent because the
11 whole purpose is to find who the testator wanted the property to
12 go to. And so there are tons of cases. We can provide the
13 Court supplemental briefing if you want that, but that does --
14 it, too, presents an issue of fact.

15 Let's get to the *Wright* case first. And I -- I
16 omitted this during my argument, but their application of the --
17 or, I'm sorry, the -- that case doesn't stand for what it says.
18 Basically that that case dealt with a name change that wasn't a
19 total abandonment. It changed the fund from McGavin Fund
20 [phonetic] to the McGuirk Foundation [phonetic]. There was no
21 evidence, unlike here, there was no evidence introduced that the
22 testator would have wanted the gift to lapse in light of the
23 name change. And further, the Court specifically found that
24 there were no representations, promises, or contractual
25 arrangements associated for the gift.

1 That's the only way that case, which was a trial court
2 case, could distinguish prior New York Supreme Court authority
3 issued by Cardozo that basically said that a gift where there is
4 found to be some type of agreement is invalidated. So the court
5 in the *Wright* case says the only way it was able to distinguish
6 that it said there was absence of any evidence of any contract
7 or representation. That's obviously different than what we've
8 got here. That's why that case isn't applicable with respect to
9 that.

10 A couple other issues to clear up as soon as I can
11 find the right page. You'll note when he's talking about the
12 *Tennessee* case we cited it says conditions are generally
13 contained in the will. It's not it must be contained, it's just
14 noted that as a general matter they are contained in the will.
15 It's not in this case because we already went through, we have
16 the prior agreements.

17 So with respect to the lapse issue, simply I think
18 Your Court is right. They're -- they're trying to pigeonhole us
19 into three situations in which the lapse applies. We cite to
20 additional law that says a lapse applies any time the intent of
21 the testator is thwarted by events or circumstances that occur
22 after the execution of the will. So for them to say that our
23 three positions on lapse are only death, dissolution, or change
24 of the purpose, that is not the case. We also cite to cases for
25 the general proposition any time the matter is thwarted or the

1 testator's intent is thwarted, a lapse can occur.

2 The last thing I want to clear up is this evidence
3 they keep talking about in 2004 with respect to the naming
4 rights. First and foremost, these are scant inferences. There
5 was never any -- there was never any action taken. We still
6 have the in perpetuity clause language. Milt wasn't worried
7 about that. It was promised to him it was in perpetuity.
8 Further, even if he were to accept what they said, all that does
9 is create an issue of fact and that's for the jury to decide.

10 Their sole basis for hitting this trumpet is the one
11 clause that it's -- and it's contained in the meeting minutes,
12 it doesn't refute any of the evidence that we point out and
13 there's nothing to indicate that it wasn't the scope of what we
14 already talked about in our evidence. There were situations
15 where they were talking about naming classrooms. There wasn't
16 discussion about naming buildings or naming schools until 2007
17 with respect to the Adelson High School.

18 THE COURT: Thank you.

19 Mr. Couvillier, anything further?

20 MR. COUVILLIER: Unless Your Honor has any doubts or
21 any questions, Your Honor, I think as a matter of law we've
22 demonstrated the Court can and should make the -- the entry of
23 order. The dispositive facts here are not in dispute. The will
24 is clear. And we're asking the Court for the Hebrew Academy
25 enter a summary judgment order. Thank you.

1 THE COURT: All right. Well, I think actually,
2 unfortunately, Mr. Couvillier, I disagree. I think that what
3 this is is a question of fact because we have this problem here
4 of what does the Milton Schwartz Hebrew Academy mean? I know
5 when I read this, to me, it appears that what he was talking
6 about was he was really focused on education of Jewish children.
7 His pride in his grandchildren who could cite the Torah portions
8 so well. His revoking any other affiliation with any other
9 school is all really clear.

10 He doesn't put in anything that says in exchange for
11 the Hebrew Academy being named after me in perpetuity I'm giving
12 them \$500,000. He doesn't say that. He says I want to deal
13 with their -- with their mortgage. And in the alternative, if
14 the mortgage is paid off then we're going to educate children.
15 But that's interpreting it as a question -- it's a question of
16 fact. And so I can't say that it's a matter of law. To me, I
17 believe that it's -- it's a question -- ultimately it's a
18 question of fact for the finder of fact.

19 So I'm going to deny the motion and I guess we have to
20 come in and discuss how much time you think you need. We will
21 send you an order scheduling this for a jury trial since we now
22 have the jury demand here so that we can flag it and get it on
23 the stack. What's -- how much time do you think you need?

24 MR. FREER: Could I defer and talk to my --

25 MR. COUVILLIER: Yeah.

1 THE COURT: Yeah, I mean --

2 MR. FREER: I think we --

3 THE COURT: -- are you going to --

4 MR. FREER: -- need to go through and kind of look at
5 the evidence and get together.

6 THE COURT: What is your plan for -- are you going to
7 do a report, are you going to give us some sort of -- because
8 you don't usually -- normally the discovery commissioner would
9 give us the scheduling order and she would tell us how long
10 you're going to take for your discovery. Probate works a little
11 differently. So I don't know if you want to do your own or if
12 you want to be referred there to --

13 MR. COUVILLIER: Your Honor, if I may propose -- and
14 Alan -- if we may set this matter over for a status check in a
15 month, and in the meantime Alan and I can get together and --
16 and reach an agreement and submit a proposal to the Court.

17 THE COURT: Okay. All right. And I also, I should
18 say that I do think that this is a cy pres issue. And I think
19 that is a question of fact, as well. So, anyway, in the end
20 it's just questions of fact which somebody is going to have to
21 decide. So you need to let us know so we can get you on a
22 schedule because we're already sitting out pretty far and we'll
23 see if we can find some place to put you in. So it's a month
24 for a status check.

25 THE CLERK: Okay. So a month would be probably August

1 13th.

2 MR. COUVILLIER: Okay.

3 THE CLERK: August 13th at 9:00.

4 MR. COUVILLIER: Thank you.

5 THE COURT: Okay.

6 MR. FREER: That's great.

7 THE COURT: And we will see you back here.

8 MR. COUVILLIER: Great. Thank you, Your Honor.

9 MR. FREER: Thank you, Your Honor.

10 (Proceedings adjourned at 10:52 a.m.)

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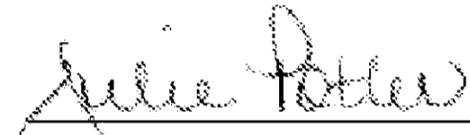
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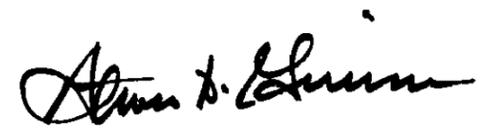
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TRANSCRIBED HE AUDIO/VIDEO PROCEEDINGS IN THE ABOVE-ENTITLED
CASE TO THE BEST OF MY ABILITY.



JULIE POTTER
TRANSCRIBER

33

33



CLERK OF THE COURT

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

10 In the Matter of the Estate of)
MILTON I. SCHWARTZ,)
11 Deceased.)
12)
13)

Case No. 07P061300
Dept. No. XXVI/Probate

14 **NOTICE OF ENTRY OF**
15 **ORDER DENYING THE DR. MIRIAM AND SHELDON G. ADELSON**
EDUCATIONAL INSTITUTE'S MOTION FOR PARTIAL SUMMARY JUDGMENT

16 Date of Hearing: July 9, 2014
17 Time of Hearing: 9:00 a.m.

18 PLEASE TAKE NOTICE that the **ORDER DENYING THE DR. MIRIAM AND SHELDON G.**
19 **ADELSON EDUCATIONAL INSTITUTE'S MOTION FOR PARTIAL SUMMARY**
20 **JUDGMENT**("Order") was entered on September 4, 2014, in the above-referenced Court. A copy of the
21 Order is attached hereto.

22 DATED this 5th day of September, 2014.

23 SOLOMON DWIGGINS & FREER, LTD.

24 
25 By Mark A. Solomon, Esq., State Bar No. 00418
26 Alan D. Freer, Esq., State Bar No. 7706
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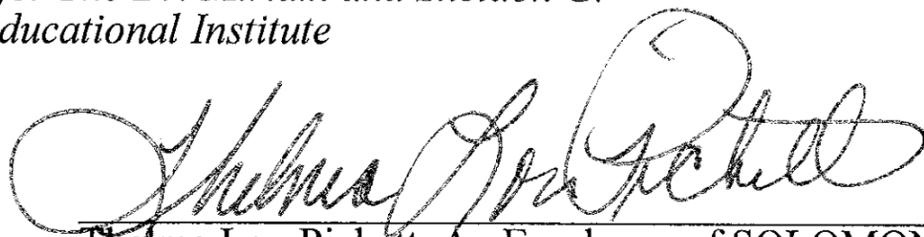
Attorneys for Respondent, A. Jonathan Schwartz

CERTIFICATE OF SERVICE

Pursuant to EDCR 8.05, I hereby certify that on September 5, 2014, I caused a true and correct copy of the *Notice of Entry of Order Denying The Dr. Miriam and Sheldon G. Adelson Educational Institute's Motion for Partial Summary Judgment* to be deposited into the Court's Electronic File/Service Program, to the following as noted below in place of deposit in the United States Postal Service, to the last known electronic address as follows:

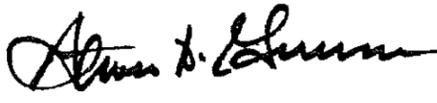
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 CLERK OF THE COURT

10 **DISTRICT COURT**
 11 **COUNTY OF CLARK, NEVADA**

12 In the Matter of the Estate of
 13 MILTON I. SCHWARTZ,
 14 Deceased.

Case No. P061300
 Dept. No.: 26/Probate
 Date of Hearing: July 9, 2014
 Time of Hearing: 9:00 a.m.

15
 16 **ORDER DENYING THE DR. MIRIAM AND SHELDON G. ADELSON EDUCATIONAL**
 17 **INSTITUTE'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

18 On July 9, 2014, the Court heard The Dr. Miriam and Sheldon G. Adelson Educational
 19 Institute's Motion for Partial Summary Judgment. Maximiliano D. Couvillier III, Esq. appeared on
 20 behalf of The Dr. Miriam and Sheldon G. Adelson Educational Institute ("Adelson Campus"), and
 21 Alan D. Freer, Esq. appeared on behalf of the Executor A. Jonathan Schwartz ("Executor").

22 After review of the briefs, consideration of the argument from Counsel, and for good cause
 23 shown:

24 The Court makes the following findings:

- 25
 26 1. The Estate's Ex Parte Application to Exceed Page Limit is hereby granted.
 27
 28

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2. The Adelson Campus' Motion for Partial Summary Judgment is hereby denied because there are questions of fact and the Estate has requested a jury trial.

3. The Court has found that there were genuine issues of material fact to be decided by the trier of fact.

4. The Court further finds, *sua sponte*, that the cy pres doctrine will also be an issue to be tried in this case.

Good cause being found,

IT IS HEREBY ORDERED that the Estate's Ex Parte Application to Exceed Page Limit is hereby GRANTED;

IT IS FURTHER ORDERED that the Adelson Campus' Motion for Partial Summary Judgment is hereby DENIED; and

IT IS FURTHER ORDERED that this matter shall be set for a status check on August 13, 2014 at 9:00 a.m.

DATED this 3rd day of ~~August~~ September, 2014.


DISTRICT COURT JUDGE


Respectfully submitted,

SOLOMON DWIGGINS & FREER

By: 

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Alan D. Freer, Esq.
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Approved As To Form And Content:

BLACK & LOBELLO

By: Refused to sign

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1 **OPP**

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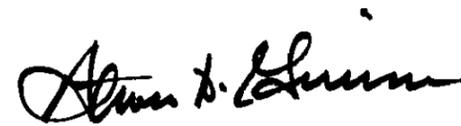
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16 *Attorneys for A. Jonathan Schwartz, Executor
17 of the Estate of MILTON I. SCHWARTZ*

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CLERK OF THE COURT

18 **DISTRICT COURT**

19 **COUNTY OF CLARK, NEVADA**

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

Case No. P061300

Dept. No.: 26/Probate

DATE OF HEARING: October 8, 2014
TIME OF HEARING: 9:00 a.m.

23 **OPPOSITION TO THE ADELSON CAMPUS' MOTION FOR RECONSIDERATION OF DENIAL OF MOTION
24 FOR PARTIAL SUMMARY JUDGMENT**

25 A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz ("Estate"), by and through
26 his attorneys, Solomon Dwiggins & Freer, Ltd., hereby files this Opposition to the Adelson Campus'
27 Motion for Reconsideration of Denial of Motion for Partial Summary Judgment ("Opposition").

28 **MEMORANDUM OF POINTS AND AUTHORITIES**

1. **INTRODUCTION AND OVERVIEW**

A motion for reconsideration should be summarily denied because the Adelson Campus has not raised any new issues of law, fact or error, but rather simply restates its arguments contained in its

1 Motion for Partial Summary Judgment. Likewise, the Adelson Campus' Motion for Reconsideration
 2 should be denied because its argument regarding the "impact of name change from MISHA to
 3 Adelson" improperly presupposes that the Adelson Campus would be entitled to funds as a bequest
 4 under the Decedent's Will and completely ignores the predicate issues of fact that must be determined
 5 by the jury as to Milton Schwartz's ("Milton") understanding and intent when formulating the bequest.

6 Lastly, with respect to the Adelson Campus' request to remove the ruling pertaining to the *cy-*
 7 *pres* doctrine as an issue to be tried in this case, the Estate has no objection to removal of that portion
 8 of the Order.
 9

10 2. **STATEMENT OF FACTS**

11 As this Court will certainly recall, the Estate has requested a jury trial. *See* Demand for Jury
 12 Trial previously filed on November 27, 2013. In its Opposition to the Adelson Campus' Motion for
 13 Summary Judgment and at the hearing on the same, the Estate identified numerous questions of fact,
 14 which the Court ultimately recognized, must be decided by the jury. Indeed, each of the following
 15 issues of fact precluded summary judgment:

- 16 1. Whether Milton intended the bequest identified in Section 2.3 to be made only
 17 to an entity bearing the name "Milton I. Schwartz Hebrew Academy";
- 18 2. Whether Milton intended the bequest in Section 2.3 of his Will to lapse if
 19 MISHA did not maintain his name in perpetuity;
- 20 3. Whether Milton intended to permit a successor entity (*i.e.* the Adelson Campus)
 21 that did not bear his name to receive the bequest identified in Section 2.3 of his
 22 Will;
- 23 4. Whether Milton believed and understood that MISHA would bear his name in
 24 perpetuity based upon MISHA's promises and representations;
- 25 5. Milton's belief and understanding that MISHA would retain his name in
 26 perpetuity played an integral part in forming Milton's understanding and intent
 27 in drafting and making a bequest in Section 2.3;
- 28 6. Based upon Milton's intent and understanding, would he have made the
 disputed bequest contained in Section 2.3 of his Will had he known that his
 name would be removed from MISHA immediately following his death; and

- 1 7. Whether, for the purpose of obtaining contributions from Milton, MISHA and
2 its officers and directors at least led Milton to believe that such an agreement
3 existed.

4 Notwithstanding the Court's finding that there are numerous issues of fact to be decided by the
5 jury, the Adelson Campus' Motion contends that the "only apparent issue of fact identified by the
6 Court, however, is the impact of the corporation operating the various schools changing its corporate
7 name from "Milton I. Schwartz Hebrew Academy." See Motion for Reconsideration at 2:21-23. As
8 an initial matter, the Adelson Campus misrepresents the issue of fact identified by the Court, which
9 was "I think that what this is is a question of action because we have this problem here of what does
10 the Milton Schwartz Hebrew Academy mean." See July 9, 2014, Hearing Transcript at 39:1-18,
11 attached as Ex. 1 to the Motion for Reconsideration. Further, the Court is not required to specifically
12 identify each and every issue of fact in its Order.

13 The Adelson Campus' Motion for Partial Summary Judgment, and ultimately its Motion for
14 Reconsideration, are deceptive and flawed because such motions attempt to skirt the penultimate issue
15 of fact: whether Milton intended the bequest in Section 2.3 to go to any entity that did not bear his
16 name. This issue will be decided by a jury. For these reasons, and those set forth below, the Motion
17 for Reconsideration should be denied in its entirety.

18 **3. LEGAL ARGUMENT**

- 19 a. **THE ADELSON CAMPUS DOES NOT ESTABLISH ANY GROUNDS FOR**
20 **RECONSIDERATION BUT MERELY REPEATS ARGUMENTS PREVIOUSLY MADE AND**
21 **REJECTED AND THUS RECONSIDERATION WOULD BE AN ABUSE OF DISCRETION.**

22 Nevada courts do not look favorably on motions for reconsideration. "Litigants are not entitled
23 to a rehearing as a matter of right." *Bates v. Nevada Savings & Loan Ass'n*, 85 Nev. 441, 443, 45P.2d
24 451, 452 (1969). "Only in very rare instances in which new issues act or law are raised supporting a
25 ruling contrary to the ruling already reached should a motion for rehearing be granted." See *Moore v.*
26 *City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). Thus, a court may entertain a motion
27

1 to reconsider a ruling only where the moving party can show: (1) a change in controlling law; (2)
 2 newly discovered evidence, unknown or unavailable when the parties were last before the court; or (3)
 3 clear error in law or fact or to correct manifest injustice. *See School Dist. No 1J Multnomah County v.*
 4 *Acands, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Reconsideration is not to “be used to ask the Court to
 5 rethink what it has already thought,” *Motorola Inc. v. J.B. Rodgers Mechanical Contractors*, 215
 6 F.R.D. 581, 582 (D. Ariz. 2003), or “to dress up arguments that previously failed.” *Waddell & Reed*
 7 *Fin., Inc. v. Torchmark Corp.*, 338 F. Supp. 2d 1248, 1250 (D. Kan. 2004)(citations omitted). Thus,
 8 reconsideration motions cannot not be used merely to reargue the arguments the movant already made
 9 to the court. *See Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

11 In fact, in *Moore*, the Nevada Supreme Court held that the district court abused its discretion
 12 by entertaining reconsideration where the motion was based on arguments previously made:

13 The only feature which distinguishes the second motion for rehearing from the two
 14 previous motions is the citation of additional authorities for a proposition of law
 15 already set forth and adequately supported by reference to relevant authorities in the
 16 earlier motions. We note particularly that the second motion for rehearing raised no
 17 new issues of law and made reference to no new or additional facts. Under such
 18 circumstances the motion was superfluous and, in our view, it was an abuse of
 19 discretion for the district court to entertain it.

18 *Moore*, 92 Nev. at 405, 551 P.2d at 246.

19 Here, the Adelson Campus does the same thing the Nevada Supreme Court rejected in *Moore*,
 20 to wit: The Adelson Campus does not raise any new issues of law, fact or error, but simply restates its
 21 arguments and asks the Court to rethink what it has already thought, carefully and considerately. In its
 22 Motion, the Adelson Campus asks the Court to reconsider its Order Denying Motion for Partial
 23 Summary Judgment on the grounds that: (1) the impact of its name change from the “Milton I.
 24 Schwartz Hebrew Academy” to the “Dr. Miriam and Sheldon G. Adelson Educational Institute” is a
 25 matter of law; and (2) a *sua sponte* theory regarding *cy pres* is not supported.

1 Because reconsideration motions cannot be used merely to reargue the arguments the movant
 2 already made, the Court should deny the Adelson Campus' Motion for Reconsideration. *See Moore*,
 3 92 Nev. At 405, 551 P.2d at 246 (entertaining a motion for reconsideration that is based on arguments
 4 previously made is abuse of discretion).

5 b. **THE ADELSON CAMPUS' MOTION FOR RECONSIDERATION SHOULD BE DENIED IN**
 6 **ITS ENTIRETY BECAUSE THE COURT CANNOT MAKE A DETERMINATION**
 7 **REGARDING THE BEQUEST UNTIL IT DECIDES WHETHER THE BEQUEST HAS LAPSED**
 8 **OR WHETHER THE ADELSON CAMPUS IS THE PROPER RECIPIENT OF THE BEQUEST.**

9 The Adelson Campus' contention that it is entitled to partial summary judgment because the
 10 name change from the "Milton I. Schwartz Hebrew Academy" to the "Dr. Miriam and Sheldon G.
 11 Adelson Educational Institute" is "inconsequential" improperly presupposes that the Adelson Campus
 12 is entitled to the funds as the beneficiary under Section 2.3 of the Will. As recognized by this Court at
 13 the hearing on the Adelson Campus' Motion for Summary Judgment on July 9, 2014, before the Court
 14 can make any determination regarding the bequest, it must first determine whether the bequest has
 15 lapsed or whether the Adelson Campus is a **proper recipient** of the funds.¹

16 In its Opposition to the Adelson Campus' Motion for Summary Judgment, the Estate identified
 17 numerous issues of fact, the majority of which are listed above, that must first be resolved prior to the
 18 Court making a determination of whether a beneficiary exists. Each of these issues must first be
 19 resolved, because without a prior determination of whether a beneficiary exists, the permissive use of
 20 the bequest is unripe and may be rendered moot.²

22 ¹ Specifically, the Court stated the following: "All right. Well, I think actually, unfortunately, Mr.
 23 Couvillier, I disagree. I think what this is is a question of fact because we have this problem here of
 24 what does the Milton Schwartz Hebrew Academy mean. . . But that's interpreting it as a question - -
 25 it's a question of fact. And so I can't say that it's a matter of law. To me, I believe that it's - - it's a
 question - - ultimately it's a question of fact for the finder of fact." *See* July 9, 2014, Hearing
 Transcript at 39:1-18, attached as Ex. 1 to the Motion for Reconsideration.

26 ² *Cf. Boulet v. City of Las Vegas*, 96 Nev. 611, 613, 614 P.2d 8, 9 (1980) (unripe case not
 27 appropriate for judicial review); *Personhood Nevada v. Bristol*, 126 Nev. Adv.Op. 56, 245 P.3d 572,
 574 (2010) (courts should not render advisory opinions where events render the case moot).

1 The majority of the cases cited in the Motion for Reconsideration were the same cases relied
2 upon by the Adelson Campus in its Motion for Partial Summary Judgment. Therefore, the Estate
3 hereby incorporates the same arguments contained within its Opposition to Motion for Partial
4 Summary Judgment by reference. Further, none of which are from Nevada, are inapplicable because
5 none of them deal with the construction of a will bequest to an entity bearing the decedent's name.³
6 More importantly, none of the cases address the consequences of a change of the corporate name in
7 breach of the corporation's contractual obligations to the decedent. Indeed, when it comes to gifts and
8 bequests made in connection with naming rights, courts have held that changing the name in violation
9 of the recipient's representations is consequentially important and have entered substantial judgments
10 in favor of the donors. For example, in *Tennessee Division of the United Daughters of the*
11 *Confederacy v. Vanderbilt University*, 174 S.W.3d 98 (Tenn. App. 2005), a donor challenged
12 Vanderbilt University's announcement that it would change the name of Confederate Memorial Hall in
13 violation of its agreement with the donor. Siding with the donor, the court ordered the university to
14 maintain the existing name or return the donation to the donor organization. Similarly, when a
15 hospital violated its oral promise to country singer Garth Brooks that it would name a hospital wing
16 after his mother in return for his \$500,000 donation, the jury awarded Mr. Brooks \$500,000 in
17 damages on his breach of contract claim, \$150,000 on his fraud claim, and \$500,000 in punitive
18
19
20
21

22 ³ See, e.g., *Northern Natural Gas Co. v. Vanderburg*, 785 S.W.2d 415, 421 (Tex. App. 1990)
23 (court found that claims against a division of a corporation were against the corporation itself as the
24 division is not a separate legal entity); *Alley v. Miramon*, 614 F. 2d 1372, 1384 (5th Cir. 1980)
25 (corporate name change did not divest shareholders of equity interest in the successor corporation);
26 *Haynes v. JP Morgan Chase Bank, N.A.*, 2011 WL 2581956, *5 (M.D. Ga. 2011) (note and security
27 deed transferred from one financial institution to another was valid); *In re VHA Diagnostic Services,*
28 *Inc.*, 602 N.E. 2d 647, 651-52, 65 Ohio St. 3d 210, 215 (Ohio 1992) (change of applicant's ownership
did not prevent issuance of certificate of need); *Goodwyne v. Moore*, 316 S.E. 2d 601, 170 Ga. App.
305 (Ga. App. 1984) (court found that party was estopped denying legal existence of corporation
because it accepted promissory note from a corporation that was undergoing a name change).

1 damages. *Brooks v. Integris Rural Health Inc.*, Okla. Dist. Ct., Rogers County, No. CJ-2009-738 (Jan.
2 25, 2012).

3 Accordingly, the Adelson Campus' Motion for Reconsideration should be denied.

4 c. **THE ADELSON CAMPUS' MOTION FOR SUMMARY JUDGMENT WAS NOT DENIED**
5 **BECAUSE OF THE INVOCATION OF THE *CY-PRES* DOCTRINE.**

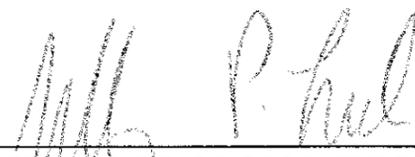
6 The Adelson Campus also contends that partial summary judgment is "not precluded by a
7 possible, speculative application of *cy-pres*." See Motion for Reconsideration at 5:17-18. Although
8 the Estate does not believe that the Adelson Campus' Motion for Partial Summary Judgment was
9 denied due to the invocation of the *cy-pres* doctrine since the Court merely stated that the "*cy-pres*
10 doctrine will also be an issue to be tried in this case,"⁴ it has no objection to such finding being
11 stricken from the Order.

12 4. **CONCLUSION**

13 In light of the foregoing, the Adelson Campus' Motion for Reconsideration should be denied in
14 its entirety.

15 DATED this 6th day of October, 2014.

16 SOLOMON DWIGGINS & FREER

17 By: 

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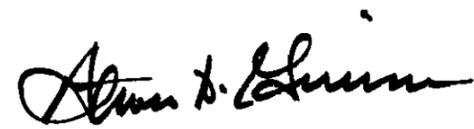
25 *Attorneys for A. Jonathan Schwartz, Executor*
26 *of the Estate of MILTON I. SCHWARTZ*

27 ⁴ See Order Denying The Dr. Miriam and Sheldon G. Adelson Educational Institute's Motion for
28 Partial Summary Judgment at 2:5-6, previously filed on September 4, 2014.

35

35

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 Dwiggin & 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 Opcion. 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', written over a horizontal line.

Matthew Smith

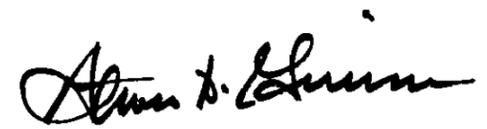
Certified Transcriber

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NOTC
Maximiliano D. Couvillier III, Esq.
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CLERK OF THE COURT

*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

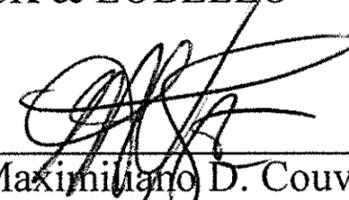
Case No. P061300
Dept. No.: 26/Probate

**NOTICE OF ENTRY OF STIPULATION
AND ORDER FOR PROTECTIVE
ORDER**

NOTICE is hereby given that a **STIPULATION AND ORDER** was entered on this Court's docket on March 5, 2015. A copy of the same is attached.

Dated this ___ March, 2015.

BLACK & LOBELLO

By: 
Maximiliano D. Couvillier, III (SBN #7661)

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

BLACK & LOBELLO
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

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CERTIFICATE OF SERVICE

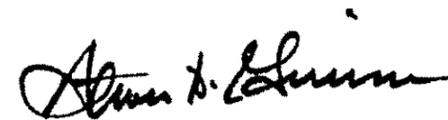
I certify that a true and correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER FOR PROTECTIVE ORDER** was served on counsel of record via the Court's c-service system this 5th day of March, 2015.

Bonnie L. Lindsay
An Employee of Black & Lobello

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(702) 869-8801 FAX: (702) 869-2669

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of

MILTON I. SCHWARTZ,

Deceased.

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

**STIPULATION AND ORDER FOR
PROTECTIVE ORDER**

The Executor of Milton I. Schwartz and The Dr. Miriam and Sheldon G. Adelson Educational Institute ("Adelson Campus") in the above-referenced action ("Matter"), by and through their respective counsel, hereby agree and stipulate as follows:

WHEREAS, the parties regard certain of the documents and information that may be requested and/or produced during discovery in this Matter as containing or constituting confidential information and/or proprietary information belonging to one or more of the parties; and

WHEREAS, the party or parties producing such information could and likely would suffer prejudice if the review and dissemination thereof is not reasonably restricted;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. Any information, document, or thing produced in connection with Matter that is reasonably believed by any party or third party to be proprietary, private, confidential, or commercially sensitive, may be designated as "Confidential Material." As used herein, Confidential Material may include, but is not limited to: (a) all papers, tapes, documents (including, but not limited to written responses to interrogatories, document requests and requests for admission), disks, diskettes, and other tangible things produced by or obtained from

any person in connection with this litigation; (b) transcripts of depositions herein and exhibits attached thereto; and (c) all copies, extracts, and/or complete or partial summaries prepared from such papers, documents, or things. Confidential Material does not include attorney work-product. The designation of Confidential Material shall be made in good faith.

2. Such designation of Confidential Material may be made by stamping or otherwise marking the material as follows: "Confidential" or "Confidential—Subject To Protective Order" with the initials of the designating party or a bates number that identifies the producing party.

3. More than one party may designate the same material as Confidential Material. If a non-producing party designates material as Confidential Material, it shall do so by giving notice to all parties in writing, as soon as reasonably practicable following the production of the material by the producing party, that the material is to be designated as Confidential Material, and should be stamped or otherwise marked confidential, provided that the non-producing party had earlier provided the material in question, or the basis for the material in question, to the producing party with the expectation of confidentiality. In addition, if a producing party inadvertently fails to stamp certain documents upon their production, it may designate such documents as Confidential Material by giving written notice as described in the preceding sentence. In either case, after receiving such notice, all parties shall thereafter stamp or otherwise mark the designated material as Confidential Material as described above. Deposition transcripts and exhibits thereto may be designated as confidential on the record at the deposition, and may also be designated as confidential for a period of ten (10) days after receipt of the transcript from the court reporter.

4. Should any party to whom Confidential Material is disclosed object to the classification of such materials, and the parties are unable to resolve the objection informally, then the objecting party may move for an order determining whether the materials are properly

designated as Confidential Material. Until the Court rules to the contrary, all materials designated Confidential Material shall be treated as prescribed in this Stipulation and Protective Order. Any party who believes that another party hereunder has inappropriately designated materials as Confidential shall make reasonable and diligent efforts to meet and confer with the designating party in an effort to reach an informal resolution to the dispute. If, after such efforts, the parties are unable to resolve the dispute, the objecting party may file a Motion with the Court challenging the designation of confidentiality. Nothing herein is intended to shift the applicable burden of establishing confidentiality.

5. All documents produced by, or discovery responses of, any party in these proceedings, as well as all deposition testimony in these proceedings, which are designated as Confidential Material, shall be used solely in connection with this litigation and the preparation and trial of this case, or any related appellate proceeding, and shall not be used for any other purpose, including without limitation other litigation or any business, competitive, or governmental purpose or function. However, if any party is served with a subpoena calling for the production of documents or discovery responses that have been produced by another party in these proceedings, whether or not designated as Confidential Material, the subpoenaed party shall promptly give written notice to the producing party before compliance with the subpoena so as to allow the producing party sufficient time to seek protection from the Court. In addition, the parties agree that all documents produced by, or discovery responses of, any party in these proceedings, as well as all deposition testimony in these proceedings, whether or not designated as Confidential Material, shall not be used to file a separate lawsuit against any party hereto in this or any other forum, except as may be necessary to enforce subpoenas or other process in connection with this litigation.

6. Confidential Material and information derived from Confidential Material shall not be disclosed except as set forth in paragraphs 7 or 12.

7. Confidential Material may be disclosed to the following persons:
- (a) Counsel of record for any party to this action;
 - (b) Paralegal, stenographic, clerical, and secretarial personnel employed by counsel in (a);
 - (c) Parties and any person who is responsible for assisting or directly overseeing counsel in the litigation and is also an officer, employee, partner, or in-house legal personnel of a party;
 - (d) Witnesses, deponents, and their respective counsel in accordance with the terms of paragraph 12;
 - (e) Any person who authored, was an identified original recipient of the Confidential Material, or who otherwise had previously received the Confidential Material from the producing or designating party;
 - (f) Outside commercial vendors retained for photocopying and other litigation services in this litigation;
 - (g) Court personnel including stenographic, video, or audio reporters engaged to record depositions in this litigation; and
 - (h) Any expert(s) or consultant(s) retained in connection with this action.

8. Each individual identified in paragraphs 7(c), (f), and (h), above and paragraph 12 below, to whom Confidential Material is furnished, shown, or disclosed shall, before the time he or she receives access to such materials, be provided by counsel furnishing him or her such material with a copy of this Order, and shall affirm that he or she has carefully read the Order and fully understands the terms of the Order, and agrees to be bound thereto, by signing the certificate attached as Exhibit A. Counsel making disclosure to any person as described in this paragraph shall retain the original executed copy of this certificate until final termination of this litigation.

9. The restrictions on the use of Confidential Material established under this Order do not apply to the party, person, or entity producing such material, except that if such party, person, or entity disseminates Confidential Material in a manner inconsistent with the claim that it is proprietary or confidential, any party may assert to the Court that such material is no longer entitled to be treated as Confidential Material.

10. The foregoing is without prejudice to the right of any party to this Stipulation: (a) to apply to the Court for a further or additional protection for any Confidential Material; (b) to object to the request for production of documents or information that it considers to be not properly subject to discovery; (c) to apply to the Court for an order compelling production of documents or modification of this Order or for any Order permitting disclosure of Confidential Material beyond the terms of this Order; or (d) to seek access to Confidential Material in any other proceeding.

11. Documents filed with the Court that reveal any Confidential Material shall be marked "Confidential: File Under Seal Pursuant to Protective Order" and filed in accordance with Rule 3(7)&(8) of the NV Supreme Court Rules Governing Sealing & Redacting Court Records, which provide:

7. Procedures for maintaining sealed court records.

(a) When the clerk receives a court order to seal specified court records, the clerk shall:

(1) Preserve the docket code, document title, document and subdocument number, and date of the original court records on the court's docket;

(2) Remove the specified court records, seal them, and return them to the file under seal or store them separately. The clerk shall substitute a filler sheet for the removed sealed court record. If the sealed record exists in a microfilm, microfiche, or other storage medium form other than paper, the clerk shall restrict access to the alternate storage medium so as to prevent unauthorized viewing of the sealed court record; and

(3) File the order and the written findings supporting the order to seal. Both shall be accessible to the public.

(b) Sealed court records may be maintained in a medium other than paper.

(c) Before a court file is made available for examination, the clerk shall prevent access to the sealed court records.

8. Procedures for redacted court records. When a court record is redacted in accordance with a court order, the clerk shall replace the original court record in the public court file with the redacted copy. The person who filed the motion shall provide the redacted copy. The original unredacted court record shall be sealed following the procedures set forth in subsection 7 of this rule.

If any Confidential Material is filed with the Court as part of a motion, pleading, or other document, two versions of that motion, pleading, or document shall be filed and served simultaneously: (1) a public version, with any quotes from or discussion of the Confidential Material redacted, and (2) an unredacted version filed under seal as provided.

12. Nothing contained in this Order shall preclude any party at deposition from showing any Confidential Material or disclosing information derived therefrom to any witness presently or formerly employed by or affiliated with the party producing such material. Confidential Material may be shown or disclosed to witnesses at or in preparation for deposition who are persons other than those authorized to receive such material by the terms of paragraph 7 of this Order, provided that such witnesses shall first sign the Certificate attached as Exhibit A. If Confidential Material is disclosed at a deposition, only the stenographic, video, or audio reporter and those persons who are authorized by the terms of this Order to receive such material may be present. Counsel for the parties shall confer in good faith regarding the appropriate use and disclosure of Confidential Material at trial.

13. The portions of the transcripts of all testimony designated as Confidential Material shall be labeled with the appropriate designation by the reporter. If any document or information designated as Confidential Material pursuant to this Order is used during the course of a deposition herein, that portion of the deposition record reflecting such material shall be labeled with the appropriate designation and segregated from the remaining portion of the deposition transcript. It is the responsibility of the designating party to seek the appropriate designation and segregation hereunder.

14. At the conclusion of the trial and of any appeals, or upon other termination of this litigation, all Confidential Material received under the provisions of this Order shall, at the receiving party's election, be returned to the producing party, person, or entity or, alternatively, be destroyed. The parties shall certify compliance with this preceding sentence to the producing

party, person, or entity within 90 days following the conclusion or termination of this litigation. Provisions of this Order shall continue to be binding on all persons subject to the terms of this Order until further order of this Court. Counsel for the parties are entitled to retain their court papers, deposition and trial transcripts, and attorney work product containing Confidential Material, provided that such counsel, and employees of such counsel, shall not disclose such court papers or attorney work product to anyone except pursuant to court order under the terms of paragraph 5 or agreement with the producing party.

15. If a party inadvertently produces material, whether stamped “Confidential—Subject To Protective Order” or not, such production shall not constitute a waiver of, or prejudice or estop, any claim of privilege, work product, or other ground for withholding production which the producing party would otherwise be entitled to claim. On notice by the producing party, the materials inadvertently produced, and any and all copies, shall be promptly returned to the producing party by all persons and/or entities in receipt of those materials, and the receiving party or parties shall not use such materials for any purpose other than in connection with a motion to compel (which shall be filed under seal) until further order of the Court.

16. If materials stamped “Confidential—Subject to Protective Order” are used in any court proceeding in this litigation or appeal therefrom, such material shall not lose its confidential status through such use. Counsel shall confer on such procedures as are necessary to protect the confidentiality of any confidential materials used in the course of any court proceedings.

17. Subject to paragraph 18 below, this Court shall retain jurisdiction over all persons subject to the terms of this Order for the sole purpose of enforcing this Order.

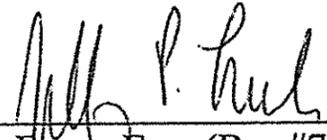
18. Nothing in this stipulation shall affect or prejudice any of the defenses of any of the defendants to this action, including lack of personal jurisdiction, to the extent any such defenses exist.

[signature page follows]

Dated: March 2, 2015

By: 

Maximiliano D. Couvillier III, Esq.
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By: 

Alan D. Freer, Esq. (Bar #7706)
Jeffrey Luszeck, Esq. (Bar #9619)
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Fax: (702) 853-5485
afreer@sdfnvlaw.com
jluszeck@sdfnvlaw.com
Attorneys for Executor

IT IS SO ORDERED this 3 day of March, 2015.


DISTRICT COURT JUDGE


Attachment A

In the Matter of the Estate of

MILTON I. SCHWARTZ,

Deceased.

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

**STIPULATION AND ORDER FOR
PROTECTIVE ORDER**

I hereby certify that I have been given a copy of and have read the Stipulation and Order for Protective Order ("Order") in the above-captioned case, and that I fully understand the terms of that Order. I recognize that I am bound by the terms of the Order, and I agree to comply with those terms.

I understand that Confidential Material and any copies, notes, or other records that may be made regarding Confidential Material, shall not be used by me or disclosed by me to others, except in conformity with the terms of the Order.

Upon the conclusion of the case, including all appeals therefrom, I agree to destroy all Confidential Material and any copies, notes, or other records that may be made regarding Confidential Material. I agree not to disclose Confidential Material to anyone who has not agreed to be bound by the Order.

I agree to use Confidential Material only in connection with the above-captioned case and not for any other purpose, including without limitation any other litigation or any business, competitive, or governmental purpose or function.

Executed this _____ day of _____, 201__.

Signature

Print Name: _____

Affiliation: _____

Business Address: _____

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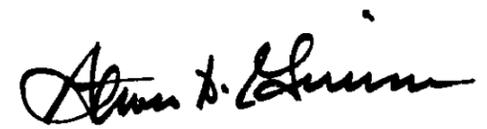
MARK A. SOLOMON, ESQ.
Nevada State Bar No. 00418
msolomon@sdfnvlaw.com

ALAN D. FREER, ESQ.
Nevada State Bar No. 7706
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JEFFREY P. LUSZECK, ESQ.
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SOLOMON DWIGGINS & FREER
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Las Vegas, Nevada 89129
Telephone: (702) 853-5483
Facsimile: (702) 853-5485

Attorneys for A. Jonathan Schwartz



CLERK OF THE COURT

DISTRICT COURT

COUNTY OF CLARK, NEVADA

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

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

PETITION FOR PARTIAL DISTRIBUTION

A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz ("Executor"), by and through his Counsel of Record, the law firm of Solomon Dwiggin & Freer, Ltd., hereby files this Petition for Partial Distribution.

DATED this 19th day of May, 2016.

SOLOMON DWIGGINS & FREER

By: 

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 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 **PETITION FOR PARTIAL DISTRIBUTION** before this Court at 200 Lewis Avenue, Las Vegas, Nevada 89101, on the 10 day of Jun, 2016, at the hour of 9:30 a.m/~~p.m.~~, or as soon thereafter as counsel can be heard.

DATED this 19th day of May, 2016.

SOLOMON DWIGGINS & FREER

By: 
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 A. Jonathan Schwartz

MEMORANDUM OF POINTS AND AUTHORITIES

1. Milton I. Schwartz (the "Decedent") died on August 9, 2007.
2. On February 5, 2004, the Decedent executed his Last Will and Testament, which specifically provides that after certain gifts are made the residue of his Estate shall be distributed to THE MILTON I. SCHWARTZ REVOCABLE FAMILY TRUST established January 29, 1986, as amended (the "Trust"):

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, as amended... See Last Will and Testament at ¶ 3.1, a copy of which is attached hereto as **Exhibit 1**.

3. One of the assets owned by the Decedent, and currently being administered by the Estate, is real property located at 2293 Duneville Street, Las Vegas, Nevada, APN: 163-01-402-007. See Amended Inventory, Appraisal and Verified Record of Value, attached hereto as **Exhibit 2**. The

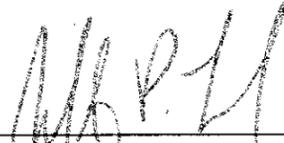
1 Executor would like the Real Property be distributed to the Trust, so that it can be marketed, and
2 ultimately, sold.

3 4. As this Court may recall, the Estate cannot be fully distributed in light of the pending
4 litigation between the Estate and The Dr. Miriam and Sheldon G. Adelson Educational Institute
5 regarding the naming rights of the Milton I. Schwartz Hebrew Academy. As this Court may also
6 recall, the disputed \$500,000 specific bequest is being held in a blocked account pending further order
7 of this Court. See Order Regarding Deposit of Funds in Blocked Account at Morgan Stanley dated
8 March 6, 2014, on file herein.

9
10 5. In light of the foregoing, a partial distribution of the Real Property to the Trust will not
11 adversely impact The Dr. Miriam and Sheldon G. Adelson Educational Institute. As such, the
12 Executor respectfully requests an order allowing him to partially distribute the Real Property to the
13 Trust.

14 DATED this 19th day of May, 2016.

15 SOLOMON DWIGGINS & FREER

16
17 By: 

18 MARK A. SOLOMON, ESQ., NSB #00418
19 ALAN D. FREER, ESQ., NSB #7706
20 STEVEN E. HOLLINGWORTH, ESQ., NSB #7753
21 9060 West Cheyenne Avenue
22 Las Vegas, Nevada 89129
23 Telephone: (702) 853-5483
24 Facsimile: (702) 853-5485
25 *Attorneys for A. Jonathan Schwartz*
26
27
28

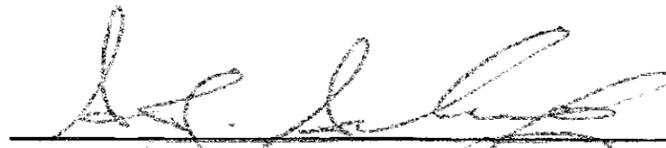
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VERIFICATION

A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz, being first duly sworn under penalty of perjury, deposes and states:

That he is the Petitioner who makes the foregoing PETITION FOR PARTIAL DISTRIBUTION ("Petition"), that he has read said Petition and knows the contents thereof, and that the same is true of his own knowledge except for those matters stated on information and belief, and that as to such matters he believes them to be true.

DATED this 19 day of May, 2016.


A. Jonathan Schwartz, Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 19, 2015, pursuant to NRCP 5(b)(2)(B), I placed a true and correct copy of the foregoing **PETITION FOR PARTIAL DISTRIBUTION**, in the United States Mail, with first-class postage prepaid, addressed to the following, at their last known address, and, pursuant to EDCR 8.05 (a) and 8.05 (f) and Rule 9 of N.E.F.C.R., caused an electronic copy to be served via Odyssey, to the e-mail addresses noted below:

KEMP JONES & COULTHARD, LLP

J. Randall Jones, Esq.

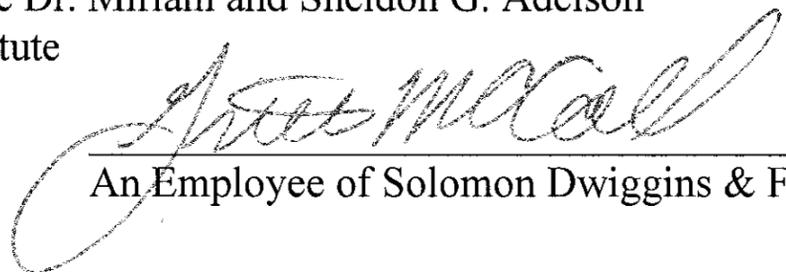
David Blake, Esq.

3800 Howard Hughes Parkway, 17th Floor

Las Vegas, NV 89169

Attorneys for The Dr. Miriam and Sheldon G. Adelson

Educational Institute



An Employee of Solomon Dwiggin & Freer, LTD.

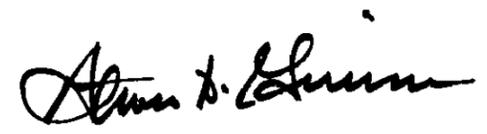
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CLERK OF THE COURT

1 **ERR**
 2 MARK A. SOLOMON, ESQ.
 Nevada State Bar No. 00418
 msolomon@sdfnvlaw.com
 3 ALAN D. FREER, ESQ.
 Nevada State Bar No. 7706
 4 afreer@sdfnvlaw.com
 JEFFREY P. LUSZECK, ESQ.
 5 Nevada State Bar No. 9619
 jluszeck@sdfnvlaw.com
 6 SOLOMON DWIGGINS & FREER
 9060 West Cheyenne Avenue
 7 Las Vegas, Nevada 89129
 Telephone: (702) 853-5483
 8 Facsimile: (702) 853-5485
 9 *Attorneys for A. Jonathan Schwartz*

DISTRICT COURT

COUNTY OF CLARK, NEVADA

12 In the Matter of the Estate of
 13 MILTON I. SCHWARTZ,
 14 Deceased.

Case No. 07P061300
 Dept. No.: XXVI/Probate

ERRATA TO PETITION FOR PARTIAL DISTRIBUTION

16 A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz (“Executor”), by and
 17 through his Counsel of Record, the law firm of Solomon Dwiggin & Freer, Ltd., hereby files this
 18 Errata to his Petition for Partial Distribution (“Petition”), originally filed on May 19, 2016 as follows:

19 The undersigned inadvertently did not attach the Last Will and Testament of Milton I. Schwartz,
 20 **Exhibit “1”** to the Petition, and the Amended Inventory, Appraisement and Verified Record of Value

21 / / /

23 / / /

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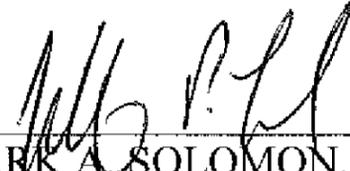
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Exhibit "2" to the Petition. Therefore, attached hereto are **Exhibit "1"** and **Exhibit "2,"** as should have been filed and incorporated within the Petition as though originally filed.

DATED this 2nd day of June, 2016.

SOLOMON DWIGGINS & FREER

By: 
MARK A. SOLOMON, ESQ., NSB #00418
ALAN D. FREER, ESQ., NSB #7706
JEFFREY P. LUSZECK, ESQ., NSB #9619
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Attorneys for A. Jonathan Schwartz

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 2, 2015, pursuant to NRCP 5(b)(2)(B), I placed a true and correct copy of the foregoing **ERRATA TO PETITION FOR PARTIAL DISTRIBUTION**, in the United States Mail, with first-class postage prepaid, addressed to the following, at their last known address, and/or pursuant to EDCR 8.05 (a) and 8.05 (f) and Rule 9 of N.E.F.C.R., caused an electronic copy to be served via Odyssey, to the party(ies) noted below:

KEMP JONES & COULTHARD, LLP

J. Randall Jones, Esq.

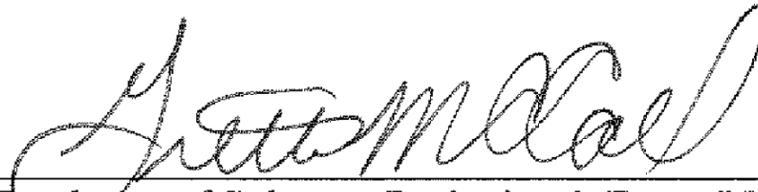
David Blake, Esq.

3800 Howard Hughes Parkway, 17th Floor

Las Vegas, NV 89169

Attorneys for The Dr. Miriam and Sheldon G. Adelson

Educational Institute



An Employee of Solomon Dwiggin & Freer, LTD.

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EXHIBIT 1

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 MS

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 LS

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 WSD

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

Beverley J. Jones
Residing At:
1911 Surf Drive
Henderson, NV 89015

STATE OF NEVADA)
) ss.:
COUNTY OF CLARK)

Then and there personally appeared the within named Richard B. Newman and Beverley 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.

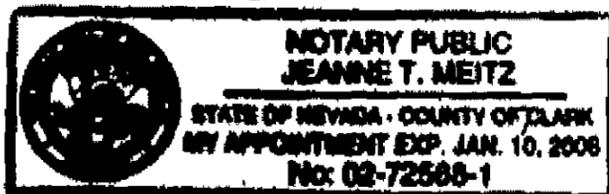
[Signature]

Beverley J. Jones

SUBSCRIBED and SWORN to before me

This 5th day of February, 2004.

Jeanne T. Meitz
Notary Public



1:09

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EXHIBIT 2

ORIGINAL

FILED

JAN 8 4 27 PM '09

Ed [Signature]
CLERK OF THE COURT

WY

1 CC25
 2 Steven J. Oshins, Esq., Bar No. 5732
 3 Heidi C. Freeman, Esq., Bar No. 8458
 4 Kristen E. Simmons, Esq., Bar No. 9187
 5 Oshins & Associates, LLC
 6 1645 Village Center Circle, Suite 170
 Las Vegas, NV 89134
 (702)341-6000
probate@oshins.com
 Attorneys for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Case No. P61300
 AMENDED INVENTORY, APPRAISEMENT AND
 VERIFIED RECORD OF VALUE

Date of Hearing: N/A
 Time of Hearing: N/A

I, being first duly sworn, hereby certify under penalties of perjury that:

1. The attached asset listing contains a true statement of all of the decedent's property, both real and personal, which has come into my control. The decedent has no claims against me, and none is listed.
2. All known assets of the estate are listed, including all partnerships, and other interests, bonds, notes, and other securities for the payment of money.
3. Items requiring an appraisal have been appraised by a qualified appraiser having no interest in the estate or in the sale, exchange or other transfer of estate assets. A copy of each appraisal is attached hereto and incorporated herein by this reference.

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1 4. Cash and other items of undisputed value are listed at that value, which I hereby
2 verify is accurate.

3 5. Upon information and belief, the property described in this amended inventory is
4 the decedent's separate property.

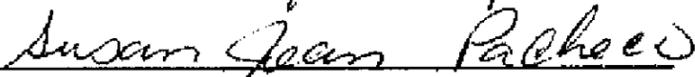
5 6. I hereby verify that the contents of this amended inventory are true of my own
6 knowledge, except for matters stated upon information and belief, and those matters I believe to
7 be true.

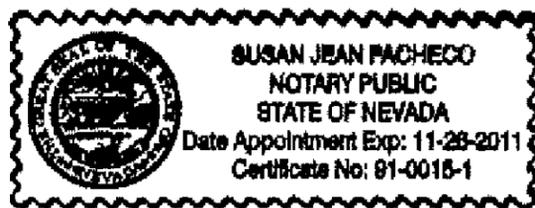
8 Dated: 1-6-09

9 
10 A. JONATHAN SCHWARTZ

11
12 SUBSCRIBED AND SWORN TO before me

13 this 6th day of January, 2009.

14 
15 NOTARY PUBLIC



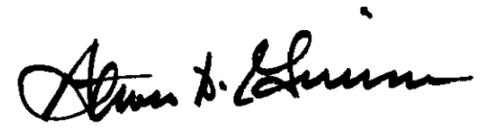
INVENTORY

DESCRIPTION OF ASSET	VALUE OF ASSET
1) Bank of America, Certificate of Deposit, Account No. 910 000 5511 7368 <i>[Value based on Statement of Account in the amount of \$445,915.19. There is a line of credit against the Certificate of Deposit in the amount of \$377,290.08. Therefore, the decedent's interest in the Certificate of Deposit is \$68,625.11]</i>	\$ 68,625.11
2) 1999 Rolls Royce Silver Seraph, VIN SCALA61E1XCX01704 <i>[value based on quote given by USI Motors]</i>	60,000.00
3) 2004 Dodge Neon, VIN 1B3ES26C84D606157 <i>[value based on Kelley Blue Book value High = \$7,420; Low = \$5,845]</i>	6,632.50
4) Real property commonly known as 2293 Duneville Street, Las Vegas, Nevada, APN 163-01-402-007, and further described as follows: PARCEL I: Parcel Two (2) as shown by map thereof on File 31 of Parcel Maps, Page 82, in the Office of the County Recorder of Clark County, Nevada. PARCEL II: An easement for ingress and egress over those portions of Lots One (1), Three (3), and Four (4) lying within the private drive as shown by said map. <i>[Value is based on appraisal attached to previously filed Inventory in the amount of \$490,000.00. There is a mortgage on the real property in the amount of \$211,868.32. Therefore, the decedent's interest in the real property is \$278,131.68]</i>	278,131.68
5) Las Vegas Country Club Membership <i>[value based on quote given by Las Vegas Country Club]</i>	14,000.00
6) 2.428% interest in Roland Garage <i>[value based on tax return]</i>	1,779.00
7) 1.3889% shares in Americab, Inc. <i>[value based on balance sheet]</i>	5,960.00
8) 29.7% interest in Valley Group Constructors <i>[value based on tax return]</i>	0
9) VA Life Insurance Policy, Policy No. V547688 <i>[value based on insurance statement]</i>	10,000.00
10) 16.667% interest in Star Limousine, L.L.C. <i>[value based on tax return]</i>	41,700.00

1	11) 200 shares in Fleet Management U.S.A	0
2	<i>[value based on balance sheet]</i>	
3	12) 16.667% interest in Star Transit, LLC	0
4	<i>[value based on balance sheet]</i>	
5	13) 100 shares in 1824 Corp.	0
6	<i>[value based on tax return]</i>	
7	14) 500 shares in Samson Consulting, Inc.	53,073.21
8	<i>[value based on balance sheet]</i>	
9	15) 8 shares in Fleet Delivery Service Northwest	0
10	<i>[value based on balance sheet]</i>	
11	16) HCA Inc; claim # 5096129	125.67
12	<i>[value based on statement form State of Nevada. Unclaimed Property]</i>	
13	17) Misc. Personal Property	184,025.00
14	<i>[value based on tax return]</i>	
15	18) Cash	204,891.00
16	19) 1.39% interest in Pittsburg LALV	0
17	<i>[value based on tax return]</i>	
18	20) 3.4670994% interest in Hallandale Trust	940.00
19	<i>[value based on tax return]</i>	
20	21) 10,000 shares in Medinox	1.00
21	<i>[value based on tax return]</i>	
22	22) .000067% interest in Westin LP	0
23	<i>[value based on tax return]</i>	
24	23) Insured Municipal Trust	0
25	<i>[value based on tax return]</i>	
26	24) 1.584% interest in Petroleum Securities	0
27	<i>[value based on tax return]</i>	
28	25) 1.0439% interest in Towner Leveraged Private Program	0
	<i>[value based on tax return]</i>	
	Total Value of Assets	\$929,884.17

39

39



CLERK OF THE COURT

1 **RTRAN**

2

3

DISTRICT COURT

4

CLARK COUNTY, NEVADA

5

6 IN THE MATTER OF:

7

CASE NO. P-061300

8

THE ESTATE OF MILTON SCHWARTZ

DEPT. XXVI

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BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

13

WEDNESDAY, AUGUST 3, 2016

14

**RECORDER'S TRANSCRIPT OF PROCEEDING:
ALL PENDING MOTIONS**

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17

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19 APPEARANCES:

20

For the Estate:

ALEXANDER G. LEVEQUE, ESQ.
Solomon Dwiggin & Freer, LTD.

21

For the Adelson Campus:

DAVID T. BLAKE, ESQ.
Kemp, Jones & Coulthard, LLP

22

23

24

RECORDED BY: KERRY ESPARZA, COURT RECORDER

25

1 TUESDAY, AUGUST 3, 2016 AT 10:15 A.M.

2

3 THE COURT: Okay. P161300.

4 MR. LEVEQUE: Morning, Your Honor. Alex LeVeque, Bar Number 1183,
5 on behalf of the Estate.

6 MR. BLAKE: Good morning, Your Honor. Dave Blake, 11059, on behalf
7 of the Adelson Campus.

8 THE COURT: Okay. This is the motion of Dr. Adelson and Mr. Adelson
9 to quash service of process. There's an opposition and countermotion, and
10 we're also going to have a status check concerning our position of discovery
11 for -- our hope for a jury trial the week of September 12 or sometime -- on the
12 stack of September 12th, rather. I don't know if you saw the late filed sur
13 rebuttal that was filed by Mr. LeVeque yesterday?

14 MR. BLAKE: I did, I saw that, a copy of it.

15 THE COURT: Okay. I know it's late, but, actually, I thought at least
16 finally we got to the issue here, but something that nobody has explained to me
17 is whose witness -- whose witness is already -- I mean, who are identified for
18 as far as -- Mr. Adelson is now the president of your board. He was not at the
19 time the case was initiated. Mr. Chaltiel, who unfortunately has passed away,
20 was.

21 I think there's an allegation that some retaliatory action was taken
22 by the board in response to this litigation, and, again, Mr. Adelson was on the
23 board at that time. Dr. Adelson was not. So I'm trying to figure out why she's
24 even been noticed. She is now on the board, but I don't know what she would
25 know. I mean, are these people who your clients have identified as needing to

1 testify on their behalf?

2 MR. BLAKE: I believe they're on our witness list. Can I -- can I use the
3 lectern, Your Honor?

4 THE COURT: Absolutely.

5 MR. BLAKE: It's our motion, so I figure we'll go first. So I'll address
6 your answer to your question first. Judge, you're correct, Mr. Adelson is the
7 chairman of the board. He does have relevant knowledge. He's on our witness
8 list, although we have never affirmatively represented that we would offer him
9 as a witness or that we would accept service on his behalf. The position of the
10 school and -- and in my office and --

11 THE COURT: I mean, I think they finally got to the real point here, which
12 is, this is a corporate entity that has brought the petition, the Adelson school,
13 and if they want to use the testimony of a former board member, now current
14 board president, don't they have to make him available, otherwise, he's not a
15 witness?

16 MR. BLAKE: Well, I think that -- I think the Estate has to subpoena him.
17 So, number one, the argument about -- so you're referring to the argument
18 raised in the reply for the very first time yesterday regarding NRCP 30(b)(1),
19 and the Estate relies on --

20 THE COURT: And to be clear, he is not the 30(b)(6) deponent witness.
21 He has not been identified for the purpose -- that purpose. You have a different
22 30(b)(6) representative. That's the head of the school.

23 MR. BLAKE: Yeah. The former head of the school was our 30(b)(6)
24 witness at one point; however --

25 THE COURT: How are you -- how are you going to deal with that?

1 MR. BLAKE: -- my point is more fundamental to that. My point is more
2 fundamental than that, and, that is, that this argument -- the subpoenas, the
3 notices never referenced NRCP 30(b)(1). The Estate never made the argument
4 to me or to my office ever once that, oh, these guys are an entity
5 representatives that you have to make them available. As far as I'm aware of --
6 I believe -- my understanding has always been that the Estate believes that it
7 always had to subpoena these individuals and that that was difficult. And so
8 this is the first time that that argument has ever been raised.

9 THE COURT: Uh-huh.

10 MR. BLAKE: I disagree with it. I think if you look at 30(b)(1), there's
11 no -- there's no language indicating that you can serve officers, which is -- the
12 officers have to be made available just pursuant to a deposition notice. I looked
13 through *Willis* or -- I'm sorry, Wright-Miller Treatise on federal practice and
14 procedure. I've been looking at *Willis* for other things. The Wright-Miller
15 treatise does not mention, as far as I can discover, anything about 30(b)(1)
16 being allowed to compel board members or managing agents of the corporation
17 simply by the deposition notice. And so the -- I disagree with --

18 THE COURT: My point is, this is the chairman of your board, and if you
19 want him to testify and he refuses to comply with a discovery subpoena -- we'll
20 get to whether it's about service or not -- then he doesn't get to testify.

21 MR. BLAKE: Well, that's the -- our position is not that he doesn't have
22 to comply with a valid discovery subpoena. Mr. Adelson's position and Dr.
23 Adelson's position is that the subpoena is not -- he was never under authority.
24 That subpoena was never properly served. So our position has never been that
25 he doesn't have to comply with the subpoena, and I don't think we would ever

1 take that position.

2 THE COURT: Okay. So your position is just that we haven't got a
3 properly served subpoena.

4 MR. BLAKE: Correct.

5 THE COURT: Because as a corporate entity filing suit, who wants to use
6 the testimony of the chairman of your board to prove your claim, you don't
7 have to make that witness available.

8 MR. BLAKE: Our position is we don't have to make him available, is they
9 have to subpoena him. I think it's -- I think it's different that -- it's a discovery
10 subpoena --

11 THE COURT: Why is this corporation any different from any other
12 corporation in the world? Of course, you have to make a corporate
13 representative available. This is the chairman of your board. If you want him
14 to testify at the trial, he's got to be made available, otherwise, he doesn't have
15 to testify at trial. How hard is it?

16 MR. BLAKE: My understanding of the rules are that this is a discovery
17 subpoena and that it's for the purposes of assisting the Estate in their
18 discovery --

19 THE COURT: Right.

20 MR. BLAKE: -- and that's different than us -- I mean, he's -- we can call
21 him as a witness. They can subpoena him to --

22 THE COURT: No, he can't. If you have not made this person available
23 during discovery; you don't get to call him at trial.

24 MR. BLAKE: So point number one, I'm not aware of any authority saying
25 you have to make a witness available in discovery in order to call that witness

1 at trial. We disclosed him. They could've subpoenaed him many times before.
2 That's our position on that. I understand that you're confused about the
3 position. You don't necessarily agree with the fairness of that position, but --
4 judging by the look on your face; however, the more fundamental point is,
5 we're not saying that he doesn't have to -- that he doesn't have to provide
6 testimony. The only position of the -- of the Adelsons is that --

7 THE COURT: Who are not your clients, by the way. They're not your
8 clients.

9 MR. BLAKE: No, they are our client.

10 THE COURT: Your client -- your client is the school.

11 MR. BLAKE: No -- and we represent the Adelsons. My firm represents
12 the Adelsons. They've raised --

13 THE COURT: That was -- okay. Stop right there. The representation
14 that was made to the Estate was, we don't represent the Adelsons. Mr. Kemp
15 made that representation. We can't accept service for them. We don't
16 represent them in this litigation. They're not our clients in this litigation. He's
17 just a member of the board.

18 MR. BLAKE: That's -- that's not exactly the representation. The
19 representation was made that they are not our clients and that we cannot
20 accept service for them; however, subsequent to that time, once we real -- the
21 minute we realized that the Estate was claiming that they had proper service,
22 we contacted the Adelsons, and they made arrangements for us to represent
23 them. And we filed our motion to quash the subpoena, and we rejected the
24 subpoena on behalf of the Adelsons.

25 THE COURT: Okay. So now they're your clients?

1 MR. BLAKE: Yes. Correct.

2 THE COURT: Oh, awesome. So now they can serve you.

3 MR. BLAKE: I disagree. I think NRCP 45 requires the subpoena to be
4 served personally. That's the -- that's the Adelsons' position.

5 THE COURT: Okay. Uh-huh.

6 MR. BLAKE: So I don't believe this notice -- a simple notice of
7 deposition, I don't believe that the Estate can compel us to accept service on
8 behalf of the Adelsons. That's the Adelsons' position. I understand your
9 views. I disagree with that, so --

10 THE COURT: All right. Let's talk about your motion then.

11 MR. BLAKE: Okay. So the -- I want to make the point first that this is
12 not a situation where the Adelsons are asking in bad faith or trying to -- they're
13 standing on their rights, which they're entitled to do, and their right is NRCP
14 45, which requires personal service of subpoenas, and personal service was not
15 effectuated. And there's been a lengthy history of time where the Estate could
16 have served these subpoenas; did not serve the subpoenas.

17 I think it's a mischaracterization to make the Adelsons seem like
18 the ones who are trying to avoid service. There was two attempts made on a
19 single day, and so I disagree with that characterization, so I want to get that
20 out of the way.

21 THE COURT: Okay. Well, let's just talk about the attempts.

22 MR. BLAKE: Okay.

23 THE COURT: I understand two attempts on a single day. Eh, it doesn't
24 look good; however, I'm struggling to understand your interpretation of the
25 statute, and the distinction you draw -- you seem to read into that statute that

1 it must be a gated community. It doesn't have to be a guard-gated community.
2 They make a distinction between guard-gated communities and just gated
3 communities --

4 MR. BLAKE: That's right.

5 THE COURT: -- because both of them limit your access; however, the
6 whole point is the community doesn't have to be gated and inaccessible, if the
7 house is gated and inaccessible. And I understand your position that their
8 process server was less than forthcoming in his affidavit. She was. I
9 understand that.

10 But I also am a little puzzled by why the security guard at
11 Tournament Hills calls the security gate that surrounds the Adelson compound,
12 which has access controlled by going up to one of the many, many, many exits
13 for that property and pushing a call button to contact security or somebody
14 inside the house -- a doorbell. It's not a doorbell. It's not on a door. It's an
15 intercom from a gate asking to have the gate open so I can come in and serve
16 process.

17 And if nobody answers the bell because security has called and
18 said, I'm bringing a process server in, wink, wink, don't answer any call, what's
19 a process server going to do? This statute wasn't enacted to allow people who
20 can afford to be inside multiple gates excluding themselves from access from
21 the public to avoid process.

22 MR. BLAKE: I don't think that's exactly what happened. Anytime -- Mr.
23 Adelson has -- I agree there's a fence around his property. I guess --

24 THE COURT: It's not a fence. It's a blockade. This is a massive
25 property that is surrounded -- and what's this process server going to do?

1 Climb it? I don't think so.

2 MR. BLAKE: No, I think --

3 THE COURT: He'd be trespassing.

4 MR. BLAKE: My argument --

5 THE COURT: He'd be shot.

6 MR. BLAKE: Our position is that the -- the buzzer on the gate is no
7 different -- it's no different from a doorbell. The process servers are to ring that
8 buzzer, and that's the same as ringing a doorbell on the residence. And if a
9 resident decides not to -- if a resident is present and decides not to answer,
10 that's -- that's that person's prerogative.

11 Now, if the Estate is not going to procure any evidence that the
12 Adelsons were present, that they knew that he was there, that they did not
13 answer -- I don't know if that's true --

14 THE COURT: Well, somebody was there --

15 MR. BLAKE: There was no --

16 THE COURT: -- because somebody talked to the security guard at the
17 gate, who called and said, I'm bringing a process server in, don't pick up the
18 phone.

19 MR. BLAKE: He talked to the security guard. That's his protocol in any
20 kind of reasonable security situation. If somebody's going to gain access to
21 your residence, you would call the resident and let that person know. And my
22 guess is that --

23 THE COURT: Okay. So a "person who resides at a location which
24 access is not reasonably available except through a gate" -- I think that
25 presumes a locked gate, a gate that you can't simply reach out and open and

1 walk in -- "may lawfully -- be lawfully served with any process in the manner
2 provided for in this section if there is a guard posted." And this is where the
3 Tournament Hills security is very sophisticated. "A guard posted at the gate
4 and the guard denies access to the residence for service of process. Service of
5 process is effected leaving a copy with the guard."

6 So what happened here? The process server did that, but you're
7 right, that wasn't the proper thing to do because the guard -- they're very
8 sophisticated. They took him in and said, oh, look, there's another gate. You
9 got to push that button and see if somebody will come out and accept process.
10 Oh, by the way, I'm not going to tell you, I called them and told them not to
11 come out because we don't do that around here. We protect our residents in
12 Tournament Hills.

13 MR. BLAKE: I think --

14 THE COURT: The next part is "no guard posted at the gate." That's we
15 have, there's no guard, there's not a doorbell, there's an intercom or some sort
16 of a button to contact security, "and entry through this gate is not reasonably
17 available" -- I got to ask you, seriously, how is access reasonably available to a
18 person who comes up to the gate at Sheldon Adelson's house? Everybody in
19 town knows he's got armed guards.

20 MR. BLAKE: He rang the buzzer. He said he rang the buzzer for five --
21 between five and ten minutes, and he tried --

22 THE COURT: And they're not going to come out.

23 MR. BLAKE: -- before that.

24 THE COURT: They're not going to come out. There's no way to get
25 access.

1 MR. BLAKE: But that's not -- they're going to ring the bell, though.

2 THE COURT: They're armed guards. Like I said, you climb over that
3 fence, they're shooting you because you're trespassing.

4 MR. BLAKE: But he doesn't have to climb over the fence because the
5 doorbell rings the residence. That's the --

6 THE COURT: It's not a doorbell. It's not a doorbell.

7 MR. BLAKE: I would -- here's -- the way that I look at it in my mind is
8 it's not different from -- there are many, many residents that have intercom
9 systems and individual gates to their residences. I know people in my
10 community have those. I have used them. You push a button, it rings a thing,
11 and if somebody is there, they will say, who is it, and they'll answer the door if
12 somebody's there. I don't think --

13 THE COURT: Or they won't answer the door if they've been told, I'm
14 bringing in a process server, don't come out.

15 MR. BLAKE: That's the person -- again, we don't have any evidence the
16 Adelsons were there or not --

17 THE COURT: Right.

18 MR. BLAKE: -- so it's not a situation where they intentionally ignored
19 that.

20 THE COURT: Because it would still have to be a person of suitable age
21 and discretion resident therein.

22 MR. BLAKE: Certainly that's possible, but it's possible in any residence.
23 If you know that a process server is going to be there, you can choose to not
24 answer the door, but it's no different from -- I mean, those intercom systems
25 are typically in front of a gate, and so if you interpret this statute 14.090 to

1 apply to any residence where there's an intercom system that goes directly
2 back to the residence, I think you're opening the door to service in many
3 residences that the legislature designed and to provide for service of those
4 residents. That's our position.

5 THE COURT: Okay.

6 MR. BLAKE: So that's in 14.090. And so the fact that there was a
7 security guard at the Adelson residence or not a security guard at the Adelson
8 residence -- I'm guessing that a lot of the residences in that Tournament Hills
9 community have gates, and they have intercom systems --

10 THE COURT: They probably do.

11 MR. BLAKE: -- that they can use to access the residence. Does that
12 mean now that they all subject to service of process through the Tournament
13 Hills community guard --

14 THE COURT: No.

15 MR. BLAKE: -- even though they're don't have access to the building?

16 THE COURT: Absolutely not. It has to be mailed. It has to be mailed.

17 MR. BLAKE: And so -- and so that's -- that's what happened here. He
18 went, he was admitted to -- he was allowed entrance to the community --

19 THE COURT: The only reason for that is they don't want to put the
20 burden on the security guard. It's a security -- the security policy at the
21 community is, we don't want people in to serve process. Then you're opening
22 yourself up to having them take the process, and they don't want that. They
23 don't want their guards having to take the process.

24 MR. BLAKE: Right.

25 THE COURT: So the burden is on the other party to proceed and to

1 serve by mail.

2 MR. BLAKE: Or make -- in this case they could've made different
3 attempts. If -- this is a very different situation. If they would've come back
4 four days in a row, rang the buzzer for five minutes, they would've been
5 allowed in the community every single time. If they would've ringed the buzzer
6 four days in row, we can -- the cause for evasion of service would've been
7 much better against my client. They could've tried to serve him at the -- at his
8 office in the Venetian. You can serve personally at somebody's office to
9 somebody with suitable age or discretion. There was just the one attempt to
10 serve --

11 THE COURT: Not in an office you can't.

12 MR. BLAKE: But I guess that would --

13 THE COURT: You can't leave it with a person of suitable age or
14 discretion at work.

15 MR. BLAKE: That would confirm more than an attempt -- that would
16 confirm an intent to evade service here. I just don't think you have the
17 evidence -- there's only two attempts on a single day. You don't have the
18 evidence to show that the Adelsons were -- were going to be served.

19 THE COURT: Okay.

20 MR. BLAKE: I guess I've said what I was going to say on 30(b)(1). I
21 would just point out that, again, the deposition notice was not -- did not
22 mention 30(b)(1) --

23 THE COURT: I think it say 30. It didn't say 30(b)(1).

24 MR. BLAKE: Right, it didn't say 30(b)(1). And, again, there were never
25 a -- there was never a follow-up letter saying, hey, you have an obligation to

1 produce this guy, otherwise, we're going to hold you in contempt. It was
2 always --

3 THE COURT: So you're opposing the continuance that they asked for.

4 MR. BLAKE: Yes.

5 THE COURT: I'm trying to figure out why they need a continuance
6 because it seems to me that it shouldn't warrant a continuance because how
7 are you going to get Mr. Adelson's testimony in?

8 MR. BLAKE: Well, if you're -- let me be clear. Your position is that -- if
9 we oppose the continuance and that Mr. Adelson is not allowed to testify at
10 trial because he did not make himself available for a -- for the discovery
11 subpoena, then our position very might well change.

12 The current position of the school and of the Adelsons is that
13 they're not required to make the Adelsons available for deposition. If your
14 position is that they are required to do that in order to make Mr. Adelson
15 available for -- in order to allow Mr. Adelson to become a witness, then,
16 obviously, the client has got to think about how badly they want to have Mr.
17 Adelson. They've got to make a decision on whether they're going to allow
18 him to be deposed or not or --

19 Again, I'm hesitant to put it in those terms because I don't think
20 we didn't allow him to be deposed. It's just -- we're just -- the Adelsons are
21 just standing on their rights. It was ineffective service, and there were no
22 subsequent attempt. Even when they made our motion, they didn't -- they
23 didn't do any more additional attempts to serve.

24 However, again, I want to know, if your position is that we can't
25 call Mr. Adelson at trial if he doesn't make himself available, then we -- then I

1 would like to know because this is the first time I'm hearing that argument, and
2 I've never -- I've never heard that before, and I have -- again, I have now been
3 made aware of that fact.

4 THE COURT: Okay.

5 MR. BLAKE: So -- but, again, we would then probably agree to allow
6 them to -- anyway, we take the issue of the client and address the issue of
7 continuing discovery, et cetera, if that's the position.

8 THE COURT: Okay. Right.

9 MR. BLAKE: Can I look through my notes and make sure that I didn't
10 forget to say anything?

11 THE COURT: Sure.

12 [Pause]

13 MR. BLAKE: I just want to make clear that NRS 14.090, the specific
14 language is that it refers to a person who resides at a location to which access
15 is not reasonably available. It doesn't say a residence to which access is not
16 reasonably available except through a gate. I just want to reiterate the point. If
17 you allow for service in this kind of situation, then NRS 14.090 applies to
18 many, many homes with individual gates and intercom systems that I don't
19 need to list that the legislature intended.

20 THE COURT: Okay.

21 MR. BLAKE: That's it.

22 THE COURT: Thank you.

23 MR. BLAKE: Thank you, Your Honor.

24 THE COURT: Uh-huh.

25 MR. LEVEQUE: Thank Your Honor. I just want to address briefly the

1 reply that we filed. That was a reply to the countermotion that was made by
2 the Estate. We didn't receive the opposition to the countermotion until
3 Thursday. It was filed, I think, at 5:00 or after 5:00 on Wednesday --

4 THE COURT: Uh-huh.

5 MR. LEVEQUE: -- so we did what we could. I had an evidentiary
6 hearing, a preliminary injunction -- well, actually, it wasn't evidentiary, but a
7 preliminary injunction hearing last Friday, so we scrambled to get something put
8 together. It was delivered to the Court and the counsel yesterday.

9 And this morning, Your Honor, I prepared some additional exhibits
10 that we'd like to file in open court with respect to the reply because it sheds a
11 lot of light on the issue of 30(b)(1) and the acceptance of service. And the
12 offer of proof, Your Honor, with respect to those exhibits are that before Kemp,
13 Jones and Coulthard got involved in the case, there was a discussion with
14 former opposing counsel, Mr. Couvillier in my office about accepting service on
15 behalf of the Adelsons, and it was agreed that that would occur.

16 That changed when Kemp, Jones and Coulthard got involved in the
17 case, and all of a sudden it was, well, no, we're not accepting service on behalf
18 of the Adelsons. We don't represent the Adelsons. Now, they apparently do
19 represent the Adelsons.

20 And I think the overarching theme of this whole situation, Your
21 Honor, is they're trying to skirt due process on a technicality. There's no
22 dispute that they've received the subpoena. And I submit, Your Honor, that
23 what we presented in our reply, the *Cadent* case that talks exactly on this issue
24 with respect to Rule 30(b)(1). Let me be clear, we never -- we never noticed
25 those depositions under 30(b)(6), so the only sub rule under Rule 30 that we'd

1 be seeking to depose these people is under Rule 30(b)(1).

2 And the *Cadent* case makes it clear that -- at least with respect to
3 the federal interpretation of 30(b)(1), which is substantially similar to the
4 Nevada rule -- it is well recognized that if the corporation is a party, which the
5 school is in this case, the notice compels it to produce any officer, director or
6 managing agent named in the deposition notice. It is not necessary to
7 subpoena such individual. The corporation risks sanctions, including default or
8 dismissal if the designated individual fails to appear.

9 That's the law, Your Honor, and under *American Home Assurance*
10 *Corporation v. Eighth Judicial District Court*, this Court looks to guidance of the
11 federal interpretation when there's an ambiguity or the Supreme Court hasn't
12 decided the issue under Nevada law. In this case, it hasn't been squarely
13 addressed on point.

14 So the position of the Estate is, there was never a reason to go
15 through this circus in the first place of having to subpoena and serve the
16 Adelsons.

17 THE COURT: Did you have to subpoena and serve all the other board
18 members?

19 MR. LEVEQUE: No, actually, you don't. Any current board of trustee
20 member of the corporation does not have to be served. We went -- and, in
21 fact, I'd say all the current board members with the exceptions of the Adelsons,
22 the school accepted service. So the only ones at issue here are Dr. and Mr.
23 Adelson.

24 THE COURT: So they don't testify. Why do you need them. Why would
25 you even want them?

1 MR. LEVEQUE: Oh, yeah. Well, Your Honor, we addressed that in our
2 opposition and in our reply. One of the key issues in this case, as Your Honor
3 knows, is, you know, what happened with respect to the naming rights of the
4 school. We know that at one point it was named Milton I. Schwartz Hebrew
5 Academy. We know that changed. We deposed a whole --

6 THE COURT: And they left the Milton Schwartz name on the school
7 building, but they have since removed that?

8 MR. LEVEQUE: Correct. And that was --

9 THE COURT: Along with his picture?

10 MR. LEVEQUE: Yes.

11 THE COURT: That's kind of punitive.

12 MR. LEVEQUE: Yeah. And that was -- that was the deposition testimony
13 of Mr. Schiffman, which we've included, and --

14 THE COURT: Who was at one time the head of school and the person
15 most knowledgeable. I haven't heard yet who the person most knowledgeable
16 is going to be.

17 MR. LEVEQUE: I don't know. At the time he was --

18 THE COURT: Uh-huh.

19 MR. LEVEQUE: -- and when he was deposed, he testified that Mr.
20 Adelson definitely gave input in the decision -- the ultimate decision of the
21 school to remove the name, to remove Mr. Schwartz's picture. And in addition
22 to that, Your Honor, Mr. Ventura, who was just deposed a few weeks ago --
23 and I can provide his deposition transcript if the Court's inclined to review it --
24 you know, I asked him a question with respect to what happened, do you know
25 if there was ever an agreement between Mr. Schwartz and Mr. Adelson

1 concerning the naming rights? Because I started hearing that from the board
2 members as we were going through depositions

3 And Mr. Ventura's testimony, who, by the way, was on the board, I
4 think, the longest, he was -- starting in the '80s and just got off the board not
5 that long ago, his testimony was that there was closed-door meetings with Mr.
6 Chaltiel, who has passed away --

7 THE COURT: Yes.

8 MR. LEVEQUE: -- Mr. Schwartz, who's passed away, Mr. Adelson and
9 Mr. Schiffman. When I asked Mr. Schiffman about those -- those meetings, he
10 said he couldn't recall or he didn't remember ever participating. So the only
11 person that the Estate can ask with respect to any clandestine agreements that
12 occurred in closed doors is Mr. Adelson. He's a key witness. So --

13 THE COURT: Well, but if they don't -- if they can't prove there were any
14 agreements, then isn't the Estate in a better position? They don't have any
15 evidence. They don't have a witness who can testify. Mr. Chaltiel is dead,
16 Mr. Schiffman doesn't remember, and Mr. Schwartz isn't going to tell us, so --
17 it's their burden of proof. This is their case.

18 MR. LEVEQUE: It's their burden of proof to prove that the \$500,000
19 bequest is an enforceable trust in the will. It is our burden to prove that the
20 school breached a contract for -- or it's liable for promissory estoppel because
21 of the covenants that were entered into between Mr. Schwartz and the school,
22 and that -- you know, the position that the Estate -- excuse me, the school is
23 taking is that --

24 THE COURT: So I understand Mr. Adelson, that he would've been acting
25 in his capacity as somehow a member of the board and their biggest

1 benefactor. What's the -- Dr. Adelson, she wasn't on the board the time they
2 removed Mr. Schwartz's name.

3 MR. LEVEQUE: So it's not entirely clear.

4 THE COURT: If she was there or not?

5 MR. LEVEQUE: We know -- well, she's been on and off the board.

6 THE COURT: Doctor.

7 MR. LEVEQUE: I know that for certain, and I know for certain that
8 there's board meeting minutes in January of 2008 -- that would've been about
9 six months after Mr. Schwartz died -- where Dr. Adelson was on the board, and
10 she apparently had a conversation during that meeting about what her vision of
11 the school was going to be in the future. So, clearly, there's at least a relevant
12 inquiry with respect to what she knew, what involvement she had in changing
13 the direction of the school and the naming of the school. So it's our burden to
14 prove those claims --

15 THE COURT: Okay.

16 MR. LEVEQUE: -- and, therefore, that testimony would be relevant.

17 THE COURT: So you need the discovery.

18 MR. LEVEQUE: We do. The other --

19 THE COURT: Well, okay. Then on the issue of the service, I respectfully
20 counsel's interpretation of the statute.

21 MR. LEVEQUE: Yeah.

22 THE COURT: If you have a gated compound inside a larger gated
23 community, access to the property of the person who they're trying to serve is
24 still blocked by a gate.

25 MR. LEVEQUE: Exactly, Your Honor. I think Your Honor is --

1 THE COURT: But I am a little concerned about your process server just
2 going back and handing it to the gate. That's the whole -- they don't want
3 guard gates -- they don't have guards at gates to be responsible for these
4 things.

5 MR. LEVEQUE: Yes.

6 THE COURT: That's the whole point.

7 MR. LEVEQUE: And, Your Honor, one thing we specifically addressed in
8 our reply brief is that our process server complied with 14.090(1)(b), where if
9 you can't get access to anyone at the gate, then you can -- you can mail it via
10 certified mail. He did that.

11 And as Exhibit 3 to our reply, it's the -- it's the bill from Legal
12 Process Server, our process server, where he includes certified mailings and
13 affidavits for process of service for both Sheldon Adelson and Dr. Miriam
14 Adelson, so he's already complied with 14 --

15 THE COURT: So he did both, he both left it with the guard --

16 MR. LEVEQUE: Correct.

17 THE COURT: -- and he mailed it? Okay.

18 MR. LEVEQUE: I mean -- and you know --

19 THE COURT: Now, counsel's point is that this was pretty weak. This
20 was pretty weak. You go twice on the same day and push the button for five
21 minutes. Your guys didn't know. He didn't know that they'd already called
22 ahead and told the residents we're bringing in a process server.

23 MR. LEVEQUE: Correct, we had no idea. All we knew --

24 THE COURT: We should all live in this place. This is amazing.

25 MR. LEVEQUE: All we knew, Your Honor, is what our process server

1 told us in his affidavit, and that was that he was denied access and, therefore,
2 served the guard gate. So we didn't see any reason to continue trying to serve
3 Mr. Adelson and Dr. Adelson because we reasonably relied on what our process
4 server told us.

5 THE COURT: But can they rely on this statute when they just go twice
6 and ring the bell for -- I think he rang not one, but two different --

7 MR. LEVEQUE: Several --

8 THE COURT: It was like three or four --

9 MR. LEVEQUE: Several -- yeah, several --

10 THE COURT: -- entrances on the property.

11 MR. LEVEQUE: -- entrances on the property. And the whole point of the
12 statute, Your Honor --

13 THE COURT: Maybe it's two. I don't know. There's several.

14 MR. LEVEQUE: Yeah, it's a fortress.

15 THE COURT: Yes.

16 MR. LEVEQUE: And I think Your Honor's right, that if the process server
17 tried jumping, they're going to get shot.

18 THE COURT: Yeah.

19 MR. LEVEQUE: And this is really the only effective way of serving the
20 Adelsons. Can you imagine a process server walking up to Mr. Adelson and
21 saying here's service of process? You'd probably get beaten up by a security
22 guard. This is the only reasonable way that we could serve Mr. Adelson
23 because of his obstinacy and counsel's refusal despite Rule 31(b) [sic] to accept
24 service on behalf of the Adelsons. So, you know, we gave approximately 30
25 days of notice after we served the Adelsons for their actual depositions. The

1 depositions [sic] were served on June 8th --

2 THE COURT: But -- I'm sorry, it's Rule 30(b)(1)?

3 MR. LEVEQUE: Correct, Rule 30(b)(1).

4 THE COURT: Because 31(b) is different.

5 MR. LEVEQUE: If I said 31(b), I apologize.

6 THE COURT: Yeah.

7 MR. LEVEQUE: I sometimes get ahead of myself. You know, we served
8 the Adelsons on June 8th. There's no dispute that they received it. We taped
9 it to their house. We sent it certified mail. We left it with the guard gate.
10 They waited three weeks to file any sort of motion to quash, not on shortened
11 time, knowing full well that the discovery deadline was July 15th.

12 But they filed it to be heard today, past the discovery cutoff in
13 terms of getting some sort of procedural advantage, and it's just inequitable,
14 Your Honor.

15 You know, the whole purpose of 14.090, it's not -- it's not the
16 situation where I live in a gated community and -- you know, or Mr. Blake or
17 anyone else -- you go to Canyon Gate, you go to Rancho Bellaire. You go to
18 the guard gate, he lets you in, and you can literally walk up to the door and
19 knock on the door. That's not the case here. And the whole factual scenario
20 what's going on here, especially considering that the guard gates have been
21 trained to call ahead, it defeats the purpose of 14.090.

22 So we submit, Your Honor, that service was effectuated under
23 (1)(a). We believe that even -- if the Court takes an their interpretation of that,
24 service was nevertheless is effectuated by (1)(b) because it was mailed via
25 certified mail. And notwithstanding all that, we believe under the federal

1 court's interpretation of NRS 30(b)(1) -- it's not even necessary because
2 counsel's obligated to accept service because these are present officers and
3 board members of a corporation.

4 THE COURT: Okay.

5 MR. BLAKE: Just a couple points of clarification. It sounds like Your
6 Honor is pretty -- had her mind made up as to where she's going to go;
7 however, 31(b) is relying on a federal law, Again, I don't see any support in the
8 text of the actual Rules of Civil Procedure Rule 30. There's no indication that
9 the Nevada Supreme Court would be inclined to follow the federal courts on
10 that specific issue, and the --

11 I guess the final point is, this is an argument that could've been
12 raised before we filed our motion. It could've been raised -- I guess the point is,
13 it could've been raised well in advance. We could've briefed it. We could've
14 analyzed it. You know, we found out about it yesterday. I don't think it
15 applies.

16 The point is, the Estate's behavior is inconsistent with their beliefs
17 if 30(b)(1) applied to the Adelsons. Mr. LeVeque said that the school accepted
18 service on behalf of the individual board members. That's not true at all. We
19 accepted service on behalf of the individual board members, not on behalf of
20 the school. Our position -- my position has always been that the individual
21 board members have to authorize me before I can accept service on their
22 behalf.

23 I made very -- what's the word I'm looking for? It was inconvenient
24 to reach out to all of these board members and -- even when they were
25 available, coordinate their availability and see if I could accept service on their

1 behalf. That was an individual thing. There was no reason in my mind to treat
2 the Adelsons any different than we treated every other of the members of the
3 board of directors. So that's just a point of clarification.

4 There was a discussion about the Adelsons' Campus' PMK. It's not
5 a PMK situation we're dealing with. They've already done their PMK
6 deposition. They haven't served the new -- that PMK is no longer with the
7 school, but they haven't served the new PMK deposition notice.

8 THE COURT: Well, have you substituted a new PMK? You said we're
9 not going to use that person for a PMK anymore. Use your PMK.

10 MR. BLAKE: He was our 30(b)(6) witness for purpose of the deposition.
11 I don't know if he'll -- we'll call him to testify. He has some relevant
12 knowledge. I don't know whether we'll plan on calling him to testify. I don't
13 know if they plan on subpoenaing him, but -- I mean, they deposed him recently
14 in addition to the PMK deposition.

15 So it's not like we're trying to play games here. I just think that
16 they just haven't -- they just didn't want to notice another PMK -- or a 30(b)(6)
17 deposition. So I just think, though -- my point is not that they're being
18 somehow improper or anything like that. I just think it's not at issue. The issue
19 of PMK is not relevant to the motion that you have in front of you.

20 THE COURT: Okay. Well, I'm going to deny the motion to quash the
21 service of process because I think service of process was effectuated by --
22 pursuant to NRS 14.090(1)(b). No guard was posted at the gate, and entry
23 through the gate is not reasonably available because the gate is the gate for the
24 house. Letting him into the community does not give him access to the house
25 because you have to serve him at his place of residence with a person of

1 suitable age and discretion resident therein. There's no way to access that
2 because it's a compound with a gigantic security fence that you can't get -- and
3 it's not a doorbell. They weren't ringing a doorbell. They were ringing an
4 intercom to allow the gate to open to then get into the house. They got
5 nowhere near a door.

6 So they then satisfied it by leaving process there, leaving it as in
7 excessive caution with the security guards. They don't have to do that. The
8 security guards don't have to accept it. They did their job by letting him into
9 the larger community, but I don't think that voids their service because they
10 also mailed it certified mail.

11 I had denial it was mailed certified mail. I don't know if there's a
12 return receipt for that. It was mailed. They may not have accepted it, but it
13 was mailed. It doesn't necessarily have to be received by the party deponent.
14 It just had to have been mailed.

15 I think service was effectuated, and I just think you have a bigger
16 problem here, which is you have a witness who is -- was at one time a member
17 of the board, has relevant knowledge from that period of time, is now the
18 chairman of the board, who I'm assuming you want to testify at trial.

19 MR. BLAKE: Correct, we want him to testify at trial at this point.

20 THE COURT: And I'm not understanding how if he refuses to make
21 himself available for a deposition, how you expect you're going to be allowed to
22 have him testify.

23 MR. LEVEQUE: Again, I reiterate the position. I disagree that that's the
24 law; however, if that's your position, if that's what your order is going to be,
25 then we would not object to continuing discovery or trial in this matter in order

1 to allow the deposition to happen, so then he can then testify at trial because I
2 think he is -- he's an important witness for both sides.

3 THE COURT: Uh-huh.

4 MR. LEVEQUE: So --

5 THE COURT: Yeah. I mean, I think that is the law. I think if you're -- if
6 you're going to rely on testimony of a corporate officer and you haven't made
7 the corporate officer available or he doesn't make himself available, he doesn't
8 testify.

9 MR. LEVEQUE: Then I don't think -- we don't have a choice then. We
10 have to -- then we can't object to their request for additional discovery. We
11 didn't know -- if that's the position, and it sounds like it is, then we have no
12 objection to them continuing discovery for the purpose of finishing that
13 deposition.

14 THE COURT: All right. I do believe that is the rule.

15 MR. LEVEQUE: Okay.

16 THE COURT: And that would be my ruling. So that, I guess, affects the
17 issue of whether you can continue. Can you get this done so that we can have
18 our jury trial next month?

19 MR. LEVEQUE: It all depends on the Adelsons' availability. I mean, you
20 know --

21 THE COURT: This has dragged out a really long time.

22 MR. LEVEQUE: It has, and, you know, our preference, of course, would
23 be to keep that trial setting, but the functional problem we have is I -- they're
24 busy people, I understand that.

25 THE COURT: Uh-huh. Uh-huh.

1 MR. LEVEQUE: And then once we depose them, we need their
2 transcripts, and we've got to do dispositives, and, you know, we'll do what we
3 can to fast track that to get on the stack if we can, but, again, it's all
4 dependent on when they're going to make themselves available for a
5 deposition.

6 THE COURT: Okay. Well --

7 MR. BLAKE: I mean, I -- sorry, go ahead.

8 THE COURT: You're telling us all it's on the 18th, and I don't know if
9 you'll know by the 18th. Do you want to just leave it on the calendar for now
10 and come back on the 18th and tell us whether you think you can make it
11 work?

12 MR. BLAKE: I'm okay with that because I don't know what the
13 Adelsons' availability is. So if they're not going to be available for the next
14 month and a half, again, Mr. LeVeque is correct, there's -- they're out of the
15 state all the time --

16 THE COURT: Right.

17 MR. BLAKE: -- so I don't want to make any promises that they can't
18 commit to.

19 THE COURT: Right. Absolutely.

20 MR. BLAKE: And so I think that makes sense to me. I guess that's -- in
21 the interim, though, we have a summary judgment deadline that's coming up on
22 the 5th this week.

23 THE COURT: Uh-huh.

24 MR. BLAKE: I'm not saying anybody was going -- you know, plan on
25 filing a summary judgment, but I've been very busy this week, so --

1 THE COURT: Uh-huh.

2 MR. BLAKE: Do we have to -- if we -- I'm just kidding. We're planning
3 on filing a motion for summary judgment. So do we still need to comply with
4 that deadline?

5 THE COURT: Do we want -- do we want to continue this discussion of
6 extending deadlines to the 18th?

7 MR. LEVEQUE: Yes, Your Honor, but with that, we'd want to extend the
8 dispositive motion deadline because the Adelsons' depo is critical.

9 THE COURT: They were going to file their own motion for summary
10 judgment.

11 MR. BLAKE: And we have motions in limine -- just another point.
12 Motions in limine are due on, I believe, next Monday, the 12th -- or the 8th.

13 THE COURT: And so we don't even know if we can keep this on the
14 current stack.

15 MR. BLAKE: Right.

16 THE COURT: -- so it doesn't make any sense to do that work --

17 MR. BLAKE: Right.

18 THE COURT: -- if you're not going to be able to comply with the stack
19 because counsel's got to check with his clients. I think they were properly
20 served, they need to be made available or they're not testifying. So you may
21 not be able to get that done, and you've got until the 18th --

22 MR. BLAKE: Right.

23 THE COURT: -- to see if you can work it out. And if you can't, then
24 we'll just have to do all this on an expedited schedule if we can, but if we
25 can't, then we have to move this. It's a pretty old case, so -- I mean, we need

1 to move it.

2 MR. LEVEQUE: Right. And, you know, if it ends up just being easier --
3 you know, we've consulted our client on this. If it ends up being easier to just
4 move it if we can to avoid the situation where we don't know when the
5 Adelsons will be available, we've got all these pending deadlines coming up --

6 THE COURT: Right. That's what I'm saying, is that we would just
7 suspend the deadlines --

8 MR. LEVEQUE: Yeah.

9 THE COURT: -- and we'll discuss on the 18th if there's any conceivable
10 way you can make your schedules work because it's not just the Adelsons. It's
11 whether counsel, once they do those depositions, can possibly make this work.

12 MR. BLAKE: Yeah, I think it's -- I'm kind of with Alex, and I think it's
13 kind of unlikely that we will do it, but I think it makes sense for us to try and --
14 let's suspend all the deadlines --

15 THE COURT: Talk to your clients then --

16 MR. BLAKE: -- and we'll try and work it out before the 18th. The 18th
17 will turn into a status check, and we'll --

18 THE COURT: You can tell us -- if you think -- if it's not going to work,
19 then we'll find someplace to move you.

20 MR. BLAKE: Okay.

21 THE COURT: You probably don't want to go in November because you're
22 going to get stuck behind a little old lady. Good luck.

23 MR. BLAKE: Understood. Thank you, Your Honor.

24 MR. LEVEQUE: Thanks, Your Honor.

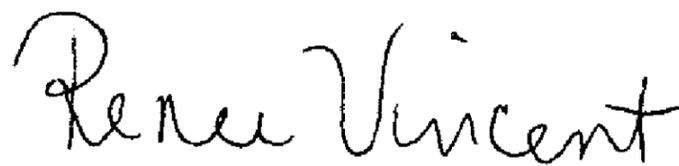
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THE COURT: Okay.

[Proceedings concluded at 10:53 a.m.]

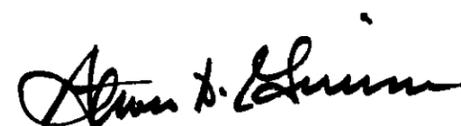
ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.



Renee Vincent, Court Recorder/Transcriber

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CLERK OF THE COURT

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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IN THE MATTER OF THE)

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ESTATE OF MILTON I. SCHWARTZ)

CASE NO. P-061300

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DEPT. XXVI)

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BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

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THURSDAY, AUGUST 18, 2016

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**RECORDER'S TRANSCRIPT OF PROCEEDING:
CALENDAR CALL**

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APPEARANCES:

19

For the Co-Executor:

ALAN FREER, ESQ.
Solomon Dwiggin & Freer, LTD

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21

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For the School:

RANDALL JONES, ESQ.
Kemp, Jones & Coulthard, LLP

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24

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RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 THURSDAY, AUGUST 18, 2016 AT 9:30 A.M.

2
3 THE COURT: Do we have anybody here from – oh, there he is. I was
4 like, where's Mr. Jones? There he is.

5 MR. JONES: Good morning, Your Honor.

6 MR. FREER: Good morning, Your Honor, Alan Freer on behalf of the Co-
7 Executor.

8 MR. JONES: Randall Jones on behalf of the School, Your Honor.

9 THE COURT: Okay. So we're ready to go?

10 MR. FREER: No. Last we were here we needed the two depositions of
11 the Adelsons.

12 THE COURT: Yeah.

13 MR. FREER: We don't have the dates yet for those depositions. We are
14 waiting to hear back as to availability with respect to that. Once we do that all
15 we need, I think, are transcripts, dispositive motion deadline, maybe some
16 motion in limine and we're ready to go.

17 THE COURT: Mr. Jones.

18 MR. JONES: Your Honor, Mr. Adelson has been on vacation so I was
19 finally was able to get ahold of him yesterday, and he – I'm to speak with his
20 secretary, today, to get dates.

21 THE COURT: Uh-huh.

22 MR. JONES: So, although I want to mention that there is a – while we
23 do not believe the service was appropriate --

24 THE COURT: Uh-huh.

25 MR. JONES: -- I understand the Court's ruling. Having said that, we

1 have not had an opportunity to discuss or contest the proposed deposition of
2 Dr. Adelson, which we don't necessarily think is appropriate.

3 THE COURT: She wasn't on the board at the time.

4 MR. JONES: Pardon me.

5 THE COURT: She was not on the board at the time. She is now, but she
6 was not at the time, as far as I understood.

7 MR. JONES: That's right.

8 THE COURT: Okay.

9 MR. JONES: And – and so – and again, trying to move this forward.

10 THE COURT: Uh-huh.

11 MR. JONES: Haven't made a final decision as to whether or not we think
12 a motion to quash is appropriate, it's something I'm still thinking about and –
13 and I'll talk to Counsel about that.

14 THE COURT: Right.

15 MR. JONES: I will get dates, irrespective.

16 THE COURT: Right.

17 MR. JONES: But I want to at least make the Court aware that we may
18 file a motion to quash as –

19 THE COURT: Sure.

20 MR. JONES: -- it relates to Dr. Adelson. And that's –

21 THE COURT: Right. And that's – that's what I think we discussed that
22 this was only about the subpoena. We weren't addressing whether the
23 depositions – I mean, I – I understand Dr. – Mr. Adelson's deposition -- he was
24 on the board at the time, because the president who was the president is dead
25 now so --

1 MR. JONES: And I understand that --

2 THE COURT: -- I get that.

3 MR. JONES: -- and we would not be filing a motion I -- while, you know,
4 we respectfully disagree with your opinion --

5 THE COURT: Uh-huh.

6 MR. JONES: -- or decision as it relates to service and how it was
7 accomplished, or allegedly accomplished. You made a ruling --

8 THE COURT: Uh-huh.

9 MR. JONES: -- and so, in discussing the matter we decided, let's just go
10 forward --

11 THE COURT: Uh-huh.

12 MR. JONES: -- with Mr. Adelson. So I -- I just didn't want the Court to --

13 THE COURT: Right.

14 MR. JONES: -- be caught unaware that --

15 THE COURT: And I don't think Mr. -- that we ever -- I -- we didn't get to
16 the like [sneeze heard] merits of whether these are appropriate depositions; we
17 did not --

18 MR. FREER: Right.

19 THE COURT: -- talk about that.

20 MR. FREER: I think Adelson's pretty -- Mr. Adelson's pretty clear. We
21 think Dr. Adelson --

22 THE COURT: We had that discussion about --

23 MR. FREER: -- but it hasn't been litigated.

24 THE COURT: -- Dr. -- Dr. Adelson wasn't on the board by, and --

25 MR. FREER: That's correct.

1 THE COURT: -- but we just -- we didn't address it; we didn't rule on it.
2 It's just that we raised the issue that she wasn't even on the board at the time.

3 MR. JONES: And so I -- I just want the Court to be aware that we may --

4 THE COURT: Right.

5 MR. JONES: -- or may not make an issue out of that. In the meantime,
6 yeah, with the -- with the trial date on this stack -- and I haven't had a chance
7 to talk to counsel about this yet, but I know the Court essentially stayed all the
8 deadlines, and I've looked at the deadlines, obviously there's --

9 THE COURT: Uh-huh.

10 MR. JONES: -- a lot of issues that we need to deal with.

11 THE COURT: Right.

12 MR. JONES: I did talk to my client as well -- currently head of the school
13 and the board --

14 THE COURT: Uh-huh.

15 MR. JONES: -- about whether they would object to this trial being
16 pushed out if that was even what the Court felt was necessary.

17 THE COURT: Right.

18 MR. JONES: There was not a disagreement about that, but again, I
19 haven't had a chance to talk to Counsel. I just don't know how we could do it
20 in the time that's allotted and get all --

21 THE COURT: Right.

22 MR. JONES: One of the other things I wanted to do Your Honor and,
23 again, we haven't had a chance --

24 THE COURT: Uh-huh.

25 MR. JONES: -- to talk about this, but I have found -- and in this case I

1 think there's potentially good reason for it, that a jury questionnaire is very
2 helpful to actually speed up the process.

3 THE COURT: I think Mr. Freer and it's -- there's like --

4 MR. FREER: I think we discussed that.

5 THE COURT: -- you're going to have to do it. I mean --

6 MR. FREER: Yeah. I agree.

7 THE COURT: -- in this case it's -- you're going to need a really big pool --

8 MR. JONES: With the parties involved.

9 THE COURT: -- you're going to need a really big pool.

10 MR. FREER: Jury selection may take longer than the trial.

11 THE COURT: I mean, I know everybody on your witness list. I mean it's
12 -- it's everybody I know so, I mean --

13 MR. FREER: Right.

14 MR. JONES: So --

15 THE COURT: -- you're -- you're going to need to really -- really look for
16 people who don't know anybody.

17 MR. JONES: With that said, Your Honor, again I'm -- I'm supposed to get
18 dates today.

19 THE COURT: Uh-huh.

20 MR. JONES: I was actually in Los Angeles on another case yesterday so

21 --

22 THE COURT: Yeah.

23 MR. JONES: -- when I talked to Mr. Adelson, so I'm going to try to get
24 dates.

25 THE COURT: I think you probably -- you need like two weeks. Do you

1 think you can do it in two weeks?

2 MR. JONES: For the – for the trial --

3 THE COURT: Yeah.

4 MR. JONES: -- or --

5 MR. FREER: It'll be close.

6 THE COURT: There's a number of witnesses you guys have. I mean, I
7 think you guys are maybe going to take --

8 MR. FREER: I mean, the board member and witnesses, I think will
9 probably be turning through probably two to three hours apiece.

10 THE COURT: But there's like -- there's the board from like --

11 MR. FREER: Right.

12 THE COURT: -- 1990. There's the board from 1990 and there's a board
13 from two thou -- I mean, you've got -- seriously, I read the list I'm like, there's
14 50 people on this list I know.

15 MR. FREER: Yeah. We might need two and a half weeks maybe.

16 THE COURT: I -- yeah, I think you're going to probably, probably a stack
17 all to yourselves.

18 MR. JONES: Well it depends on how many -- those really are the
19 witnesses they think are more relevant than what we think --

20 THE COURT: Sure.

21 MR. JONES: -- is necessarily relevant, but if they decide to call all those
22 witnesses -- at least in my experience, if you have that many witnesses you're
23 talking about at least -- I think more like three weeks or so --

24 THE COURT: I think you are.

25 MR. JONES: -- depending on how -- how long of a trial date you're able

1 to give us, Your Honor --

2 THE COURT: Yeah.

3 MR. JONES: -- that -- that's obviously part of the analysis.

4 THE COURT: So I guess that's just the thing is to just look at a stack
5 that's not real full where it's likely you could -- because you -- you guys are just
6 going to take a whole stack.

7 MR. JONES: I think we're going to take a while.

8 MR. FREER: Yeah.

9 THE COURT: Yeah.

10 MR. FREER: I mean --

11 MR. JONES: It may take a while to pick the jury itself, just to pick that
12 jury.

13 THE COURT: Even -- yeah, even with a jury questionnaire it's just --

14 MR. JONES: Right.

15 THE COURT: -- to find enough people who don't -- haven't had a kid go
16 there or don't know --

17 MR. JONES: Haven't read the newspaper.

18 THE COURT: -- I mean, like I said, "You've got like 50 people on your
19 list." Every -- every attorney in town is on your -- is on your list, so I don't
20 know.

21 JUDGE'S ASST: Okay, we're in July --

22 COURT CLERK: The July stack is pretty --

23 JUDGE'S ASST: You have a July or August.

24 THE COURT: Uh-huh. So how's -- how do you like spending next
25 summer? You get -- you get the month of July.

1 MR. FREER: It would have been nice to resolve it before then, but if
2 that's the earliest stack you got available.

3 THE COURT: Well, that's the stack that's like, you know – well you're
4 going to be the oldest case on any stack because it's 2007; the joys of probate,
5 no five year rule. So your case is a 2007 case. You'll be the oldest case on
6 any stack you go on. There's like –

7 MR. JONES: Well, Your Honor, again, I think that it makes sense for all
8 of us if we get a stack where we think we can finish the case without
9 interfering with other trials that are being set.

10 THE COURT: Right.

11 MR. JONES: So whatever the Court thinks is best.

12 THE COURT: And I know that the Adelson's travel a lot, so I just don't
13 know if that's –

14 MR. JONES: They do, but if we give them that much lead time I will just
15 let them know they need to be – or at least Dr. – or Mr. Adelson –

16 THE COURT: Right.

17 MR. JONES: -- needs to be there for that period of time, whatever it is.

18 THE COURT: Right. Okay. So what do you think?

19 COURT CLERK: Well, the month before has a med mal --

20 THE COURT: Right.

21 COURT CLERK: -- ahead of July, the month of July doesn't.

22 THE COURT: Yeah, there's no med mal so there'd be nothing to take –

23 COURT CLERK: Let's set it --

24 THE COURT: -- there'd be nothing that would take priority over you in
25 that stack. And like I said, "You're going to be the oldest case on any stack

1 you go on, so you're going to get the first pick."

2 MR. FREER: All right.

3 THE COURT: That's just a month where we don't – we don't have a med
4 mal interrupting the month that you'd have to work around, because you guys –

5 MR. FREER: Right.

6 THE COURT: -- we can't move the med mal settings.

7 MR. FREER: Right.

8 THE COURT: And we need a stack where you can take three weeks and
9 it won't interfere with anything else.

10 MR. FREER: The only thing I would request is if we could set an earlier
11 date, obviously for discovery and everything, so we don't worry about bumping
12 it back so.

13 MR. JONES: But not – no.

14 THE COURT: Right. And so that would just be the question that if – if
15 that's the date we give you, do you want to work on your own, just a discovery
16 plan of your own? There's not that much –

17 MR. FREER: We can work on that and if we don't agree we'll –

18 THE COURT: There's not much left.

19 MR. FREER: Why don't – why don't we set this for 30 days on a status
20 check. If we can't agree –

21 MR. JONES: Well, that's fine.

22 MR. FREER: -- on a – on a discovery schedule we'll be done.

23 THE COURT: So on – for 30, what's –

24 COURT CLERK: Status check in 30 days?

25 THE COURT: And it's on a probate day.

1 COURT CLERK: On 9/14? You know, that might be really full now.
2 Yeah, we're already over so – 9/21, 9/28.

3 THE COURT: September the – September 21st, September 28th, the – do
4 either of you know right now if one of those dates -- and so, it'd be on a
5 probate stack so it'd be on a Wednesday.

6 MR. FREER: We're fine either – I'm fine –

7 THE COURT: Either date?

8 MR. FREER: -- either of those dates.

9 MR. JONES: The 28th would be better for me, Your Honor.

10 THE COURT: 28th? Okay.

11 COURT CLERK: Those two – 9/28 and 9/30 is the status check.

12 THE COURT: So 9/28 at 9:30 for a status on whether you've got a
13 discovery plan.

14 MR. FREER: And if we do we'll just submit it prior to that and we can
15 vacate this?

16 THE COURT: Exactly.

17 MR. FREER: Okay.

18 THE COURT: And we'll continue this. The motion on – to compel the
19 accountants to comply, that's off calendar.

20 MR. JONES: Right.

21 MR. FREER: Right.

22 THE COURT: So there's nothing else really on.

23 MR. FREER: No.

24 THE COURT: Okay.

25 MR. JONES: Not as far as I know.

1 THE COURT: And then that – that'll maybe give Mr. Jones time to figure
2 out if he – they're going to oppose Dr. – Dr. Adelson's being deposed.

3 MR. FREER: That's appropriate. Thank you, Your Honor.

4 COURT CLERK: And you want me to give the dates for the trial.

5 THE COURT: Yeah. So we'll – we'll go ahead and give those dates but
6 we will send you a new order.

7 COURT CLERK: Okay.

8 MR. FREER: Okay.

9 COURT CLERK: So calendar call will be June 8th, and the trial stack runs
10 July 3rd through July 28th.

11 THE COURT: I – whew. The 3rd's probably – the 3rd's probably the
12 Monday before the 4th of July and then we'll let you – so it's – that'll be a real
13 short week but that – the rest of the month, then you'd have the rest of the
14 month.

15 MR. FREER: Okay.

16 MR. JONES: The calendar call is at what time of day? Is it 9?

17 COURT CLERK: 10:30.

18 MR. JONES: 10:30? Okay.

19 THE COURT: Calendar call's at 9.

20 COURT CLERK: Calendar call is at 9.

21 MR. JONES: Oh, the trial's at –

22 COURT CLERK: The trial starts whenever you guys agree.

23 THE COURT: Whenever we agree.

24 MR. FREER: [Laughs].

25 COURT CLERK: I'm thinking of pretrial conference is 10:30.

1 THE COURT: Yeah.

2 COURT CLERK: We're not even going to worry about that yet.

3 THE COURT: Okay.

4 MR. FREER: Very good. Thank you, Your Honor.

5 THE COURT: See you guys back here in a month or so. Good luck.

6 MR. FREER: Hopefully you don't see us in a month.

7 MR. JONES: Hopefully.

8 THE COURT: Thanks.

9 MR. JONES: Thank you, Your Honor.

10 THE COURT: Thank you very much.

11 MR. FREER: Thank you, Your Honor.

12 THE COURT: Okay.

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[Proceeding concluded at 9:39 a.m.]

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

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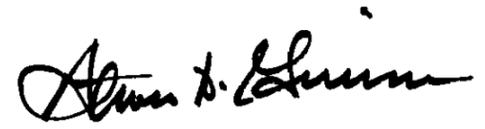
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Kerry Esparza, Court Recorder/Transcriber
District Court, Department XXVI

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

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8 In the Matter of the:

9 ESTATE OF MILTON I. SCHWARTZ

CASE NO. P-061300

DEPT. XXVI

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BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

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WEDNESDAY, SEPTEMBER 28, 2016

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**RECORDER'S TRANSCRIPT OF PROCEEDING:
STATUS CHECK**

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APPEARANCES:

19

For the Petitioner:

ALEX G. LEVEQUE, ESQ.
Solomon Dwiggin & Freer, LTD

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For Other:

JON R. JONES, ESQ.
Kemp, Jones & Coulthard, LLP

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RECORDED BY: KERRY ESPARZA, COURT RECORDER

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WEDNESDAY, SEPTEMBER 28, 2016 AT 9:30 A.M.

THE COURT: Okay. Milton Schwartz. That's page 1 and 0613 –

MR. JONES: Good morning, Your Honor, Randall Jones on behalf of the school.

MR. LEVEQUE: And Alex Leveque on behalf of the Estate.

THE COURT: All right. So gentlemen, are we proceeding to try to get this wrapped up so we really will be able to do a trial in July, because of all these people we have to coordinate?

MR. LEVEQUE: Yes, Your Honor, here's what I'd like to do. We don't have a trial now until July.

THE COURT: Correct.

MR. LEVEQUE: We just had an agreement to continue the deposition of Mr. Adelson –

THE COURT: Uh-huh.

MR. LEVEQUE: -- to the beginning of March.

THE COURT: Uh-huh.

MR. LEVEQUE: My client believes, and I also agree with my client that this case is, at this point, appropriate for a Settlement Conference –

THE COURT: Uh-huh.

MR. LEVEQUE: -- so that we can try resolving –

THE COURT: Do you want that before or after Mr. Adelson's deposition?

MR. LEVEQUE: Before, so we –

THE COURT: Okay. And do you want to do that, that yourselves or you want us to send you to Judge Wiese, or do you want to try to get somebody

1 over at the – at the Senior Judges? Or are you going to do it privately?

2 MR. LEVEQUE: We would like an order from the Court –

3 THE COURT: Okay.

4 MR. LEVEQUE: -- under 2.51 for a Judicial Settlement Conference with
5 the ability to do a private mediation if the parties agree to do it private.

6 THE COURT: Yeah, and if somebody isn't accommodating. Is that
7 agreeable to you, Mr. Jones?

8 MR. JONES: Let me put it this way. I'm, I'm – I'm taking a neutral
9 position on this for reasons the Court may appreciate.

10 THE COURT: Sure.

11 MR. JONES: But it would be – I think it would be helpful if we had an
12 order from the Court –

13 THE COURT: Sure.

14 MR. JONES: -- in this regard.

15 THE COURT: Okay. So you'll draft that, Mr. Leveque, and it'll say that
16 the parties are referred to Court Mediation. They can – and it may be that Ileen
17 will have – because some of the senior judges are particularly good. Judge
18 Kosach of all people, from Reno, retired judge who was their probate judge for
19 years, comes down every once in awhile. He's real good. Because I think
20 Judge Becker, now that she's gone private, I don't know if she does much with
21 the Senior Judges Program anymore. And she was always so effective.

22 MR. LEVEQUE: Sure.

23 THE COURT: But, you know --

24 MR. LEVEQUE: What I'll put in the order is that –

25 THE COURT: Some of the private mediators are real good and can help a

1 lot so.

2 MR. LEVEQUE: Yeah. And if – as long as we have the flexibility to, to
3 elect –

4 THE COURT: To allow either?

5 MR. LEVEQUE: -- private mediation if we can.

6 THE COURT: But you can call for options and if those are – if you're able
7 to organize something more attractive to the parties privately then, you can
8 certainly do so.

9 MR. LEVEQUE: Okay.

10 THE COURT: Yeah.

11 MR. LEVEQUE: One thing I would request as part of the order, Your
12 Honor, is that the Chairman of the School, Mr. Adelson, be personally present
13 for it as well as Dr. Adelson, who is a Board of Trustee Member as well. And
14 enough Members of the Board, as necessary, to have authority to enter into a
15 Settlement Agreement.

16 THE COURT: That's –

17 MR. JONES: Well, what – I, I –

18 THE COURT: -- possibly a bridge too far.

19 MR. JONES: With respect to Mr. Adelson as the Chairman, I don't know
20 that it would be worth even having the – a Settlement Conference if he does
21 not attend.

22 THE COURT: Uh-huh.

23 MR. JONES: As for Dr. Adelson, I – I --

24 THE COURT: Now, she's just a member, right?

25 MR. JONES: -- don't know if he -- I, I, I understand the reason why they

1 would like her there. If we're ordered to mediation or a Settlement Conference,
2 she may be helpful to the process when –

3 THE COURT: And she may choose to go if her husband's got to be there.
4 She may want to be with him, I mean, that's certainly her option. It – usually
5 the language is that the person or persons necessary to give final settlement
6 authority or approval should be present, personally. And I mean, because you
7 don't want to have to reach some sort of an agreement and then go have it
8 voted on by the Board, I understand that.

9 But it's – ordering specific –

10 MR. JONES: I, I think if, if --

11 THE COURT: -- people to be present is kind of – I don't know that I have
12 the authority to do that because they're just members of a – of the board of a
13 party so.

14 MR. LEVEQUE: If I can settle with Mr. Adelson being there I'll take that.

15 THE COURT: Uh-huh.

16 MR. JONES: And I would say this: I would certainly encourage Dr.
17 Adelson since the issue does involve her name, obviously, as well as his --

18 THE COURT: Right.

19 MR. JONES: -- to be there.

20 THE COURT: Uh-huh.

21 MR. JONES: So I will certainly encourage her to attend. I think her
22 presence would probably be helpful but I, I think that ordering it may be – may,
23 may actually be counterproductive.

24 THE COURT: I -- I'm very concerned about it. I -- I'm sure you can think
25 of some diplomatic way to put this, Mr. Leveque. The – since this is a board, if

1 the party is, is operated by a Board of Directors that – it's important that the
2 person or persons with authority as, you know, executive – members of the
3 executive committee or whatever of the board, should participate in order to
4 have a settlement that we know is authorized. So some nice language like that.
5 I just -- I'm very reluctant to order specific people, because the people are not
6 necessarily parties in this litigation, it's the board that is.

7 And whoever is the representative of the board and whoever the
8 entity wants to have come to a trial, you know, I – you don't really have a lot
9 of control over that. So would they want to be there? Probably. But do I think
10 that our local rule would allow me to order specific people on a board to be
11 present? I'm not sure that it would.

12 MR. LEVEQUE: The rule's silent on it.

13 THE COURT: Right. And that's why I'm kind of like –

14 MR. LEVEQUE: But some board members are more persuasive than
15 others.

16 THE COURT: Correct. And so that's maybe, like you, you can work on
17 some nice language that is very diplomatic and just that, because one of these
18 entities is a board, is a school operated by a board, that it's important that, you
19 know, persons in authority on that board attend in person.

20 MR. JONES: Right. And I think the Chairman of that Board will definitely
21 want to be there at that –

22 THE COURT: I'm sure.

23 MR. JONES: -- kind of discussion and, and I will be --

24 THE COURT: Along with the head of school, I'm sure of it.

25 MR. JONES: As, as I assume the head of the school would want – will

1 want to be there as well, Dr. Rainor [phonetic], so.

2 THE COURT: Their executive, yeah.

3 MR. JONES: I will – I will certainly do my best to make sure that – I
4 think without the Chairman of the Board being there, it would probably not be
5 very, very effective –

6 THE COURT: Right.

7 MR. JONES: -- so I think it is important that, that he is there, and I will
8 certainly indicate that that I think is, is the appropriate way to do this.

9 THE COURT: And I guess the thing is – the question is: Physically
10 present or personally participating. Because there's a distinction, and
11 sometimes you want them physically in the room and sometimes it's okay if
12 they are – if they really, really will make themselves available that they can be
13 talked to by the mediator, personally. So, I mean, if that's part of the problem
14 Mr. Jones may have in physically getting them to some neutral location.

15 MR. JONES: I think that – I think there's such an interest here that
16 Chairman of the Board would –

17 THE COURT: Uh-huh.

18 MR. JONES: -- probably want to make himself available, personally --

19 THE COURT: Okay.

20 MR. JONES: -- assuming we work around schedules –

21 THE COURT: Right.

22 MR. JONES: -- because obviously both these parties have busy schedules

23 –

24 THE COURT: So –

25 MR. JONES: -- and I'm sure we can accommodate them.

1 THE COURT: -- do you want to then follow-up on this in like, what,
2 sometime in January?

3 MR. JONES: Sure.

4 THE COURT: Do you think you'd get this done before the first of the year
5 or you --

6 MR. LEVEQUE: Yeah, I -- we were kind of thinking -- trying to do this in
7 December or January. So maybe end of January --

8 THE COURT: Okay.

9 MR. LEVEQUE: -- to have a status check?

10 THE COURT: Because that gives you a full, you know, month before --

11 MR. JONES: Sure.

12 THE COURT: -- a deposition, if you're --

13 MR. LEVEQUE: Yeah.

14 THE COURT: -- going to take it in March. Okay. So we'll follow-up with
15 a status check sometime in mid to late January, maybe like, what is -- would
16 like the 25th, maybe? That gives them all -- to work all around the holidays.
17 Okay, that's January 25th and that's a -- would be a Wednesday just for a
18 status check.

19 MR. LEVEQUE: I'm sorry, the 25th?

20 THE COURT: I -- yeah, I think that's the, the last Wednesday in January,
21 is that --

22 MR. LEVEQUE: Okay.

23 THE COURT: -- so that gives you -- if you can't get it done before -- in
24 December because of the holidays, then that gives you the entire month of
25 January to get it done.

1 MR. JONES: And what time, Your Honor?

2 THE COURT: 9:30.

3 MR. JONES: 9:30?

4 THE COURT: Yeah.

5 THE COURT CLERK: January 25th.

6 MR. JONES: Very good.

7 THE COURT: Yeah. So it's just going to be on a regular calendar so,
8 good luck and thank you. And yes, if you want to send over agreed – some
9 agreed upon – I understand that Mr. Jones may not be able to do anything
10 more than approve as to content.

11 MR. JONES: That's probably correct, Your Honor.

12 THE COURT: Yes.

13 MR. JONES: But I – and so I will look for that –

14 THE COURT: Just so we know that he's looked at it and –

15 MR. LEVEQUE: Of course.

16 MR. JONES: We'll, we'll work together to see if we can make sure we,
17 we do this in a way that helps –

18 THE COURT: It's not a stipulation. I understand that he – that – doesn't
19 have that authority. I will order it, but I would like to know that Mr. Jones has
20 looked at the language.

21 MR. LEVEQUE: Absolutely.

22 MR. JONES: Thank.

23 THE COURT: Thank you.

24 MR. JONES: Thank you, Your Honor.

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THE COURT: Thanks gentlemen. Okay.

[Proceeding concluded at 9:39 a.m.]

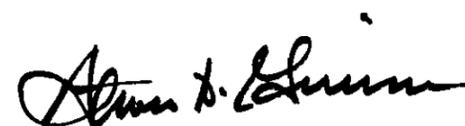
ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/visual recording in the above entitled case to the best of my ability.



Kerry Esparza, Court Recorder/Transcriber
District Court, Department XXVI

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

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9 IN THE MATTER OF THE ESTATE OF
10 MILTON SCHWARTZ

) CASE NO. 07P061300

) DEPT. XXVI

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BEFORE THE HONORABLE GLORIA J. STURMAN
DISTRICT COURT JUDGE

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WEDNESDAY, APRIL 19, 2017

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TRANSCRIPT OF PROCEEDINGS

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**MOTION: MOTION FOR PROTECTIVE ORDER
ON ORDER SHORTENING TIME**

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APPEARANCES:

21

For the Estate:

ADAM LEVEQUE, ESQ.

22

For the School:

RANDALL JONES, ESQ.

23

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RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 Wednesday, April 19, 2017 at 11:04 a.m.

2
3 THE COURT: 61300? Milton Schwartz.

4 MR. LEVEQUE: Morning, Your Honor. Alex Leveque on behalf the estate.

5 MR. JONES: Morning, Your Honor. Randall Jones on behalf of the school.

6 THE COURT: Okay. So Mr. Jones, this is your motion for protective order
7 with respect to Dr. Adelson.

8 MR. JONES: It is, Your Honor, thank you. I don't know if you recall it's been
9 some time since we were last before you was in connection with the deposition of --
10 well actually the service of the subpoenas for Dr. Adelson and Mr. Adelson. At the
11 time we were here we really only talked about Mr. Adelson. Mr. Adelson had agreed
12 to -- to appear and -- and -- and go forward with the deposition.

13 At the time, at least it was my recollection that the Schwartz estate said
14 they weren't necessarily sure they were going to proceed with the deposition of Dr.
15 Adelson, although they weren't conceding the issue as I recall. And I think even the
16 Court made a comment of -- well I certainly made a comment I don't see any reason
17 why Dr. Adelson should have to be bothered by this and I think the Court even
18 chimed in I -- I think you said you didn't necessarily see why either.

19 Obviously that hadn't been briefed and wasn't before you and so you
20 didn't hear their arguments, but I -- and I -- and I don't want to belabor this issue, but
21 they've deposed 22 witnesses and they're going to depose Mr. Adelson in a couple
22 of weeks. I've seen their argument now and I appreciate the fact that they don't
23 have to lay out their strategy. I don't know that I was surprised by anything they
24 said, but they certainly told me and you what they believe to be the reasons why
25 they should be allowed take Dr. Adelson's deposition.

-2-

1 Obviously our position is that her involvement in this matter is extremely
2 tangential at best. The one issue that we anticipated they would bring up for sure
3 was this video that had been taken at -- at a appreciation dinner and if you read the
4 transcript, certainly Mr. Schwartz at the time that he made that video or was involved
5 in that video made the same self-serving arguments that he -- his estate is now
6 making in the lawsuit, but if you look at what Dr. Adelson asked in the video, it --it
7 supplies no evidence whatsoever that supports their theory. She's basically asking
8 basic questions and Mr. Schwartz is saying yeah, I -- it's my school and -- and I
9 should be entitled to -- or -- or with names and -- and my name in perpetuity.

10 With respect to the documentation, I don't think there's any dispute
11 about the documentation. It is what it is. Dr. Adelson was not on the board at the
12 time that a resolution was passed, by the way, by Mr. Schwartz who was at the time
13 I believe the chairman of that board and he got to a resolution. There's never been
14 a contractual agreement of any kind that's been presented --

15 THE COURT: Right.

16 MR. JONES: -- that after Mr. Schwartz was involved in getting a resolution
17 which is not a -- a timeless and -- and cast-in-stone, if you will, document.
18 Resolutions can be overturned which in fact they were subsequently, but even
19 based on that resolution.

20 Mr. Schwartz ultimately left the school over a dispute that happened in
21 the early '90s. They changed the name back after he allegedly had his name on the
22 school in perpetuity and then when he came back and there was a reconciliation,
23 they agreed to put his name back on the school. That had nothing to do with Dr.
24 Adelson or Mr. Adelson for that matter and anything that -- that they presumably can
25 get related to this issue they can get from Mr. -- Mr. Adelson whose deposition

1 they're going to take.

2 So it just seems that to -- to us in looking at this under Rule 26(c) that
3 this really is oppressive and burdensome and -- and completely unnecessary.

4 Certainly, you -- you can argue take depositions that are extremely tangential and
5 you can always try to make some kind of a relevance argument, but as they point
6 out in their own brief, this Court has the discretion to allow that or not so the
7 question is, is it really necessary for them to pursue this deposition to gain any
8 relevant evidence that -- that will support their argument and I have seen nothing in
9 the briefs that they've submitted that suggest Dr. Adelson would have anything to
10 say about Mr. Schwartz's name being put on the school in perpetuity.

11 She might have some relevant testimony about the naming of the
12 Adelson Campus. I don't dispute that. But that's not what this case is about, ever.
13 It's never been about the Adelson Campus, it's only been about whether Mr.
14 Schwartz's name should stay on the lower school in perpetuity and she can offer
15 nothing, not one thing and nothing in their brief that they've offered to you supports
16 the proposition that she has any knowledge whatsoever of that issue, which by the
17 way is the only relevant issue to the case.

18 THE COURT: And they've attached some documents in addition to this
19 transcript from the appreciation dinner, some documents, you know, when they
20 renamed the school the Adelson School when they got the 50 million and some
21 other board minutes. She's not -- and I think there's a letter that was in one of the --

22 MR. JONES: That's right.

23 THE COURT: -- appreciation banquet --

24 MR. JONES: Right.

25 THE COURT: -- that little book they hand out.

1 MR. JONES: Yeah.

2 THE COURT: She's not disputing that those are her signatures or that she
3 was there. She was on the board for a brief period of time and she is now.

4 MR. JONES: That's -- you're exactly right, Judge. You -- you obviously read
5 the briefs and looked at the documents. We're not disputing any of that and I don't
6 think she's disputing that that her -- that letter -- the -- the letter of appreciation is an
7 interesting document because it does talk about Milton I. Schwartz School, but that
8 is -- is something that has nothing to do with her -- her personal knowledge of how
9 that came to be.

10 THE COURT: Right.

11 MR. JONES: That's the issue in the case. It's not -- I don't believe -- in fact,
12 it's -- if I'm incorrect, I'd like Mr. Leveque to point it out to me. Anything in their
13 allegations about the naming of the Adelson Campus, that's not in dispute. It's
14 whether or not the lower school was named in perpetuity for Mr. Schwartz. That all
15 happened decades before --

16 THE COURT: But it was K through 8 for a long time.

17 MR. JONES: That's -- yes, you're right, K through 8, and -- and -- and they
18 point out that at some point after the dispute arose Mr. Schwartz's name came off of
19 the lower school.

20 By the way, since that time and -- and this is matter of public record, the
21 Adelson Foundation has put in tens of millions of dollars more. So you know, that --
22 there's a -- they -- they don't like that fact. I understand that Mr. Jonathan Schwartz
23 doesn't like that fact, but that has nothing to do with Dr. Adelson. In fact it -- I could
24 make the same argument for Mr. Adelson but he is chairman of the board and I'm --
25 I'm not here to argue about that. What we're arguing about is whether or not Dr.

1 Adelson has any relevant knowledge, because that goes to the heart of their
2 argument.

3 THE COURT: Right.

4 MR. JONES: It's got to be relevant and -- and -- and it's only got to be -- it's
5 tangential relevance. It's likely to lead to the discovery of admissible evidence.

6 Well, let's -- let's not be distracted by what happened after the fact as
7 they -- as every -- they-- they accuse us of trying to distract the Court from the real
8 issue. I would ask the Court think yourself what is at issue here. Is it the naming of
9 the Adelson Campus or is it the naming of the lower school back in the early -- late
10 '80s and early '90s and then off again and on again, all of which happened before
11 either of the Adelsons were involved. Is that the issue or is there some other issue
12 that I haven't seen yet in any pleadings that -- that makes it -- that is contesting
13 whether the Adelson Campus has a right to be named in perpetuity as to that
14 aspect.

15 THE COURT: Okay, thanks.

16 MR. JONES: So with that said, I -- I believe and -- and also I would point out
17 that Rule 26(b)(2) is -- is further -- I think further supports our position and with the --
18 the point that if the information is obtainable for some other source that is more
19 convenient, less burdensome or less expensive that the Court should look to that.
20 Again, if it's not relevant in the first instant it doesn't matter, but they've taken 22
21 other witnesses, all of who apparently have a lot more information about this issue
22 than -- than certainly Dr. Adelson --

23 THE COURT: Is Dr. Adelson a witness on your witness list? I mean was it
24 your intention to call her or?

25 MR. JONES: You know, that's a good question. I haven't -- I haven't looked

1 at that specifically. I don't know. I don't anticipate -- I -- I would be surprised to find
2 that. I didn't look at that before we came today and I -- again I -- I should have, I
3 wish I had now that you've asked the question. But I -- I can tell you since trial is
4 coming up shortly, I have no expectations of calling her for any reason. I don't think
5 she has anything relevant to say about whether Mr. Schwartz had the right to the --
6 the lower school name in perpetuity and whether he actually -- if he ever did have
7 that right, did he actually pay the consideration that he promised to pay to -- to
8 actually obtain that right in perpetuity.

9 THE COURT: Got it.

10 MR. JONES: Those are the issues in the case as I understand it and unless
11 Mr. Leveque can enlighten me that somehow or other the naming of the Adelson
12 Campus is relevant to this issue, I see no reason whatsoever why she should have
13 her deposition taken.

14 THE COURT: Understood, thank you.

15 Mr. Leveque.

16 MR. LEVEQUE: Thank you, Your Honor. I'd like to just first get back to the
17 core of the rules that we're required to follow in this case and, you know, discovery
18 is very broad and we're suggesting that we take a seven hour deposition which will
19 most likely be a lot less of Dr. Adelson and, you know --

20 THE COURT: Okay. Why would you need seven hours?

21 MR. LEVEQUE: We don't. We don't. That -- that's -- that's the presumptive I
22 think reasonableness because that's now the rule we get seven hours. I think we
23 can get this knocked out in three hours.

24 But the bottom line, Your Honor, is that the concerns that have been
25 raised by the school -- and by the way, this is the school, this isn't Dr. Adelson's

1 counsel. The concerns raised by the school are that there's a possibility that this
2 could be oppressive, this could be unduly burdensome, but there's a remedy for
3 that, Your Honor, and we briefed that in our opposition and that is under Rule
4 30(d)(3) you can make a motion or you can seek to terminate deposition if it gets to
5 be that point. I don't think it's going to get there.

6 Mr. Jones focuses intentionally on only one aspect of one element of
7 one claim in this case and that is the formation element of a -- of a -- of a contract
8 claim, but what he conveniently does not talk about is the breach of contract which
9 has occurred more than once in this case and he's conveniently ignored all the other
10 claims in this case where the element of intent is relevant. We have a fraud claim.
11 We have a -- a claim for a permanent injunction where you look at the likelihood of
12 something reoccurring. We know in this case that originally Milton I. Schwartz --

13 THE COURT: What would -- what would Mrs. -- Dr. Adelson know about the
14 fraud claim?

15 MR. LEVEQUE: The fraud in the inducement, Your Honor, when you're
16 looking at fraud in inducement you look at the -- the conduct after the inducement to
17 see if there was an actual intent to defraud and --

18 THE COURT: What would Dr. Adelson know about that? She wasn't on the
19 board.

20 MR. LEVEQUE: Well she -- Your Honor, she was on the board -- well I -- she
21 was on the board during certain periods of time --

22 THE COURT: Right.

23 MR. LEVEQUE: -- and it's very conceivable during the periods of time that
24 she was on the board that this issue could have been discussed, naming rights with
25 respect to the school. I don't know one way other because I haven't deposed Dr.

1 Adelson --

2 THE COURT: But haven't taken the deposition of pretty much everybody else
3 who was ever on this board?

4 MR. LEVEQUE: You know, we -- we have, Your Honor, and strategically we
5 kept the Adelsons to the very last because in our mind they're the most important,
6 and one issue that we have not gotten an answer to is that in January of 2013 there
7 are minutes that indicate that there was a naming rights agreement signed by the
8 Adelson Charitable Foundation by Dr. Adelson and by Mr. Adelson where the \$50
9 million pledge occurred and the school conveniently doesn't know where that
10 document is. So we need to fill in the gaps with respect to this naming rights
11 agreement and I think it's -- it certainly leads to relevant evidence to ask Dr. Adelson
12 questions with respect to that naming rights agreement that she clearly signed.

13 And, Your Honor, I -- we just have to get back to, you know, the
14 purpose of discovery, you know, it's -- the school is named after Dr. Adelson and I
15 understand that she's a busy woman but this is discovery, Your Honor. They've
16 been on notice for several years now of Dr. Adelson being a potential witness in this
17 case. She's a board member and I don't think that asking Dr. Adelson questions
18 with respect to the areas that we've discussed in our opposition are unduly
19 burdensome or oppressive. I mean she signed a document where she
20 acknowledged that there are two separate schools.

21 The problem, Your Honor, the big issue in this case I think is that what
22 happened with the middle school because we know that the -- that the board at least
23 acknowledged that there was a perpetual naming rights agreement with respect to
24 the elementary school. That's -- that's stated in the resolution and it's accepted from
25 the -- the original naming rights agreement that was signed by the Adelson Campus.

1 What we don't know is what happened with the -- the middle school
2 grades that the school surreptitiously misappropriated months after Mr. Schwartz
3 died and we think that the person whose school is named after those middle school
4 grades might have some, you know, insight as to what happened. So I think under
5 our general and broad rules of discovery, Your Honor, I think that it would be an
6 abuse of discretion to completely prohibit deposition of not only a board member of
7 the school who's a party in this case but also the namesake of the school itself.

8 THE COURT: Okay. So you've conceded that you -- you do not need seven
9 hours. I mean she --

10 MR. LEVEQUE: No.

11 THE COURT: -- there's -- I mean she has very narrow windows when she
12 was even involved and to the extent that she -- they haven't really contested that
13 she signed any of these documents. So what are -- I guess what's left from -- to get
14 from her because she -- about the time that Mr. Schwartz came back in the late '90s,
15 she was I think on the board for a year or two --

16 MR. LEVEQUE: Couple years.

17 THE COURT: -- maybe from '96 --

18 MR. LEVEQUE: '97 to 2000.

19 THE COURT: Yeah --

20 MR. LEVEQUE: Yeah.

21 THE COURT: -- '97 to 2000. Then she was off for like 15 years.

22 MR. LEVEQUE: Right. Well Your -- Your Honor --

23 THE COURT: So she's off for 15 years what --

24 MR. LEVEQUE: Here's some anticipated questions, Your Honor --

25 THE COURT: Including 2013 when the naming rights --

1 MR. LEVEQUE: Sure. Here's some anticipated questions, Your Honor, you
2 know, I -- we asked a lot of the board members about the naming rights agreement
3 that was entered into for the \$50 million pledge and no one seemed to recall the
4 terms. So I'm going to ask very basic question, Dr. Adelson what's your
5 understanding of -- of why the Milton I. Schwartz Hebrew Academy's name was
6 taken off the middle -- middle school grades. If she says I don't know, the inquiry
7 ends there, but I think we're entitled to ask that question; Dr. Adelson, did you speak
8 to any of the board members who were around during the period of time when this
9 all occurred, did they say anything about it?

10 I mean this is where it's reasonably calculated to lead to the discovery
11 of admissible evidence, Your Honor. It doesn't have to be relevance, it has to be
12 reasonably calculated and us asking Dr. Adelson if she had any conversations
13 about, you know, highly influential people in the Jewish community which is a small
14 community I think is certainly within the realms of 26(b).

15 THE COURT: I see. Thank you.

16 MR. JONES: Your Honor --

17 THE COURT: Mr. Jones.

18 MR. JONES: Your Honor, I -- Mr. Leveque just helped make my argument
19 about this being a fishing expedition especially when he was responding to your
20 questions. I -- even his point about well the -- the naming rights and this -- this
21 resolution about an agreement in 2013 that she was on the board, so what? What
22 does that have to do with --

23 THE COURT: She wasn't on the board then.

24 MR. JONES: Well she wasn't on the board then. It -- it was an -- a resolution
25 involved her name, her name was involved, but what does that have to do whether

1 or not there was a -- a breach of a contract to put Mr. Schwartz's naming rights on
2 the lower school in perpetuity?

3 THE COURT: Right.

4 MR. JONES: Absolutely nothing.

5 And -- and by the way, they're going to take Mr. Adelson's deposition.
6 As relates to this fishing expedition, you brought up the question well didn't you take
7 the other board members? There's 22 witnesses that have been deposed so far.
8 The -- all living former board members and -- and heads of the school --

9 THE COURT: Yeah.

10 MR. JONES: -- and the -- the board members who were there or -- or have
11 been there essentially in the recent years, especially since the Adelson Campus has
12 been named, not one of them has ever said anything about Dr. Adelson having any
13 involvement whatsoever and -- and certainly they had a chance to do that. So
14 where is the evidence that would support any relevance of her testimony?

15 It seems like if they take Dr. -- or excuse me, Mr. Adelson's deposition,
16 they can ask him questions. If there's something that comes up in his deposition
17 that lends support to her knowledge of the issues in this case, not the Adelson
18 Campus aspects but the issues in the case, I mean we -- really I -- I, you know, can't
19 say enough the issues are whether or not the breach of contract related to Mr.
20 Schwartz occurred, whether there was fraud with respect to the removal of Mr.
21 Schwartz' name which occurred, none of which has anything to do with Dr. Adelson.
22 And as -- as counsel has conceded, if he asks these questions and she says no,
23 that's the end of the inquiry because there's nothing else to ask her.

24 So my proposal would be this: In terms of a less oppressive and -- and
25 in -- burdensome way of pursuing this, I understand the rules of discovery are very

1 broad and I've been on the opposite side of this argument many times where I argue
2 about the -- the -- the level of discovery we get in civil cases in this state. Having
3 said that, there is a limit. So take Dr. -- or Mr. Adelson's deposition. If they want to
4 send a number of interrogatories to her on the basic questions that they say they
5 want to ask and the answers are no, then that should be sufficient to --

6 THE COURT: Or if Mr. -- if -- if Mr. Adelson says I don't know, my wife would
7 know --

8 MR. JONES: Or -- or certainly --

9 THE COURT: He might.

10 MR. JONES: -- something like that and -- and I have -- then I would have a
11 very hard time coming before you with a straight face on -- on an issue that's
12 relevant to the case where he says something like that and -- and trying to object to
13 the deposition.

14 But prior to that, again the whole point here is there is -- discovery is not
15 unlimited. There has to be some reasonable limit -- you have the discretion to -- to
16 limit it and make it a fair process and not be intrusive -- inappropriately intrusive, and
17 I have heard nothing this morning that seems to me to -- to support the argument
18 that she would have any relevant testimony to give under any circumstances, and to
19 the extent that she might, there are less intrusive ways to find that out first before we
20 impose on her the obligation to come down to an attorney's office, which by the way
21 obviously I have to sit down with her even if she doesn't know anything to do my job
22 and -- and just so the Court's aware, I do -- I represent Dr. Adelson as well, so I am
23 her attorney and -- as it relates to this matter and so I still would have to take the
24 time and effort to sit down with her just to do my job and it's just completely
25 unnecessary at this point in time.

1 THE COURT: Thanks. All right --

2 MR. LEVEQUE: May I just briefly, Your Honor? I just like to make a --

3 THE COURT: Okay.

4 MR. LEVEQUE: -- couple quick points. The estate should not be -- have to
5 rely on representations of opposing counsel or what Mr. Adelson says in a
6 deposition. Also, with respect to the idea of doing written interrogatories, I would
7 argue that that's more burdensome than it is sitting Dr. Adelson down for two or
8 three hours to have her deposition taken. And, you know, one of the -- counsel talks
9 about me conceding a lot of points. One thing he conceded is Dr. Adelson does
10 potentially have some relevant knowledge with respect to the naming rights
11 agreement which is an element in this -- in this case, not only with respect to the
12 breach of contract but also with respect to the claim for permanent injunction --

13 THE COURT: What are you going to get from Dr. Adelson that you can't get
14 from Mr. Adelson? I mean --

15 MR. LEVEQUE: I -- I don't know what either of them are going to say, Your
16 Honor, but it shouldn't -- I've never seen a situation where a predicate to deposing
17 someone is first deposing someone else, especially someone like Mr. Adelson who
18 if I had a million dollars I would bet her would not be throwing his wife under the --
19 under the bus in a deposition so I just think that, you know, what we're asking for
20 we're not asking to shoot the moon here, we're asking --

21 THE COURT: Right.

22 MR. LEVEQUE: -- for a few hours of an oral deposition.

23 THE COURT: Okay. Thanks.

24 Anything in conclusion, Mr. Jones?

25 MR. JONES: No, Your Honor, I think it's --

1 THE COURT: I --

2 MR. JONES: -- been said.

3 THE COURT: To me it seems like we need to figure out if you need her
4 deposition and I'm not understanding why you need it. She wasn't on the board at
5 the relevant period of time which is when Mr. Schwartz thinks he got this agreement.
6 Who agreed to that agreement? Not Mrs. Adelson, she -- Dr. Adelson, she wasn't
7 on the board. I just -- you know, I'm not understanding this.

8 If -- if I'm wrong and Mr. Adelson does say my wife knows everything,
9 my wife negotiated which I am really doubting is going to happen, I would certainly
10 say you could come back and -- and show a -- show grounds why you need it, but
11 otherwise she's -- she was not on the board at any period that appears to me to be
12 relevant and she's not currently -- she came on the board after the 2013 agreement
13 when the Adelsons whatever it's calls, Adelson Educational Campus agreement
14 came into place. She wasn't on the board. So --

15 MR. LEVEQUE: She doesn't have to be, Your Honor. I mean that -- I think
16 that's the --

17 THE COURT: I'm just not --

18 MR. LEVEQUE: -- that's the narrow window that --

19 THE COURT: Right.

20 MR. LEVEQUE: -- that the -- that the school wants you to look at is well was
21 she on the board and if she was, when things occurred, did it occur during relevant
22 period of time but --

23 THE COURT: Okay. Well I'm going to grant this motion but without prejudice
24 to you. If -- if something comes up to reopen and -- and take this deposition if you
25 can show that there's something that she would uniquely have in her possession,

1 some knowledge that is unique to her -- she's not a witness. If they're not calling
2 her, she -- they're not disputing those are her signatures on documents, then why do
3 we need her? She wasn't on the board when Milton Schwartz believes he got the
4 agreement to come back to raise the million dollars and his name would go back on.
5 That's what's relevant.

6 MR. LEVEQUE: Your Honor --

7 THE COURT: Thank you. So I'm -- I'm granting --

8 MR. LEVEQUE: -- if the Court is --

9 THE COURT: -- the motion, but as I said it's without prejudice. If you can
10 come up with something that's uniquely in her knowledge, then I would totally agree
11 with you that you would have the right to take her deposition on that -- on that topic.
12 But for right now --

13 MR. LEVEQUE: Could I ask for alternate relief for we do deposition by written
14 interrogatory?

15 THE COURT: I think that Mr. Jones has indicated he'd be willing to have her
16 answer some interrogatories. If there are some specifics that you need -- if you
17 need her to admit her signatures for example, I'm -- I think Mr. Jones would agree to
18 that.

19 MR. JONES: I would, Your Honor, and obviously I -- I -- to the extent I think a
20 question is inappropriate I have a right to object to the objection --

21 THE COURT: Right.

22 MR. JONES: -- but I certainly don't have any -- that is by far a way from my
23 perspective a -- a much less burdensome and oppressive method of getting
24 answers to questions I think that -- I understand Mr. Leveque as any lawyer wants to
25 get as much discovery as he thinks he -- he needs --

1 THE COURT: Sure.

2 MR. JONES: -- but that's a less obtrusive --

3 THE COURT: Right.

4 MR. JONES: -- way to do it --

5 THE COURT: Right.

6 MR. JONES: -- and hopefully --

7 THE COURT: Right.

8 MR. JONES: -- we'll get him the answers that he -- he --

9 THE COURT: Thanks.

10 MR. JONES: -- that he feels he needs.

11 THE COURT: Thanks.

12 So certainly with written discovery in the alternative you can do and if --
13 if I'm wrong and Dr. Adelson does say my wife negotiated -- Mr. Adelson does say
14 my wife negotiated everything, then yeah, I -- I would agree with you it would be
15 necessary take her deposition, but I just -- I'm going to be real surprised if we find
16 that out.

17 MR. LEVEQUE: I would be too.

18 THE COURT: So yeah.

19 MR. JONES: I -- I would be too, Your Honor.

20 THE COURT: Thank you.

21 MR. LEVEQUE: All right.

22 THE COURT: So we'll see you guys back here.

23 Mr. Jones, you're going to do an order that grants some alternative
24 relief but the deposition's denied at this point in time unless something comes up
25 that shows she's got unique knowledge.

1 MR. JONES: And I will run that by Mr. Leveque before I --

2 THE COURT: Yeah.

3 MR. JONES: -- submit it the Court.

4 THE COURT: Thanks very much.

5 MR. LEVEQUE: Thank you, Your Honor.

6 MR. JONES: Thank you, Your Honor.

7 THE COURT: Good luck.

8 MR. JONES: Thank you, Your Honor.

9 [Proceedings concluded at 11:28 a.m.]

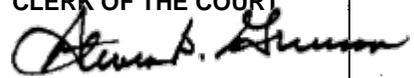
10 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual
11 proceedings in the above-entitled case to the best of my ability.

Tracy A. Gegenheimer

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14 Tracy A. Gegenheimer, CER-282, CET-282
15 Court Recorder/Transcriber
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9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 In the Matter of the Estate of
12 MILTON I. SCHWARTZ,
13 Deceased.

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

16 **NOTICE OF ENTRY OF ORDER REGARDING**
17 **THE ADELSON CAMPUS' MOTION FOR**
18 **PROTECTIVE ORDER**

19 YOU WILL PLEASE TAKE NOTICE that the ORDER REGARDING THE ADELSON
20 CAMPUS' MOTION FOR PROTECTIVE ORDER, was entered in the above-entitled matter on the
21 5th day of May, 2017, a copy of which is attached hereto.

22 DATED this 8th day of May, 2017.

23 KEMP, JONES & COULTHARD, LLP

24 /s/ J. Randall Jones
25 J. Randall Jones, Esq. (#1927)
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CERTIFICATE OF SERVICE

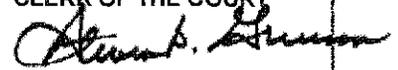
I hereby certify that on the 9th day of May, 2017, service of the foregoing **ORDER REGARDING THE ADELSON CAMPUS' MOTION FOR PROTECTIVE ORDER**, was electronically served Eighth Judicial District Court's CM/ECF electronic filing system, addressed to all parties on the via the E -service list.

/s/ Pamela Montgomery
An employee of Kemp, Jones & Coulthard, LLP

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DISTRICT COURT
CLARK COUNTY, NEVADA

9 In the Matter of the Estate of
10 MILTON I. SCHWARTZ,
11 Deceased.

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

**ORDER REGARDING THE ADELSON
CAMPUS' MOTION FOR PROTECTIVE ORDER**

Hearing Date: April 19, 2017
Hearing Time: 9:30 a.m.

15 This matter having come before this Court on April 19, 2017, regarding the Adelson Campus'
16 Motion for Protective Order, the Court having reviewed the pleadings and papers on file herein, and
17 having heard additional arguments of counsel for The Dr. Miriam and Sheldon G. Adelson
18 Educational Institute (the "Adelson Campus"), J. Randall Jones, Esq. of the law firm of Kemp, Jones
19 & Coulthard, LLP; and counsel for A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz
20 (the "Estate"), Alexander G. LeVeque, Esq. of the law firm of Solomon Dwiggin & Freer, Ltd.; and
21 with good cause appearing and there being no just cause for delay,

22 Accordingly:

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Adelson Campus'
24 Motion for Protective Order is GRANTED without prejudice.

25 IT IS HEREBY FURTHER ORDER, ADJUDGED, AND DECREED that as an alternative
26 to the oral deposition of Dr. Miriam Adelson, the Estate may use deposition upon written
27 interrogatories pursuant to NRCP 31 of Dr. Miriam Adelson. The Adelson Campus is permitted to
28 object to any interrogatory to the fullest extent permitted under the Nevada Rules of Civil Procedure

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1 and Nevada law.

2 Dated this 4th day of May 2017.

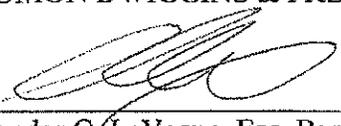

DISTRICT COURT JUDGE

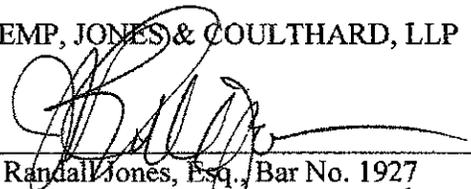

6 Approved as to Form:

Respectfully Submitted By:

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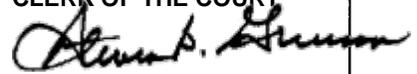
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25 P061300

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7
8 **DISTRICT COURT**
9
10 **CLARK COUNTY, NEVADA**

11 In the Matter of the Estate of
12 MILTON I. SCHWARTZ,
Deceased.

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

**NOTICE OF FILING PETITION FOR A WRIT
OF MANDAMUS OF PROHIBITION**

13 Pursuant to NRAP 21(a)(1), **PLEASE TAKE NOTICE** that on May 17, 2017, A.
14 Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz, filed with the Supreme Court of
15 Nevada a Petition for Writ of Mandamus or Prohibition, which seeks review of this Court's Order
16 Regarding the Adelson Campus' Motion for Protective Order, filed on May 5, 2017.

17 DATED this 17th day of May, 2017.

18 SOLOMON DWIGGINS & FREER, LTD.



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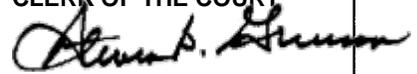


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9 *Executor of the Estate of Milton I. Schwartz*

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

13 In the Matter of the Estate of
14 MILTON I. SCHWARTZ,
15 Deceased.

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

18 **NOTICE OF ENTRY OF STIPULATION**
19 **TO STAY MATTER PENDING PETITION FOR WRIT OF MANDAMUS**

20 **TO: ALL PERSONS INTERESTED IN THE ABOVE REFERENCED CASE**
21 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that a STIPULATION TO
22 STAY MATTER PENDING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION, a

23 ///
24 ///
25 ///
26 ///

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TRUST AND ESTATE ATTORNEYS



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1 copy of which is attached hereto and incorporated herein by referenced was filed with the Court
2 on the 23rd day of May, 2017.

3 DATED this 24th day of May, 2017.

4 SOLOMON DWIGGINS & FREER, LTD.

5 /S/ ALEXANDER G. LEVEQUE

6 By: _____

7 ALAN D. FREER, ESQ.,
8 Nevada State Bar No. 07706
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27 *Page two of Notice of Entry of Stipulation to*
28 *Stay Matter Pending Petition for Writ of Mandamus or Prohibition Case No. P061300*

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CERTIFICATE OF SERVICE

PURSUANT to NRCPC 5(b), I HEREBY CERTIFY that on May 24, 2017, I served a true and correct copy of ***THE NOTICE OF ENTRY OF STIPULATION TO STAY MATTER PENDING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION*** to the following in the manner set forth below:

Via:

- Hand Delivery
- U.S. Mail, Postage Prepaid, to the parties identified below
- Certified Mail, Receipt No.: _____
- Return Receipt Request
- Pursuant to NEFCR 9, upon all registered parties via the Court's electronic E-Service through the Odyssey Filing System:

KEMP JONES & COULTHARD, LLP

/s/ Renee L. Guastafarro

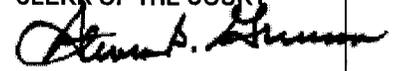
An employee of SOLOMON DWIGGINS & FREER, LTD

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11 *Executor of the Estate of Milton I. Schwartz*

DISTRICT COURT
CLARK COUNTY, NEVADA

9 In the Matter of the Estate of
10 MILTON I. SCHWARTZ,
11 Deceased.

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

**STIPULATION TO STAY MATTER PENDING
PETITION FOR WRIT OF MANDAMUS OR
PROHIBITION**

12
13 On May 17, 2017, A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz,
14 filed with the Supreme Court of Nevada a Petition for Writ of Mandamus or Prohibition (the
15 "Petition") which seeks review of this Court's Order Regarding the Adelson Campus' Motion for
16 Protective Order, filed on May 5, 2017. A true and correct copy of the Petition, without appendix,
17 is attached hereto as **Exhibit 1**.

18 Pursuant to NRAP 8(a)(1), the Parties have stipulated to stay this matter, including the
19 deposition of Sheldon Adelson and the jury trial, subject to the approval of this Court, pending a
20 decision on the Petition.

21 Dated this 19th day of May, 2017.

21 Dated this 18th day of May, 2017.

22 SOLOMON DWIGGINS & FREER

22 KEMP, JONES & COULTHARD, LLP

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24 By: 
25 Alan D. Freer, Esq.
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24 By: 
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27 *Attorneys for A. Jonathan Schwartz,*
28 *Executor of the Estate of Milton I. Schwartz*

27 *Attorneys for The Dr. Miriam and*
28 *Sheldon G. Adelson Educational*
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ORDER

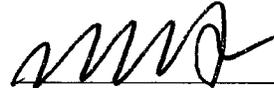
Based on the above and foregoing Stipulation of the Parties, it is hereby

ORDERED, ADJUDGED AND DECREED that this matter is stayed pending the Supreme Court of Nevada's decision of the Executor's Petition for Writ of Mandamus or Prohibition, filed on May 17, 2017; it is further

ORDERED, ADJUDGED AND DECREED that the trial date of July 3, 2017, is hereby VACATED; it is further

ORDERED, ADJUDGED AND DECREED that the Court shall convene a status hearing on August 23, 2017, at 10:00 a.m.

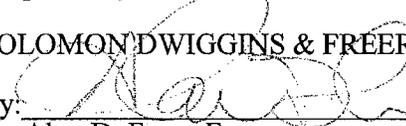
DATED this 23 day of May, 2017.



DISTRICT COURT JUDGE

Respectfully submitted,

SOLOMON DWIGGINS & FREER

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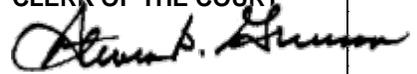
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1 J. Randall Jones, Esq. (#1927)
2 Joshua D. Carlson, Esq. (#11781)
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*Attorneys for The Dr. Miriam and
Sheldon G. Adelson Educational Institute*

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

9 In the Matter of the Estate of
10 **MILTON I. SCHWARTZ,**
11 **Deceased.**

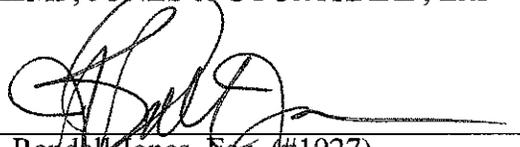
Case No.: P061300
Dept. No.: 26/Probate

**MOTION FOR PARTIAL SUMMARY
JUDGMENT REGARDING FRAUD**

13 The Dr. Miriam Adelson and Sheldon G. Adelson Educational Institute (the "Adelson
14 Campus") respectfully moves this Court for a summary judgment order dismissing the fraud claim of
15 the Estate of Milton I. Schwartz (the "Estate") against the Adelson Campus. This Motion is made
16 pursuant to NRCPC 56 and is based on the following points and authorities, supporting documentation,
17 the papers and pleadings on file in this action, and any oral argument the Court may allow.

18 DATED this 4th day of June, 2018.

19 KEMP, JONES & COULTHARD, LLP



20
21
22 J. Randall Jones, Esq. (#1927)
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24 Sheldon G. Adelson Educational Institute*

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NOTICE OF MOTION

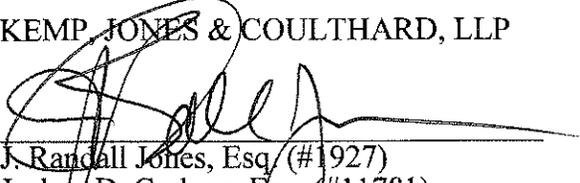
TO: All Interested Parties; and

TO: All Counsel of Record

PLEASE TAKE NOTICE that Dr. Miriam and Sheldon G. Adelson, will bring the foregoing
MOTION FOR SUMMARY JUDGMENT REGARDING FRAUD on for decision on the 19
day of Jul., 2018 at 9:30 a.m./~~p.m.~~ in front of the above-entitled Court.

DATED this 4th day of June, 2018.

KEMP, JONES & COULTHARD, LLP


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Joshua D. Carlson, Esq. (#11781)
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION AND STATEMENT OF UNDISPUTED FACTS

Discovery is now closed. All documents have been produced, and all depositions have been taken, including all living former or current school board members, and Mr. Adelson. Jonathan Schwartz’s deposition has been taken twice. Of significance to this motion, Jonathan Schwartz’s story has materially changed since the filing of the Estate’s complaint. Mr. Schwartz’s current allegations of fraud will be presented to a jury, should this Court not grant summary judgment. The point being, the Estate’s factual claims are locked in, and the Estate is no longer at liberty to massage its allegations in order to remain consistent with the testimony of the witnesses. The Estate must now live or die by the claims that it now makes.

In that regard, where a moving party requests summary judgment to dismiss a fraud claim (which must be proved at trial by clear and convincing evidence), the non-moving party must successfully demonstrate that a reasonably jury would find its claim highly probable in order to defeat the motion. *See Nutton v. Sunset Station, Inc.*, 357 P.3d 966, 975 (Nev. App. 2015); *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998). Here, the Estate’s fraud claim alleges that the Adelson Campus had no intent of honoring a naming rights agreement with Milton Schwartz at the time the school entered into an alleged agreement with Milton Schwartz and, thus, fraudulently solicited Milton Schwartz’s donations to the school. *See* March 28, 2013 Petition for Declaratory Relief, on file herein, at 7:6-15. This claim must fail because the Estate never elicited any testimony or other evidence on this point and there is no evidence from which a reasonable jury could find the claim plausible, much less highly probable. Moreover, Estate Administrator, Jonathan Schwartz, has materially changed the Estate’s position on the Fraud claim, a fact lending further credence to the argument that there was no fraud. The point being, if there was a fraud then the factual allegations supporting the fraud claim could not materially change over time if they were, indeed, true. And the

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1 new theory of fraud is wholly unsupported by any evidence of malicious intent or damages. As a result,
2 the Estate’s fraud claim must be dismissed on summary judgment.

3
4 **II.**
ARGUMENT

5 **A. Summary judgment is appropriate where there are no facts from which a reasonable**
6 **jury could find in favor of the nonmoving party.**

7 Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to
8 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
9 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of
10 law.” NRCP 56; *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1029-31 (Nev. 2005). The purpose of summary
11 judgment is to obviate the necessity of a trial as to a specific party or certain issue. *See Short v. Hotel*
12 *Riviera, Inc.*, 378 P.2d 979, 980 (Nev. 1963). It is not to decide any particular issue of fact, but to
13 decide whether any particular issue of fact exists. *Dougherty v. Wabash Life Ins. Co.*, 482 P.2d 814,
14 818 (Nev. 1971). A genuine issue of material fact is one where the evidence is such that a reasonable
15 jury could return a verdict for the non-moving party. *Riley v. Opp. IX, L.P.*, 919 P.2d 1071, 1074 (Nev.
16 1996).

17 When a motion for summary judgment is made and supported as provided by Rule 56, the
18 adverse party may not rest upon the mere allegations of the pleading, but must set forth facts
19 demonstrating the existence of a genuine issue for trial. *See, e.g., Garvey v. Clark County*, 532 P.2d
20 269, 271 (Nev. 1975). Neither conclusory statements nor general allegations are sufficient to create
21 triable issues of fact. *See, e.g., Yeager v. Harrah’s Club, Inc.*, 897 P.2d 1093, 1094-95 (Nev. 1995);
22 and *Michaels v. Sudeck*, 810 P.2d 1212, 1213 (Nev. 1991). Rather, the party opposing a motion for
23 summary judgment “must set forth specific facts showing there is a genuine issue for trial.” *Michaels,*
24 *supra*, 810 P.2d at 1213-14; *see also Posadas v. City of Reno*, 851 P.2d 438, 442 (Nev. 1993) (the
25 non-moving party’s responsive evidence must be admissible, as he/she cannot “build a case on the
26 gossamer threads of whimsy, speculation and conjecture.”). “The opposing party is not entitled to have
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1 summary judgment denied on the mere hope that at trial he will be able to discredit the movant's
2 evidence.” *Michaels, supra*, 810 P.2d at 1213-14.

3 On summary judgment, the court “must view the evidence presented through the prism of the
4 substantive evidentiary burden.” *Ferguson v. LVMPD*, 364 P.3d 592, 595 (Nev. 2015); *Bulbman, Inc.*
5 *v. Nev. Bell*, 108 Nev. 105, 110–11, 825 P.2d 588, 592 (1992). Where the nonmoving party bears the
6 burden of proof at trial, the moving party can satisfy its burden on summary judgment by “pointing
7 out ... that there is an absence of evidence to support the nonmoving party.” *See Cuzze v. U. and*
8 *Community College System of Nevada*, 172 P.3d 131, 134 (Nev. 2007). The non-moving party must
9 then respond by pointing to **admissible evidence** creating a fact issue for the jury. *See Collins v. Union*
10 *Fed. Sav. & Loan Ass'n*, 662 P.2d 610, 621 (Nev. 1983) “Evidence introduced in support of or
11 opposition to a motion for summary judgment must be admissible evidence.” *Nutton v. Sunset Station,*
12 *Inc.*, 357 P.3d 966, 975 (Nev. App. 2015). *Clear and convincing evidence requires evidence*
13 *establishing every factual element to be highly probable. See id.* (emphasis added). Thus, on summary
14 judgment, a non-moving party that bears the clear-and-convincing evidentiary burden must show that
15 a reasonably jury would find its claim highly probable. *See id.* As argued below, the Estate cannot
16 meet its burden.

17 **B. No reasonable jury could find the Estate’s fraud claim to be highly probable because it**
18 **is entirely devoid of supporting direct or circumstantial evidence and the Estate has**
19 **changed its position on the claim since filing its Petition for Declaratory Relief in May of**
20 **2013.**

To sustain a claim for fraudulent misrepresentation, the Estate must prove the following:

- 21 1. The Adelson Campus made a false representation to Mr. Milton Schwartz;
- 22 2. The Adelson Campus knew or believed that its representation was false or had an
insufficient basis of information for making the representation;
- 23 3. The Adelson Campus intended to induce Mr. Milton Schwartz to act or refrain from
acting upon misrepresentation;
- 24 4. Mr. Milton Schwartz justifiably relied upon the Adelson Campus’s representation; and
- 25 5. Mr. Milton Schwartz or his Estate sustained damages as a result.

1 See *J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290, 89 P.3d 1009, 1018
 2 (2004). In analyzing the Estate's claim, it is important to note that the Supreme Court of Nevada
 3 recognizes that "*fraud is never presumed, it must be clearly and satisfactorily proved.*" See *id.*, citing
 4 *Havas v. Alger*, 85 Nev. 627, 631, 461 P.2d 857, 860 (1969)(emphasis added). Additionally, for fraud
 5 in the inducement, the Estate must show that the Board *intended* to induce Milton Schwartz into
 6 donating money or drafting his bequest based on information the Board *knew at the time* was either
 7 false or lacked sufficient basis. See *J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev.
 8 277, 291, 89 P.3d 1009, 1018 (2004).

9 The Estate has the burden of proving each element by clear and convincing evidence. See
 10 *Barmettler*, 114 Nev. at 446-47. "Where an essential element of a claim for relief is absent, the facts,
 11 disputed or otherwise, as to other elements are rendered immaterial and summary judgment is proper."
 12 *Id.* Here, there is an absence of the required elements of fraud and summary judgment in the Adelson
 13 Campus's favor is proper.

14 The Estate's fraud claim, as set forth in its Petition for Declaratory Relief, alleges that the
 15 Adelson Campus Board fraudulently induced all of Mr. Schwartz's donations, that the Adelson
 16 Campus "had no intent to honor its agreement, as evidenced by the prompt change after Milton's
 17 death." See March 28, 2013 Petition for Declaratory Relief, on file herein, at 7:6-15. This claim cannot
 18 survive summary judgment because it is not supported by any evidence, let alone evidence strong
 19 enough that a reasonable jury would find this claim *highly probable*. In fact, every Board member that
 20 did address the issue when questioned by counsel categorically denied that the Adelson Campus ever
 21 fraudulently induced any donation or will bequest. For instance, Benjamin Yerushalmi testified as
 22 follows:

23 Q. And it states that it is obvious that the board of directors is waiting for the
 24 moment when Milton would be unable to personally defend his legacy? Do you
 25 agree with that?

26 A. No. I think it's preposterous.

27 Q. Why?

1 A. Because it's nonsense.

2 Q. Are you aware of any plan to change the name of the school prior to Milton
3 Schwartz's death?

4 A. No. I actually -- I understand that this is lawyers being lawyers, but if that's
5 actually what they think, I'm offended.

6 *See* June 30, 2016 Yerushalmi Depo. at 85:11-22, attached hereto as **Exhibit 1**. Likewise, Ercy Rosen
7 testified as follows on this issue:

8 Q. To your knowledge, when you've been on the board, has any board member had
9 a plan to trick Mr. Schwartz into donating money?

10 A. Absolutely not.

11 Q. Has any board member or has the school, the entity itself, had an intent to trick
12 Mr. Schwartz into believing that it was not going to change its name in order to
13 induce him to donate money to the school?

14 A. No.

15 MR. LeVEQUE: Object to the form, foundation.

16 Q. To your knowledge before Mr. Schwartz passed away, did the school form an
17 intent to change the name of the entity?

18 A. No.

19 MR. LeVEQUE: Same objection.

20 *See* July 6, 2016 Rosen Depo. at 122:23-123:12, attached hereto as **Exhibit 2**. Former Board members,
21 Jill Hanlon, Paul Schiffman, and Sam Ventura also testified that the Board never had a plan to deceive
22 or trick Milton Schwartz into donating or bequeathing money while simultaneously planning to change
23 the name of school. *See* June 22, 2016 Hanlon Depo. at 97:20-98:4, attached hereto as **Exhibit 3**; June
24 16, 2016 Schiffman Depo. at 141:2-6, attached hereto as **Exhibit 4**; and July 11, 2016 Ventura Depo.
25 at 51:3-8; and 51:14-20, attached hereto as **Exhibit 5**.

26 The Estate can present no admissible evidence demonstrating that the Board intended to
27 deceive Milton Schwartz into donating money and bequeathing money in his will to the school based
28

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1 on the information the Board *knew to be false at the time of the donations and Milton Schwartz's*
2 *drafting his bequest.* See *J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 291,
3 89 P.3d 1009, 1018 (2004). "The mere failure to fulfill a promise or perform in the future, however,
4 will not give rise to a fraud claim absent evidence that the promisor had no intention to perform *at the*
5 *time the promise was made.*" See *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 112, 825 P.2d 588,
6 592 (1992)(emphasis added) citing *Webb v. Clark*, 274 Or. 387, 546 P.2d 1078 (1976). Here, there is
7 no evidence that *at the time* Milton Schwartz agreed to donate money and drafted his will leaving
8 money to school, the Board had the intention of removing Milton Schwartz's name from the school.
9 The absence of such evidence is fatal to the Estate's fraud in the inducement claim.

10 Moreover, based on the sworn testimony of the executor of the Estate, Jonathan Schwartz,
11 there could be no intent to deceive Milton Schwartz at the time the donation or bequest was made
12 because Jonathan Schwartz testified that the alleged fraud happened after his father died. Jonathan
13 Schwartz described the fraud in the inducement claim as follows:

I'm saying the fraud occurred *after* my father died, when they minimized his naming rights
and attempted to take the naming rights away from him and continued to accept my money
when *I made annual donations to the school* in the name of the Milton I. Schwartz Hebrew
Academy, continued to represent to me that the school would be known as the Milton I.
Schwartz Hebrew Academy. And then I subsequently found out that they had changed the
name of the school in 2007 and never told me¹.

18 See excerpt of July 28, 2016, Deposition of Jonathan Schwartz at 48:21-49:5 (emphasis added),
19 attached hereto as **Exhibit 6**². This evidence does not support the Estate's allegations in the verified
20 Petition. And even if this was the claim alleged in the Estate's petition, there is no evidence in the
21

22
23 ¹ It must also be remembered that this testimony is nothing but inadmissible speculation and hearsay.
24 ² A non-moving party may not create an issue of fact for summary judgment purposed by means of an affidavit
25 contradicting that party's prior deposition testimony. See *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34,
26 357 P.3d 966, 976-77 (Nev. App. 2015); *Aldabe v. Adams*, 81 Nev. 280, 284-85, 402 P.2d 34, 36-37 (1965)
(refusing to credit sworn statement made in opposition to summary judgment that was in direct conflict with an
earlier statement of the same party), *overruled on other grounds by Siragusa v. Brown*, 114 Nev. 1384, 1393,
971 P.2d 801, 807 (1998); *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1138 (9th Cir. 2000).