

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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Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

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

**APPELLANT'S APPENDIX  
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56	Reply in Support of Motion for Summary Judgment Regarding Breach of Contract	08/02/18	9	2210–2245
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97	Reply in Support of Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	01/04/19	24	5924–5941
35	Reporter's Transcript of Proceedings	10/08/14	6	1334–1376
98	Reporter's Transcription of Proceedings	01/10/19	24	5942–5993
114	Stipulation and Order Regarding Trial Transcripts	08/05/19	27	6596–6597
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 record regarding the amount of donations, if any, the Estate made to the school after Milton Schwartz's  
 2 passing, and no evidence of malicious intent or intentional misrepresentation. Since there are no  
 3 documents whatsoever that support Jonathan Schwartz's fraud allegations, the only other source of  
 4 information that could possibly support these allegation would be testimony of Milton Schwartz, and  
 5 there is no such testimony. Consequently, the Adelson Campus is entitled to summary judgment on  
 6 the Estates' claim for fraud in the inducement.

7 Finally, the other admissible evidence adduced during discovery confirms that there was no  
 8 fraud, and there could not have been the fraud as alleged by Jonathan Schwartz. As set forth in the  
 9 Adelson Campus's Motion for Summary Judgment on the Estate's breach of contract claim, filed  
 10 concurrently herewith, Mr. Schwartz never fulfilled his promised donation of \$1,000,000. He only  
 11 paid half of the donation. Thus, to the extent an oral enforceable naming rights agreement was ever  
 12 discussed, the Adelson Campus was never obligated to honor it because Milton Schwarz never came  
 13 near to donating the money allegedly agreed to in connection with such an alleged agreement.

14 The Estate's evidence is deficient as to each of the elements of fraud. There is no evidence of  
 15 misrepresentation, malicious intent to induce reliance, actual reliance by Mr. Schwartz or his Estate,  
 16 and no evidence of damages. The claim must be summarily dismissed.


### 17 III.

### 18 CONCLUSION

19 For the foregoing reasons, the Adelson Campus respectfully requests that this Court enter a  
 20 summary judgment order dismissing the Estate's fraud claim against the Adelson Campus.

21 Dated this 4th day of June, 2018.

22 KEMP, JONES & COULTHARD, LLP

23   
 24 J. Randall Jones, Esq. (#1927)  
 25 Joshua D. Carlson, Esq. (#11781)  
 26 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
 27 Las Vegas, Nevada 89169  
 28 Attorneys for The Dr. Miriam and  
 Sheldon G. Adelson Educational Institute



**CERTIFICATE OF SERVICE**

I hereby certify that on the 4th day of June, 2018, service of the foregoing **MOTION FOR SUMMARY JUDGMENT REGARDING FRAUD** was electronically served on counsel for the Estate of Milton I. Schwartz via the Court's electronic filing system.



An employee of Kemp, Jones & Coulthard, LLP

# EXHIBIT 1

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 )  
4 In the Matter of the Estate ) Case No. 07P061300  
of )  
5 ) Dept. No: 26/Probate  
MILTON I. SCHWARTZ, )  
6 )  
Deceased. )  
7 )  
8 )

9  
10  
11 DEPOSITION OF BENJAMIN YERUSHALMI

12 Taken on Thursday, June 30, 2016

13 By a Certified Court Reporter

14 At 9:45 a.m.

15 At 9060 West Cheyenne Avenue

16 Las Vegas, Nevada  
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23  
24 Reported by: Marilyn Speciale, CRR, RPR, CCR #749

25 Job No. 17580

1 Q. Can I have you read that, the first two  
2 paragraphs of that section to yourself real quick?

3 A. (Witness examined document.)

4 Just the first two?

5 Q. Yes, just the first two. Are you done?

6 A. Yes.

7 Q. All right. So do you see where in the first  
8 paragraph this document references a plan to breach an  
9 agreement with Mr. Schwartz?

10 A. Uh-huh.

11 Q. And it states that it is obvious that the  
12 board of directors is waiting for the moment when Milton  
13 would be unable to personally defend his legacy? Do you  
14 agree with that?

15 A. No. I think it's preposterous.

16 Q. Why?

17 A. Because it's nonsense.

18 Q. Are you aware of any plan to change the name  
19 of the school prior to Milton Schwartz's death?

20 A. No. I actually -- I understand that this is  
21 lawyers being lawyers, but if that's actually what they  
22 think, I'm offended.

23 What the heck do I have to gain as a member of  
24 the board? Why would I want to (a) change the name; and  
25 (b), why would I care? Why would I lie to a guy that

# EXHIBIT 2

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 )  
4 In the Matter of the Estate ) Case No. 07P061300  
of )  
5 ) Dept. No: 26/Probate  
6 MILTON I. SCHWARTZ, )  
Deceased. )  
7 )  
8 )

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11 DEPOSITION OF ERCY ROSEN

12 Taken on Wednesday, July 6, 2016

13 By a Certified Court Reporter

14 At 1:30 p.m.

15 At 9060 West Cheyenne Avenue

16 Las Vegas, Nevada  
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24 Reported by: Marilyn Speciale, CRR, RPR, CCR #749

25 Job No. 17682

1 A. Yes.

2 Q. I just want to read a couple of those  
3 allegations into the record. Do you see where it says,  
4 "Because the academy removed Milton's name from the  
5 corporate documents almost immediately after his death,  
6 it is obvious that the board of directors was waiting  
7 for the moment when Milton would be unable personally to  
8 defend his legacy. The plan to breach was hidden from  
9 Milton, in hopes that he would continue to provide  
10 generous gifts, fundraising, and ultimately a bequest in  
11 his will." Do you see where I read that?

12 A. I do.

13 Q. Do you agree with that allegation?

14 A. I absolutely do not agree with that  
15 allegation. I find it very hurtful. It is untrue.

16 Q. And just for the record, my intent in drawing  
17 this to your attention is not necessarily to cause anger  
18 or to rise emotion.

19 A. I know. I know.

20 Q. But it's a claim that we have to defend and so  
21 I'm just getting the evidence into the record that we  
22 need.

23 To your knowledge, when you've been on the  
24 board, has any board member had a plan to trick  
25 Mr. Schwartz into donating money?

1 A. Absolutely not.

2 Q. Has any board member or has the school, the  
3 entity itself, had an intent to trick Mr. Schwartz into  
4 believing that it was not going to change its name in  
5 order to induce him to donate money to the school?

6 A. No.

7 MR. LeVEQUE: Object to the form, foundation.

8 Q. To your knowledge before Mr. Schwartz passed  
9 away, did the school form an intent to change the name  
10 of the entity?

11 A. No.

12 MR. LeVEQUE: Same objection.

13 BY MR. BLAKE:

14 Q. Okay. Are you -- shifting gears a little bit,  
15 moving on from this. I guess -- let's see this.

16 Let me just direct your attention to the --  
17 you see the second paragraph, three sentences in where  
18 it states, "Milton's donations and the bequest were thus  
19 induced by fraudulent misrepresentations"?

20 A. Yes.

21 Q. Do you disagree with that?

22 A. I do.

23 Q. Tell me why.

24 A. Well, just in Milton's words to me, and to  
25 many of the board members, his bequests were already on



# EXHIBIT 3

DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of the Estate     )  
of     )  
                                   ) Case No.  
MILTON I. SCHWARTZ,     ) 07P061300  
                                   )  
Deceased.     )  
                                   )  
\_\_\_\_\_     )

DEPOSITION OF JILL HANLON  
Taken on Wednesday, June 22, 2016  
By a Certified Court Reporter  
At 1:45 p.m.  
At 9060 West Cheyenne Avenue  
Las Vegas, Nevada

Reported by: Wendy Sara Honable, CCR No. 875  
Nevada CSR No. 875  
California CSR No. 13186  
Washington CCR No. 2267  
Utah CCR No. 7357039-7801  
Job No. 17449

1 brought a fraud claim against the school, and the  
2 premise of that claim, I'll represent to you, is  
3 that the school essentially intended to change its  
4 name to the -- something other than the Milton I.  
5 Schwartz Hebrew Academy -- not the school -- the  
6 entity intended to change its name while  
7 Mr. Schwartz was alive, but it never informed him of  
8 that intent in order to solicit additional donations  
9 from Mr. Schwartz.

10 MR. LEVEQUE: Object to the form.  
11 Misstates the cause of action.

12 BY MR. BLAKE:

13 Q. What is -- what are your thoughts on --  
14 on that allegation?

15 MR. LEVEQUE: Same objections.

16 THE WITNESS: I never knew anything about  
17 that, the allegation or any big shift to change  
18 things.

19 BY MR. BLAKE:

20 Q. Okay. So to your knowledge, did any  
21 board member or any other officer of the corporation  
22 try and trick Mr. Schwartz into donating more money?

23 A. No.

24 Q. To your knowledge, was Mr. Schwartz aware  
25 of the plans to change the name of the entity before

1 he passed away?

2 A. I believe so. I -- I'm certain that we  
3 discussed the Adelson Campus when he was still at  
4 meetings.

5 Q. Okay. All right. I want to move on --  
6 in the interest of time, I want to move on to  
7 another line of questioning.

8 Do you recall when you discussed with  
9 Mr. LeVeque, there was a discussion among the board  
10 members about whether the kippot would be worn and  
11 about the language of the resolution regarding the  
12 religious purpose of the school --

13 A. Yes.

14 Q. -- correct?

15 You don't remember who initially -- did  
16 anybody initially raise an objection to the language  
17 regarding the religious purpose of the school?

18 Do you remember who raised the objection  
19 first?

20 A. I can tell you who the more religious  
21 board members were who would have been on the other  
22 side of it.

23 Q. Okay. Who were those? I guess --

24 A. It would have been Sam Ventura, probably  
25 Philip Kantor.

# EXHIBIT 4

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3  
4  
5 In the Matter of the Estate of )

) Case No.

) 07P061300

6 MILTON I. SCHWARTZ, )

) Dept No. 26/Probate

7  
8 Deceased. )

9

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12 DEPOSITION OF PAUL SCHIFFMAN

13 Taken on June 16, 2016

14 By a Certified Court Reporter

15 At 1:04 p.m.

16 At 9060 West Cheyenne Avenue

17 Las Vegas, Nevada

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23  
24 Reported by Janet C. Trimmer, RPR, CRR, CCR 864

25 Job No. 17364

1 A. Not that I'm aware of.

2 Q. Do you believe that anybody at the school  
3 solicited donations of money from Mr. Schwartz with  
4 the intent -- already knowing that the name of the  
5 elementary school was going to be changed?

6 A. I'm not aware of anything.

7 Q. Have you ever seen a written agreement  
8 between Mr. Schwartz and the school giving him a  
9 perpetual naming right --

10 A. No.

11 Q. -- to any of the buildings?

12 A. No.

13 Q. To the campus?

14 A. No.

15 Q. To the entity?

16 A. No.

17 Q. You are aware that in the mid-'90s,  
18 approximately, there was a dispute between Mr. Adelson  
19 and Tamar Lubin and potentially others about the name  
20 of the school; correct?

21 MR. LEVEQUE: Objection. Assumes facts.

22 THE WITNESS: It was Mr. Schwartz, and  
23 Mr. Adelson was not involved.

24 BY MR. BLAKE:

25 Q. Sorry. I misspoke.

# EXHIBIT 5



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DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of )  
MILTON I. SCHWARTZ, ) Case No.: 07P061300  
Deceased. ) Dept. No.: 26/Probate  
\_\_\_\_\_)

DEPOSITION OF SAMUEL VENTURA

Taken on Monday, July 11, 2016

at 1:37 p.m.

At Solomon, Dwiggin & Freer, Ltd.

9060 West Cheyenne Avenue

Las Vegas, Nevada

Reported By: Ewa Barnes, CCR No. 889

1 continue to provide generous gifts, fundraising, and  
2 ultimately a bequest in his will."

3 So I guess, let me ask you this. Do you agree  
4 that in your time on the board, the board ever had a plan  
5 to trick Mr. Schwartz into giving money, and then -- while  
6 it was simultaneously planning to change its name at some  
7 point in the future?

8 A. A hundred percent, no.

9 Q. All right. Let me read another allegation. If  
10 you look at the second paragraph of that page, there's a  
11 sentence that says, "Yet the Academy had no intent to honor  
12 its agreement" --

13 A. Second paragraph where?

14 Q. Sorry. Second sentence of the second paragraph.  
15 It says, "Yet the Academy had no intent to honor its  
16 agreement as evidenced by the prompt change after Milton's  
17 death."

18 To your knowledge, did the school have an intent  
19 to change its name prior to Milton Schwartz's death?

20 A. No.

21 MR. BLAKE: All right. I don't have any other  
22 questions.

23 THE COURT REPORTER: Counsel, copy?

24 MR. BLAKE: Yes.

25 (At 2:59 p.m. the deposition was concluded.)

# EXHIBIT 6

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DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

In the Matter of the Estate  
of,

MILTON I. SCHWARTZ,

Case No. P061300  
Dept. No. 26/Probate

Deceased.

---

VIDEOTAPED DEPOSITION OF

JONATHAN SCHWARTZ

Volume I

Las Vegas, Nevada

July 28, 2016

9:40 a.m.

Reported by: Heidi K. Konsten, RPR, CCR  
Nevada CCR No. 845 - NCRA RPR No. 816435  
JOB NO. 322729

001521

1 MR. FREER: It's page 6.

2 BY MR. KEMP:

3 Q It's page 6. Did I say page 6?

4 A Okay.

5 Q Okay. We talked about that in previous  
6 depositions, so let's stay out of that. All  
7 right. Second claim is fraud in the inducement.

8 Is it really your position that someone  
9 committed a fraud here?

10 MR. FREER: Objection. Calls for a  
11 legal conclusion.

12 You can answer.

13 THE WITNESS: Unfortunately, yes.

14 BY MR. KEMP:

15 Q So you think someone sat there and they  
16 intended to defraud your father out of \$500,000?

17 A When are you referring to?

18 Q Okay. Well, what are you referring to  
19 when you say there was fraud? You agree there was  
20 no fraud at the beginning in '89?

21 A I'm saying the fraud occurred after my  
22 father died, when they minimized his naming rights  
23 and attempted to take the naming rights away from  
24 him and continued to accept my money when I made  
25 annual donations to the school in the name of the

1 Milton I. Schwartz Hebrew Academy, continued to  
2 represent to me that the school would be known as  
3 the Milton I. Schwartz Hebrew Academy. And then I  
4 subsequently found out that they had changed the  
5 name of the school in 2007 and never told me.

6 **Q Are we talking about the campus again,**  
7 **or -- we're not talking about the school. We're**  
8 **talking about the campus.**

9 A Whatever you want to call it, whether  
10 it's the campus, the school, whatever you want to  
11 call it.

12 **Q Okay. Well, let's -- let's try to break**  
13 **it down a little bit.**

14 **K through 8 was not changed in 2008;**  
15 **right?**

16 A I don't know, sitting here.

17 **Q Okay. When did you first find out --**  
18 **well, you said they changed something in 2008.**

19 A I found out --

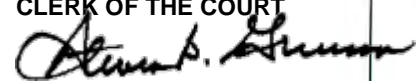
20 MR. FREER: Objection.

21 Mischaracterizes -- no, strike that. Never mind.

22 THE WITNESS: Through the course of  
23 this deposition -- through the course of this  
24 litigation, at some point we received documents  
25 through discovery. And at some point, I found a

47

47



J. Randall Jones, Esq. (#1927)  
Joshua D. Carlson, Esq. (#11781)  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway, 17th Floor  
Las Vegas, Nevada 89169  
Telephone: (702) 385-6000  
Facsimile: (702) 385-6001  
*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.

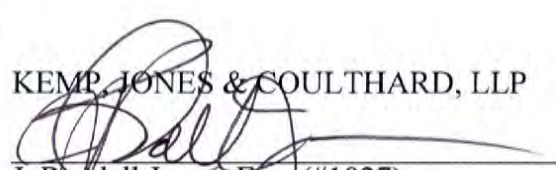
Case No.: P061300  
Dept. No.: 26/Probate

**MOTION FOR PARTIAL SUMMARY  
JUDGMENT REGARDING STATUTE  
OF LIMITATIONS**

The Dr. Miriam Adelson and Sheldon G. Adelson Educational Institute (the "Adelson Campus") respectfully moves this Court for a summary judgment order dismissing the Estate's second, fourth, fifth, sixth, seventh, and eighth claims for relief against the Adelson Campus in its Petition for Declaratory relief and Supplemental Petition thereto, filed on May 28, 2013 and May 28, 2014, respectively. This Motion is made pursuant to NRCP 56 and is based on the following points and authorities, supporting documentation, the papers and pleadings on file in this action, and any oral argument the Court may allow.

DATED this 4th day of June, 2018.

KEMP, JONES & COULTHARD, LLP



J. Randall Jones, Esq. (#1927)  
Joshua D. Carlson, Esq. (#11781)  
3800 Howard Hughes Parkway, 17th Floor  
Las Vegas, Nevada 89169  
*Attorneys for The Dr. Miriam and  
Sheldon G. Adelson Educational Institute*



**NOTICE OF MOTION**

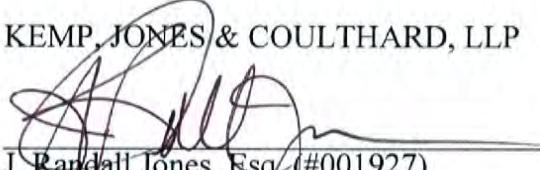
TO: All Interested Parties; and

TO: All Counsel of Record

PLEASE TAKE NOTICE that Dr. Miriam and Sheldon G. Adelson, will bring the foregoing  
**MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING STATUTE OF**  
**LIMITATIONS** on for decision on the \_\_\_\_ day of July 19, 2018 at 9:30  
 a.m./p.m. in front of the above-entitled Court.

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

KEMP, JONES & COULTHARD, LLP

  
 J. Randall Jones, Esq. (#001927)  
 Joshua D. Carlson, Esq. (#11781)  
 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
 Las Vegas, Nevada 89169  
*Attorneys for The Dr. Miriam and  
 Sheldon G. Adelson Educational Institute*

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I.**

#### **INTRODUCTION AND STATEMENT OF UNDISPUTED FACTS**

The undisputed facts critical to this Motion relate to the school entity changing its name from the Milton I. Schwartz Hebrew Academy to the Dr. Miriam and Sheldon G. Adelson Educational Institute. As discussed in prior court papers at length, the school entity changed its name from the Hebrew Academy to the Milton I. Schwartz Hebrew Academy in or around 1990. Between 1992 and 1999 the name of the entity changed back to the Hebrew Academy and then in 1999 back again to the Milton I. Schwartz Hebrew Academy. On or around April 9, 2005, Dr. Miriam Adelson and Sheldon Adelson pledged \$25,000,000 to the Operating Entity, through the Adelson Family Charitable Foundation, for the construction of a new high school. The completion of the new high school transformed the new campus, which opened in August of 2008.

During construction of the new high school and as part of rebranding efforts, the entity changed its name to the Dr. Miriam and Sheldon G. Adelson Educational Institute on March 21, 2008. *See* Certificate of Amendment to Articles of Incorporation providing notice that The Milton I. Schwartz Hebrew Academy was being renamed the Dr. Miriam and Sheldon G. Adelson Educational Institute, attached hereto as **Exhibit 1**. The entire campus was referred to using the shorthand term “the Adelson Campus.”

Jonathan Schwartz testified that although he didn’t have definitive proof, he would hear about the continual alteration of the school’s use of Mr. Schwartz’s name, which he considered to be the erosion of his father’s naming rights. Jonathan confirmed that he became aware of these changes. Specifically, he testified:

“I hear, you know, statements from board members, statements from, you know, people who sent their kids there, you know. “They’re – they’re not respecting your dad’s legacy,” all of this kind of stuff. And this was, you know a series of events. And little by little, they diminished my father’s naming rights and supplanted it completely with Adelson, which was not the agreement.”



1 J. Schwartz July 28, 2016 Dep. at 50:7-15, attached hereto as **Exhibit 2**. Jonathan Schwartz confirmed  
 2 that he learned of changes to the name of the school and diminishment of the perceived naming interest  
 3 he alleges his father obtained as these events happened throughout the years “2007, ‘8, ‘9, ‘10, ‘11,  
 4 ‘12, ‘13, ‘14 . . . .” See Exhibit 2 at 51:3-16.

5 In spite of having knowledge of or, at a minimum, being on constructive notice that his father’s  
 6 alleged naming rights were being diminished, the Estate did not file suit until more than five years  
 7 after the Adelson Campus formally changed its name to the Dr. Miriam and Sheldon G. Adelson  
 8 Educational Institute. As argued below, the statute of limitations for certain of the Estate’s claims for  
 9 relief had elapsed by this time and these claims must be dismissed.

## 10 II.

### 11 ARGUMENT

#### 12 A. Summary judgment is appropriate where there are no facts from which a 13 reasonable jury could find in favor of the nonmoving party.

14 Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to  
 15 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
 16 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of  
 17 law.” NRCP 56; *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1029-31 (Nev. 2005). The purpose of  
 18 summary judgment is to obviate the necessity of a trial as to a specific party or certain issue. See *Short*  
 19 *v. Hotel Riviera, Inc.*, 378 P.2d 979, 980 (Nev. 1963). A genuine issue of material fact is one where  
 20 the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Riley v.*  
 21 *Opp. IX, L.P.*, 919 P.2d 1071, 1074 (Nev. 1996).

22 When a motion for summary judgment is made and supported as provided by Rule 56, the  
 23 adverse party may not rest upon the mere allegations of the pleading, but must set forth facts  
 24 demonstrating the existence of a genuine issue for trial. See, e.g., *Garvey v. Clark County*, 532 P.2d  
 25 269, 271 (Nev. 1975). Neither conclusory statements nor general allegations are sufficient to create  
 26 triable issues of fact. See, e.g., *Yeager v. Harrah’s Club, Inc.*, 897 P.2d 1093, 1094-95 (Nev. 1995);  
 27 and *Michaels v. Sudeck*, 810 P.2d 1212, 1213 (Nev. 1991). Rather, the party opposing a motion for  
 28



summary judgment “must set forth specific facts showing there is a genuine issue for trial.” *Michaels, supra*, 810 P.2d at 1213-14; *see also Posadas v. City of Reno*, 851 P.2d 438, 442 (Nev. 1993) (the non-moving party’s responsive evidence must be admissible, as he/she cannot “build a case on the gossamer threads of whimsy, speculation and conjecture.”). “The opposing party is not entitled to have summary judgment denied on the mere hope that at trial he will be able to discredit the movant’s evidence.” *Michaels, supra*, 810 P.2d at 1213-14.

**B. The Estate’s breach of contract and fraud claims are barred by their respective statutes of limitations.**

The statute of limitations for breach of an oral agreement is four years. NRS 11.190(2)(c). The statute of limitations for a claim for fraud in the inducement is three years. NRS 11.190(3)(d). The discovery rule prevents a cause of action from accruing until “the injured party discovers or reasonably should have discovered facts supporting a cause of action.” *See Peterson v. Bruen*, 106 Nev. 271, 274 (1990). “[A] plaintiff must use due diligence in determining the existence of a cause of action.” *Bemis v. Est. of Bemis*, 967 P.2d 437, 440 (Nev. 1998).

Here, the Estate administrator, Jonathan Schwartz, admits that he knew of or at the very least could have discovered, though reasonable diligence, the contract breaches and tortious conduct he alleges as early as 2007. Jonathan Schwartz testified that although he did not have definitive proof, he would hear about the continual erosion of naming rights of Mr. Schwartz as these events happened. Specifically, he testified:

“I hear, you know, statements from board members, statements from, you know, people who sent their kids there, you know. “They’re – they’re not respecting your dad’s legacy,” all of this kind of stuff. And this was, you know a series of events. And little by little, they diminished my father’s naming rights and supplanted it completely with Adelson, which was not the agreement.”

Exhibit 2 at 50:7-15.

Jonathan Schwartz’s testimony also confirmed that as these events occurred, he would hear about them from the community—throughout the years “2007, ‘8, ‘9, ‘10, ‘11, ‘12, ‘13, ‘14 . . .” *See* Exhibit 2 at 51:3-16. Thus, Jonathan Schwartz admitted that he knew of the facts supporting his



1 alleged breach of a naming rights contract as the events were happening. For purposes of this motion  
2 as it relates to the statute of limitations, if Jonathan Schwartz, a lawyer, continued to hear from multiple  
3 sources, starting as early as 2007, that his father's alleged naming rights were being compromised, at  
4 the very least he was on notice that he should investigate further whether his father's alleged naming  
5 rights were in fact being compromised thereby giving rise to a claim. In other words, Jonathan  
6 Schwartz simply failed to "use due diligence to determine ..." "facts supporting the existence of a  
7 cause of action." Furthermore, the operating entity formally changed its name on March 21, 2008.  
8 See Exhibit 1. And the change of name to the entity was a matter of public record thereby placing  
9 Jonathan Schwartz on constructive notice of the change in the Operating Entity's name. Thus,  
10 Jonathan Schwartz had actual **and** constructive notice of the facts underlying the Estate's claims  
11 against the Adelson Campus by at least March 21, 2008.

12 Using March 21, 2008 as the accrual date for the Estate's causes of action, the latest that it  
13 could have filed a fraud claim against the Adelson Campus was March 21, 2011. The latest that it  
14 could have filed a claim for breach of an oral agreement was March 21, 2012. The Estate's Petition  
15 for Declaratory Relief was not filed until **more than a year after expiration of the 4-year limitations**  
16 **period—May 23, 2013.** Based on Jonathan Schwartz's admission that he knew his father's naming  
17 rights were being diluted *as these events were happening*, summary judgment is appropriate to dismiss  
18 the Estate's breach of contract and fraud claims.

19 The Estate's remaining claims relating to the naming rights agreement—offset of bequest  
20 under will, revocation of gift and constructive trust, specific performance, and injunctive relief—are  
21 either entirely derivative of the Estate's untimely breach of contract or fraud claims (offset of bequest  
22 under will, revocation of gift and constructive trust) or remedies (specific performance, injunctive  
23 relief) that are directly dependent on the Estate's untimely claims. These claims are also subject to  
24 dismissal because the claims on which they rely or are derived are untimely.

25  
26 ///

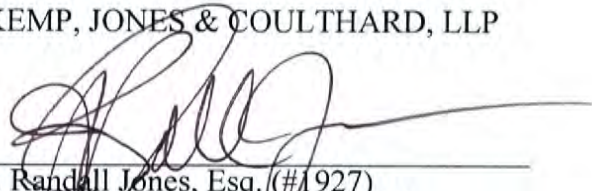
## III.

## CONCLUSION

For the foregoing reasons, the Adelson Campus respectfully requests that this Court enter a summary judgment order dismissing the Estate's second, fourth, fifth, sixth, seventh, and eighth claims for relief against the Adelson Campus.

Dated this 4<sup>th</sup> day of June, 2018.

KEMP, JONES & COULTHARD, LLP

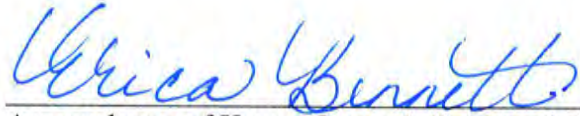


J. Randall Jones, Esq. (#1927)  
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3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169  
*Attorneys for The Dr. Miriam and  
Sheldon G. Adelson Educational Institute*



**CERTIFICATE OF SERVICE**

I hereby certify that on the 4th day of June, 2018, service of the foregoing **MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING STATUTE OF LIMITATIONS** was electronically served on counsel for the Estate of Milton I. Schwartz via the Court's electronic filing system.



An employee of Kemp, Jones & Coulthard, LLP

# EXHIBIT 1



Mar-21-08 02:28pm From-LOURIE &amp; CUTLER,PC

617-742-5720

T-154 P.03/04 F-378



ROSS MILLER  
Secretary of State  
204 North Carson Street, Ste 1  
Carson City, Nevada 89701-4289  
(775) 684 6708  
Website: secretaryofstate.biz

Filed in the office of	Document Number
	20080195694-74
Ross Miller	Filing Date and Time
Secretary of State	03/21/2008 11:20 AM
State of Nevada	Entity Number
	C1073-1980

**Nonprofit Amendment  
(After First Meeting)**  
(PURSUANT TO NRS 81 AND 82)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

**Certificate of Amendment to Articles of Incorporation  
For Nonprofit Corporations**

(NRS Chapters 81 and 82 - After First Meeting of Directors)

## 1. Name of corporation:

The Milton I. Schwartz Hebrew Academy

## 2. The articles have been amended as follows (provide article numbers, if available):

Article I is hereby deleted in its entirety and replaced with the following: "This Corporation shall be known in perpetuity as 'The Dr. Miriam and Sheldon G. Adelson Educational Institute'."

See attachment for additional amendments.

3. The directors (or trustees) and the members, if any, and such other persons or public officers, if any, as may be required by the articles have approved the amendment. The vote by which the amendment was adopted by the directors and members, if any, is as follows: directors 11, and members N/A.

## 4. Officer Signature (Required):

X

Signature

Title

\*A majority of a quorum of the voting power of the members or as may be required by the articles, must vote in favor of the amendment. If any proposed amendment would alter or change any preference or any relative or other right given to any class of members, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of a majority of a quorum of the voting power of each class of members affected by the amendment regardless of limitations or restrictions on their voting power. An amendment pursuant to NRS 81.210 requires approval by a vote of 2/3 of the members.

FILING FEE: \$50.00

**IMPORTANT:** Failure to include any of the above information and submit the proper fees may cause this filing to be rejected.

This form must be accompanied by appropriate fees.

Nevada Secretary of State 8/1/02, June 2007  
Revised on 01/01/07

EST-00250

Mar-21-08 02:28pm From: LOURIE &amp; CUTLER, PC

617-742-6720

T-154 P.04/04 F-375

Attachment to  
Certificate of Amendment to Articles of Incorporation  
of The Milton I. Schwartz Hebrew Academy

Article II is hereby amended by adding a paragraph at the end of Article II to state the following specific language: "The schools conducted by the corporation shall be community schools of mixed gender, not affiliated with a specific denomination of Judaism. Students in the schools shall not be required to pray. Male students shall be strongly recommended (but not required) to wear a kippa during prayer and other religious ceremonies. Also, no student shall be required to wear a kippa at any time."

Article IV is hereby deleted in its entirety and replaced with the following specific language: "The governing board of the corporation shall be known as the Board of Trustees and the Board of Trustees shall constitute the corporation. The term of office of each Trustee shall be three years. The number of Trustees may from time to time be increased or decreased by the Board of Trustees but in no event shall the number of Trustees be fewer than seven (7) or more than twenty (20). If for any reason a Trustee shall not be elected in the time and manner provided for herein, or in the Bylaws, such Trustee shall continue to serve as Trustee until his or her successor has been elected."

F:\users\jvarela\clients\adelson\Vanlyche\habibafoundation\schwartz-amendment\articles

EST-00251



## STATE OF NEVADA

**ROSS MILLER**  
Secretary of State

**SCOTT W. ANDERSON**  
Deputy Secretary  
for Commercial Recordings



OFFICE OF THE  
SECRETARY OF STATE

**Commercial Recordings Division**  
202 N. Carson Street  
Carson City, NV 89701-4059  
Telephone (775) 684-5708  
Fax (775) 684-7138

LIONEL, SAWYER & COLLINS

Job: C20130412-0697  
April 12, 2013

**Special Handling Instructions:**

C20130412-0697

DR. MIRIAM AND SHELDON G. ADELSON EDUCATIONAL INSTITUTE

SENT: ARTICLES/AMENDMENTS/LIST 2007 FORWARD/CERTIFIED

EMAILED RMICHEL@LIONELSAWYER.COM 4/12/13 FAB

**Charges**

Description	Document Number	Filing Date/Time	Qty	Price	Amount
Entity Copies	00003876091-74		30	\$2.00	\$60.00
Copies - Certification of Document	00003876091-74		1	\$30.00	\$30.00
24-HR Copy Expedite	00003876091-74		1	\$125.00	\$125.00
Total					\$215.00

**Payments**

Type	Description	Amount
Billed	750046	\$215.00
Total		\$215.00

Credit Balance: \$0.00

**Job Contents:**

NV Corp Certified Copy Request Cover 1  
Letter(s):

LIONEL, SAWYER & COLLINS

EST-00252

## STATE OF NEVADA

ROSS MILLER  
Secretary of State



SCOTT W. ANDERSON  
Deputy Secretary  
for Commercial Recordings

OFFICE OF THE  
SECRETARY OF STATE

## Certified Copy

April 12, 2013

Job Number: C20130412-0697

Reference Number: 00003876091-74

Expedite:

Through Date:

The undersigned filing officer hereby certifies that the attached copies are true and exact copies of all requested statements and related subsequent documentation filed with the Secretary of State's Office, Commercial Recordings Division listed on the attached report.

Document Number(s)	Description	Number of Pages
C1073-1980-001	Articles of Incorporation	6 Pages/1 Copies
C1073-1980-003	Amendment	4 Pages/1 Copies
C1073-1980-005	Amendment	3 Pages/1 Copies
C1073-1980-007	Amendment	1 Pages/1 Copies
C1073-1980-008	Amendment	1 Pages/1 Copies
C1073-1980-010	Amendment	1 Pages/1 Copies
C1073-1980-012	Amendment	1 Pages/1 Copies
20070003515-43	Annual List	1 Pages/1 Copies
20080084895-54	Annual List	1 Pages/1 Copies
20080195694-74	Amendment	2 Pages/1 Copies
20080586063-38	Amended List	1 Pages/1 Copies
20090255488-73	Annual List	1 Pages/1 Copies
20100102296-53	Annual List	1 Pages/1 Copies
20110048708-01	Annual List	2 Pages/1 Copies
20120024437-45	Annual List	2 Pages/1 Copies
20120851508-32	Annual List	2 Pages/1 Copies

Commercial Recording Division  
202 N. Carson Street  
Carson City, Nevada 89701-4069  
Telephone (775) 684-5708  
Fax (775) 684-7138

EST-00253



Respectfully,

A handwritten signature in dark ink, appearing to read "Ross Miller".

ROSS MILLER  
Secretary of State

Certified By: F Lincoln  
Certificate Number: C20130412-0697  
You may verify this certificate  
online at <http://www.nvsos.gov/>

EST-00254

# EXHIBIT 2

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA

3 \* \* \* \* \*

4

5 In the Matter of the Estate  
6 of,

6

7 MILTON I. SCHWARTZ,

7

Case No. P061300

8

Deceased.

Dept. No. 26/Probate

9

10

11

VIDEOTAPED DEPOSITION OF

12

JONATHAN SCHWARTZ

13

Volume I

14

Las Vegas, Nevada

15

July 28, 2016

16

9:40 a.m.

17

18

19

20

21

22

Reported by: Heidi K. Konsten, RPR, CCR  
Nevada CCR No. 845 - NCRA RPR No. 816435  
JOB NO. 322729

23

24

25



1 documented dated, I think, December of 2007 where  
2 the name of the school had been changed, and no  
3 one ever told us about that. The first I -- I --  
4 I knew of it was when I read that document, and I  
5 knew about it as it was occurring. This was sort  
6 of, you know, death by a thousand cuts.

7 I would hear, you know, statements  
8 from board members, statements from, you know,  
9 people who sent their kids there, you know,  
10 "They're -- they're not respecting your dad's  
11 legacy," all of this kind of stuff. And this was,  
12 you know, a series of events. And little by  
13 little, they diminished my father's naming rights  
14 and supplanted it completely with Adelson, which  
15 was not the agreement.

16 BY MR. KEMP:

17 Q Okay. So -- yeah. So at some point,  
18 it's your position that there was a change in 2007  
19 of the name of something.

20 Is that -- is that what your  
21 understanding is?

22 A Yes.

23 Q And what is your understanding of what  
24 changed?

25 A I'd have to have the document in front



1 of me. It was some -- some filing that the school  
2 made that changed the name of the school.

3 **Q And you didn't find that out until after**  
4 **you had filed this petition on May 28th, 2013?**

5 A I didn't receive definitive proof of it.  
6 Again, as these events were occurring in 2007, '8,  
7 '9, '10, '11, '12, '13, '14, I would hear things  
8 from members of the community. I would hear  
9 things from parents who sent their kids there,  
10 from board members.

11 I mean, look, I had -- I had lunch with  
12 Sam Ventura one day at a Mediterranean restaurant  
13 on the east side of town, where he proceeded to  
14 tell me, "Look, what Sheldon is doing isn't right,  
15 and I disagree with it. And I told them that if  
16 they tried to do this, you would sue the school."

17 **Q Okay. And when did -- when was this?**

18 A Sometime in '8 or '9 -- 2008, 2009.  
19 This was a long time ago, so I may be off on the  
20 exact year.

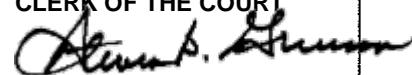
21 **Q Okay. And would that be Paymon's**  
22 **Mediterranean restaurant on Sahara?**

23 A You got it.

24 **Q Okay. And at that time, Mr. Ventura**  
25 **relayed to you some concerns he had about the name**

48

48



1 J. Randall Jones, Esq. (#1927)  
Joshua D. Carlson, Esq. (#11781)  
2 KEMP, JONES & COULTHARD, LLP  
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3 Las Vegas, Nevada 89169  
Telephone: (702) 385-6000  
4 Facsimile: (702) 385-6001  
*Attorneys for The Dr. Miriam and*  
5 *Sheldon G. Adelson Educational Institute*

6  
7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 In the Matter of the Estate of  
10 MILTON I. SCHWARTZ,  
11 Deceased.

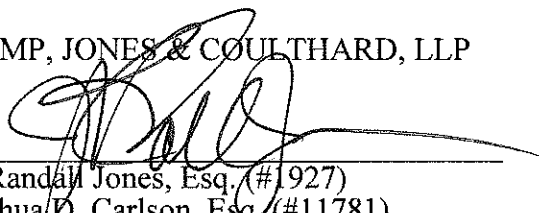
Case No.: P061300  
Dept. No.: 26/Probate

**MOTION FOR SUMMARY JUDGMENT  
REGARDING BREACH OF CONTRACT**

12  
13  
14 The Dr. Miriam Adelson and Sheldon G. Adelson Educational Institute (the "Adelson  
15 Campus") respectfully moves this Court for a summary judgment order dismissing the second, fourth,  
16 fifth, sixth, seventh, and eighth claims for relief of the Estate of Milton Schwartz (the "Estate") against  
17 the Adelson Campus in its Petition for Declaratory Relief and Supplemental Petition thereto, filed on  
18 May 28, 2013 and May 28, 2014, respectively. This Motion is made pursuant to NRCp 56 and is based  
19 on the following points and authorities, supporting documentation, the papers and pleadings on file in  
20 this action, and any oral argument the Court may allow.

21 DATED this 4th day of June, 2018.

22 KEMP, JONES & COULTHARD, LLP

23  
24   
J. Randall Jones, Esq. (#1927)  
Joshua D. Carlson, Esq. (#11781)  
3800 Howard Hughes Parkway, 17th Floor  
Las Vegas, Nevada 89169  
*Attorneys for The Dr. Miriam and*  
27 *Sheldon G. Adelson Educational Institute*

**NOTICE OF MOTION**

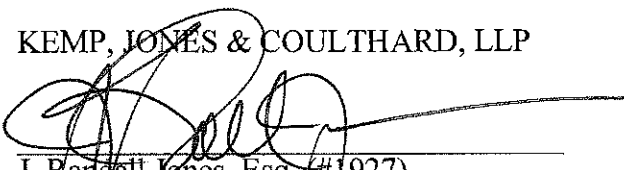
TO: All Interested Parties; and

TO: All Counsel of Record

PLEASE TAKE NOTICE that Dr. Miriam and Sheldon G. Adelson, will bring the foregoing **MOTION FOR SUMMARY JUDGMENT REGARDING BREACH OF CONTRACT** on for decision on the \_\_\_\_ day of July 19, 2018 at 9:30 a.m./p.m. in front of the above-entitled Court.

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

KEMP, JONES & COULTHARD, LLP

  
J. Randall Jones, Esq. (#1927)  
Joshua D. Carlson, Esq. (#11781)  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169  
*Attorneys for The Dr. Miriam and  
Sheldon G. Adelson Educational Institute*

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

Milton I. Schwartz ("Mr. Schwartz") was a fastidious person as described by his son, Jonathan Schwartz. *See* excerpts of March 5, 2014 J. Schwartz Dep. at 16:6, attached hereto as **Exhibit 1**. With respect to important matters, Milton Schwartz "almost never let time lapse between creating an intent and memorializing it in some fashion." *Id.* at 27:2-4. In spite of this, there is no specific written contract memorializing the agreement that the Estate argues was formed between Milton I. Schwartz and the entity then-known as the Hebrew Academy. Mr. Schwartz never asked his attorney to prepare a contract to memorialize any naming rights agreement between Mr. Schwartz and the Hebrew Academy. The absence of a written agreement is fatal to the Estate's breach of contract claim in this

1 matter because its absence leads to several evidentiary issues which require the Court to dismiss this  
2 claim on summary judgment.

3 The first evidentiary issue that defeats the Estate's breach of contract claim is the fact that the  
4 Estate cannot point to admissible evidence that Mr. Schwartz reached an agreement to donate \$500,000  
5 to the school. All admissible evidence demonstrates that Mr. Schwartz promised to donate \$1,000,000  
6 to the school and the Estate does not dispute that Mr. Schwartz only donated \$500,000 to the school  
7 at the time that it alleges Mr. Schwartz obtained a naming interest in the school.

8 The second evidentiary issue that defeats the Estate's breach of contract claim is that the estates  
9 new revised theory of the case, that Mr. Schwartz pledged \$500,000 and promised to raise \$500,000  
10 in contributions from others, cannot be submitted to a jury because there is no admissible evidence to  
11 support the theory. There is no admissible evidence supporting that this was the bargain on which  
12 there was a meeting of the minds between Mr. Schwartz and the school. Additionally, there is no  
13 evidence whatsoever that the Estate can point to showing that Mr. Schwartz himself procured or  
14 proximately cause others to donate a full \$500,000 to the school.

15 The third evidentiary issue defeating the Estate's breach of contract claim is the fact the alleged  
16 oral contract the Estate alleges is far too vague and indefinite to be enforceable under Nevada law.  
17 There is no written agreement articulating the clear terms of the alleged naming rights agreement and  
18 the Estate has not adduced evidence that critical terms, such as the amount of donation the school  
19 asked for and whether the school building, the school campus, the entity itself, and/or the school real  
20 property itself would be subject to the alleged naming interest.

21 Each of these reasons, standing alone, is a separate and independent basis on which to grant  
22 summary judgment and the court must grant the instant motion and dismiss the Estate's breach of  
23 contract claim against the Adelson Campus.

24 This Motion raises several other arguments supporting dismissal of the Estate's breach of  
25 contract claim against the Adelson campus, which are not summarized here but addressed more fully  
26 below. These arguments are: (a) the statute of frauds precludes the Estate's contract-related claims,  
27  
28

(b) the Estate is not entitled to specific performance, (c) the Estate's fourth, sixth, seventh, and eighth claims for relief are derivative of its deficient breach of contract claim and must also be dismissed, and (d) the Estate's breach of contract claim is more properly analyzed under principles of *inter vivos* gifts and is, therefore, unenforceable and *inter vivos* gift rules mandate dismissal of the Estate's claims.

## II.

### STATEMENT OF UNDISPUTED FACTS

#### A. School background and change of entity name to the "Milton I. Schwartz Hebrew Academy"

The Adelson Campus was first known as the Albert Einstein Hebrew Day School and began as a private school offering education for elementary school children. The school originally rented space from Temple Beth Shalom. In 1980, the name was changed to the Hebrew Academy, under the direction of its principal, Dr. Tamar Lubin Saposhnik. By 1989, the school had outgrown its rented space in Temple Beth Shalom and Dr. Saposhnik began looking for a new location. Through the efforts of Dr. Saposhnik, Howard Hughes Properties (Summa Corporation) granted the school a 17-acre parcel of land in Summerlin on which to construct a new building.

With real estate secured, Dr. Saposhnik then started raising money for the new building. In August of 1989, Dr. Saposhnik, together with another member of the Board of Trustees (the "Board"), Dr. Roberta Sabbath, initiated discussions with and solicited a donation from Mr. Schwartz. Dr. Saposhnik writes in her book, *From Chaos to Order*, that "[a]fter much begging and persuasion, [Mr. Schwartz] was finally ready to offer a very generous donation of one million dollars to start the school's construction." See AC500081, p.66, attached hereto as **Exhibit 2** (emphasis added). Dr. Sabbath also recalls that Mr. Schwartz donated a million dollars to the school. See Sabbath Dep. 15:9-10, attached hereto as **Exhibit 3**. Although he pledged a million dollars, Mr. Schwartz only ever fulfilled half of the pledge. Dr. Saposhnik recounted in her book:

In 1989, Milton I. Schwartz became the chairman of the Hebrew Academy's board of trustees, and per his request, the school was renamed The Milton I. Schwartz Hebrew Academy, after having contributed \$500,000 to the school. **However, the school did not receive the second half of his pledge at that time.**

See Exhibit 2, p.67. Dr. Saposhnik repeatedly confirmed in her deposition that Mr. Schwartz pledged \$1,000,000 but only gave \$500,000. See Saposhnik Dep. at 28:21-29:6; 67:11-20; 68:10-16; 84-87, attached hereto as **Exhibit 4**. Testimony of the other board members is generally consistent that they and Mr. Schwartz expected that the school be named after him as a result of his promised contribution of \$1,000,000. Other than Dr. Saposhnik, Dr. Sabbath, and Samuel Ventura, all of the other board members did not recall the specific amount of Mr. Schwartz's pledge or stated that they believe it was in excess of a million dollars. Mr. Ventura believed that Mr. Schwartz did pledge only \$500,000, but admitted that Dr. Saposhnik would know the amount of Mr. Schwartz's pledge better than he would because she was much more involved in the solicitation and school.<sup>1</sup> In August of 1989, Mr. Schwartz wrote three checks to the Hebrew Academy totaling \$500,000.00, not \$1,000,000. See EST-00036, attached hereto as **Exhibit 8**.

Prior to Dr. Saposhnik's testimony, the Estate had contended that Mr. Schwartz pledged only \$500,000 to obtain perpetual naming rights to the school. Mr. Schwartz's son and Administrator for his Estate, Jonathan Schwartz, **verified** the Estate's petition for declaratory relief, which alleged that

<sup>1</sup> The amount various witnesses' believed Mr. Schwartz's agreed to donate varies as summarized below:

Witness Name	Amount they believed Mr. Schwartz's pledged	Citation
Dr. Roberta Sabbath	Mr. Schwartz donated a million dollars to the school.	See Ex. 3, Sabbath Dep. 15:9-10.
Dr. Tamar Lubin Saposhnik	Mr. Schwartz pledged \$1,000,000 but only gave \$500,000.	See Ex. 4, Saposhnik Dep. at 28:21-29:6; 67:11-20; 68:10-16; 84-87.
Neville Pokroy	Understood Mr. Schwartz gave \$1,000,000 and solicited an additional amount of approximately \$500,000 from other donors.	See Pokroy Dep. at 17:2-4, attached hereto as <b>Exhibit 5</b> .
Elliott Klain	Believed Mr. Schwartz's donation was millions of millions of dollars at the time of the donation.	See Klain Depo. at 13:18-20, attached hereto as <b>Exhibit 6</b>
Samuel Ventura	Believed that Mr. Schwartz pledged only \$500,000, but admitted that Dr. Saposhnik would know the amount of Mr. Schwartz's pledge better than he.	See Ventura Dep. at 44:12-25, attached hereto as <b>Exhibit 7</b> .

1 “in August 1989, Milton Schwartz donated \$500,000 to the Academy in return for which the Academy  
2 would guarantee that its name would change in perpetuity to the Milton I. Schwartz Hebrew  
3 Academy.” See May 28, 2013, Verified Petition for Declaratory Relief at 2:13-15. Yet after Dr.  
4 Saposhnik’s deposition Jonathan Schwartz changed his allegations contradicting his prior verified  
5 statement under oath:<sup>2</sup>

6 Q - . . . [W]as it your understanding that the agreement was that there would be 500,000  
7 given to the school, or that there was a million, as Dr. Lubin said in her book?

8 A - No. Here’s – here’s what the agreement was: **The agreement was that my father give**  
**500,000 and raise 500,000.**

9 See July 28, 2016 J. Schwartz Dep. at 14:17-24, attached hereto as **Exhibit 9**. It is axiomatic that there  
10 can be only one truth. Either Milton Schwartz promised to give \$500,000 **or** he promised to give  
11 \$500,000 and raise another \$500,000. But Mr. Schwartz has now provided sworn statements that are  
12 materially contradictory on the issue that serves as the foundation of the Estate’s claim. There can be  
13 no better evidence of the falsity of the Estate’s claim than the inability of the person who brought the  
14 claim to consistently articulate factual basis of the claim. Furthermore, no other witness in this case  
15 supported Jonathan Schwartz’s new claim that Milton. Schwartz could satisfy his \$1,000,000 donation  
16 by relying on the contributions of others. And there is no documentary evidence supporting this claim  
17 either. In short, the cornerstone allegation in the Estate’s complaint, that Milton Schwartz gave  
18 \$500,000, and only \$500,000, in exchange for perpetual naming rights has been directly contradicted  
19 by the same person who made the original allegation.

20 With Mr. Schwartz sitting as the President of the Board, the operating entity changed its name  
21 to the Milton I. Schwartz Hebrew Academy. Board minutes dated August 14, 1989, state that the  
22 school recognizes a gift (without specifying the amount) from Mr. Schwartz and that a letter should  
23

24 <sup>2</sup> 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)  
27 (refusing to credit sworn statement made in opposition to summary judgment that was in direct conflict with an  
28 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).



1 be written to him stating that the school will be named after him. *See* EST-00010, attached hereto as  
 2 **Exhibit 10**. The minutes do not mention whether the naming rights will attach to the building or to  
 3 the entire campus or to the entity itself nor do they mention whether the name change would be for  
 4 perpetuity. *Id.* On August 14, 1989, when the school board was controlled by Milton Schwartz, the  
 5 board amended the Articles of Incorporation providing that “[t]his corporation shall be known as: THE  
 6 MILTON I. SCHWARTZ HEBREW ACADEMY.”<sup>3</sup> *See* AC402079, attached hereto as **Exhibit 11**.  
 7 The self-serving Articles that Milton Schwartz got the Board to amend can be changed by an act of  
 8 the board at any time. In fact, the Articles of Incorporation were later changed to delete the above  
 9 language, clearly demonstrating that this was not a right granted in perpetuity.

10 **B. Entity name is changed to the “Hebrew Academy” and then back to the “Milton**  
 11 **I. Schwartz Hebrew Academy” in the 1990s.**

12 The school remained the “Milton I. Schwartz Hebrew Academy” until 1993, when a dispute  
 13 among the leadership of the Board arose regarding control of the entity. During this time, two  
 14 competing Boards of Trustees purported to maintain control of the entity. The controlling Board  
 15 changed the name of the entity to the “Hebrew Academy.” Milton Schwartz and other non-controlling  
 16 Board members left and began operating a different Jewish day school for several years at a different  
 17 location on the eastside of Las Vegas. *See* Ex. 7, Ventura Dep. at 19:23-22:21. It must be remembered  
 18 that this was at a time when Milton Schwartz was claiming he still had perpetual naming rights on the  
 19 Hebrew Academy school. Yet Milton Schwartz never sued the School for breach of any alleged  
 20 naming rights, perpetual or otherwise. This event begs the question that if Milton Schwartz really  
 21 believed he had perpetual naming rights to the school, why would he have moved “his” school to  
 22 another location. Eventually, the dispute for control of the Hebrew Academy resolved and the school  
 23 reached out again to Mr. Schwartz for support. On May 23, 1996, Dr. Roberta Sabbath, the then head  
 24

25 <sup>3</sup> Even if this resolution offered some proof of an agreement to confer naming rights in perpetuity, which the  
 26 Adelson Campus rejects outright, at best it shows that the corporation, not the building, or the land or any physical  
 27 property was to be named. This resolution simply says the corporation will be named. As set forth more fully  
 28 below, granting of perpetual naming rights requires an unambiguous agreement as to the right conferred.

1 of the school, sent a letter to Milton Schwartz committing to take certain actions to regain the favor of  
 2 Mr. Schwartz, including changing the name of the entity operating the school to the Milton I. Schwartz  
 3 Hebrew Academy. The letter states that the purpose of the actions described in it are to repair the  
 4 relationship with Milton Schwartz, and **not** in recognition of a contractual right to such naming rights:

5           The restoration of the name of the "Milton I. Schwartz Hebrew Academy" has been  
 6 taken as a matter of "Menschlackeit"<sup>4</sup> [sic], in acknowledgment of your contribution and  
 7 assistance to the academy; your continued commitment to Jewish education reflected by  
 the establishment of the Jewish Community Day School" and last but not least, your recent  
 action as a man of "shalom."

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

10 See EST 00011-12, attached hereto as **Exhibit 12**. The letter uses the term Menschlackeit (or, spelled  
 11 correctly, Menschlichkeit in German or Mentshlehkeyt in Yiddish), which derives from the Jewish  
 12 term, Mensch, and connotes the idea of a person who acts justly and with honor. See  
 13 <https://en.wikipedia.org/wiki/Mensch>. Thus, by its own terms, the letter makes clear that the school  
 14 agreed to undertake these actions out of a sense of gratitude for the past support from Mr. Schwartz as  
 15 opposed to a contractual obligation. The letter does not mention or confirm a prior naming rights  
 16 agreement, does not recite any consideration (current or past) and does not place any conditions on  
 17 the proposed action the school proposed to take. The letter is entirely consistent with a voluntary  
 18 naming of a facility in honor of an individual and is diametrically inconsistent with a contractual  
 19 agreement for such naming rights in perpetuity. After Dr. Sabbath's May 23, 1996 letter, the entity  
 20 did not formally change its name back to the Milton I. Schwartz Hebrew Academy with the Nevada  
 21 Secretary of State for almost another three years, on or around March 3, 1999. See EST-00014,  
 22 attached hereto as **Exhibit 13**. And no consideration was provided by Milton Schwartz when it did so.

23           **C. Dr. Miriam and Sheldon G. Adelson make a transformative \$25,000,000 gift for  
 24 the construction of a high school.**

25           Sheldon Adelson joined the board of the school on or around November 12, 2002. The board  
 26 had expressed interest in constructing a high school as early as May of 2000. Nothing materialized

27 <sup>4</sup> An ironic choice of words in light of the current litigation.

1 until on or around April 9, 2005, when Dr. Miriam Adelson and Sheldon Adelson pledge \$25,000,000  
2 to the Operating Entity, through the Adelson Family Charitable Foundation, which funds would be  
3 used to construct a new high school, refurbish the existing school edifice, and renovate the entire  
4 campus. This gift far exceeded any previous donation the Operating Entity had previously received.  
5 The completion of the new high school and other improvements transformed the new campus, which  
6 opened in August of 2008. Almost overnight, the elementary school transformed from a well-regarded  
7 but underfunded private Jewish elementary school and preschool into a world class private campus,  
8 offering education from grades Pre-K through high school and backed by one of the wealthiest families  
9 in the world. The middle school grades, which were housed in the old elementary school, would move  
10 to the new high school building.

11 On January 8, 2013, Dr. Miriam and Sheldon Adelson made another generous donation to the  
12 entity—a gift of \$50,000,000 which was enough to resolve all of its outstanding debts, including any  
13 and all debts previously incurred by the lower school and was anticipated to cover operating costs of  
14 two-years going forward. *See* AC50044, attached hereto as **Exhibit 14**. While the high school was  
15 being developed, the Board employed various ideas to rebrand the entity to best take advantage of the  
16 Adelsons' transformational gifts.

17 Starting in December of 2007, the Board began making institutional decisions regarding its  
18 branding with the opening of the new high school. Consistent with the informal arrangement between  
19 Mr. Adelson and Mr. Schwartz, the elementary school would be called the Milton I. Schwartz Hebrew  
20 Academy if Milton Schwartz completed the remainder of his \$1 million pledge and paid off the  
21 existing debt of the school in the amount of \$1.5 million. As part of rebranding, the entity changed its  
22 name to the Dr. Miriam and Sheldon G. Adelson Educational Campus in March of 2008 and the entire  
23 campus was referred to using the shorthand term "the Adelson Campus." Milton Schwartz died on  
24 August 9, 2007 without fulfilling his agreement to pay the additional \$500,000 or pay off the existing  
25 \$1,500,000 debt.  
26  
27  
28

1        Thereafter the Board became aware of a bequest (the "Bequest") to the entity (the Adelson  
2 Campus) in Milton Schwartz's will and entered into discussions with Milton Schwartz's son and  
3 administrator of the Estate, Jonathan Schwartz, to receive the Bequest. Jonathan Schwartz as Executor  
4 of Milton Schwartz's estate, later refused to honor the bequest on the basis that the change of the  
5 school name beached what he claimed was an enforceable naming rights agreement between the  
6 School and Milton Schwartz although no such agreement has ever been produced.

7            **D.        Lawsuit is filed**

8        After attempting to resolve the dispute over payment of the bequest informally, the Adelson  
9 Campus had no choice but to seek judicial relief. On May 3, 2013, The Adelson Campus filed a petition  
10 to compel the Estate to honor the \$500,000 Bequest in Mr. Schwartz's will.<sup>5</sup> The Estate filed its own  
11 petition for declaratory relief on May 28, 2013, raising claims (improperly postured within its  
12 declaratory relief petition as opposed to a complaint with actual direct causes of action) for breach of  
13 contract, fraud in the inducement, voiding the Bequest for a mistake, offset of the Bequest, revocation  
14 of gift and constructive trust, and construction of the Will. On May 28, 2014, the Estate filed a  
15 supplemental petition for declaratory relief adding causes of action for specific performance and  
16 injunctive relief.

17            **E.        Procedural history**

18        This case is set to be tried before a jury on or around August 6, 2018.<sup>6</sup> The Adelson Campus  
19 filed a motion to dismiss the Estate's Petition for Declaratory relief on June 12, 2013, arguing that the  
20 terms of the Bequest were clear and should be compelled by the Court. The Court denied the motion  
21 to dismiss and ordered limited discovery, after which the Adelson Campus filed a motion for summary  
22 judgment on April 22, 2014. The court denied the Adelson Campus's motion for summary judgment  
23 and the case moved into full discovery. The parties have deposed 22 different witnesses, including  
24 many of the former members of the Board and administrators for the school. As argued more fully  
25

26 <sup>5</sup> This bequest was in no way tied to or referenced as having anything to do with the School naming rights.

27 <sup>6</sup> The Estate filed a Demand for Jury Trial on or around November 27, 2013.

below, several critical legal elements to the Estate's breach of contract and contract derived claims for relief against the Adelson Campus are lacking competent evidence and must be dismissed on summary judgment as a matter of law.

### III.

#### ARGUMENT

##### **A. Summary judgment is appropriate where there are no facts from which a reasonable jury could find in favor of the nonmoving party.**

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." NRCP 56; *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1029-31 (Nev. 2005). The purpose of summary judgment is to obviate the necessity of a trial as to a specific party or certain issue. *See Short v. Hotel Riviera, Inc.*, 378 P.2d 979, 980 (Nev. 1963). It is not to decide any particular issue of fact, but to decide whether any particular issue of fact exists. *Dougherty v. Wabash Life Ins. Co.*, 482 P.2d 814, 818 (Nev. 1971). A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Riley v. Opp. IX, L.P.*, 919 P.2d 1071, 1074 (Nev. 1996).

When a motion for summary judgment is made and supported as provided by Rule 56, the adverse party may not rest upon the mere allegations of the pleading, but must set forth facts demonstrating the existence of a genuine issue for trial. *See, e.g., Garvey v. Clark County*, 532 P.2d 269, 271 (Nev. 1975). Neither conclusory statements nor general allegations are sufficient to create triable issues of fact. *See, e.g., Yeager v. Harrah's Club, Inc.*, 897 P.2d 1093, 1094-95 (Nev. 1995); and *Michaels v. Sudeck*, 810 P.2d 1212, 1213 (Nev. 1991). Rather, the party opposing a motion for summary judgment "must set forth specific facts showing there is a genuine issue for trial." *Michaels, supra*, 810 P.2d at 1213-14; *see also Posadas v. City of Reno*, 851 P.2d 438, 442 (Nev. 1993) (the non-moving party's responsive evidence must be admissible, as he/she cannot "build a case on the

gossamer threads of whimsy, speculation and conjecture.”). “The opposing party is not entitled to have summary judgment denied on the mere hope that at trial he will be able to discredit the movant's evidence.” *Michaels, supra*, 810 P.2d at 1213-14.

Where the nonmoving party bears the burden of proof at trial, the moving party can satisfy its burden on summary judgment by “pointing out ... that there is an absence of evidence to support the nonmoving party.” *See Cuzze v. U. and Community College System of Nevada*, 172 P.3d 131, 134 (Nev. 2007). The other party must then respond by pointing to **admissible evidence** creating a fact issue for the jury. *Collins v. Union Fed. Sav. & Loan Ass’n*, 662 P.2d 610, 621 (Nev. 1983) “Evidence introduced in support of or opposition to a motion for summary judgment must be admissible evidence.”); *Nutton v. Sunset Station, Inc.*, 357 P.3d 966, 975 (Nev. App. 2015).

**B. The Estate’s breach of contract claim must be dismissed on summary judgment.**

In order to prevail in its breach of contract claim, the estate must prove the existence of a valid and enforceable contract, breach, and damages. *See Alter v. Resort Properties of Am.*, 59583, 2014 WL 2466282, at \*1 (Nev. May 30, 2014) (citing *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005)). The elements of a valid and enforceable contract are offer, acceptance, meeting of the minds, and consideration. *See May v. Anderson*, 119 P.3d 1254, 1257 (Nev. 2005). As argued more specifically below, the Estate cannot identify sufficient admissible evidence to prove that Mr. Schwartz entered into a valid and enforceable contract for naming rights with the school. Each of these reasons set forth below is a separate and independent basis by itself on which to grant summary judgment dismissing the Estate’s breach of contract claim against the Adelson Campus.

**1. Assuming a contract for naming rights was ever created a jury could not reasonably conclude that Milton Schwartz promised only \$500,000 in exchange for perpetual naming rights because all admissible evidence demonstrates that Mr. Schwartz promised to pay \$1,000,000 but only paid \$500,000.**

Assuming for purposes of argument that Milton Schwartz and the Hebrew Academy ever agreed to enter a contract for perpetual naming rights, the consideration for such contract - \$1,000,000 – was never paid. The Estate originally took the position that Milton. Schwartz agreed to pay only \$500,000 for the alleged naming rights to the school. *See May 28, 2013 Verified Petition for*

1 Declaratory Relief, on file herein at 2:13-15. *See also* May 20, 2014 Declaration of Susan Pacheco  
 2 attached hereto as **Exhibit 15** at ¶ 5; May 22, 2014 Declaration of Robin Sue Landsburg, attached  
 3 hereto as **Exhibit 16** at ¶ 5; May 21, 2014 Declaration of Jonathan Schwartz, attached hereto as  
 4 **Exhibit 17** at ¶ 3; May 27, 2014 Opposition to Motion for Partial Summary Judgment, on file herein  
 5 at 10:14-21. However, the admissible evidence in this case demonstrates that Milton. Schwartz  
 6 pledged \$1,000,000 but only paid \$500,000 of the pledge.

7 This fact is fatal to the Estate's breach of contract claim. A well-settled principle of contracts,  
 8 going back to at least 1877 in Nevada, is that one party's material breach of an agreement excuses any  
 9 remaining performance by the other side. *See Evans v. Lee*, 12 Nev. 393, 399 (1877) ("It is also well  
 10 settled that before a contract can be enforced, it must be shown that the party seeking its enforcement  
 11 has performed . . . all the essentials of the agreement on his part."); *Young Elec. Sign Co. v. Fohrman*,  
 12 466 P.2d 846, 847 (Nev. 1970) ("The lessee's material breach in failing to pay rent excused further  
 13 performance by the lessor.") (citing Restatement of Contracts § 397); *Thornton v. Agassiz Const., Inc.*,  
 14 799 P.2d 1106, 1108 (Nev. 1990). *See also Bradley v. Health Coalition, Inc.*, 687 So. 2d 329, 333  
 15 (Fla. 3d Dist. App. 1997) ("the general rule is that a material breach of the Agreement allows the non-  
 16 breaching party to treat the breach as a discharge of his contract liability."); *Plotnik v. Meihaus*, 146  
 17 Cal. Rptr. 3d 585, 596 (Cal. App. 4th Dist. 2012) ("in contract law a material breach excuses further  
 18 performance by the innocent party."); *Hovorka v. Community Health Sys., Inc.*, 262 S.W.3d 503, 509  
 19 (Tex. App.--El Paso 2008) ("A fundamental principle of contract law is that when one party to a  
 20 contract commits a material breach of that contract, the other party is discharged or excused from any  
 21 obligation to perform.").

22 Pursuant to this principle, the Estate cannot prevail in its breach of contract claim because the  
 23 representative of the Estate, Jonathan Schwartz, has now stated under oath in his deposition that Milton  
 24 Schwartz agreed to pay \$1,000,000 for the naming rights. Or, at best that he agreed to pay \$500,000  
 25 and raise another \$500,000 for a total of \$1,000,000 for the naming rights. Yet the evidence has now  
 26 been adduced showing conclusively that Milton Schwartz did not perform the condition that would

1 entitle him to a naming rights interest with the school, assuming such an agreement had been entered  
2 into. The Estate cannot dispute that Mr. Schwartz paid only \$500,000 towards the construction of the  
3 new school building in 1989. And the evidence shows that Mr. Schwartz initially agreed to pay  
4 \$1,000,000. Only two witnesses in this case have provided the foundational testimony that would  
5 allow them to testify regarding the existence of a naming rights agreement between Milton Schwartz  
6 and the Entity—Drs. Saposhnick and Sabbath. Both of these witnesses confirmed their understanding  
7 under oath that Mr. Schwartz’s initial pledge to the School was for \$1,000,000, not \$500,000.  
8 Furthermore, the Estate has now admitted, through its administrator, Jonathan Schwartz, that Milton  
9 Schwartz agreed to pay a total of \$1,000,000 for the naming rights; \$500,000 from Milton Schwartz  
10 himself and an additional \$500,000 to be raised from others. While this self-serving testimony  
11 contradicts the only competent testimony on the subject from Drs. Saposhnick and Sabbath, it still  
12 makes the point that even the Estate now acknowledges that the agreement it is trying to enforce  
13 required payment of \$1,000,000, not \$500,000. Moreover, Jonathan Schwartz’s testimony, given  
14 under oath, directly contradicts the verified statement in the Estate’s petition for declaratory relief,  
15 which Jonathan Schwartz signed under penalty of perjury, alleging that “Milton Schwartz donated  
16 \$500,000 to the Academy in return for which the Academy would guarantee that its name would  
17 change in perpetuity to the ‘Milton I. Schwartz Hebrew Academy.’” *See* Petition for Declaratory Relief  
18 at 2:13-15.

19 The Estate will no doubt argue that Samuel Ventura recalled that Mr. Schwartz donated  
20 \$500,000 to the Entity in exchange for naming rights (Ex. 7, S. Ventura Dep. at 11:13-19), but this  
21 testimony cannot defeat summary judgment. First, the Estate did not lay a proper evidentiary  
22 foundation for Mr. Ventura’s testimony. Specifically, the Estate did not elicit any testimony that would  
23 establish any personal conversations between Mr. Ventura and Milton Schwartz (or any other meetings  
24 at which Mr. Ventura would have personally learned of the donation amount). Second, Mr. Ventura’s  
25 testimony about Mr. Milton Schwartz’s intent is inadmissible hearsay. Finally, and most importantly,  
26 Mr. Ventura himself admitted that, as between himself and Dr. Saposhnik, she would better know how  
27  
28



1 much Milton Schwartz originally pledged because she was involved in every issue and every dollar of  
 2 the school during the relevant period of soliciting a donation from Mr. Schwartz. *See* Ex. 7, S. Ventura  
 3 Dep. at 44:12-25. Mr. Ventura's testimony cannot be submitted to the jury when it lacks foundation,  
 4 is inadmissible hearsay and he freely admitted that Dr. Saposhnik would know better than he the  
 5 amount of the promised donation, and thus cannot be the basis to defeat summary judgment.

6 Based on the foregoing evidence, applying the simple rule that a party's material breach of  
 7 contract excuses remaining performance by the non-breaching party, the Estate's breach of contract  
 8 claim must be dismissed as a matter of law. Again, assuming a contract was formed in the first place,  
 9 the admissible evidence establishes that Mr. Schwartz promised \$1,000,000 but only paid \$500,000.

- 10 **2. The Estate's newest revised theory of the case, that Milton Schwartz promised to**  
 11 **pay \$500,000 and raise \$500,000 from others, also cannot survive summary**  
 12 **judgment because (a) there is no admissible evidence that there was, in fact, a**  
 13 **meeting of the minds and (b) even if the parties agreed to these terms, there is no**  
 14 **admissible evidence from which a jury could find that Milton Schwartz fully**  
 15 **performed his part of the bargain.**

16 Again, assuming for argument sake that a sufficiently detailed contract was even formed  
 17 between Milton Schwartz and the Hebrew Academy the Estate's newly contrived theory also fails.  
 18 The Estate's new theory of the case is that Mr. Schwartz promised to donate \$500,000 himself and  
 19 raise another \$500,000 through donations of others in order to obtain perpetual naming rights (referred  
 20 to hereinafter as the "donate \$500,000 / raise \$500,000" theory). Also, as previously noted, in order  
 21 for this theory to avoid dismissal on summary judgment, the Estate must identify *admissible* evidence  
 22 creating a genuine fact issue to submit to the jury. To begin with, it should be noted that the Estate's  
 23 new theory lacks any sort of rationality or plausibility because it allows Mr. Schwartz to obtain  
 24 personal naming rights in perpetuity based on the donations of others. But separate and apart from this  
 25 implausibility, this new theory cannot withstand summary judgment because the Estate cannot identify  
 26 admissible evidence that there was a meeting of the minds on its donate \$500,000 / raise \$500,000  
 27 theory. And, ignoring this failure, the Estate also cannot identify admissible evidence that Milton  
 28 Schwartz procured and proximately caused \$500,000 in donations to the school apart from his own  
 donation.

a. *The Estate cannot identify admissible evidence supporting the Estate's donate \$500,000 / raise \$500,000 theory.*

The only witnesses to testify regarding the amount of Mr. Schwartz's pledge confirmed their understanding that Mr. Schwartz promised to donate at least a million dollars himself with no mention of the school allowing the pledge to be fulfilled through donations of others. *See* Ex. 3, Sabbath Dep. 15:9-10; Ex. 2 p.67 of "From Chaos to Order"; Ex. 4, Saposhnik Dep. at 28:21-29:6; 67:11-20; 68:10-16; 84-87. The estate has deposed members of the Board as to their understanding of the alleged naming rights agreement. Without exception, all Board members that participated in the alleged agreement **did not mention a pledge \$500,000 / raise \$500,000 term to the alleged agreement.** In fact, other than Jonathan Schwartz (who was not present during any of the meetings and whose testimony is therefore inadmissible on this point), there is only one witness in this case that even hinted at the possibility that Mr. Schwartz could satisfy his donation obligation by relying on the donation of others. The closest testimony to the Estate's theory is that of Neville Pokroy, who stated that Milton Schwartz gave **\$1,000,000** and solicited an **additional amount** of approximately \$500,000 from other donors. *See* Ex. 5, Pokroy Dep. at 17:2-4. But Mr. Pokroy did not mention whether the \$500,000 raised by Mr. Schwartz was a part of the naming rights agreement. More fundamentally, Mr. Pokroy's testimony confirms that Mr. Schwartz pledged to donate a full \$1,000,000 himself. Consequently, summary judgment must be entered dismissing the Estate's breach of contract claim as there is no competent evidence to support it, even assuming it is true.

b. *Even if the Estate could establish its donate \$500,000 / raise \$500,000 theory of the case, there is no admissible evidence that Milton Schwartz's personal efforts proximately resulted in donations from others and there is no admissible evidence that Milton Schwartz procured or proximately caused the full \$500,000 of donations from others.*

The Estate's breach of contract claim, now premised on the donate \$500,000 / raise \$500,000 theory, also cannot withstand summary judgment because there is no admissible evidence that Mr. Schwartz procured any donations from others. There are only three sources of information supporting the contention that Mr. Schwartz' personal fundraising efforts procured additional donations for the school:

- 1 1. A March 31, 1993, Affidavit of Mr. Milton Schwartz, which states that Milton Schwartz solicited contributions of \$500,000 from Paul Sogg and Robert Cohen, resulting in a combined total of \$400,000 in pledges from these individuals. **See Exhibit 18.**
- 2
- 3 2. A June 12, 2007, Interview in which Milton Schwartz stated that he gave \$500,000 and raised \$500,000 and the school agreed to name the school after him in perpetuity but only identifying \$425,000 of donations he allegedly procured or proximately solicited. **See Exhibit 19.**
- 4
- 5 3. The Deposition of Jonathan Schwartz in which he states that “the agreement was that my father give 500,000 and raise 500,000.” *See* Ex. 9, July 28, 2016 J. Schwartz Dep. at 14:17-24.
- 6
- 7

8 However, each of these sources are inadmissible. The affidavit and interview transcript of  
 9 Milton Schwartz are inadmissible hearsay, not subject to cross examination, and do not fit within any  
 10 hearsay exception. Jonathan Schwartz’s testimony is obviously self-serving hearsay and otherwise  
 11 lacks foundation sufficient to admit his testimony on the terms of the alleged agreement between  
 12 Milton Schwartz and the school. Jonathan Schwartz did not participate in any discussion with the  
 13 school regarding Milton Schwartz’s donation or perpetual naming rights. Other than these  
 14 inadmissible documents and statements, there is no evidence that Milton Schwartz procured any  
 15 donations from other parties.

16 But even if the above evidence was admissible, simple arithmetic demonstrates that Milton  
 17 Schwartz only solicited promises or pledges from others totaling **at most** \$425,000 and not \$500,000  
 18 and these pledges only resulted in a maximum of \$325,000 in actual donations. Milton Schwartz’s  
 19 March 31, 1993 Second Supplemental Affidavit states that he “solicited contributions from Paul Sogg  
 20 and Robert Cohen” and that as a result of his efforts, “Paul Sogg pledged to donate \$300,0000” and  
 21 “Robert Cohen pledged to donate \$100,000” for a total of \$400,000. *See* Ex. 18, March 31, 1993  
 22 Affidavit of Milton I. Schwartz at ¶¶ 5-6. The 2007 interview transcript indicates that Mr. Schwartz  
 23 solicited at most \$425,000:

24  
 25 “I raised a half a million dollars: 300,000 from one man, Paul [Sogg]; 100,000 from --  
 26 from Cohen, Joe Cohen, who’s still alive. . . . 25,000 from Jerry Rentschler’s father, I still  
 27 remember, George Rudiak . . . . So that’s 825 [counting Mr. Schwartz’s \$500,000].”  
 28

1 See Ex. 19, June 12, 2007 Interview Transcript. While the Adelson Campus objects to the admissibility  
2 of this evidence, and argument could be made that it fall within a hearsay exception and thus could be  
3 found to be admissible. Assuming this inadmissible hearsay evidence was allowed, the Estate  
4 nonetheless has no evidence that Milton Schwartz actually procured the full \$500,000 he pledged to  
5 raise from others.

6 Finally, the admissible evidence on this point also demonstrates that Mr. Sogg's pledge was  
7 not fully funded. A one-page accounting of "The Hebrew Academy Building Fund Pledges" from July  
8 1, 1988 through February 21, 1990 indicates that Paul Sogg only paid \$100,000 of his \$300,000  
9 pledge, Robert Cohen paid the full \$100,000 and George Rudiak only paid \$25,000 of his \$50,000  
10 pledge for a total of \$225,000. See AC402057, attached hereto as **Exhibit 20**. May 25, 1990 Board  
11 meeting minutes indicate that Mr. Sogg "paid another \$100,000 of his pledge" but there is no  
12 competent evidence to confirm this statement. See AC402055. But even after drawing all factual  
13 inferences in favor of the Estate, Mr. Schwartz's alleged fundraising efforts were short by at least  
14 \$175,000. The \$425,000 in pledges Mr. Schwartz allegedly secured were short of the \$500,000, and  
15 the \$325,000 actually donated is well-short of the alleged agreement of \$500,000 with the Hebrew  
16 Academy.

17 Accordingly, the Estate's donate \$500,000 / raise \$500,000 theory cannot withstand summary  
18 judgment because the Estate cannot identify admissible evidence that this was Mr. Schwartz's actual  
19 agreement with the school, and assuming such an agreement was actually entered into, the Estate has  
20 no admissible evidence that Mr. Schwartz raised more than \$325,000 from others, thus failing to fulfill  
21 the terms of the alleged naming rights agreement.

22 **3. The alleged naming rights oral contract is not sufficiently definite.**

23 An enforceable contract cannot exist where material terms are missing or are uncertain or  
24 indefinite. See *May v. Anderson*, 121 Nev. 668, 672 (2005). See also *Richards v. Oliver*, 328 P.2d 544,  
25 552 (Cal. App. 2d Dist. 1958). The reason for this rule is practical: the scope of the duty to be enforced  
26 must be "sufficiently defined to provide a rational basis for the assessment of damages." *Richards*,

328 P.2d at 544. *See also Alter v. Resort Properties of Am.*, 59583, 2014 WL 2466282, at \*2 (Nev. May 30, 2014) (“The terms must be definite enough for the court to ascertain what is required of the respective parties and to compel compliance.”).

Several federal cases applying these rules are instructive. The Federal District Court of Nevada held in *Wilson v. KRD Trucking West* that an implied employment contract did not exist where the parties failed to articulate specifics such as “shift assignment, location, and specific job duties.” 2:10-CV-00163-KJD, 2012 WL 1900941, at \*3 (D. Nev. May 24, 2012). The court noted that “[e]ven if Defendant offered Plaintiff a position and Plaintiff accepted, the parties would have still been required to continue negotiations in order to form a binding agreement since they did not agree on all material terms.” *Id.* The District of Nevada, applying Ohio law, also determined that a bill of sale between the late Robert Knievel and Raymond Schreiber was insufficiently indefinite because it purported to transfer motion picture rights regarding “certain performances” of Knievel. In spite of that agreement describing its intent to “include any and all existing future motion picture media,” the court held that the agreement did not adequately identify specific performances that would be assigned and that the indefiniteness prevented a determination of breach or an appropriate remedy. *See Raymond G. Schreiber Revocable Trust v. Est. of Knievel*, 984 F. Supp. 2d 1099, 1107 (D. Nev. 2013).

The best evidence that definitive naming rights agreement was never entered into, let alone consummated, is the different positions the Estate has taken in this case. As pointed out above, in the original verified petition/complaint filed by the Estate, it took the position that Milton Schwartz and the Hebrew Academy agreed that he would pay \$500K for perpetual naming rights. No mention of raising money or pledges from others was made anywhere in the petition.

Yet when faced with mounting evidence from Dr. Saposhnik and Dr. Sabbath - and perhaps even looking at the video of Milton Schwartz taken in 2008 - the Estate must have realized it had to change its position to be consistent with the evidence that was being revealed. Only then did Jonathan Schwartz change his petition to swear to something completely different in his deposition, gratuitously adopting a brand new claim, the donate \$500K and raise \$500K from others theory. **If the Estate**

1 **itself is not even sure what the material terms of the naming rights agreement was then its terms**  
 2 **were clearly not sufficiently defined so as to be enforceable.**

3 Other evidence supports this proposition as well. For example, in spite of what his son Jonathan  
 4 testified was Milton Schwartz's fastidious nature and his tendency to immediately create a writing  
 5 whenever he forms an intent to act, **there is no written naming rights agreement between Milton**  
 6 **Schwartz and the entity.** That omission in this case is particularly important because in the field of  
 7 naming rights, written contracts set forth the important and material terms of the parties' obligations.

8 The first key or material missing term is the amount of the donation. As explained above, there  
 9 is no admissible evidence to support either (a) the Estate's original theory that Mr. Schwartz' promised  
 10 only \$500,000 for perpetual naming rights or (b) the Estate's new revised donate \$500,000 / raise  
 11 \$500,000 theory. There is no competent admissible evidence to submit to the jury anything other than  
 12 that Mr. Schwartz promised to pay \$1,000,000.

13 The other critical, indefinite and uncertain term is the scope of the alleged naming right. No  
 14 party in this case offered specific testimony that was able to differentiate as to whether Milton  
 15 Schwartz's alleged naming interest would attach to: (1) the school building or structure, or (2) the  
 16 campus on which the building was constructed, or (3) a specific range of grades within the school, or  
 17 (4) the entity operating the school. In spite of these irrefutable facts, the Estate is now apparently  
 18 taking the position that Milton Schwartz's name must attach to everything associated with the school,  
 19 whether tangible or intangible, e.g. the elementary school, the campus, the signage and the school  
 20 website (as an further example of the Estate's overreach the website didn't even exist when the alleged  
 21 naming rights agreement was supposedly entered into), the corporate entity and even future real estate  
 22 expansion to the campus and/or newly constructed buildings. *See* Ex. 9, July 28, 2016 J. Schwartz Dep  
 23 at 21:2-15, 23:9-14, and 26:13-17; Supplement to Petition for Declaratory Relief, on file herein, at 4-  
 24 6 (requesting that the Court compel the Entity to change its name to the Milton I. Schwartz Hebrew  
 25 Academy and enjoin it from referring to itself as the Adelson Campus).

1 The absence of a written agreement in this case and lack of specificity as to the terms of the  
 2 alleged naming rights interest renders the alleged naming rights agreement unenforceable as matter of  
 3 Nevada law. There is not any admissible evidence to submit to a jury specifying whether Milton  
 4 Schwartz obtained a naming interest in the lower school building, the campus on which the building  
 5 was constructed—the land being donated by a third party—or the entity itself (which was organized  
 6 long before Milton Schwartz became involved with the entity). There is also no admissible evidence  
 7 to support the Estate's claim that Milton Schwartz is entitled to have his name, logo, or likeness  
 8 physically displayed on any structure signage, school letterhead or school website.

#### 9 **4. The Estate Cannot Prevail under the doctrine of Promissory Estoppel**

10 The Estate may argue that the doctrine of promissory estoppel precludes entry of summary  
 11 judgment. However, this doctrine cannot save the Estate's fatally defective breach of contract claim.  
 12 Promissory estoppel is an equitable doctrine whereby a party who reasonably relies to his detriment  
 13 on the promise of another may enforce a verbal contract against the other party, though the other party  
 14 has given no consideration. *See, e.g., Pink v. Busch*, 691 P.2d 456, 459 (Nev. 1984); Restatement  
 15 (Second) of Contracts § 90 (1981). However, the doctrine of promissory estoppel is intended as a  
 16 substitute for consideration not a substitute for an enforceable contract itself. *Vancheri v. GNLV Corp.*,  
 17 105 Nev. 417, 421, 777 P.2d 366, 369 (1989). Here, the Estate's alleged naming rights agreement is  
 18 not unenforceable because it was not supported by the essential element of consideration, rather, it is  
 19 unenforceable because it lacks essential terms and because Milton. Schwartz did not pay the full  
 20 donation that he promised to pay. The doctrine of promissory estoppel simply doesn't apply.

21 Additionally, the doctrine of promissory estoppel is equitable in nature. It is well settled that a  
 22 party seeking equity must also act equitably. *See Overhead Door Co. of Reno, Inc. v. Overhead Door*  
 23 *Corp.*, 734 P.2d 1233, 1235 (Nev. 1987). Relief inconsistent with the equities of the adverse party will  
 24 be denied. *Id.*

25 Again, assuming Milton Schwartz even had a legally enforceable naming rights agreement, by  
 26 his own admission in the videotaped interview he never fulfilled his pledge of \$1,000,000.

Consequently, he did not have clean hands and cannot rely on equitable principles because it would be highly inequitable to do so. To hold otherwise would be to establish the rule that any party could partially perform a contract and then force full performance on the other side based on the doctrine of promissory estoppel. The Estate cannot rely on this equitable doctrine to remedy Milton Schwartz's deficient performance.

**5. The statute of frauds bars the Estate's contract-related claims for relief.**

The statute of frauds requires any contract that cannot be fully performed within one year to be in writing and signed by the party against whom enforcement is sought. *See* NRS 111.220(1) Multiple writings, which would be insufficient alone to satisfy the statute, can satisfy the statute. *See Edwards Industries, Inc. v. DTE/BTE, Inc.*, 923 P.2d 569, 574 (Nev. 1996). The separate writings, however, must establish all of the terms and promises of the alleged agreement. *See Id.* "Full performance by one party may also remove a contract from the statute of frauds." (emphasis added) *Id.*

Here, the Estate now alleges that Milton Schwartz promised to pay \$500,000 and raise an additional \$500,000 in exchange for the school being named after him. The estate will no doubt point to the following evidence as being the "writing" that contains the material terms of the alleged agreement:

- EST-00010: August 14, 1989 Board Meeting minutes stating "George Rudiak moved that the Board accepts, with thanks, the donation from Milton Schwartz, George and Gertrude Rudiak, and Paul Sogg. A letter should be written to Milton Schwartz stating the Academy will be named after him." *See* Ex. 10.
- EST-00097: December 18, 1990 Bylaws state that "the name of this corporation is the Milton I. Schwartz Hebrew Academy . . . and shall remain so in perpetuity." *See Exhibit 21.*
- AC402057: Hebrew Academy Building Fund Pledges document shows that Milton I Schwartz pledged \$500,000 and paid \$500,000. *See* Ex. 20.
- EST 00011-12: May 23, 1996 letter from Roberta Sabbath offering to restore Mr. Schwartz's name to the elementary school. *See* Ex. 12.

Viewed separately or together, these documents do not establish that Milton Schwartz obtained perpetual naming rights to the school, its campus, all later-acquired land, and all later-constructed



buildings on the school campus conditioned on him paying and/or raising a specific amount money. These documents confirm two facts: (1) that Milton Schwartz donated \$500,000 to the school in 1989 and (2) that the school changed its name (at times) as a token of gratitude for Milton Schwartz's support. There is no document or combination of documents showing a mutual and conditional exchange of rights and duties—the critical component of such a contract. Importantly, there is nothing in any of these writings that establish the amount of consideration Milton Schwartz was to pay, another critical term to any agreement. None of the documents clarify whether Milton Schwartz was required to (a) pay only \$500,000, (b) pay \$1,000,000, or (c) pay \$500,000 of his own money and raise \$500,000 by soliciting others. Accordingly, the statute of frauds bars enforcement of the alleged oral contract the Estate seeks to enforce.

**A. The Estate cannot specifically enforce the alleged naming rights agreement.**

Specific Performance is an equitable remedy, not a cause of action. *Serpa v. Darling*, 107 Nev. 299, 810 P.2d 778, 782 (Nev.1991). Thus, the Estate's seventh claim for relief is improperly pleaded as a cause of action. Additionally, this remedy is available only when "(1) the terms of the contract are definite and certain; (2) the remedy at law is inadequate; (3) the appellant has tendered performance; and (4) the court is willing to order [specific performance]." *Mayfield v. Koroghli*, 124 Nev. 343, 351, 184 P.3d 362, 367 (2008). Here, as demonstrated above, the terms of the alleged naming rights agreement are anything but definite and certain. The Estate cannot present admissible evidence on the fundamental terms of the alleged naming rights agreement. Issues of (i) the amount that Milton Schwartz was required to pay in order to receive the naming rights, (ii) whether the naming rights attached to the school building for which the donation was given, or the name of the entity, or the real estate or campus, which was donated by the Howard Hughes corporation and not Milton Schwartz, or (iii) whether the school entity has any obligation to list Milton Schwartz's name on letterhead or on its promotional and/or marketing material or website are all points on which the Estate has not adduced any direct competent evidence. No component of the alleged naming rights agreement is specific and definite enough to be enforced through specific performance. Also, as argued below,

1 the alleged naming interest should be viewed as a conditional gift and addressed using the law of  
 2 conditional inter-vivos gifts. Even if the Estate could prevail in its claim for relief under these  
 3 principles (which it cannot), the Estate has an adequate remedy at law—forfeiture of the donation.  
 4 The remedy of specific performance is simply not available to the Estate.

5 **B. The Estate's fourth (offset of bequest under will), sixth (revocation of gift and**  
 6 **constructive trust), seventh (specific performance), and eighth (injunctive relief)**  
 7 **claims for relief are derivative of its breach of contract claims and must also be**  
 8 **dismissed.**

9 The Estate has raised several claims for relief that are entirely derivative of its breach of  
 10 contract claim for relief. The Estate's fourth claim for relief is that the amount of the bequest to the  
 11 Adelson Campus must be offset by damages to the Estate stemming from its breach of contract claim.  
 12 See May 28, 2016 Petition for Declaratory Relief at 8:16-17 ("Because the Academy has breached the  
 13 obligations and promises that induced Milton's lifetime and testamentary gifts, the Academy is liable  
 14 to the Estate . . ."). The sixth claim for relief seeks to revoke the \$500,000 bequest and lifetime gifts  
 15 to the school because "the gifts and bequests . . . were conditioned on the Academy bearing his name  
 16 perpetually and fulfilling its promises as memorialized in its May 23, 1996 letter." The seventh claim  
 17 for relief is for specific performance, which is a purely contractual remedy. The eighth claim for relief  
 18 premises the Estate's request for injunctive relief on the allegation that "the Hebrew Academy has  
 19 breached its agreements and promises, and as a direct result of the Hebrew Academy's breach, the  
 20 Estate faces the prospect of immediate, severe, and irreparable injury." Petition at 5:20-21.

21 It is clear that each of these claims for relief is contingent on, derivative of, or premised on the  
 22 foundation of the Estate's breach of contract claim for relief. As demonstrated above, the breach of  
 23 contract claim cannot survive summary judgment as a matter of law and must be dismissed.  
 24 Accordingly, each of the derivative claims for relief must also be dismissed.

25 ///

26 ///

**C. The Estate's Claims Relating to Milton Schwartz's naming interest in the school as a result of his donation to the school in 1989 should be addressed under property principles of inter vivos conditional gifts, not contract principles and, accordingly, the Estate's breach of contract claims must be dismissed.**

The Estate's Petition for Declaratory Relief contains claims for relief against the Adelson Campus that are primarily based on contract principles and *inter vivos* gift principles. The Estate seeks a declaration that the Adelson Campus breached the alleged 1989 naming rights agreement with Milton Schwartz and seeks various remedies (offset of bequest, injunctive relief, and specific performance) arising from principles of contract law, and seeks to revoke the *inter vivos* gift (revocation and a constructive trust). However, naming rights agreements are traditionally analyzed under property principles of *inter vivos* conditional gifts. See John K. Eason, Private Motive and Perpetual Conditions in Charitable Naming Gifts: When Good Names go Bad, 38 U.C. Davis L. Rev. 375, 406 fn. 111 (2005) citing *Foote Mem'l Hosp., Inc. v. Kelley*, 211 N.W.2d 649, 662 (Mich. 1973), *Rothenberger v. Glick*, 52 N.E. 811, 812 (Ind. App. 1899), and *Stock v. Augsburg Coll.*, 2002 Minn. App. WL 555944 (Minn. Ct. App. 2002). The Estate cannot assert a cause of action for breach of contract or seek contract-based remedies because the facts alleged in the Estate's Petition give rise to, at most, a conditional gift and courts have traditionally analyzed *inter vivos* gifts in exchange for naming rights under traditional gift principles. Therefore, contract related remedies, including damages for breach, are not available to the Estate. Furthermore, even assuming it could prevail on its claims, the Estate would be limited to the remedy of forfeiture of the gift.

**D. The Estate's sixth and seventh claims for relief, revocation of the gift and constructive trust, must be dismissed on summary judgment because Milton Schwartz did not fully fund his promised gift.**

The Estate's property-related claims and remedies raised in its sixth Claim for relief (revocation of gift and constructive trust) must be dismissed on summary judgment for the same reasons that its breach of contract claim fails. Under black letter rules of *inter vivos* gifts, where a party makes a gift subject to a subsequent condition, the result is a conditional gift, not a charitable trust. See Restatement of the Law (Second) of Trusts (hereinafter the "Restatement") § 11 (1959); *City of Palm Springs v. Living Desert Reserve*, 82 Cal. Rptr. 2d 859, 866 (Cal. App. 4th Dist. 1999). The

1 remedies for breach of the condition precedent is forfeiture of the gift. *See* Restatement § 11 cmt. b;  
2 *City of Palm Springs*, 82 Cal. Rptr. 2d at 866. It belabors the obvious to observe that a grantor of a gift  
3 has no remedies when he does not grant the full gift on which conditional naming rights are attached.  
4 Otherwise, a grantor could pledge a large amount of money in exchange for naming rights and receive  
5 full rights after paying only a fraction of the pledge.

6 The facts adduced by the Estate in support of its *inter vivos* gift claim for relief cannot  
7 withstand summary judgment. As shown above, the Estate has not identified competent evidence from  
8 which a fact finder could reasonably conclude that Milton Schwartz fulfilled his \$1,000,000 pledge,  
9 whether by paying the full \$1,000,000 or by paying \$500,000 and soliciting an additional \$500,000.  
10 The Estate's own evidence demonstrates that Milton Schwartz did not pay the full \$1,000,000 and  
11 there is no admissible evidence to suggest that (a) the school agreed to allow Milton Schwartz to fulfill  
12 his \$1,000,000 pledge in part by relying on donations of others or (b) even if the Estate could somehow  
13 convince the Court that there was an enforceable agreement allowing Schwartz to raise the other  
14 \$500,00, and the third parties who the Estate claim were participants in that deal, the evidence  
15 unequivocally demonstrates that those third parties never donated enough money to reach the  
16 \$500,000 goal.

17 Accordingly, the Estate's contract-related claims are precluded altogether because donations in  
18 exchange for naming rights are analyzed under principles of *inter vivos* gifts, not contract law. And  
19 under either framework—property or contract—the Estate cannot prove that Milton Schwartz satisfied  
20 his alleged obligations as a condition of obtaining a perpetual naming interest in the elementary school.

21  
22 ///

23  
24 ///

25  
26 ///

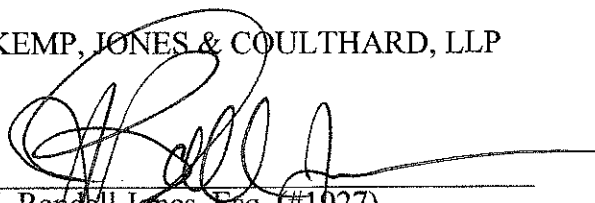
## IV.

## CONCLUSION

For the foregoing reasons, the School respectfully requests that this Court enter a summary judgment order dismissing each of the Estate's second, fourth, fifth, sixth, seventh, and eighth claims for relief against the Adelson Campus.

Dated this 4<sup>TH</sup> day of June, 2018.

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001568

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of June, 2018, service of the foregoing **MOTION FOR SUMMARY JUDGMENT REGARDING BREACH OF CONTRACT** was electronically served on counsel for the Estate of Milton I. Schwartz via the Court's electronic filing system.

  
An employee of Kemp, Jones & Coulthard, LLP

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kjc@kempjones.com

001569

# EXHIBIT 1

## 1 DISTRICT COURT

2 COUNTY OF CLARK, NEVADA

3  
4 In the Matter of the Estate of ) Case No. P061300

5 MILTON I. SCHWARTZ, )

) Dept. No.: 26/Probate

6 Deceased. )

7 \_\_\_\_\_ )

8  
9  
10  
11  
12  
13  
14  
15 DEPOSITION OF A. JONATHAN SCHWARTZ

16 Taken on Wednesday, March 5, 2014

17 At 12:33 p.m.

18 At 9060 West Cheyenne Avenue

19 Las Vegas, Nevada

20  
21  
22  
23  
24 Reported by: Carla N. Bywaters, CCR 866

25 Job No. 9107



1 Q. Anybody proofread your dictation --

2 A. Well, he did.

3 Q. -- after you completed.

4 A. My father did.

5 Q. Your father did?

6 A. He was extremely fastidious about reviewing

7 any and every document that went out of the office.

8 Anyone who worked for him can attest to the fact that

9 he was very, very challenging to work for.

10 Q. But he brought everybody's standards up, I  
11 take it?

12 A. He did.

13 Q. Did your father maintain -- was he pretty good  
14 at maintaining records?

15 A. Yes.

16 Q. And where did he maintain his records?

17 A. In our office.

18 Q. Okay. And this is the Duneville?

19 A. Correct.

20 Q. Okay. And from here forward, so we don't have  
21 to clarify, it's fair to assume that when you're  
22 talking your office, you mean that Duneville address?

23 A. Correct.

24 Q. Would that be fair?

25 A. Correct.

1 that existed at the time. He never let time lapse  
2 between -- I won't say never. He almost never let time  
3 lapse between creating an intent and memorializing it  
4 in some fashion, so that's why he would have done it.

5 From reading this, I can surmise from Section  
6 1 that he must have come to an agreement sometime with  
7 her, with Abigail, regarding dealing with the ownership  
8 or reversion of the house, so that was Section 1.

9 Section 2, let me read it. There, he's just  
10 clarifying my compensation as a director for  
11 Yellow-Checker-Star if he were to pass away, so again  
12 it speaks for itself.

13 Let me see No. 3. Article 3, again, he's  
14 republishing his intent that his premarital agreement  
15 and various amendments to it were to remain effective  
16 and that it met his intent. He had had a series of  
17 disputes with his former wife Abigail.

18 They had had a separation and in some  
19 litigation, she did everything she possibly could to  
20 try and upset their premarital agreement, and he wanted  
21 to, you know, state on the record, yet again that any  
22 agreements they had come to in writing were effective,  
23 and there was no differing oral agreement, so that was  
24 the reason for Article 3 as I recollect.

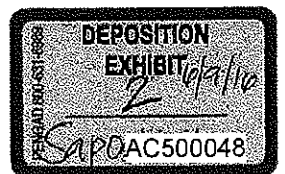
25 And then Article 4, again from reading it, I

# EXHIBIT 2

# From Chaos to Order

Tamar Lubin Saposhnik, PhD

001575



## DR. TAMAR LUBIN SAPOSHNIK

around the country encouraged parents to choose schools for their kids, rather than the public-zoned schools.

But the Clark County School District actively discouraged zone changing. So little choice in schools was available to the typical parent. Even the aggressive, well-connected, politically astute parent still had difficulty getting a child into a different school.

There had been some effort by master-planned developer, Summit Corporation, in addition to the public school sector, to encourage the development of independent private schools on the Summerlin land it controls. It, therefore, provided land grants to private schools, one of which was the Hebrew Academy.

Milton I. Schwartz was a businessman and philanthropist. He became interested in Jewish education. Originally, I met him at a function, introducing myself, and letting him know about the Academy. I asked for an appointment to meet him to see if he would be interested in supporting the Hebrew Academy.

I spoke to him at length, explaining that the Hebrew Academy was a great cause. "I know where your heart is," I said. "The school is in dire need of funds. We have the land, but the school has to be built within the 1989 year, if not the land would revert back to Howard Hughes Properties in Summerlin. Is there anything you can do to help?"

It was August, when most of the school board members left town, including the then-president, Dr. Elliot Klain, who had flown to Michigan to visit his ailing father.

Mr. Schwartz asked for, and was provided with, the home telephone numbers of all the board members, including Dr. Klain's. Fortunately, Mr. Schwartz was satisfied with his conversations with the members of the board and Dr. Klain, its president. After much begging and persuasion, he was finally ready to offer a very generous donation of one million dollars to start the school's construction.

In 1989, Milton I. Schwartz became the chairman of the Hebrew Academy's board of trustees, and per his request, the school was

## FROM CHAOS TO ORDER

renamed The Milton I. Schwartz Hebrew Academy, after having contributed \$500,000 to the school. However, the school did not receive the second half of his pledge at that time.

Headlines in all the Las Vegas papers published, **ACADEMY GIVEN \$500,000**, and **MILTON I. SCHWARTZ DONATES \$500,000 TO HEBREW SCHOOL**.

Mr. Schwartz said, "Education is one of the most important things we can give to our children. The new Milton I. Schwartz Hebrew Academy will be a tremendous asset to our community." He added, "The cost of building the first phase of the new academy is an estimated \$1.9 million. To raise these funds, the school launched a major fund-raising campaign."

The *Las Vegas Sun* announced, **SOCC GIVES TO SCHOOL**, stating that Paul B. Sogg, a local businessman and philanthropist, pledged \$300,000 to the Hebrew Academy. "The funds will go toward construction of the nonparochial school's new Summerlin campus," Mr. Sogg was quoted, "I have a longstanding commitment to quality education, and this fine school exemplifies that. The tremendous growth of Las Vegas has made the need for schools like the Hebrew Academy even more important."

Local attorney, George Rudiak and his wife, Gertrude, donated \$50,000. The Rudiaks, both long-time area residents and enthusiastic supporters of the academy, said that the school's academic level is excellent and that rapid local growth necessitates a new campus to better serve the community's children.

Our big fund-raising gala was doubly exciting. Not only would we honor Milton I. Schwartz as Man of the Year, and recognize Paul Sogg's and George Rudiak's generous building fund donations, but this year's gala would also celebrate our tenth anniversary.

# EXHIBIT 3

## 1 DISTRICT COURT

2 COUNTY OF CLARK, NEVADA

3  
4 In the Matter of the Estate of ) Case No. P061300  
5 MILTON I. SCHWARTZ, ) Dept. No.: 26/Probate  
6 Deceased. )  
7 \_\_\_\_\_ )

15 DEPOSITION OF ROBERTA SABBATH, Ph.D.

16 Taken on Wednesday, March 5, 2014

17 At 10:16 a.m.

18 At 9060 West Cheyenne Avenue

19 Las Vegas, Nevada

24 Reported by: Carla N. Bywaters, CCR 866

25 Job No. 8972

1 question with respect to that.

2 A. Yes.

3 Q. Okay. And your testimony is you don't have  
4 any documentation responsive to Nos. 3 through 6, as  
5 well?

6 A. That is correct.

7 Q. Okay. Thank you. I'm done with Exhibit 8.

8 A. Okay.

9 Q. I presume that you know who Milton I. Schwartz  
10 was?

11 A. Yes.

12 Q. How did you know him or how did you first come  
13 to meet him?

14 A. Tamar Lubin, who was the director of the  
15 Hebrew Academy, approached him about making a donation  
16 to the school in order to get property for the school  
17 and to have a building for the school. And I was on  
18 the board at the time, and so that was how I first came  
19 to learn about him and to meet him personally.

20 Q. Okay. Do you recall when that was?

21 A. No.

22 Q. Okay. Were you with Ms. Lubin when she  
23 initially approached Milton for that land donation?

24 A. Yes.

25 Q. Okay. Did that happen at the school; did that



1 happen at another location?

2 A. It happened at his home. We went to visit him  
3 at his home.

4 Q. Okay. Was there anybody else there?

5 A. No, it was the three of us.

6 Q. Okay.

7 A. My best recollection.

8 Q. Do you recall how long that meeting lasted?

9 A. It was a cordial meeting. He handed us a  
10 million dollars.

11 Q. Okay.

12 A. It was long enough.

13 Q. Okay. So at that meeting, then, you and  
14 Mrs. Lubin had gone there to discuss about a land  
15 donation for, I presume, the Hebrew Academy?

16 A. Dr. Lubin and I went there. She had --  
17 Dr. Lubin and I went there to meet him and to firm up  
18 this agreement with the idea that property would be  
19 purchased and a building would be built.

20 Q. Okay. And as a result of that meeting,  
21 Milton, you said, gave a check for a million dollars?

22 A. Yes.

23 Q. Okay.

24 A. Yes.

25 Q. And what was your understanding as to what

# **EXHIBIT 4**

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DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of )  
MILTON I. SCHWARTZ, ) Case No. 07P061300  
Deceased. ) Dept. No.: 26/Probate  
\_\_\_\_\_ )

DEPOSITION OF TAMAR LUBIN SAPOSHNIK, Ph.D.

Taken at  
Las Ventanas at Summerlin  
10401 West Charleston Boulevard  
Las Vegas, Nevada 89135

On Thursday, June 9, 2016  
At 9:36 a.m.

Reported by: Sarah M. Winn-Boddie, CCR No. 868

1 A. Yeah.

2 Q. -- you write, "Mr. Schwartz asked for and was  
3 provided with the home telephone numbers of all the board  
4 members, including Dr. Klain's."

5 A. I remember.

6 Q. Do you recall that?

7 A. Yeah Dr. Klain was then the president of the school.

8 Q. Okay. And then you go on to say, "Fortunately,  
9 Mr. Schwartz was satisfied with his conversations with the  
10 members of the board and Dr. Klain, the president. After much  
11 begging and persuasion, he was finally ready to offer a  
12 generous donation of \$1 million to start the school's  
13 construction." (As read.)

14 Do you see where I read that?

15 A. Yes.

16 Q. Okay. And are these all true statements --

17 A. Yeah.

18 Q. -- to the best of your recollection?

19 A. Yeah.

20 Q. All right. So at some point -- strike that.

21 At some point, did Mr. Schwartz pledge money to the  
22 school?

23 A. Yes.

24 Q. And do you recall how much?

25 A. Yeah. \$1 million.

1 Q. Okay. And do you recall how much of that pledge was  
2 personally provided by Mr. Schwartz?

3 A. Yes. It was \$500,000, half a million dollars. He  
4 gave it to me --

5 Q. Okay.

6 A. -- in my hand, yes.

7 Q. Okay. And do you recall if Mr. Schwartz assisted in  
8 obtaining -- in facilitating additional money from other  
9 philanthropists and benefactors?

10 A. Yeah. He had a friend. He had the fellow -- what  
11 was his name? I don't know. Maybe it's here. It was  
12 somebody.

13 Q. Mr. Sogg?

14 A. Yeah. Sogg.

15 Q. Okay.

16 A. Right. Right. Right.

17 Q. Do you recall how much money Mr. Sogg contributed?

18 A. Probably half a million dollars, but I can't say  
19 100 percent for sure. I don't know.

20 Q. Okay. I'll represent to you that your book says  
21 \$300,000. Does that seem right to you?

22 A. Could be, yeah.

23 Q. Okay. Let me ask you this. It's sort of a general  
24 question about your book --

25 A. It was a couple of years ago, by the way.

1 insurance coverage with respect to the lawsuit that we looked  
2 at in Exhibit 7?

3 A. Very vaguely.

4 Q. Okay. Does -- after we looked at all three of these  
5 exhibits, does that refresh your recollection at all with  
6 respect to a claim that was made by Mr. Schwartz in this  
7 lawsuit about the name change of the school?

8 MR. KEMP: Form. Foundation.

9 THE WITNESS: Vaguely, yeah.

10 MR. LeVEQUE: Okay.

11 (Exhibit 11 marked for identification.)

12 BY MR. LeVEQUE:

13 Q. Doctor, the court reporter just handed you an  
14 exhibit which has been marked as Exhibit 11 to your  
15 deposition, and it's a supplemental affidavit of Milton  
16 Schwartz. Do you recognize it as such?

17 A. Yes.

18 Q. Okay. I'll represent to you that this affidavit,  
19 the sworn testimony of Mr. Schwartz, was submitted as part of  
20 the lawsuit that we were talking about. Fair enough?

21 A. Yes.

22 Q. Okay. I'm just going to ask you a couple questions  
23 about it, because this is Mr. Schwartz's sworn testimony.

24 On paragraph four of his affidavit, Mr. Schwartz  
25 states "That on or about August of 1989, affiant," who is

1 Mr. Schwartz, "donated \$500,000 to The Hebrew Academy in  
2 return for which it would guarantee that its name would change  
3 in perpetuity with the Milton I. Schwartz Hebrew Academy."

4 Do you see where I read that?

5 A. Yes.

6 Q. Any disagreement with Mr. Schwartz's testimony here?

7 A. No.

8 Q. Okay. "Affiant was first elected" --

9 A. The only --

10 Q. Sorry?

11 A. The only thing that I would add to this would be --

12 and that would be later, that we never received the other

13 \$500,000.

14 MR. KEMP: Right.

15 BY MR. LeVEQUE:

16 Q. Do you know what bequests Mr. Schwartz made in his  
17 last will and testament?

18 A. The only thing I know is he made a promise to make  
19 the contribution of a million dollars, and we got \$500,000. I  
20 know that we never received the other \$500,000.

21 Q. Okay. When I say the word "pledge," do you  
22 understand what that means?

23 A. Of course. Promise, another word.

24 Q. Okay. When you were principal of the school, do you  
25 recall any of the benefactors of the school, the

1 philanthropists making testamentary pledges? Do you know what  
2 that phrase means?

3 A. Yeah.

4 Q. When I die, I'm giving the school --

5 A. I understand.

6 Q. -- money?

7 A. Yeah.

8 Q. Okay.

9 A. Yeah.

10 Q. All right. Did you have an understanding with  
11 respect to the million dollars that Mr. Schwartz pledged how  
12 and when it was going to be paid to the school?

13 A. How and when? I -- I know we received a half a  
14 million dollars, and the expectation was to receive another  
15 half a million dollars within a given time. How much, I don't  
16 know.

17 Q. Okay. I will represent to you that Mr. Schwartz in  
18 his last will and testament made a \$500,000 specific bequest  
19 to The Milton I. Schwartz Hebrew Academy. Fair enough?

20 A. Yes. Yes. Yes.

21 Q. Okay. Assuming that that \$500,000 was paid to The  
22 Milton I. Schwartz Hebrew Academy, would he have satisfied his  
23 \$1 million pledge to the school?

24 MR. KEMP: Form. Foundation.

25 THE WITNESS: I don't understand the question.



1 are -- I can't see the numbers. Sixty-four, -five, -six.

2 Okay. Here.

3 Q. Okay. Take a look at the bottom of page 66. And it  
4 says, quote, In 1989, Milton I. Schwartz became the chairman  
5 of The Hebrew Academy's board of trustees and per his request,  
6 the school was renamed The Milton I. Schwartz Hebrew Academy  
7 after having contributed to the school, period. However, the  
8 school did not receive the second half of his pledge at that  
9 time, unquote.

10 Did I read that right?

11 A. That's correct. I said that before.

12 Q. Okay. And the understanding with Mr. Schwartz was  
13 that in return for having the school named after him, he would  
14 give a million dollars, not just 500,000?

15 A. That was the pledge.

16 Q. And the understanding was the 500,000 -- the second  
17 500,000 would come within a reasonable amount of time?

18 MR. LEVEQUE: Object to the form. Vague.

19 THE WITNESS: That it would come. I don't know  
20 about reasonable, but that it would be forthcoming.

21 BY MR. KEMP:

22 Q. And by "forthcoming," you meant within months?  
23 years? What?

24 A. Not years.

25 Q. You thought it would be within months?

1 A. (Witness nods head.)

2 MR. LeVEQUE: Object to the form.

3 THE WITNESS: Not years.

4 BY MR. KEMP:

5 Q. The answer is yes, you thought he would give it  
6 within months?

7 A. Yes.

8 Q. And that was your understanding of the agreement to  
9 name the school after him, that he would give the 500,000 and  
10 then the second 500,000 within months, correct?

11 MR. LeVEQUE: Objection. Misstates testimony.

12 THE WITNESS: It would be forthcoming. I don't know  
13 about months. Yeah, I expected it to arrive, to come.

14 BY MR. KEMP:

15 Q. And he never paid the other 500,000?

16 A. No.

17 Q. Did you ask him for it?

18 A. Yes.

19 Q. What did he say?

20 A. That he would be paying it, but I didn't receive it.

21 Q. How many occasions did you ask him for the second  
22 500,000?

23 A. I'd say several times, but how many, I...

24 Q. And on each occasion, he told you it would be  
25 forthcoming --

1 A. Yes.

2 Q. -- in the near future?

3 A. That it would be forthcoming, yeah. That he  
4 would -- he promised and he will provide it, give it.

5 Q. Okay. And did he ever tell you that, I'm not going  
6 to pay it for 35 years? Was that ever --

7 A. No.

8 Q. -- discussed?

9 A. No.

10 Q. Okay.

11 A. No.

12 Q. And as the years went by, did -- did you come to  
13 feel that he had violated or breached his -- his pledge to  
14 give the second 500,000?

15 MR. LeVEQUE: Object to the form. Foundation.

16 THE WITNESS: Well, he didn't give it to me, so --  
17 or to the school.

18 BY MR. KEMP:

19 Q. So you thought he was in violation of what he said  
20 he'd do?

21 A. I didn't think -- I -- I just didn't give it a great  
22 deal of thought. I mean, he gave us \$500,000 and then I  
23 thought that was very nice and hoped to receive --

24 Q. And no one is disputing the first \$500,000 was not a  
25 very generous gift. No one is disputing that.

1 A. So that was that. I mean...

2 Q. Let me ask you different, then.

3 A. Yes. Mm-hmm.

4 Q. Do you feel that him not giving the second 500,000  
5 was consistent with his pledge to the school?

6 A. He promised a million dollars. We got \$500,000 and  
7 we didn't get the other \$500,000. Whether it was this, that,  
8 or the other, I...

9 Q. Did you have discussions with other board members  
10 about the -- the failure to pay the second 500,000?

11 A. Well, it would come up at the -- from time to time.

12 Q. Okay. And can you recall --

13 A. It came up. It came up. I mean, the school always  
14 needed money.

15 Q. Did anyone else say that he had breached his pledge  
16 to give the second 500,000?

17 A. I don't remember anybody saying that it wasn't nice  
18 or he breached or it was --

19 (Telephonic interruption.)

20 (Off-the-record discussion.)

21 (Record read.)

22 BY MR. KEMP:

23 Q. Okay. Did you have discussions with other people  
24 about efforts to get Mr. Schwartz to give the other 500,000?

25 A. Probably.

# EXHIBIT 5

## DISTRICT COURT

COUNTY OF CLARK, NEVADA

In the Matter of the Estate of ) Case No. P061300  
MILTON I. SCHWARTZ, ) Dept. No.: 26/Probate  
Deceased. )

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DEPOSITION OF NEVILLE POKROY, M.D.

Taken on Tuesday, February 25, 2014

At 11:14 a.m.

At 9060 West Cheyenne Avenue

Las Vegas, Nevada

Reported by: Carla N. Bywaters, CCR 866

Job No. 8969

1 understanding that when he gave the donation -- and  
2 this is conjecture -- is that it was implicit in his  
3 donation.

4 Q. And you said "it," what was "it"?

5 A. That the naming was implicit, that it would  
6 remain there.

7 Q. Okay. Did you have any discussions with  
8 Milton about the permanency of the name?

9 A. No.

10 MR. COUVILLIER: And, Alan, if I could just  
11 interpose.

12 When you said his donation, which donation  
13 were you talking about Dr. Pokroy?

14 THE WITNESS: His initial donation to allow  
15 the school to go forward.

16 MR. COUVILLIER: Thank you, sir.

17 THE WITNESS: Which also brought him to be  
18 Chairman of the Board.

19 BY MR. FREER:

20 Q. When did Milton become Chairman of the Board?

21 A. Soon after he agreed to proceed with the  
22 financial contribution.

23 Q. And what was the amount --

24 A. To my recollection.

25 Q. What was the amount of that financial

1 contribution?

2 A. I mean, I understood that he gave a million  
3 dollars, and he solicited another approximately 5-,  
4 \$500,000, from a couple of other donors. To my  
5 recollection, it was a Mr. Cohen and a Mr. Paul Sogg  
6 S-a-g-g, I believe. There were other, obviously,  
7 smaller donations that were given as well.

8 MR. FREER: This is Exhibit No. 4.

9 (Exhibit No. 4 was marked for  
10 identification.)

11 BY MR. FREER:

12 Q. I'm handing you what's been marked as Exhibit  
13 No. 4 which states it's the Bylaws of The Milton I.  
14 Schwartz Hebrew Academy. If you would turn to the last  
15 page, EST 105. Do you recognize your signature on any  
16 of those lines?

17 A. Yes.

18 Q. And is it approximately -- 1, 2, 3, 4 -- five  
19 lines down?

20 A. The sixth line down to be exact.

21 Q. That's why I became a lawyer, because I can't  
22 count. Thank you for correcting me. Do you recall  
23 signing Bylaws of The Milton I. Schwartz Hebrew Academy  
24 in or around December 18th, 1990?

25 A. I don't recall exactly, but my signature's



# EXHIBIT 6

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA

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4 In the Matter of the Estate of )  
5 MILTON I. SCHWARTZ, ) CASE NO.:  
6 ) PO61300  
7 Deceased )  
8 )  
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12 )

13 DEPOSITION OF ELLIOTT KLAIN, DO  
14 LAS VEGAS, NEVADA  
15 WEDNESDAY, MARCH 11, 2015  
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24 REPORTED BY: KAREN L. JONES, CCR NO. 694, CSR 9464  
25 JOB NO.: 237453

001597

1 but either Neville Pokroy or Fred Berkley, who was  
2 Milton Schwartz' attorney, or Dr. Lubin approached  
3 Milton Schwartz and Paul Sogg and George Rudiak, his  
4 daughter was on the board, Geri Rentchler. And they  
5 donated money.

6 I don't know the conversations that were  
7 had or what restrictions were placed or not placed  
8 on it, but they donated a certain amount of money  
9 and we had to raise the rest.

10 Now, Milton Schwartz' gift was  
11 contingent -- this I remember -- on being called the  
12 Milton I. Schwartz Hebrew Academy, and he wanted to  
13 be president of the board, which was fine with me  
14 because I was very busy with my practice and this  
15 was not my main area of expertise. And Milton  
16 Schwartz, I'm sure, was a very shrewd businessman  
17 and that's what the school needed.

18 He gave the money. At the time, I  
19 thought it was millions and millions. I've been  
20 corrected since then. But he gave the money and  
21 wanted the school to be called the Milton Schwartz  
22 Hebrew Academy.

23 And when we would take -- and Summerlin  
24 Parkway wasn't even built and 95 wasn't even built.  
25 And when the school was built and I would take my

# EXHIBIT 7

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DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of )  
MILTON I. SCHWARTZ, ) Case No.: 07P061300  
Deceased. ) Dept. No.: 26/Probate  
\_\_\_\_\_ )

DEPOSITION OF SAMUEL VENTURA

Taken on Monday, July 11, 2016

at 1:37 p.m.

At Solomon, Dwiggins & Freer, Ltd.

9060 West Cheyenne Avenue

Las Vegas, Nevada

Reported By: Ewa Barnes, CCR No. 889

1 school with the condition to build a private school only,  
2 restrictions.

3 Q. Okay. Do you recall one way or the other if the  
4 land grant came with the restriction that construction had  
5 to occur within a time period otherwise the land would  
6 revert back to Howard Hughes?

7 A. Yes, I do. But I do not remember the time on  
8 the contract.

9 Q. Okay. Do you recall Mr. Schwartz donating money  
10 to the school for the purpose of starting the construction  
11 on the Howard Hughes location -- excuse me -- on the  
12 Hillpointe location?

13 A. I recall Mr. Schwartz donating for the naming of  
14 the school half a million dollars to have the name of the  
15 school on him, and then we needed construction loan that  
16 was approximately one and a half million dollars. I  
17 happened to know about that because the only developer on  
18 the board, I was asked to oversee the builder who built the  
19 school.

20 I remember, that was Schulman, the builder. And  
21 that one and a half million dollars was arranged by  
22 Mr. Milton from the bank, his reputation, for the  
23 construction loan.

24 Q. Okay. Is the nature of your business  
25 development, commercial?

1 A. Jewish Community Day School.

2 Q. -- the day school; right?

3 A. I had to put the kids somewhere.

4 Q. Were you on the board when Mr. Sheldon Adelson  
5 was nominated and elected to be a board member?

6 A. Yes, I was.

7 Q. All right.

8 A. Hold on. Hold on. Correction. I was not.

9 Q. Okay.

10 A. Sorry. I was not.

11 Q. When you got back on the board, was Mr. Sheldon  
12 Adelson already on the board at that time?

13 A. That's correct.

14 Q. What about Dr. Miriam Adelson?

15 A. Dr. Miriam Adelson, she become a board member  
16 just a few months ago.

17 Q. Okay.

18 A. When I was on the board. Just a month before I  
19 resigned.

20 Q. All right. And I think we established that was  
21 about six months ago; right?

22 A. Yes.

23 Q. How did you come to be on the board again?

24 A. When the crisis of Tamar Lubin at the Hebrew  
25 Academy was outrageous, a lot of the parents pulled their

1 children out. Milton was out, too, Milton Schwartz. I  
2 don't know exactly if he was fired or he quit or he was  
3 suing, whatever it is. As you know, I was not a board  
4 member anymore. I have enough to worry about the new  
5 school. We were talking about opening a new school on the  
6 east side. We had no Jewish day school on the east side.

7 So one day -- actually, one day one of the  
8 callers was Milton Schwartz who called me. He says, Sam, I  
9 think we should open up a school on the east side because  
10 the way the Hebrew Academy is going, it's terrible, and  
11 it's a huge demand of the Jewish community on the east side  
12 to have a Jewish day school. Traveling -- we killing the  
13 kids. They were traveling 45 minutes from Henderson and  
14 east side all the way to Summerlin.

15 Okay? So it was Milton, it was me, it was  
16 Arman Sklar, it was Neville Pokroy, and it was Harry  
17 Steinberg, and Judy Mayak. You probably know all those  
18 names.

19 Q. Some of them.

20 A. We started the new school. The federation --  
21 the Jewish Federation all put down to get started, start  
22 money. Start money. So it was -- that's how it started.  
23 So Milton was on the board. It was a lot of excitement,  
24 and we leased the space in the synagogue called Ner Tamid  
25 on Emerson, the east side, and the school was built. So we



1 had, like, ten classes and we started the school.

2 Milton was on the board with me. As a matter of  
3 fact, he was -- no, he was not. He was not the president  
4 or the chairman. I forgot the name of who it was, it was  
5 another lady. I forgot the name of the president. It's  
6 been a while.

7 That was huge, huge success. It was huge  
8 success. It was amazing school. I'll make it short and  
9 brief. I ended up being president the last two years of  
10 the school. Milton Schwartz, who actually helped us to get  
11 started, he resigned the board just the first -- I'm  
12 guessing couple of years. After year and a half, two years  
13 he resigned because I think he went back to the Hebrew  
14 Academy.

15 So I don't know if you call it conflict of  
16 interest to have two Jewish day schools, but, anyway, he  
17 resigned. So we keep running the school and school kept  
18 expanding, and we run out of space. We were almost a  
19 hundred children. It was amazing. It was like one family  
20 and so successful.

21 But schools, nonprofit schools, they're  
22 nonprofit. They lose a lot of money daily. So as long as  
23 you can raise money from the community, you're capable of  
24 giving scholarships and continue running the school.

25 So we had difficult time financially because the

1 Hebrew Academy, they're -- I guess -- I'm guessing, because  
2 I don't know the date, start talking about bringing Adelson  
3 in there, because I asked Adelson to bring his children, at  
4 that time they were little, two boys, to my school, and he  
5 says, "Well, we decided to take them to the Hebrew  
6 Academy."

7 Then Milton start talking to Sheldon about  
8 getting involved with the school, and I am already -- I'm  
9 still running the school, all the children, and you got to  
10 understand my biggest supporter is Mr. Adelson of the  
11 Jewish day school. We loved the school and he helped me,  
12 and he's also a friend of mine since he moved in town.

13 And Milton was helping me a lot, and also was  
14 talking about make the Hebrew Academy bigger and stronger.  
15 I find out four or five of the families were supporting the  
16 school, helping me out to continue to expand it, were  
17 calling me and dropping off, supporting the school by  
18 saying, especial- -- Sheldon asked me, talked to me on the  
19 phone about it. He says, "Let's have one strong Jewish day  
20 school, and possible high school in the future. Sam, we  
21 need to shut down the school."

22 So it was a tough time for us because we really  
23 loved the school. It was the parents and everybody, with  
24 100 children. Then, God, this must be what, I don't know,  
25 probably 15 years -- 13, 15 years from now, yeah. 15 years

1 name. I cannot answer that because I didn't see the  
2 agreement.

3 Q. Okay. Are there any other entities, to your  
4 knowledge, in Southern Nevada that go by the Milton I.  
5 Schwartz Hebrew Academy?

6 A. No.

7 Q. If I -- if somebody came up to you today and  
8 said, "Hey, my student or daughter -- my son or daughter  
9 goes to the Milton I. Schwartz Hebrew Academy," do you know  
10 what entity they're referring to?

11 A. To the school, our school.

12 Q. Even though it doesn't have the same name, you  
13 still understand that they're referring to the same school?

14 A. Sure.

15 MR. LEVESQUE: Objection. Form. Calls for  
16 speculation. Improper hypothetical.

17 BY MR. BLAKE:

18 Q. Go ahead and answer.

19 A. Sure we did. Even me, after so many years, I  
20 still once a while get to it and I say Milton Schwartz  
21 Hebrew Academy.

22 Q. Okay. I want to jump back in time a little bit.  
23 Going back to the period 1989/1990 when -- this original  
24 pledge by Mr. Schwartz. I'll represent to you that Tamar  
25 Lubin has testified that Milton at that time committed to

1 give 500- -- excuse me. He committed to give a million  
2 dollars and paid the initial \$500,000 but not the rest.

3 The question for you is does that sound accurate  
4 to you? Is that consistent with your memory, or do you  
5 remember it being different?

6 MR. LEVEQUE: Objection to the form and  
7 foundation to the extent it misstates testimony.

8 THE WITNESS: I just remember half a million.

9 BY MR. BLAKE:

10 Q. Okay.

11 A. That's all I recall.


12 Q. Would you say that -- who was more involved in  
13 dealing with the initial donation at that time in the early  
14 1990s? Would it have been you, or would it have been  
15 Tamar Lubin?



16 A. It was Tamar Lubin with Milton Schwartz.



17 Q. So as between you and Tamar Lubin, Tamar Lubin  
18 would probably know better how much he originally committed  
19 to give?

20 A. That's correct. She had 105 percent control on  
21 the school. Every dollar and every event and every issue.  
22 That was one of the biggest issues with Tamar is she has to  
23 decide on everything, she has to know about everything, and  
24 that's an issue when you want to run a board, and I think  
25 that's where the trouble starts.

# EXHIBIT 8

MILTON I. SCHWARTZ 2203  
8-14- 1989 94-77/1224  
 Pay to the order of Hebrew Academy \$ 25,000.00  
Twenty-five Thousand and No/100-----Dollars  
 **NEVADA STATE BANK**  
 A Subsidiary of Zions Bancorporation  
 Main Office • P.O. Box 990  
 Las Vegas, Nevada 89125-0990  
 For \_\_\_\_\_  
 ⑆122400779⑆ 0166 2652⑈ 203⑈

 MILTON I. SCHWARTZ 2675  
 9145 LAS VEGAS BLVD. S.  
 LAS VEGAS, NV 89123 8-14- 1989 94-72/1224  
 Pay to the order of Hebrew Academy \$ 125,000.00  
One Hundred Twenty-five Thousand and No/100-----Dollars  
 **Valley Bank of Nevada**  
 MEMBER FDIC  
 P.O. BOX 98800 • LAS VEGAS, NV 89153-8800  
 For \_\_\_\_\_  
 ⑆122400724⑆ 2675⑈ 013680208⑈

 MILTON I. SCHWARTZ 2676  
 9145 LAS VEGAS BLVD. S.  
 LAS VEGAS, NV 89123 8-23- 1989 94-72/1224  
 Pay to the order of Hebrew Academy \$ 350,000.00  
Three Hundred Fifty Thousand and No/100-----Dollars  
 **Valley Bank of Nevada**  
 MEMBER FDIC  
 P.O. BOX 98800 • LAS VEGAS, NV 89153-8800  
 For \_\_\_\_\_  
 ⑆122400724⑆ 2676⑈ 013680208⑈

EST-00036

# EXHIBIT 9

1

DISTRICT COURT

2

CLARK COUNTY, NEVADA

3

\* \* \* \* \*

4

5 In the Matter of the Estate  
6 of,

6

MILTON I. SCHWARTZ,

7

Case No. P061300

8

Deceased.

Dept. No. 26/Probate

9

10

11

VIDEOTAPED DEPOSITION OF

12

JONATHAN SCHWARTZ

13

Volume I

14

Las Vegas, Nevada

15

July 28, 2016

16

9:40 a.m.

17

18

19

20

21

22

Reported by: Heidi K. Konsten, RPR, CCR  
Nevada CCR No. 845 - NCRA RPR No. 816435  
JOB NO. 322729

23

24

25

001611



1 time.

2 Q Okay. But in any event, your  
3 understanding is that the board came to your  
4 father's house, and that's when this agreement was  
5 made?

6 A Correct.

7 Q And is this based on what your father  
8 told you, or is this based on your being present  
9 at the meeting?

10 A It's based on what my father told me.  
11 And it's also based on testimony I've heard during  
12 this litigation. And it's based upon  
13 conversations I've had with Sam Ventura. It's  
14 based on lots and lots of information and  
15 discussion and -- and practice over many, many  
16 years.

17 Q Okay. And it was your -- was it your  
18 understanding that the agreement was that there  
19 would be 500,000 given to the school, or that  
20 there was a million, as Dr. Lubin said in her  
21 book?

22 A No. Here's -- here's what the agreement  
23 was: The agreement was that my father give  
24 500,000 and raise 500,000. That's how the million  
25 was arrived at, and that's what he did. He

1 BY MR. KEMP:

2 Q '89, first of all.

3 A My understanding is that the name of the  
4 school was the Milton I. Schwartz Hebrew Academy  
5 in perpetuity, and that applied to the entire  
6 piece of land where the school sits.

7 Q Okay. So do you understand that  
8 agreement to have included the lower school and  
9 the entire campus, or do you have any  
10 understanding?

11 A Any -- any school that -- that appeared  
12 on the land. At the time of the agreement, there  
13 was no high school. There was simply a school,  
14 and the school was the Milton I. Schwartz Hebrew  
15 Academy.

16 Q Okay.

17 A And it applied to that entire land --  
18 piece of land.

19 Q Okay. Let -- let me try to clarify  
20 this.

21 When we talked to Rabbi Wyne, he broke  
22 it down into lower school, campus, and high  
23 school. Okay?

24 A Uh-huh.

25 Q And -- and his testimony -- and I think

1 something that someone made up after my father  
2 died. It was never something my father agreed to.

3 Q Okay. And by the same token, there was  
4 never an agreement that it would be called the  
5 Milton I. Schwartz Educational Campus either;  
6 correct?

7 A No, that's what it was.

8 Q Okay. Well, let -- let me back up.

9 So your contention is that in 1989 there  
10 was an agreement that both the lower school and  
11 the campus be named after your father; is that  
12 correct?

13 A Any school that was on that piece of  
14 land was the Milton I. Schwartz Hebrew Academy.

15 Q Okay. But your contention was that  
16 would include both the lower school and any -- any  
17 name of the campus?

18 A Your client, I believe, is  
19 differentiating between the lower school, the high  
20 school, and the campus. And what I'm telling you  
21 is there was no -- any school that appeared on  
22 that land was the Milton I. Schwartz Hebrew  
23 Academy.

24 This whole notion of separate naming  
25 rights as to the campus, again, was something that

1 BY MR. KEMP:

2 Q That -- that's your understanding of the  
3 agreement?

4 A The school.

5 MR. FREER: Objection. Misstates  
6 prior testimony.

7 BY MR. KEMP:

8 Q "The school" referring to the lower  
9 school --

10 A The --

11 Q -- and the campus?

12 A Whatever school appeared on the land.

13 Q So in my hypothetical, we bought  
14 40 acres next door. So now that we have new land,  
15 it still has to be called the campus? Is that  
16 your understanding?

17 A Correct.

18 Q So any after-acquired land, any  
19 after-built building, anything in the future, your  
20 understanding was the agreement was it would  
21 encompass that?

22 A The understanding of all of the parties  
23 is that the name of the school was the Milton I.  
24 Schwartz Hebrew Academy in perpetuity, which is  
25 why the parties who were donating the major sums

# EXHIBIT 10

cc Fred Berk

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

## Present:

Elliott Klain  
Gerri Rentchler  
Neville Pokroy  
Fred Berkley  
George Rudiak  
Tamar-Lubin  
Milton Schwartz  
Roberta Sabbath  
Susan McGarraugh

— 388-6157 (10AM)

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

The minutes were approved as read.

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

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

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

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

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

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

*Susan McGarraugh*  
Susan McGarraugh  
Acting Secretary

EST-00010

001617

# EXHIBIT 11

IN THE OFFICE OF THE  
SECRETARY OF STATE OF THE  
STATE OF NEVADA

AUG 22 1990

ANEXO SUB DEL PARA SECRETARY OF STATE

NO. 1075

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

FILED

AUG 29 2 43 PM '90

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

1. The original Articles of Incorporation were filed in  
the Office of the Secretary of State for the State of Nevada on  
the 27th day of February, 1980.

2. That on the 14th day of August, 1989, at a special  
meeting of the Board of Trustees of said corporation, duly called  
and convened, at which a quorum for the transaction of business  
was present, notice of said meeting having been previously waived  
by the Trustees of said corporation in writing, the following  
resolution was adopted by the Board of Trustees of said corpora-  
tion:

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

ARTICLE I

This corporation shall be known as:

THE MILTON I. SCHWARTZ HEBREW ACADEMY

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

///

///

///



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

MILTON I. SCHWARTZ, President

LENARD E. SCHWARTZER, Secretary

STATE OF NEVADA            )  
                                  SS:  
COUNTY OF CLARK         )

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

WITNESS MY HAND AND OFFICIAL SEAL.



Kathryn D. Hardesty  
NOTARY PUBLIC

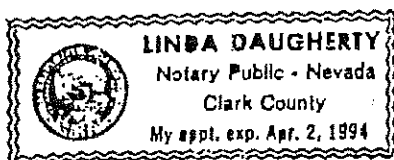
STATE OF NEVADA )

SS:

COUNTY OF CLARK )

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

WITNESS MY HAND AND OFFICIAL SEAL.

  
 NOTARY PUBLIC


AC402081

# EXHIBIT 12

# THE HEBREW ACADEMY

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



Dr. Roberta Rabbath  
School Head

May 23, 1996

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

Dear Milton:

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

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



Accreditation: Northwest Association of Schools and Colleges



License: State of Nevada Department of Education



Member: National Association of Independent Schools

177-23-1996 11:18

1 702 2557232

P.02

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

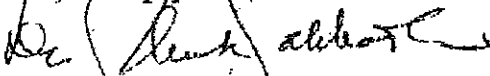
Your invitation to me as new School Head to meet and resolve differences and to work with me and the Board to bring "shalom" to our Jewish community will serve as a much needed example of Jewish leadership.

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

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

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

Very truly yours,



Dr. Roberta Sabbath  
School Head

MAY-29-1996 11:18

1 782 257232

P. 23

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001624

**The Milton I. Schwartz  
HEBREW ACADEMY**

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



Dr. Roberta Sabbath  
School Head



Accreditation, Northwest Association of Schools and Colleges



License: State of Nevada Department of Education



Member National Association of Independent Schools

HW-23-1306 11:46

(702) 255-7232

P. 83

EST-00013

# EXHIBIT 13

07/13/04 TUE 12:58 FAX 1 702 2557232

THE HEBREW ACADEMY

21001

given to Blu  
3-24-05

## BYLAWS

OF

THE MILTON I. SCHWARTZ

HEBREW ACADEMY

## ARTICLE I

PURPOSE AND POWERS

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

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

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

## ARTICLE II

OFFICES

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

## ARTICLE III

BOARD OF TRUSTEES

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

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

GENERATED BY 12601-03/HebrewLAW  
March 5, 1999

EST-00014



# EXHIBIT 14

THE DR. MIRIAM AND SHELDON G. ADELSON EDUCATIONAL CAMPUSBoard Meeting January 8, 2013

In attendance: Victor Chaltiel, Steve Haberkorn, Philip Kantor, Sheldon Adelson, Sam Ventura

Absent: Tom Spiegel, Yasmin Lukatz, , Ercy Rosen, Benny Yerushalmi

Amir Eden delivered the D'var Torah.

Paul Schiffman delivered the enrollment report. To date, fourteen 8<sup>th</sup> graders have signed contracts for high school. Nine 8<sup>th</sup> graders have expressed the intention to attend other high schools (two were not invited back based on poor academics; two cite social reasons; two hope to attend West Tech magnet school). There will be an open house for the school in Henderson.

The financial report was good in that revenues from tuition continue to increase, and costs per student continue to decrease. Board members noted that total income for 2012 was down from 2011, but this was due to a large gift from the Steinberg family that was recorded in 2011. Tuition income for 2012 was greater than 2011. Costs were up for 2012 compared to 2011, but this was due to larger enrollment, in turn, generating increased tuition, etc. On balance, the financial picture is better for 2012 than 2011.

The Board was presented with a gift from the Adelson family to the school of \$50 million to resolve the school's outstanding debts, and anticipated to cover up to two years of deficits going forward. The gift was accompanied by a contract with conditions for the school to observe, in perpetuity, regarding its educational and cultural focus. The Board reviewed the contract which, by its terms, is confidential; a motion was made to approve the contract; the motion was seconded; a vote was taken; the contract was approved; and the Chairman signed the contract, which was countersigned by Dr. Miriam and Sheldon G. Adelson. Sheldon Adelson did not participate in the vote; Benny Yerushalmi voted by proxy.

The meeting was then adjourned.

Respectfully submitted

January 9, 2013

*Philip A. Kantor*

Philip A. Kantor

CONFIDENTIAL

24  
AC50044

# EXHIBIT 15

**DECLARATION OF SUSAN PACHECO**

I, Susan Pacheco, under penalty of perjury in the State of Nevada, state:

1. I make this Declaration in support of the Estate's Opposition to Motion for Partial Summary Judgment. I have knowledge of the matters stated herein and would be competent to testify about them if called upon to do so.

2. I served as Milton I. Schwartz's personal secretary from May 27, 1987 until his death. My job duties included, but were not limited to, managing Mr. Schwartz's daily calendar, including Milton's telephone calls, which he typically engaged in over a speaker phone and there were times he asked me to join him on the calls or I was able to hear the conversation when my office was adjacent to his.

3. I observed and/or assisted Mr. Schwartz facilitate countless charitable transactions. Although Mr. Schwartz made minor donations to various causes and charitable organizations, the major monetary donations made by Mr. Schwartz were used to create a legacy bearing his name such as the Milton I. Schwartz Hebrew Academy ("MISHA"). I observed a few situations wherein Mr. Schwartz refrained from making donations to charitable organizations because there was no name recognition. For example, I recall that he wanted to make a donation to the Jewish Community Day School and he did not do so because there was no name recognition available.

4. In or around 1989, Mr. Schwartz became very involved with the Hebrew Academy because he wanted Jewish children to have a great Jewish education, and he did not feel that there were any quality Jewish schools at that time. Because of Mr. Schwartz's involvement with MISHA, I was appointed to and served on the Board of Trustees of MISHA in or about 1988 until 1990, wherein I served as Acting Secretary. In light of my service as Mr. Schwartz's personal secretary for such a long period of time, and member of the Board of

Trustees, I have first-hand knowledge regarding the significant contributions that Mr. Schwartz made to MISHA.

5. Mr. Schwarz made substantial monetary donations to the MISHA, loaned money to the school and was instrumental in the Howard Hughes Corporation's gift of land where the Adelson High School sits. Indeed, there were several occasions when MISHA would call Mr. Schwartz needing a donation so the school could cover payroll. I participated in the Special Meeting of the Board of Trustees on August 14, 1989, wherein the Board decided to name MISHA after Mr. Schwartz in perpetuity in light of a \$500,000 donation made by Mr. Schwartz, and requested that "a letter should be written to Milton Schwartz stating the Academy will be named after him." In fact, I served as the Acting Secretary of such meeting. A true and correct copy of the Minutes are attached hereto as **Exhibit 1**. It was my understanding from my participation in this meeting, and other documents that I have seen, that MISHA would be named after Mr. Schwartz forever.

6. It was also important for Mr. Schwartz to donate time as well as money to the MISHA. Consequently, I routinely spent approximately five (5) hours out of my eight (8) hour work day working on issues relating to MISHA. Although Mr. Schwartz made substantial donations and spent a significant amount on other charities, he did not spend nearly as much money and/or time on those charities as he did on MISHA.

7. It was always important for Mr. Schwartz to have MISHA named after him. Mr. Schwartz often referred to MISHA as "his school" and that it would be named after him "forever" or "in perpetuity." In fact, when Mr. Schwartz said "in perpetuity" he would often slow down and clearly annunciate that phrase for added emphasis. During one conversation I had with Mr. Schwartz he told me: "when I die my name will remain on MISHA, and my

children's children and great-grandchildren will know I was part of Jewish education in Las Vegas." It was common for Mr. Schwartz to correct others when they referred to MISHA merely as the Hebrew Academy. For example, on or around February 22, 1994, I drafted correspondence to Ms. Ronni Epstein's for Milton I. Schwartz's signature which states "[p]lease accept this note as a gentle reminder. The name of the school is The Milton I. Schwartz Hebrew Academy." See correspondence from Milton I. Schwartz to Ms. Ronni Epstein dated February 22, 1994, attached hereto as **Exhibit 2**.

8. When MISHA removed Mr. Schwartz's name off the school in or around 1993 he stopped making donations, and told me that "we are going to war to get my name back on the Hebrew Academy." Mr. Schwartz resumed making donations to MISHA after he received a copy of Dr. Roberta Sabbath's correspondence dated May 23, 1996, a copy of which is attached hereto as **Exhibit 3**. In response to the letter, Mr. Schwartz stated "well finally" as he was glad to see that it had been agreed to change the name back to MISHA. A short time later Mr. Schwartz regained his position on the Board of Directors at MISHA and resumed his duties. Mr. Schwartz donated over \$1,000,000.00 to MISHA throughout his life as evidenced by the donation schedule that I prepared, which is attached hereto as **Exhibit 4**.

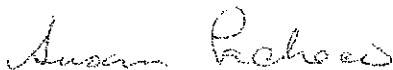
9. Mr. Schwartz was also instrumental in causing others to make donations to MISHA. He was also aware of and welcomed MISHA's attempt to attract donors by providing naming rights to certain classrooms because its served a dual purpose by preserving his legacy and allowing others to become associated with portions (i.e. certain class rooms, library, etc.) of MISHA.

10. Mr. Schwartz encouraged Sheldon Adelson to build a high school next to MISHA because it would bring all sorts of amenities to MISHA. Mr. Schwartz knew and understood

from discussions with Victor Chaltiel and Mr. Adelson that the Adelson High School and MISHA would maintain distinct identities. Mr. Schwartz did not worry that the MISHA would remove his name after he died because the language contained in many of the school's documents stated it would be named after him "in perpetuity." Further, while Mr. Schwartz was alive MISHA and The Dr. Miriam and Sheldon G. Adelson School were always referred to as two separate entities in conversation, on stationary and in other organizational documents. In fact, The Dr. Miriam and Sheldon G. Adelson School was often referred to as being located on the MISHA campus.

11. Based upon my relationship with Mr. Schwartz, and the numerous conversations that I had with him, I do not believe that Mr. Schwartz would want the \$500,000.00 bequest in his Last Will and Testament to go to The Dr. Miriam and Sheldon G. Adelson Educational Campus because he intended the money to go to the MISHA, an entity which no longer exists.

Dated this 20<sup>th</sup> day of May, 2014.



SUSAN PACHECO

# EXHIBIT 16



## 001636

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1       5.     My Dad worked tirelessly on behalf of MISHA. Not only did he give the initial \$500,000  
2 that founded the school, but he was instrumental in securing the gift from the Howard Hughes  
3 Corporation that provided the land upon which the school is located. Not only did my Dad make large  
4 cash donations to the school each year, he gave his time and energy to raise funds for the school that  
5 he believed in with all of his passion. Even though my Dad was an extremely busy man, he didn't let  
6 anything get in the way of his dedication to the school.

7       6.     My Dad's devotion to his school was sometimes so extreme that it threatened his  
8 health. My Dad suffered from kidney disease the last several years of his life and was sometimes  
9 forced to admit himself to Valley Hospital for treatment. My Dad also founded Valley Hospital. One  
10 time my Dad was at Valley where he was hooked up to an IV and supposed to be resting in bed, a  
11 nurse discovered him pulling out his IV and getting dressed against doctors orders. The nurse said,  
12 "Mr. Schwartz, what are you doing? You're supposed to be recuperating." My Dad answered:

13        "I have a meeting tonight. If it was a regular business meeting that involved thousands  
14 of dollars, I would listen to you and stay here in the hospital. However, this is a board  
15 meeting at The Milton I. Schwartz Hebrew Academy. If I don't show up, the students  
16 will suffer. I cannot let that happen. Whatever you are doing for me here regarding my  
17 health, you can do at my home and office. I am leaving now.  
18

19       7.     The foregoing is an example of how strongly connected my Dad felt towards his school  
20 and how interconnected his work, sweat, and resources were with the mission of his school and the  
21 students. The school was not a charity that my Dad simply wrote a check to once a year and received  
22 a plaque for his gift. My Dad was involved with the management of the school that bore his name on  
23 a daily basis. My Dad often spent several hours a day devoted to the management of the school. His  
24 involvement included raising money, traveling around the country at his own expense to assess the  
25

1 best practices of other Jewish schools, analyzing curriculum, and obtaining financing amongst several  
2 other areas of involvement too long to list.

3 8. The students loved my Dad. One of the many times that he was honored by the students,  
4 I was there to witness a celebration of my father's birthday at the school. They had an assembly to  
5 honor him and thank him. The students made cards for him. My Dad was deeply touched by the  
6 gratitude that he received from the students. Actually, I seem to remember that Sheldon Adelson  
7 ("Sheldon") was there at the school for this occasion. Sheldon and my father were friends. This is one  
8 of the reasons that this entire dispute is so sad to experience.

9 9. My Dad gave *tzedakah* (the Jewish word for justice/charity) with the highest  
10 standards. Many believe the Hebrew term "*tzedakah*," means charity, but actually, it literally means,  
11 "justice." After my Dad's original large gift, the school agreed to be named, "MISHA" from  
12 Kindergarten through 8<sup>th</sup> grade. Sometime before my Dad passed away, my husband and I had  
13 occasion to join him for dinner. Because of my Dad's advanced age, I asked him, "How would you  
14 like [your name] to be remembered after you are no longer here and what would you like to have  
15 written on your tombstone?" He answered:

16 "I would like it to reflect my life's work regarding Jewish education."  
17

18 10. I wrote down my father's feelings on a note and put it in a file which I didn't look at until  
19 after he died. So, when it came time to write something on his tombstone, I told my siblings what I  
20 was having inscribed. My Dad's tombstone now says:

21 "A Champion of Jewish Education"  
22

23 11. In a telephone conversation I had with my Dad the spring before he passed away, my Dad  
24 relayed an agreement he had reached with Sheldon Adelson ("Sheldon"). My Dad said that he and  
25 Sheldon had resolved what the High School Sheldon was building at MISHA would be named. My  
26 Dad said:

1 "I'm so happy that Sheldon and I have reached an agreement concerning the naming  
2 rights to the school. The school will continue to be known as the Milton I. Schwartz  
3 Hebrew Academy and the High School that Sheldon is building at the Milton I. Schwartz  
4 Hebrew Academy will be known as the Adelson High School (the "Agreement")."

5 12. My Dad was aware of and welcomed MIHSA's attempt to attract donors by naming  
6 certain rooms within MISHA as it served a dual purpose by preserving his legacy and allowing others  
7 to become associated with portions (*i.e.* certain class rooms, library, etc.) of MISHA.

8 13. My Dad was honored by MISHA for the third time at its Annual Gala on May 6, 2007  
9 ("Gala"). Five hundred plus people from the Las Vegas Jewish Community and community at-large  
10 came to see my Dad receive his honor. The Gala was written about in a prominent article in the  
11 *Review Journal*. My Dad's lifelong commitment to Jewish education and the school he founded were  
12 celebrated.

13 14. My Dad smiled the whole evening and told me that he felt tremendously blessed and  
14 grateful. It was not only because he received the honor, but because he felt that his dream of Jewish  
15 continuity through Jewish education would live beyond his lifetime, and bear his name as a legacy to  
16 his progeny. I was privileged to be there that evening and was included in those 500 witnesses who  
17 saw my father receive the new award called the Dr. Miriam and Sheldon G. Adelson Award. Miriam  
18 and Sheldon presented the award to my Dad.

19 15. In his remarks, Sheldon repeated the story of a discussion at a Las Vegas Jewish  
20 Federation Board Meeting ("Federation") between he and my Dad. According to Sheldon, my Dad  
21 compared giving money to start a Jewish skilled nursing facility versus the gift Sheldon and Miriam  
22 were planning to MISHA for a high school. According to Sheldon, at that Federation meeting, my  
23 father said:

1 "If we don't take care of the Jewish education of young people, there will be no need for  
2 a Jewish "old-age" home, because there will be no old Jews."

3 16. Sheldon said he was inspired by my father's words and pledged a very generous gift for  
4 the funds to build a high school on the campus of MISHA. The Agreement between Sheldon and my  
5 Dad, signed by Mr. Adelson, regarding the naming of the school was referenced in the 2007 Gala  
6 commemorative book, a copy of which is attached to the Opposition as **Exhibit W**. At the end of a  
7 glowing, heartfelt, and warm presentation speech by Sheldon to his friend, Milton, Sheldon summed  
8 up by saying:  
9

10 "When I grow up, I want to be Milton I. Schwartz!"

11 Sheldon was 13 years younger than my father.

12 17. My Dad told me that the week after the Gala, he went to MISHA and spoke with Paul  
13 Schiffman, Head of School. At the end of their meeting, my Dad said: "Paul, you will make sure that  
14 my work here at The Milton I. Schwartz Hebrew Academy will continue, won't you?" My father told  
15 me that Paul reassured him that he would fulfill and continue my father's legacy.

16 18. Three months later, on August 9, 2007, my Dad, Milton I. Schwartz died. Two weeks  
17 after his funeral there was a Memorial Service in Las Vegas at MISHA for the over 300 people who  
18 could not attend the funeral. I'm told Sheldon and Miriam were very upset that they could not attend  
19 as they were opening up their new casino in Macau. Since my Dad passed away, his memory and  
20 legacy have been disrespected, little by little, by effectively removing his name from the school he  
21 founded in a way that my Dad would have never accepted if he were alive. The school has  
22 systematically removed my Dad's name at the school in favor of its latest, large donor in a way that  
23 did not meet my Dad's intent and would have never been tolerated by my Dad were he alive. My Dad  
24 would have never accepted his Agreement with Mr. Adelson regarding the school's name being  
25

1 breached in the way that it has. The bottom line is that my Dad would want the name of the school  
2 restored to MISHA, in perpetuity, and the Adelson name honored on the high school only.

3 DATED this 22nd day of May, 2014.

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5 Robin Sue Landsburg  
6 ROBIN SUE LANDSBURG  
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# EXHIBIT 17

DECLARATION OF JONATHAN SCHWARTZ

I, Jonathan Schwartz, under penalty of perjury in the State of Nevada, declare:

1. I make this Declaration in support of the Estate's Opposition to Motion for Partial Summary Judgment ("Opposition"). I have knowledge of the matters stated herein and would be competent to testify about them if called upon to do so.

2. Milton I. Schwartz was my father. Beginning in or about September 1996, my father and I began working closely with each other. We both had offices in the same building located at first at 1824 Goldring, on 714 S. Tonopah and then at 2293 Duneville Street, Las Vegas, Nevada. My father conducted all of his business on a speaker phone that could often be heard throughout the office because he had the volume turned up so high. It was his regular practice to ask me to sit at the side of his desk as he conducted business on the phone. As such, my father and I spoke numerous times throughout the day regarding various matters. We had innumerable discussions regarding charity, education, Jewish beliefs and traditions. Based upon such conversations, it is my firm belief and understanding that it was my father's lifelong practice and intent to make contributions that would bear his name and ensure a legacy for his name. Indeed, from our conversations, it was clear that my father's intent was that the Milton I. Schwartz Hebrew Academy ("MISHA") be named after him in perpetuity for reasons, including, but not limited to, religious beliefs that he could only progress in the afterlife through good deeds bearing his name.

3. My father worked tirelessly on behalf of MISHA. Not only did he give the initial \$500,000 that founded the school, but he was instrumental in securing the gift from the Howard Hughes Corporation that provided the land upon which the school is located. Not only did my father make large cash donations to the school each year, he gave his time and energy to raise funds for the school that he believed in with all of his passion. Even though my father was an extremely busy man, he didn't let anything get in the way of his dedication to MISHA. MISHA was very important to my



1 father and he wanted his dedication to Jewish education and to MISHA to be remembered for years to  
2 come.

3 4. During my many conversations with my father, he often recounted the importance of  
4 charity and the importance of leaving a legacy (i.e. associating his name with a charitable donation).  
5 My father's insistence on leaving a legacy involves the Jewish religious concepts of giving  
6 "tzedakah" (the Jewish word for justice or charity) in the work of "tikkun olam" (meaning "repairing  
7 the world"), which is the Jewish concept for taking steps to improve the state of the world) to enable  
8 others to perform "mitzvahs" on his behalf after his passing. Having mitzvahs performed on my  
9 father's behalf and in his name was very important for my father as he adhered to the Jewish religious  
10 belief that progression in the afterlife can only be obtained through good deeds on earth that bear the  
11 deceased's name. Indeed, from our conversations, it was my father's clear intent that the Milton I.  
12 Schwartz Hebrew Academy ("MISHA") be named after him in perpetuity for the above reasons.

13 5. I witnessed several examples of my father's insistence that major charitable undertakings  
14 bear my father's name. For example, in or around 2004, my father offered to make a large donation  
15 for the Shul associated with the AISH Hatorah Temple, upon condition that it name the Shul's  
16 educational sanctuary after him. The AISH Hatorah Temple agreed and to this day the education  
17 sanctuary is named the "Milton I. Schwartz Education Sanctuary." Likewise, I have observed  
18 instances where my father declined to make large charitable donations when the charity refused to  
19 provide my father with a naming opportunity. Indeed, charitable gifts associated with my father's  
20 name were a source of great pride for him. It was inevitable that any visitor calling upon my father at  
21 his office was lead through a long hallway to his office which is covered in approximately 100 plaques  
22 that commemorate his charitable endeavors. Once the trip down the hallway was completed, the  
23 discussion with any visitor almost always began with my father's charitable accomplishments.  
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1           6.       It should be further noted that MISHA was more than just a charity for my father. It was  
2 not simply a charity for which my father wrote a check once a year and received a plaque for his gift.  
3 My Father was involved with the management of the school that bore his name on nearly a daily basis.  
4 My Father often spent several hours a day devoted to the management of the school. His involvement  
5 included raising money, traveling around the country at his own expense to assess the best practices of  
6 other Jewish schools, analyzing curriculum, and obtaining financing amongst several other areas of  
7 involvement too long to list.

8           7.       Accordingly, my father prepared the Last Will and Testament dated February 5, 2004  
9 ("Will") that directed a \$500,000 bequest to go directly to MISHA upon his death. At the time my  
10 father prepared the Will, he and I discussed provision 2.3, "The Milton I. Schwartz Hebrew  
11 Academy." My father made it clear to me that there was no successor clause to be added to provision  
12 2.3. He was adamant that there was to be no successor clause in provision 2.3, as the bequest was to  
13 only go to MISHA to be used for the benefit of the Jewish children who attended MISHA. Had my  
14 father intended the bequest to go anywhere else, he would have included a successor clause in  
15 provision 2.3. The absence of such "successor clause" language makes it clear that the bequest was to  
16 only go to MISHA.

17           8.       In conversations, too numerous to count, my father informed me that MISHA was to bear  
18 his name in perpetuity (forever). In addition to placing emphasis on the word "in perpetuity" when  
19 stating the name of the Milton I. Schwartz Hebrew Academy, my father also demonstrated his belief  
20 that MISHA would bear his name in perpetuity when he provided me with documents regarding the  
21 naming of the school for the specific purpose of educating me about the naming of MISHA upon his  
22 passing. Specifically, my father provided me with a copy of the May 23, 1996, correspondence from  
23 Dr. Roberta Sabbath to my father (attached to the Opposition as **Exhibit M**), and substantially  
24 informed me, "You may need this one day, if the naming rights to the school ever become an issue."  
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1 Similarly, my father provided me with a copy of the Bylaws (attached to the Opposition as **Exhibit E**),  
2 directed my attention to Article 1, Section 1, which provides that the Hebrew Academy shall be named  
3 the Milton I. Schwartz Hebrew Academy in perpetuity, and likewise substantially informed me, "You  
4 may need this one day, if it ever becomes an issue."

5 9. My father often referred to MISHA as "my school" when discussing it with me. The  
6 naming of the school as MISHA, in perpetuity, is consistent with numerous documents provided by  
7 the school and years of practice. Because of the foregoing, it is clear to me what my father intended  
8 and would have wanted with regard to MISHA because it was communicated to me by my father.

9 10. In or around 2006 or 2007, at the time Sheldon Adelson pledged \$25,000,000 to MISHA  
10 for the purpose of funding the construction of a high school, my father had told me on numerous  
11 occasions that the pre-existing school, grades Pre-K through Eighth, would continue to be known as  
12 MISHA and that the high school would be known as the Adelson School.

13 11. I have reviewed the Adelson Campus' Motion for Partial Summary Judgment and  
14 disagree with many of the allegations raised therein. Specifically, I adamantly disagree with the  
15 Adelson Campus' allegation and Mr. Schiffman's testimony that there was an agreement that the  
16 property upon which the Milton I. Schwartz Hebrew Academy would be referred to as the "The Dr.  
17 Miriam and Sheldon G. Adelson Educational Campus." See Motion for Partial Summary Judgment at  
18 8:3-17. Although there may have been some discussion regarding this topic, my father would have  
19 never agreed and, to my knowledge, did not agree to name the property upon which the Milton I.  
20 Schwartz Hebrew Academy operates, property that my father was instrumental in obtaining, the "The  
21 Dr. Miriam and Sheldon G. Adelson Educational Campus." Rather, the only discussion pertaining to  
22 naming rights involved the offering of naming rights *as to particular classrooms* within the high  
23 school. Victor Chaltiel, after my father's passing, had discussions with me to that effect that a number  
24 of rooms within the high school had been identified for naming opportunities, wherein one could  
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1 "buy" a naming right. None of these applied to MISHA. Indeed, Victor Chaltiel showed me a book  
2 with different rooms listed at various prices and asked me if I wanted to buy one.

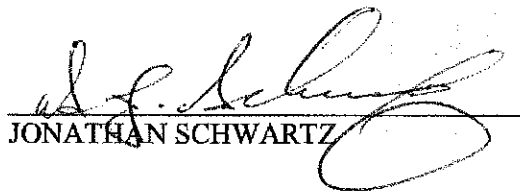
3 12. Contrary to Adelson Campus' Motion for Partial Summary Judgment, I specifically recall my  
4 father walking into my office in the winter of 2007 and remarking that he was pleased because he had  
5 reached an agreement with Mr. Adelson that the high school only would be known as the Adelson  
6 School and the remainder of the school and the campus would continue to be known as MISHA  
7 ("2007 Agreement"). No documentation was necessary as the 2007 Agreement merely continued the  
8 status quo dating back to 1996, was consistent with the bylaws of MISHA, and numerous other  
9 documents that referenced that the school was to be known as MISHA in perpetuity. All of  
10 documents, correspondence and indeed the 2007 Gala demonstrate that only the high school was to be  
11 named the Adelson School.  
12

13 13. The 2007 Agreement ratified what had always been my father's understanding: that  
14 MISHA and the Adelson School would be and were considered two distinct entities. Indeed, prior to  
15 the 2007 Agreement, my father had discussions at the MISHA board meetings where the issue was not  
16 the renaming of MISHA, but whether the Adelson School would be split off and operate separate and  
17 apart from MISHA. For example, attached to the Opposition as **Exhibit P** are MISHA executive  
18 board minutes dated March 14, 2007, which were given to me by my father, where the MISHA board  
19 is considering operating as two distinct boards ("Victor discussed the need to clarify whether we  
20 would have the same or separate boards for the MIS Hebrew Academy and Adelson High School.  
21 Victor will discuss this with Sheldon and Jill."). Further evidence of my father's understanding of  
22 the 2007 Agreement is found in the 2007 Gala commemorative book, which is attached to the  
23 Opposition as **Exhibit W**.  
24

25 14. Moreover, even after my father's passing, MISHA and the Adelson School appeared as  
26 two distinct entities on letterhead, which is attached to the Opposition as **Exhibit V**.  
27

1        15.     The notion of an "Adelson Educational Campus" supplanting the MISHA as the moniker  
2 of the campus was something that was made up after my father's passing and was something that my  
3 father would have never permitted.

4        Dated this 21 day of May, 2014.

5  
6          
JONATHAN SCHWARTZ

# EXHIBIT 18

## 001650

03-31-1993 09:09AM FROM

TO

3978770

P.03

1           6. That Affiant solicited contributions from Paul Sog  
2 and Robert Cohen. That as a result of Affiant's efforts, Paul Sog  
3 pledged to donate \$300,000, and that as a result of Affiant's  
4 efforts Robert Cohen pledged to donate \$100,000.

5           7. That Summerlin only donated 17 acres for the Hebre  
6 Academy after Affiant donated \$500,000, and Paul Sogg pledged an  
7 donated \$300,000 and Robert Cohen pledged and donated \$100,000.

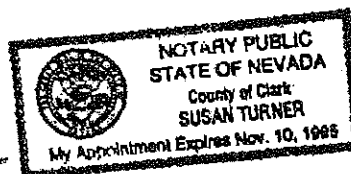
8           8. That the donation of \$500,000 by Affiant was  
9 condition precedent to the donation of the land by Summerlin; tha  
10 Affiant believes that the donation of \$400,000 by Mr. Sogg and Mr  
11 Cohen was also a condition precedent to the donation of the land by  
12 Summerlin.

13           FURTHER AFFIANT SAYETH NAUGHT.

14  
15           Milton I. Schwartz  
16           MILTON I. SCHWARTZ

17           SWORN and SUBSCRIBED to before me  
18 this 31<sup>st</sup> day of March, 1993.

19           Susan Turner  
20           Notary Public





# EXHIBIT 19

Partial DVD Transcription of Milton I. Schwartz Interview

06/12/2007



400 South Seventh Street • Suite 400, Box 7 • Las Vegas, NV 89101  
702-476-4500 | [www.oasisreporting.com](http://www.oasisreporting.com) | [info@oasisreporting.com](mailto:info@oasisreporting.com)

COURT REPORTING | NATIONAL SCHEDULING | VIDEOCONFERENCING | VIDEOGRAPHY

## DVD Transcription of Milton I. Schwartz Interview

## In the Matter of the Estate of Milton I. Schwartz

Page 1	Page 3
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 PARTIAL DVD TRANSCRIPTION OF</p> <p>13 INTERVIEW BETWEEN MILTON I. SCHWARTZ</p> <p>14 AND DR. MIRIAM ADELSON</p> <p>15</p> <p>16 June 12, 2007</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Transcribed by:</p> <p>25 William C. LaBorde, RPR, CRR, CCR 673</p>	<p>1 DR. ADELSON: You should.</p> <p>2 MR. SCHWARTZ: She said, "I need a</p> <p>3 million dollars, and I can get the land from John</p> <p>4 Goolsby." She didn't know that I was working on the</p> <p>5 land at the time and that John Goolsby -- I don't</p> <p>6 know the answer, whether he gave me the land for me</p> <p>7 or for her. I don't know why he would give it to</p> <p>8 her, but he owed me.</p> <p>9 I decided to give her a half a million</p> <p>10 dollars. I -- I -- I didn't feel I could afford a</p> <p>11 million dollars at the time, and I raised a half a</p> <p>12 million dollars: 300,000 from one man, Paul Saag;</p> <p>13 100,000 from -- from Cohen, Joe Cohen, who's still</p> <p>14 alive. I think he's 95 now. 25,000 from Jerry</p> <p>15 Rentschler's father, I still remember, George</p> <p>16 Rudiak, who was my lawyer at the hospital.</p> <p>17 So that's 825. And other -- I raised a</p> <p>18 million doll- -- the half a million and I gave a</p> <p>19 half a million, and they agreed to make the name of</p> <p>20 the school Milton I. Schwartz Hebrew Academy in</p> <p>21 perpetuity.</p> <p>22 I answered you how I went and started it,</p> <p>23 and --</p> <p>24 DR. ADELSON: Did the Federation give any</p> <p>25 money for this?</p>
Page 2	Page 4
<p>1 PROCEEDINGS</p> <p>2 (DVD 1 plays.)</p> <p>3 (00:57:38)</p> <p>4 DR. ADELSON: So Tamar came with the idea</p> <p>5 to build a school, a Hebrew school, in Las Vegas?</p> <p>6 MR. SCHWARTZ: Well, later on, Tamar</p> <p>7 Lubin came to me -- oh, I had on my board at the</p> <p>8 hospital -- some of these answers are --</p> <p>9 DR. ADELSON: Great, Milton. We can</p> <p>10 edit. Fantastic.</p> <p>11 MR. SCHWARTZ: Okay. I had on my board a</p> <p>12 fellow by the name of John Goolsby. He was</p> <p>13 president of Howard Hughes Company at the time, and</p> <p>14 he got the job as president because he was on my</p> <p>15 board. He was very, very appreciative that I put</p> <p>16 him on a board. I put him on a board because Alan</p> <p>17 Miller asked me to. Alan Miller was --</p> <p>18 DR. ADELSON: On the board of which</p> <p>19 company, of the taxi?</p> <p>20 MR. SCHWARTZ: On the board of Valley</p> <p>21 Hospital.</p> <p>22 DR. ADELSON: Oh, right.</p> <p>23 MR. SCHWARTZ: Our Board of Governors.</p> <p>24 Then when Tamar Lubin came to me -- I'm</p> <p>25 giving you long answers.</p>	<p>1 MR. SCHWARTZ: No.</p> <p>2 DR. ADELSON: So it wasn't a project of</p> <p>3 the Federation?</p> <p>4 MR. SCHWARTZ: Did not.</p> <p>5 (End of transcription of DVD</p> <p>6 1 at 01:00:04.)</p> <p>7 (DVD 2 plays.)</p> <p>8 (00:02:32)</p> <p>9 DR. ADELSON: Okay. And we were talking</p> <p>10 about high school just a year and a half, two years,</p> <p>11 and then --</p> <p>12 MR. SCHWARTZ: And it's going to --</p> <p>13 they're --</p> <p>14 DR. ADELSON: -- this year --</p> <p>15 MR. SCHWARTZ: -- they're putting in the</p> <p>16 first class in August, next month.</p> <p>17 DR. ADELSON: In September we are</p> <p>18 starting the --</p> <p>19 MR. SCHWARTZ: No, the end of August.</p> <p>20 DR. ADELSON: August, August, August the</p> <p>21 twenty --</p> <p>22 MR. SCHWARTZ: 27th.</p> <p>23 DR. ADELSON: -- seventh, yeah.</p> <p>24 MR. SCHWARTZ: I said that in my speech.</p> <p>25 DR. ADELSON: Yeah. Yeah, I remember.</p>

Page 5

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.)  
 19  
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Page 6

## TRANSCRIBER'S CERTIFICATE

1  
 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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# EXHIBIT 20

Board Meeting  
May 25, 1990  
8:00 P. M.

Agenda

- |         |   |
|---------|---|
|         | 1. Approval of minutes                              |
| ROBERTA | 2. Gala   |
|         | Honoree<br>Chairman<br>Procedures                   |
| LENNY   | 3. Student Aid                                      |
|         | Recommendations<br>Procedures                       |
| MILTON  | 4. Building Fund raising                            |
| MILTON  | 5. Federation allocation                            |
| TAMAR   | 6. Budget revision for School Year 1990-1991        |
|         | 7. Relocation                                       |
|         | Moving<br>Assistance                                |
| NEVILLE | 8. Recommendation - advertising from subcontractors |
| FRED B. | 9. Transportation                                   |
| SAM     | 10. Building report                                 |

BOARD MEETING MINUTES  
May 25, 1990

Present: Milton Schwartz  
Dr. Tamar Lubin  
Fred Berkley, Esq.  
G. Rentchler  
N. Pokroy, M.D.  
Roberta Sabbath  
Lennie Schwartz, Esq.  
Elliot Klain, M.D.

Meeting opened at 8:10 P.M. by the president, M.S.

1) Minutes

Approved Berkley, seconded by Sabbath as written.

2) Gala

A report was given by Roberta. She discussed changing the format slightly in view of the fact that there is diminished volunteerism and an increase in the number of female parents who are working.

We have a "shell" of an event. Shelley Berkley has agreed to be the M.C. We have cleared the Jewish Federation calendar. The date set is Saturday, October 2<sup>nd</sup>. Consideration of increasing the price to \$125 per ticket was potentially agreed upon.

Milton Schwartz put forward the name of Roger Shamey as a potential ~~for~~ publicity man for the school in general.

Dr. Pokroy has proposed and located Rene Hale, Entertainment International Special Events, phone #794-0052, was proposed as professional help for the Gala event itself - Mr. Schwartz requested to interview her personally.

Dr. Pokroy has proposed a professional to run the journal associated with the Gala and has recommended and interviewed Donna ~~Beard~~, phone 363-6812. She is adequately qualified to enlarge this "brochure" significantly. Discussion as to her income - to whether it should be salary plus incentive, or just incentive, was discussed. Milton Schwartz will be meeting her to interview within the next couple of days.

Honoree suggestions: John Goolsbee, Stan Mallin, Al Benedict.

Chairperson for the Gala is Roberta Sabbath, on condition that she has significant help.

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3) Student Aid

Lennie Schwartz, Esq. gave his recommendations on this issue. A letter to the Jewish Federation by Milton Schwartz for allocation request is forthcoming. \$48,000 has been recommended in the budget for Student Aid. Milton Schwartz proposed, Neville Pokroy seconded, unanimously approved.

4) Building Fund

Milton Schwartz reported under his good solicitation and auspices that Paul Saag has paid another \$100,000 of his pledge. Robert Cohen has paid \$100,000 of his pledge. Oscar Alterwitz estate is forthcoming. <sup>Milton Schwartz</sup> will call on this issue.

5) <sup>Jewish is not yet</sup> Federation Allocation

↓ the executor of the estate

~~This was also discussed in detail (see above).~~

6) Budget *The Jewish Federation allocated \$64,000 for The Hebrew Academy, \$50,000 for student aid and \$4,000 for books.*

Dr. Lubin presented a revised budget of 5/22/90. It was reviewed, proposed by Fred Berkley, seconded by Elliot Klain, M.D. Approved unanimously.

7) Relocation to Summerlin

Dr. Lubin requested moving assistance, which will be placed in the bulletin and requests on a one-to-one basis and also from the Board of Directors and P.T.O. She will need about a week sometime in July.

8) Advertising for Open House

*about preparing a large ad to be put in*  
Dr. Pokroy made a recommendation that we ~~agree to allow~~ <sup>interview</sup> Shlomo Ertel ~~to place a bulletin in the newspapers, advertising supported by the developers and sub-contractors, articles, etc.~~ *paid*. This is a turn key operation, would not be time consuming, but there would be a major contribution to the publicity for the school. Mr. Schwartz agreed to meet him at the first convenience, telephone #870-0300. *but no more*

9) Transportation

This has been assigned to Fred Berkley. He has been in contact with Western Coach. A list to be presented for prices and possibly four locations for pickup. Forty-seven students per bus at about \$22.50 per week. The state regulations will be investigated. It is agreed that the students must arrive by 7:45 a.m. in order to disembark and be ready for school. Discussion ensued, and it was clear that it is imperative that we have some kind of transportation arranged to maximize student attendance at the school.

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10) Building Report

Dr. Lubin is in constant touch with the developers and architect at least 3 times a week. Mr. Sam Ventura (on the Board of Trustees) is also monitoring, and they believe that it is on schedule. Long-term financing is being looked at. At this point 11.5% with 1 point for approximately \$1.5 million looks in the ballpark. Dr. Pokroy said he will also try to beat that figure.

The meeting closed at 10:00 P.M.

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THE HEBREW ACADEMY BUILDING FUND PLEDGES  
JULY 1, 1988 THROUGH FEBRUARY 21, 1990

NAME	AMOUNTS		
	PLEDGED	PAID	UNPAID
MILTON I. SCHWARTZ	\$500,000	\$500,000	\$ NONE
DR. ELLIOTT KLAIN	\$ 14,400	\$ 8,650	\$ 5,750
GERI RENTCHLER	\$ NONE	\$ NONE	\$ NONE
LENARD SCHWARTZER	\$ 2,000	\$ 2,000	\$ NONE
FRED BERKLEY	\$ 2,500	\$ 2,500	\$ NONE
SAM VENTURA	\$ 2,500	\$ NONE	\$ 2,500
GEORGE RUOIAK	\$ 50,000	\$ 25,000	\$ 25,000
ROBERTA SABBATH	\$ 2,000	\$ 2,000	\$ NONE
DR. NEVILLE POKROY	\$ 2,000	\$ 2,000	\$ NONE
T.H.A. BOARD BUILDING FUND PLEDGES (SUB-TOTAL)	\$575,400	\$544,650	\$ 30,750
<i>Robert Cohen</i>	100,000		NONE
DR. STANLEY AMES	\$ 1,000	\$ 1,000	\$ NONE
R. BELLIVEAU	\$ 2,000	\$ 2,000	\$ NONE
CHIC HECHT	\$ 5,000	\$ 2,500	\$ 2,500
A. SPECTOR	\$ 5,000	\$ 5,000	\$ NONE
DR. DALE GLICKEN	\$ 2,000	\$ 2,000	\$ NONE
PAUL SOGG	\$300,000	\$100,000	\$200,000
OSCAR ALTERWITZ	\$ 6,000	\$ NONE	\$ 6,000
LINDA STERLING ROSEN	\$ 25,000	\$ NONE	\$ 25,000
DR. DENCKER	\$ 1,000	\$ 1,000	\$ NONE
DR. RICHARD ELLIS	\$ 5,000	\$ 5,000	\$ NONE
T.H.A. "OTHER" BUILDING FUND PLEDGES (SUB-TOTAL)	\$352,000	\$118,500	\$233,500
T.H.A. BOARD AND "OTHER" B.F. PLEDGES GRAND TOTALS	\$927,400	\$663,150	\$264,250

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~~an office short~~  
a short term office employee

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Dec

# **EXHIBIT 21**

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## BYLAWS OF

THE MILTON I. SCHWARTZ HEBREW ACADEMY

## ARTICLE I

NAME AND OFFICE

1. Name: The name of this corporation is The Milton I. Schwartz Hebrew Academy (hereinafter referred to as The Academy) and shall remain so in perpetuity.
2. Office: The principal office of the corporation shall be at 9700 W. Hillpointe Road, Las Vegas, Nevada.

## ARTICLE II

TRUSTEES

1. The governing board of the corporation shall be known as the Board of Trustees and the membership of the Board of Trustees shall constitute the corporation.
2. The Board of Trustees shall be composed of fourteen members elected by the Board of Trustees and the school head.
3. In the event the parents of the students of The Academy form a parent-teacher organization with dues paying members representing at least fifty percent of the student body, which holds regular meetings, such organization shall be entitled to one representative to the Board of Trustees at the discretion of the Board of Trustees and, dependent upon the activity level and services rendered to The Academy by the parent-teacher organization.
4. In the event of a vacancy during the term of a trustee, the Board of Trustees shall appoint, after due consultation with the nominating committee, a person to fill the unexpired term.

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

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

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

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

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

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

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

#### ARTICLE III

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

#### ARTICLE IV

##### COMMITTEES

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

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



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

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

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

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

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

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

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

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

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

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

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

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

#### ARTICLE V

##### DESCRIPTION AND DUTIES OF OFFICERS OF THE BOARD

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

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

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

#### ARTICLE VI

##### MEETINGS OF THE BOARD OF TRUSTEES

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

#### ARTICLE VII

##### ELECTIONS

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

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

#### ARTICLE VIII

##### AMENDMENTS

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

#### ARTICLE IX

##### RULES

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

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

KNOW ALL MEN BY THESE PRESENT:

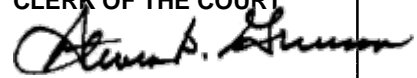
That we, the undersigned, being a majority of all the persons appointed in the Amended Articles of Incorporation to act as the first Board of Trustees of The Hebrew Academy hereby assent to the foregoing bylaws and adopt the same as the bylaws of said corporation.

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

Amber H. H. H.  
Edith H. H.  
Sharon H. H.  
Rheta S. S.  
Ken R. R.  
Willa P. P.  
Clara C. C.  
Sam S. S.  
Richard R. R.  
George G. G.  
Tanner T. T. S.

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Facsimile: 702.853.5485

*Attorneys for A. Jonathan Schwartz  
Executor of the Estate of Milton I. Schwartz*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Case No.: P061300  
Dept.: 26/Probate

**OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING  
FRAUD**

A. Jonathan Schwartz ("Executor"), Executor of the Estate of Milton I. Schwartz (the "Estate"), by and through his counsel, Alan D. Freer, Esq. and Alexander G. LeVeque, Esq., of the law firm of Solomon Dwiggins & Freer, Ltd., hereby submits his Opposition to Motion for Partial Summary Judgment Regarding Fraud Claims (the "Opposition"). This Opposition is made and based upon the pleadings and papers on file in this action, the attached Memorandum of Points and Authorities, all attached exhibits, and any oral argument that this Honorable Court may entertain at the time of hearing.

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## Memorandum of Points and Authorities

### I. Introduction

Genuine factual disputes preclude summary judgment for the School on the Estate's claim of "Fraud in the Inducement" based upon the evidence already in the record. To reach its requested relief of a pretrial dispositive ruling, the School<sup>1</sup> impermissibly assumes the role of the factfinder and weighs the credibility of all disputed and conflicting evidence, and concludes that its version of the facts are the most credible, and, therefore, summary judgment is appropriate.

Contrary to the sole argument advanced by the School in its motion, several genuine issues of material fact exist for the jury to consider when adjudicating the Estate's claim of fraud in the inducement. Accordingly, and for the reasons more set forth below, summary judgment is inappropriate on this issue.

### II. Statement of Genuine Factual Disputes Which Preclude Summary Judgment

In August, 1989, Mr. Schwartz and the Board of Trustees agreed to change the name of the Hebrew Academy to the "Milton I. Schwartz Hebrew Academy," in perpetuity.<sup>2</sup> Consistent with this agreement, during a Board of Trustees meeting held on August 14, 1989, it was decided that "[a] letter should be written to Milton Schwartz stating the Academy will be named after him."<sup>3</sup> Indeed, on August 14, 1989, a letter was written to Mr. Schwartz that provided, in relevant part, "The Hebrew Academy has decided to name the campus the 'Milton I. Schwartz Hebrew Academy,' in perpetuity..."<sup>4</sup>

Moreover, and as a result of the agreement between the Board of Trustees and Mr. Schwartz regarding the naming of the school, a Certificate of Amendment of the Articles of Incorporation of the Hebrew Academy, a Nevada Non-Profit Corporation, was filed on August 29, 1990, which, in relevant part, amended Article I of the Articles of Incorporation to read as

<sup>1</sup> The Dr. Miriam and Sheldon G. Adelson Educational Institute (the "School").

<sup>2</sup> See, Supplemental Affidavit of Milton I. Schwartz, a true and correct copy of which is attached hereto as **Exhibit 1**, at ¶ 4:20-23.

<sup>3</sup> See, Hebrew Academy Minutes of Board of Trustees, dated August 14, 1989, a true and correct copy of which is attached hereto as **Exhibit 2**.

<sup>4</sup> See, Letter to Mr. Schwartz, dated August 14, 1989, a true and correct copy of which is attached hereto as **Exhibit 3**. (Emphasis added).

1 follows: "This corporation shall be known as: THE MILTON I. SCHWARTZ HEBREW  
2 ACADEMY."<sup>5</sup> On December 18, 1990, the Board of Trustees also executed a document entitled  
3 "Bylaws of the Milton I. Schwartz Hebrew Academy, which provides, in relevant part, that "[t]he  
4 name of this corporation is The Milton I. Schwartz Hebrew Academy (hereinafter referred to as  
5 The Academy) and shall remain so in perpetuity."<sup>6</sup>

6 During his deposition, Neville Pokroy, MD ("Mr. Pokroy") testified that, at a Board of  
7 Trustees meeting held on August 14, 1989, discussions took place with Mr. Schwartz regarding  
8 the naming of the school after Mr. Schwartz in perpetuity.<sup>7</sup> Specifically, Mr. Pokroy testified that  
9 "certainly the discussion took place, and indeed, we followed it up by naming the school after  
10 Milton I. Schwartz."<sup>8</sup> Mr. Pokroy further testified that, after Mr. Schwartz provided his donation  
11 of \$500,000.00 in August, 1989, naming the school after Mr. Schwarz in perpetuity was  
12 understood by all board members and that the name (i.e. the Milton I. Schwartz Hebrew  
13 Academy) "would remain there."<sup>9</sup>

14 Lenard E. Schwartz, Esq. ("Mr. Schwartz") also testified that, based upon the donation  
15 of \$500,000.00 from Mr. Schwartz in August, 1989, "it was -- was then and today -- my  
16 understanding that the school would be named the Milton I. Schwartz Hebrew Academy in  
17 perpetuity in light of the financial donation..."<sup>10</sup> Moreover, Mr. Schwartz testified that upon  
18 executing the Bylaws of the Milton I. Schwartz Hebrew Academy on December 18, 1990, which  
19 changed the name of the entity to the Milton I. Schwartz Hebrew Academy, in perpetuity, the  
20 Board of Trustees "understood that in perpetuity meant forever."<sup>11</sup>

21  
22 <sup>5</sup> See, Certificate of Amendment of the Articles of Incorporation of the Hebrew Academy, a Nevada Non-  
23 Profit Corporation, filed August 22, 1990, a true and correct copy of which is attached hereto as **Exhibit 4**.

24 <sup>6</sup> See, Bylaws of The Milton I. Schwartz Hebrew Academy, fully executed on December 18, 1990, a true and  
25 correct copy of which is attached hereto as **Exhibit 5**. (Emphasis added).

26 <sup>7</sup> See, Ex. 3.

27 <sup>8</sup> See, Excerpt of Deposition Transcript of Mr. Pokroy, at p. 13:17-25 through p. 14:1-17, a true and correct  
28 copy of which is attached hereto as **Exhibit 6**.

<sup>9</sup> See, Excerpt of Deposition transcript of Mr. Pokroy, at p. 15:25 through p. 16:1-6, a true and correct copy of  
which is attached hereto as **Exhibit 7**.

<sup>10</sup> See, Excerpt of Deposition Transcript of Mr. Schwartz, at p. 9:17-19, a true and correct copy of which is  
attached hereto as **Exhibit 8**. (Emphasis added).

<sup>11</sup> See, Excerpt of Deposition Transcript of Mr. Schwartz, at p. 13:24 through 14:1-7, a true and correct copy  
of which is attached hereto as **Exhibit 9**.

1 Roberta Sabbath, Ph.D. ("Dr. Sabbath"), a board member who met with Mr. Schwartz  
 2 regarding his initial donation to the school testified that, upon the Board of Trustees' decision to  
 3 change the name of the entity to the Milton I. Schwartz Hebrew Academy, her understanding  
 4 "was that it was for in perpetuity."<sup>12</sup> Indeed, Tamar Lubin ("Mrs. Lubin"), the former principal of  
 5 the school who was integral in soliciting Mr. Schwartz's donation to the school, also testified that  
 6 it was the Board of Trustees' understanding that the change of the entity's name to the Milton I.  
 7 Schwartz Hebrew Academy "would be there in perpetuity."<sup>13</sup>

8 Notwithstanding, in or about 1992, a dispute arose between Mr. Schwartz and the Board  
 9 of Trustees regarding internal matters related to the operation of the Milton I. Schwartz Hebrew  
 10 Academy. As a result of this dispute, on October 19, 1994, the Board of Trustees breached its  
 11 agreement and changed the name of school from the "Milton I. Schwartz Hebrew Academy" to  
 12 the "Hebrew Academy."<sup>14</sup> During the time in which the school no longer bore Mr. Schwartz's  
 13 name, he discontinued making and soliciting donations.<sup>15</sup>

14 In an effort to reconcile their differences and in order to entice Mr. Schwartz to resume his  
 15 financial donations to the school, on May 23, 1996, Dr. Sabbath, on behalf of the "entire Board of  
 16 Directors of the Milton I. Schwartz Hebrew Academy," sent Mr. Schwartz a letter, which  
 17 provides, in relevant part, that the Board of Trustees would:

- 18 "(1) Restore the Hebrew Academy's name to the 'Milton I. Schwartz Hebrew  
 19 Academy.'
- 20 (2) Amend the Hebrew Academy's Articles of Incorporation to restore its  
 21 former name of the 'Milton I. Schwartz Hebrew Academy.'
- 22 (3) Restore the marker in front of the Hebrew Academy identifying it as the  
 23 'Milton I. Schwartz Hebrew Academy.'

24  
 25 <sup>12</sup> See, Excerpt of Deposition Transcript of Dr. Sabbath, at p. 27:10-18, a true and correct copy of which is  
 attached hereto as **Exhibit 10**. (Emphasis added).

26 <sup>13</sup> See, Excerpt of Deposition Transcript of Mrs. Lubin, at p. 35:16-25 through p. 36:1-16, a true and correct  
 copy of which is attached hereto as **Exhibit 11**.

27 <sup>14</sup> See, Certificate of Amendment of Articles of Incorporation, filed on October 19, 1994, a true and correct  
 copy of which is attached hereto as **Exhibit 12**.

28 <sup>15</sup> See, Spreadsheet of donations made and solicited by Mr. Schwartz, a true and correct copy of which is  
 attached hereto as **Exhibit 13**.

(4) Change the Hebrew Academy's formal stationary to include its full name, the 'Milton I. Schwartz Hebrew Academy'...

(5) You can rest assured it is the intention of the School Head and the school's Officers and Directors that the utilization of the school's full name will be consistent with an intent to recognize and honor your contribution and assistance."<sup>16</sup>

Within the May 23, 1996 letter, Dr. Sabbath states that the "restoration of the name of the 'Milton I. Schwartz Hebrew Academy' has been taken as a matter of 'meschlackeit' in acknowledgement of your contribution and assistance to the Academy." Indeed, during her deposition, Dr. Sabbath testified that the intent behind the May 23, 1996, letter was to "reassure [Mr. Schwartz] of the name reversion back to his name, and the hopes it is referencing his continued involvement and goodwill."<sup>17</sup> Dr. Sabbath further testified that the letter was provided to Mr. Schwartz "to rebuild the bridges that [the Board of Trustees] felt had been broken and to retain in the stability of the school and to guarantee future growth."<sup>18</sup>

On March 21, 1997, the Board of Trustees filed a Certificate of Amendment of Articles of Incorporation, which provided in relevant part, that "[t]his corporation shall be known as the Milton I. Schwartz Hebrew Academy."<sup>19</sup> As such, and consistent with the agreement offered by the Board of Trustees to rectify their initial breach, the name of the school was effectively changed back to the Milton I. Schwartz Hebrew Academy. Indeed, on April 13, 1999, the Board of Trustees executed a document entitled "BYLAWS OF THE MILTON I. SCHWARTZ HEBREW ACADEMY," which provides in relevant part, as follows:

"Section 1.01. Name. The name of the Corporation is the Milton I. Schwartz Hebrew Academy and will remain so in perpetuity."<sup>20</sup>

In reliance upon the Board of Trustees' agreement to rename the school the "Milton I. Schwartz Hebrew Academy" in perpetuity, Mr. Schwartz resumed making personal donations,

<sup>16</sup> See, Letter to Mr. Schwartz from Dr. Sabbath, dated May 23, 1996, a true and correct copy of which is attached hereto as **Exhibit 14**.

<sup>17</sup> See, Excerpt of Deposition Transcript of Dr. Sabbath, at p. 37:5-13; p. 37:16-19, a true and correct copy of which is attached hereto as **Exhibit 15**. (Emphasis added).

<sup>18</sup> *Id.* (Emphasis added).

<sup>19</sup> See, Certificate of Amendment of Articles of Incorporation, filed March 21, 1997, a true and correct copy of which is attached hereto as **Exhibit 16**.

<sup>20</sup> See, Bylaws of the Milton I. Schwartz Hebrew Academy, executed April 13, 1999, a true and correct copy of which is attached hereto as **Exhibit 17**. (Emphasis added).

1 funding costs to continue the operations of the school, and soliciting donations and scholarships.  
 2 Indeed, during his deposition, Irving J. Steinberg ("Mr. Steinberg") testified that, because the  
 3 "school always ran in a deficit...Milton Schwartz would make payroll."<sup>21</sup> Mr. Steinberg further  
 4 testified that when the school "didn't have the money to pay the teachers or pay a note[...]" Milton  
 5 would be asked to put up the money and he would put up money."<sup>22</sup>

6 Referencing the "Milton I. Schwartz Hebrew Academy Board Meeting" minutes from  
 7 May 13, 2003, identifying a donation of \$150,000.00 from Mr. Schwartz,<sup>23</sup> Mr. Steinberg testified  
 8 that such minutes were consistent with his recollection that Mr. Schwartz provided financial  
 9 support to the school on a regular basis.<sup>24</sup> Referencing the Milton I. Schwartz Hebrew Academy  
 10 Board of Trustees Meeting minutes, dated May 9, 2006, which provides as follows: "Thanks to  
 11 Milton, we received the scholarship money from the Federation for the 2005-2006 school year,"<sup>25</sup>  
 12 Mr. Steinberg testified that Mr. Schwartz assisted in facilitating the donation from the Jewish  
 13 Federation of Las Vegas. Specifically, Mr. Steinberg testified that Mr. Schwartz "was the one  
 14 that pushed -- that pushed the Federation to come up with the scholarship money."<sup>26</sup>

15 In further reliance upon the Board of Trustees' agreement to change the name of the  
 16 school to the "Milton I. Schwartz Hebrew Academy" in perpetuity and their actions consistent  
 17 with such agreement (i.e. April 13, 1999 Bylaws), on February 5, 2004, Mr. Schwartz executed  
 18 his Last Will and Testament (the "Will").<sup>27</sup> Article Two, Section 2.3 of the Will provides, in  
 19 relevant part, as follows:

21 See, Excerpt of Deposition Transcript of Mr. Steinberg, at p. 26:2-20, a true and correct copy of which is  
 23 attached hereto as **Exhibit 18**.

22 *Id.*

24 See, The Milton I. Schwartz Hebrew Academy Board Meeting Minutes, dated May 13, 2003, a true and  
 25 correct copy of which is attached hereto as **Exhibit 19**.

26 See, Excerpt of Deposition Transcript of Mr. Steinberg, at p. 38:18 through p. 39:19, a true and correct copy  
 27 of which is attached hereto as **Exhibit 20**.

28 See, The Milton I. Schwartz Hebrew Academy Board Meeting Minutes, dated May 9, 2006, a true and  
 correct copy of which is attached hereto as **Exhibit 21**.

See, Excerpt of Deposition Transcript of Mr. Steinberg, at a p. 66:18-25, a true and correct copy of which is  
 attached hereto as **Exhibit 22**.

See, Will, a true and correct copy of which is attached hereto as **Exhibit 23**.

1       “The Milton I. Schwartz Hebrew Academy. I hereby give, devise and bequeath  
2       the sum of five hundred thousand dollars (\$500,000.00) to the Milton I. Schwartz  
3       Hebrew Academy (the, “Hebrew Academy”).”<sup>28</sup>

4       Although the Board of Trustees initially honored the agreement with Mr. Schwartz  
5       concerning the name of the school, the Board of Trustees breached said agreement on December  
6       13, 2007 (only four (4) months after Mr. Schwartz’s death). Specifically, the Board of Trustees  
7       executed a document entitled “THE MILTON I. SCHWARTZ HEBREW ACADEMY  
8       RESOLUTIONS OF THE BOARD OF TRUSTEES.”<sup>29</sup> Within such resolution, the Board of  
9       Trustees agreed that “Article I. of the Corporate Articles be and hereby is amended and restated in  
10      its entirety to state that: ‘This corporation shall be known in perpetuity as ‘The Dr. Miriam and  
11      Sheldon G. Adelson Educational Institute.’”<sup>30</sup>

12      Although Jonathan was unaware of the actions taken by the Board of Trustees, throughout  
13      this litigation, it was discovered that the Board of Trustees breached their agreement with Mr.  
14      Schwartz as a result of additional funds donated to the school through the Adelson Family  
15      Charitable Foundation (“AFCF”). Specifically, on December 13, 2007, Victor Chaltiel (“Mr.  
16      Chaltiel”), the Chair of the Board of Trustees, executed a letter from the AFCF which granted  
17      additional funds to the school only if the Board of Trustees agrees that “the Corporation shall be  
18      named ‘The Dr. Miriam and Sheldon G. Adelson Educational Institute.’”<sup>31</sup> In contravention of the  
19      prior agreement made with Mr. Schwartz concerning the name of the school, the Board of  
20      Trustees filed a Certificate of Amendment to Articles of Incorporation for Nonprofit Corporation  
21      on March 21, 2008, which provides, in relevant part: “This Corporation shall be known in  
22      perpetuity as ‘The Dr. Miriam and Sheldon G. Adelson Educational Institute’.”<sup>32</sup>

23      It is clear that the Board of Trustees did not intend to honor their promise to name the  
24      school after Milton I. Schwartz in perpetuity. Moreover, it is abundantly clear that, after the

25      <sup>28</sup> *Id.*, at § 2.3.

26      <sup>29</sup> *See*, The Milton I. Schwartz Hebrew Academy Resolutions of the Board of Trustees, dated December 13,  
27      2007, a true and correct copy of which is attached hereto as **Exhibit 24**.

28      <sup>30</sup> *Id.*

29      <sup>31</sup> *See*, Letter to Mr. Chaltiel, dated December 13, 2007, a true and correct copy of which is attached hereto as  
30      **Exhibit 25**.

31      <sup>32</sup> *See*, Certificate of Amendment to Articles of Incorporation for Nonprofit Corporation, filed on March 21,  
32      2008, a true and correct copy of which is attached hereto as **Exhibit 26**.

1 dispute in 1992, the Board of Trustees, on their own volition, reached out to Mr. Schwartz to  
 2 “rebuild the bridge” between Mr. Schwartz and the School in hopes of inducing Mr. Schwartz to  
 3 resume his financial involvement with the School. In an effort to encourage such financial  
 4 contribution from Mr. Schwartz, the Board of Trustees offer Mr. Schwartz an empty promise to  
 5 rename the school the “Milton I. Schwartz Hebrew Academy, in perpetuity.” Indeed, it was this  
 6 empty promise and the school’s misleading actions that precipitated Mr. Schwartz’s renewed  
 7 involvement with the school, and ultimately his decision to provide a specific bequest within his  
 8 Will to the Milton I. Schwartz Hebrew Academy.

9 Based upon: (1) the documents attached hereto; (2) the sworn testimony by the Board of  
 10 Trustees provided during their respective depositions; and (3) the testimony and evidence to be  
 11 presented at trial, the Estate will present clear and convincing evidence that the school  
 12 fraudulently induced Mr. Schwartz’s to renew his financial donations to the school, which  
 13 specifically includes the bequest within his Will, while the Board of Trustees undoubtedly had no  
 14 intention of honoring their agreement.

#### 15 **IV. Legal Argument**

##### 16 **A. The Elements of Fraud in the Inducement Have Clearly Been Satisfied.**

17 The elements of fraud in the inducement are as follows: (1) a false representation made by  
 18 the Board of Trustees to Mr. Schwartz; (2) the Board of Trustees’ knowledge or belief that the  
 19 representation was false (or knowledge that it had an insufficient basis for making the  
 20 representation); (3) the Board of Trustees’ intention therewith to induce Mr. Schwartz to consent  
 21 to the agreement; (4) Mr. Schwartz justifiable reliance upon the Board of Trustees’  
 22 misrepresentation; and (5) damages to Mr. Schwartz resulting from his reliance.<sup>33</sup>

23 As fully set forth above in Sections II and III, there exists sufficient evidence to clearly  
 24 prove the elements of fraud in the inducement that must be presented to the jury. Specifically, it  
 25 is clear that the Board of Trustees represented to Mr. Schwartz that the name of the school would  
 26 be changed to the Milton I. Schwartz Hebrew Academy in perpetuity on multiple occasions.

27  
 28 <sup>33</sup> J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc., 120 Nev. 277, 290, 89 P.3d 1009, 1018 (Nev. 2004).

1 Either this misrepresentation was false or the School breached its agreement when the Board of  
2 Trustees took affirmative steps to change the name of the school with the Secretary of State and  
3 within their Bylaws.

4 After the Board of Trustees' initial breach of their agreement in 1992, Mr. Schwartz  
5 ceased providing financial support to the school. Realizing the school needed additional funding,  
6 and taking into account that Mr. Schwartz was a major donor (if the only major donor at the  
7 time), in 1996, the Board of Trustees' again represented to Mr. Schwartz that it would rename the  
8 school to the Milton I. Schwartz Hebrew Academy in perpetuity in order to induce Mr. Schwartz  
9 to resume his financial donations and contributions to the school.

10 As a result of the Board of Trustees' representations and conduct (*i.e.* changing the name  
11 of the school with the Secretary of State and within the Bylaws), Mr. Schwartz resumed his  
12 financial contributions and solicitation. Moreover, and in reliance upon the school's  
13 representations, Mr. Schwartz devised a specific bequest within his Will to provide additional  
14 financial assistance to the Milton I. Schwartz Hebrew Academy after his death. As such, Mr.  
15 Schwartz justifiably relied upon the school's representations.

16 Notwithstanding the testimony of numerous members of the Board of Trustees that they  
17 undeniably understood "in perpetuity" to mean "forever," the representations made to Mr.  
18 Schwartz were either false as evidenced by the immediate change of the school's name after Mr.  
19 Schwartz's death or in breach of the agreement to maintain the name of the School "in  
20 perpetuity." Indeed, considering the fact that the Board of Trustees breached its prior agreement  
21 made in 1989 after a dispute arose in 1992, the jury could reasonably find that the Board of  
22 Trustees had no intention to honor its representation to Mr. Schwartz made in 1996, but, rather  
23 intended only to induce Mr. Schwartz to resume providing financial assistance to the school for  
24 the rest of his life and then cast his name by the wayside to the highest bidder after Mr. Schwartz  
25 was no longer able to protect his legacy.

26 ///

27 ///

28



B. The Evidence Establishing Fraud in the Inducement is Admissible.

While the School would like to convince this Court that there is no admissible evidence to support the Estate's claim of fraud in the inducement, such contention is without merit. Indeed, the Bylaws, Minutes of the Board of Trustees, and the Certificate of Amendment to the Articles of Incorporation attached hereto as admissible under NRS 51.135. Specifically, NRS 51.135 provides as follows:

"a memorandum, report, record or compilation of data, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, all in the course of regularly conducted activity, as shown by the testimony or affidavit of the custodian or other qualified person, is not inadmissible under the hearsay rule unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness." (Emphasis added).

The Bylaws, Minutes of the Board of Trustees, and the Certificate of Amendment to the Articles of Incorporation are records kept in the Board of Trustees' ordinary course of business. Moreover, the following documents attached hereto have been authenticated, and are, therefore, admissible:

1. Hebrew Academy Minutes of Board of Trustees, dated August 14, 1989, attached as Exhibit 2;<sup>34</sup>
2. Letter to Mr. Schwartz, dated August 14, 1989, attached as Exhibit 3;<sup>35</sup>
3. Certificate of Amendment of the Articles of Incorporation of the Hebrew Academy, a Nevada Non-Profit Corporation, filed August 22, 1990, attached as Exhibit 4;<sup>36</sup>
4. Bylaws of The Milton I. Schwartz Hebrew Academy, fully executed on December 18, 1990, attached as Exhibit 5;<sup>37</sup>
5. Letter to Mr. Schwartz from Dr. Sabbath, dated May 23, 1996, attached as Exhibit 14;

<sup>34</sup> See, Excerpt of Deposition Transcript of Susan Pacheco, a true and correct copy of which is attached hereto as **Exhibit 27**, at p. 33:16 through p. 34:21.

<sup>35</sup> See, Excerpt of Deposition Transcript of Susan Pacheco, a true and correct copy of which is attached hereto as **Exhibit 28**, at p. 14:9 through p. 16:3.

<sup>36</sup> See, Excerpt of Deposition Transcript of Mrs. Lubin, a true and correct copy of which is attached hereto as **Exhibit 29**, at p. 37:3 through p. 40:2.

<sup>37</sup> See, Excerpt of Deposition Transcript Mrs. Lubin, a true and correct copy of which is attached hereto as **Exhibit 30**, at p. 45:15 through p. 47:16

6. Bylaws of the Milton I. Schwartz Hebrew Academy, executed April 13, 1999, attached as Exhibit 17;<sup>38</sup>
7. The Milton I. Schwartz Hebrew Academy Board Meeting Minutes, dated May 13, 2003, attached as Exhibit 19;<sup>39</sup>
8. ~~The~~ The Milton I. Schwartz Hebrew Academy Board Meeting Minutes, dated May 9, 2006, attached as Exhibit 21;<sup>40</sup>
9. The Milton I. Schwartz Hebrew Academy Resolutions of the Board of Trustees, dated December 13, 2007, attached as Exhibit 24;<sup>41</sup> and
10. Letter to Mr. Chaltiel, dated December 13, 2007, attached as Exhibit 25.<sup>42</sup>

The Certificates of Amendment of Articles of Incorporation, filed October 19, 1994; March 21, 1997; and March 21, 1998, respectively are admissible pursuant to NRS 51.155 as they are "records, reports, statements or data compilations, in any form" kept by the Secretary of State. *See*, NRS 51.155(2). Additionally, as a result of Mr. Schwartz's death and unavailability, the Supplemental Affidavit of Milton I. Schwartz is admissible under NRS 51.135(1). In addition to the aforementioned, the Estate will present testimony at trial regarding its claim of fraud in the inducement.

As fully set forth above, the Estate has presented sufficient admissible evidence herein, and will present additional admissible evidence to the jury in support its claim of fraud in the inducement.

C. The Genuine Issues of Disputed Facts Must be Presented to the Jury

Although the School would like this Court to view the individual pieces of evidence before it through a vacuum, "[i]t is a familiar rule of law that intentions generally must be established by circumstantial evidence." Waddell v. White, 56 Ariz. 420, 430, 108 P.2d 565, 570 (Ariz. 1940). Moreover, the Estate will prove at trial that the "entire evidence and the conduct of

<sup>38</sup> This document will be authenticated during trial.

<sup>39</sup> *See*, Excerpt of Deposition Transcript of Irving Steinberg, a true and correct copy of which is attached hereto as **Exhibit 31**, at p. 37:22 through p. 38:1-23

<sup>40</sup> Excerpt of Deposition Transcript of Irving Steinberg, a true and correct copy of which is attached hereto as **Exhibit 32**, at p. 65:16-21.

<sup>41</sup> *See*, Excerpt of Deposition Transcript of Dorit Schwartz, at p. 55:21 through p. 56:10. a true and correct copy of which is attached hereto as **Exhibit 33**.

<sup>42</sup> *See*, Excerpt of Deposition Transcript of Sheldon G. Adelson, a true and correct copy of which is attached hereto as **Exhibit 34**, at p. 78:11-25; *see also*, Excerpt of Deposition Transcript of Paul Schiffman, a true and correct copy of which is attached hereto as **Exhibit 35**, at p. 81:10 through 82:11.

1 the parties all the way through” is “sufficient to justify a jury in believing...that the whole plan of  
2 conduct [by the Board of Trustees] was a preconceived scheme” to induce Mr. Schwartz to  
3 resume his financial contributions and donations, specifically including the specific bequest set  
4 forth in his Will, until the School could remove Mr. Schwartz’s legacy without offering him the  
5 ability to defend the same. *Id.*

6 The testimony, numerous documents, and the conduct of the parties over the years clearly  
7 establishes the existence of a misrepresentation and Mr. Schwartz’s reliance upon the same.  
8 Indeed, the School “may be found liable for misrepresentation even when [the School] did not  
9 make an express misrepresentation, but instead makes a representation which is misleading  
10 because it partially suppresses or conceals the information.” Epperson v. Roloff, 102 Nev. 206,  
11 210-211, 719 P.2d 799, 802 (Nev. 1986).<sup>43</sup>

12 The Estate is entitled to present the issues and evidence to the jury that: (1) the statements  
13 and conduct of the Board of Trustees were calculated to mislead Mr. Schwartz into believing that  
14 the school would remain the Milton I. Schwartz Hebrew Academy in perpetuity in order to induce  
15 Mr. Schwartz to provide financial assistance to the school; (2) that such statements and conduct  
16 were misrepresentations; and (3) Mr. Schwartz relied upon those misrepresentations to his and his  
17 Estate’s detriment.

18 Based upon the School’s misrepresentations and its unilateral breach of the agreement  
19 with Mr. Schwartz, the Estate has been forced into litigation to protect Mr. Schwartz’s legacy,  
20 namely, his namesake in a school that otherwise would not have been possible without Mr.  
21 Schwartz’s donations and contributions.

22 The foregoing facts and evidence clearly establish genuine issues of material fact, which  
23 must be submitted to the jury for adjudication. *See, e.g., Julius Castle Restaurant Inc. v. Payne*,

24  
25 <sup>43</sup> Assuming arguendo that the Board of Trustees did make intentional misrepresentations to Mr. Schwartz  
26 regarding its decision to change the name of the School to “The Milton I. Schwartz Hebrew Academy” in perpetuity,  
27 the School may, nonetheless, be liable for its negligent misrepresentation. “Where the defendant makes false  
28 statements honestly believing that they are true, but without reasonable ground for such belief, he may be liable for  
negligent misrepresentation, a form of deceit.” Bily v. Arthur Young & Co., 3 Cal.4th 370, 407, 834 P.2d 745, 769,  
(Cal. 1992) (*In Bank*). Indeed, should this Court find, based upon the evidence before it, that the misrepresentations  
by the Board of Trustees were negligently made rather than intentionally, this Court may amend the pleadings to  
conform to the evidence. *See*, NRCP 15(b).

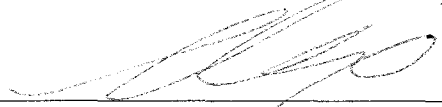
1 216 Cal.App.4th 1423, 157 Cal.Rptr.3d 839 (Cal. Ct. App. 2013) (finding that questions of fact  
 2 regarding fraud in the inducement are properly submitted to the jury to determine if the party  
 3 alleging such fraud reasonably relied upon assurances made to him or her).

4 **V. Conclusion**

5 Based upon the foregoing, the Estate respectfully requests that the School's instant Motion  
 6 be denied in its entirety, and that the Estate be permitted to present the genuine issues of material  
 7 fact to the jury.

8 Dated this 6 day of July, 2018.

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 DWIGGINS & FREER  
 TRUST AND ESTATE ATTORNEYS



# Exhibit 1

# Exhibit 1

SUPPLEMENTAL AFFIDAVIT OF MILTON I. SCHWARTZ

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

MILTON I. SCHWARTZ, being first duly sworn, upon oath, deposes and says:

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

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

3. This Affidavit is submitted in support of Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Declaratory Judgment and Injunctive Relief; Plaintiff's Opposition to Defendant's Countermotion for Sanctions; Plaintiff's Opposition to Defendant's Countermotion to Dismiss or, in the Alternative, for a More Definite Statement; and Plaintiff's Countermotion to Strike Defendant's Opposition.

4. That on or about August of 1989, Affiant donated \$500,000 to the Hebrew Academy in return for which it would guarantee that its name would change in perpetuity to the MILTON I. SCHWARTZ HEBREW ACADEMY. Affiant was first elected Chairman of the Board of Directors in the August 1989 Board of Directors meeting. Affiant was reelected Chairman of the Board of the Milton I. Schwartz Hebrew Academy in June of 1991.

5. That Affiant has been instrumental in bringing large sums of money into the MILTON I SCHWARTZ HEBREW ACADEMY from personal

1 donations and donations of friends and business acquaintances of  
2 Affiant. That as a result of the actions of Tamar Lubin, and the  
3 Defendants, many of the people that donated money will no longer donate  
4 money to the MILTON I. SCHWARTZ HEBREW ACADEMY. As a result, the MILTON  
5 I. SCHWARTZ HEBREW ACADEMY will suffer severe financial problems.

6           6. That as a result of the actions of the Defendant, the  
7 MILTON I. SCHWARTZ HEBREW ACADEMY has suffered and will continue to  
8 suffer irreparable harm. That as a result of the actions of the  
9 Defendant and in particular of Tamar Lubin, there has been a high  
10 turnover of school teachers at the Hebrew Academy. This caused the loss  
11 of highly qualified teachers that had the respect of the parents and  
12 children and has caused and will continue to cause irreparable damage to  
13 the MILTON I. SCHWARTZ HEBREW ACADEMY. In addition, Tamar Lubin has  
14 repeatedly lied to the Board of Directors. She informed the Board of  
15 Directors in May of 1992 that all teachers would be returning in  
16 September to the Academy and she had informed the Board of Directors  
17 that the teachers would receive their contracts. However, neither of  
18 these statements were true at the time she made them. At least two  
19 teachers were terminated immediately subsequent to her reassuring the  
20 Board of Directors that all teachers would return in September of 1992.

21           7. It was the intention of some of the Directors, including  
22 Affiant, to not renew Tamar Lubin's contract that is up for renewal on  
23 June 3, 1993. This decision was the result of numerous complaints that  
24 were received by the Directors concerning the actions of Tamar Lubin.  
25 One graphic example is that one student became nervous and upset and  
26 vomited. Tamar Lubin required that student to sit in his vomit and not  
27 move. This type of abuse should not occur today. A letter concerning  
28 that incident was given to Affiant and is attached as Exhibit "10" to

1 this Motion. In addition, other letters and complaints concerning Ms.  
2 Tamar Lubin are attached to this Motion as Exhibit "11" and were the  
3 basis of the Board's concerns with renewing the contract.

4 8. That Affiant believes that the Defendant is in the  
5 process of negotiating a long term contract with Tamar Lubin to be the  
6 Administrator of the MILTON I. SCHWARTZ HEBREW ACADEMY and that this  
7 action will cause irreparable harm to the MILTON I. SCHWARTZ HEBREW  
8 ACADEMY.

9 9. That Defendant's rely on the fact that there had been  
10 approximately ten more students enrolled in the Academy to demonstrate  
11 that they have not harmed the Academy. However, three (3) of the  
12 private schools in the Las Vegas area that compete with the Academy,  
13 Temple Beth Sholom, Las Vegas Day School and the Meadows are operating  
14 at near capacity and have a waiting list to get in and the Hebrew  
15 Academy is only operating at approximately 40% of its capacity. That as  
16 a result of the actions of Tamar Lubin, many parents have removed their  
17 children from the MILTON I. SCHWARTZ HEBREW ACADEMY to enroll them in  
18 either the Meadows, Temple Beth Sholom, the Las Vegas Day School, or to  
19 place them in public school. As a result, the MILTON I. SCHWARTZ HEBREW  
20 ACADEMY is suffering irreparable harm as long as Tamar Lubin remains  
21 employed. Attached to this Motion as Exhibit "1" are true and correct  
22 copies of petitions from parents that have either removed their children  
23 or are considering removing their children from the MILTON I. SCHWARTZ  
24 HEBREW ACADEMY as a result of the actions of Tamar Lubin. Two of the  
25 former directors of the Hebrew Academy, Sam Ventura and Dr. Neville  
26 Pokroy, have informed Affiant that at least fifty (50) students that  
27 were removed from the school are waiting to return to the MILTON I.  
28 SCHWARTZ HEBREW ACADEMY as soon as Tamar Lubin leaves.



1           10. That the minutes of the May 21st meeting, that are  
2 attached as Exhibit "B" to the Defendant's Opposition To Plaintiff's  
3 Motion For Declaratory Judgment And Injunctive Relief And Countermotion  
4 For Sanctions; Countermotion To Dismiss Or, In The Alternative, For A  
5 More Definite Statement are not a true and correct copy of the minutes  
6 of the meeting that occurred on May 21, 1992.

7           11. That at the May 21, 1992 meeting of the Board of  
8 Directors, it was determined that a conflict existed between the Bylaws  
9 which mandated the time required for the nominating committee to give  
10 its report and the time that elections could occur after that report was  
11 given. That as a result, it was resolved at the May 21st meeting that  
12 the only way elections could occur in the June meetings was that new  
13 Bylaws would be approved at the beginning of the June meeting and a  
14 provision in the new Bylaws would delete the time period which must  
15 occur between the report of the nominating committee and the election.  
16 Once the new Bylaws were approved, the elections could be held during  
17 the June meetings. Otherwise, elections could not be held until the  
18 July meeting.

19           12. That on or about June 10, 1992, Affiant was notified by  
20 Dr. Edward Goldman that the nominating committee had decided that due to  
21 the conflict in the Bylaws and the discussion that occurred at the May  
22 21, 1992 Board meeting, that the elections should be put off until the  
23 July Board meeting. That as a result of this conversation, Affiant  
24 drafted the letter dated June 11, 1992. Affiant sent that letter to  
25 each of the board members of the MILTON I. SCHWARTZ HEBREW ACADEMY  
26 indicating to them that the elections would not occur at the June  
27 meeting.

28           13. That during the June 18, 1992 meeting of the Board of

1 Directors, the Directors did not vote on the Bylaws. That at the June  
2 meeting, Affiant strenuously objected to the fact that elections were  
3 going on.

4 14. That Affiant was specifically requested by Lenard  
5 Schwartz, a member of the Defendant, the Second Board of Directors, to  
6 not file this suit until after the fundraisers and Jewish holidays  
7 occurred. In addition, Affiant attempted to arrange a meeting with  
8 members of the Defendant, the Second Board of Directors, to resolve this  
9 dispute. However, the meeting never took place because Tamar Lubin was  
10 acting in bad faith and refused to allow the meeting to occur.

11 15. That on May 21, 1992, the Board of Directors of the  
12 MILTON I. SCHWARTZ HEBREW ACADEMY consisted of Milton I. Schwartz,  
13 Michael Novick, Dan Goldfarb, Cynthia Michaels, Frederick Berkley, Dr.  
14 Edward Goldman, Scott Higginson, Dr. Tamar Lubin, Lenard Schwartz,  
15 Robert Rikita, Ira Sternberg, Geri Rentchler, Don Schlesinger, and Dr.  
16 Richard Ellis. In addition, that Roberta Sabbath and Dr. Neville Pokroy  
17 were Honorary Members of the Board of Directors. Honorary Members can  
18 advise the Board of Directors but they cannot vote.

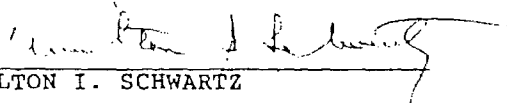
19 16. That on July 16, 1992, Affiant called a meeting of the  
20 Board of Directors at Affiant's home because Affiant was not allowed on  
21 the premises of the MILTON I. SCHWARTZ HEBREW ACADEMY. That at that  
22 meeting the Board of Directors first voted for new Bylaws which removed  
23 the requirement that the Board wait thirty (30) days after receiving the  
24 Nominating Committee's report to hold an election.

25 17. That as of November 5, 1992, the Plaintiff's Board of  
26 Directors consisted of: Milton I. Schwartz, Mike Novick, Abigail  
27 Richlin, Frederick Berkley, Dr. Edward Goldman, Phyllis Darling, Sam  
28 Ventura, Dr. Alvin Blumberg, Roger Soime, Wendy Roselinsky, Ira


1 Sternberg, Bob Rakita, Dr. Richard Ellis, Scott Higginson and Dr. Tamar  
 2 Lubin. However, Ira Sternberg, Bob Rakita, Dr. Richard Ellis, Scott  
 3 Higginson and Dr. Tamar Lubin have not acknowledged the past three (3)  
 4 Board notices Affiant sent out, nor did they attend the July, August or  
 5 November Board meetings, nor did they return telephone calls.

6 18. That Affiant was informed by Dr. Edward Goldman, the  
 7 Assistant Superintendent, Administrative Operations and Staff Relations  
 8 of the Clark County School District, and a member of the Board of  
 9 Directors, that there is an inadequate degree of critical skills  
 10 teaching in the upper classes. In addition, Affiant was told that if  
 11 this is not corrected the education of the students who attend the  
 12 MILTON I. SCHWARTZ HEBREW ACADEMY will suffer irreparable harm.

13 FURTHER AFFIANT SAYETH NAUGHT.

14   
 15 MILTON I. SCHWARTZ

16 SUBSCRIBED AND SWORN to before  
 17 me this 12 day of February, 1993

18   
 19 NOTARY PUBLIC



22 DIANNE SANDERS  
 23 Notary Public, Nevada  
 24 My exp. date Mar. 21, 1993

25  
 26  
 27  
 28  
 LAW OFFICE OF DANIEL MARKS  
 302 East Carson, Suite 702  
 Las Vegas, Nevada 89101 (702) 386-0536

# Exhibit 2

# Exhibit 2

MAR-04-2010 12:21

SCHWARTZ OFFICE

7023878770 P.02/04

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

## Present:

Elliott Klain  
Gerri Rentchler  
Neville Pokroy  
Fred Berkley  
George Rudiak  
Tamar-Lubin  
Milton Schwartz  
Roberta Sabbath  
Susan McGarraugh

388-61FT (10AM)

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

The minutes were approved as read.

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

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

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

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

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

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

*Susan McGarraugh*  
Susan McGarraugh  
Acting Secretary

EST-00075

# Exhibit 3

001696

001696

# Exhibit 3

August 14, 1989

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

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

Dear Mr. Schwartz:

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

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

Sincerely yours,

EST-00077

# Exhibit 4

# Exhibit 4



## STATE OF NEVADA

**ROSS MILLER**  
Secretary of State

**SCOTT W. ANDERSON**  
Deputy Secretary  
for Commercial Recordings



## Commercial Recordings Division

202 N. Carson Street  
Carson City, NV 89701-4069  
Telephone (775) 684-5708  
Fax (775) 684-7138

OFFICE OF THE  
SECRETARY OF STATE

LIONEL, SAWYER &amp; COLLINS

Job: C20130412-0697  
April 12, 2013

## Special Handling Instructions:

C20130412-0697

DR. MIRIAM AND SHELDON G. ADELSON EDUCATIONAL INSTITUTE

SENT: ARTICLES/AMENDMENTS/LIST 2007 FORWARD/CERTIFIED

EMAILED RMICHEL@LIONELSAWYER.COM 4/12/13 FAB

## Charges

Description	Document Number	Filing Date/Time	Qty	Price	Amount
Entity Copies	00003876091-74		30	\$2.00	\$60.00
Copies - Certification of Document	00003876091-74		1	\$30.00	\$30.00
24-HR Copy Expedite	00003876091-74		1	\$125.00	\$125.00
Total					\$215.00

## Payments

Type	Description	Amount
Billed	750046	\$215.00
Total		\$215.00

Credit Balance: \$0.00

## Job Contents:

NV Corp Certified Copy Request Cover 1  
Letter(s):

LIONEL, SAWYER &amp; COLLINS

## STATE OF NEVADA

**ROSS MILLER**  
Secretary of State



**SCOTT W. ANDERSON**  
Deputy Secretary  
for Commercial Recordings

OFFICE OF THE  
SECRETARY OF STATE

## Certified Copy

April 12, 2013

**Job Number:** C20130412-0697  
**Reference Number:** 00003876091-74  
**Expedite:**  
**Through Date:**

The undersigned filing officer hereby certifies that the attached copies are true and exact copies of all requested statements and related subsequent documentation filed with the Secretary of State's Office, Commercial Recordings Division listed on the attached report.

Document Number(s)	Description	Number of Pages
C1073-1980-001	Articles of Incorporation	6 Pages/1 Copies
C1073-1980-003	Amendment	4 Pages/1 Copies
C1073-1980-005	Amendment	3 Pages/1 Copies
C1073-1980-007	Amendment	1 Pages/1 Copies
C1073-1980-008	Amendment	1 Pages/1 Copies
C1073-1980-010	Amendment	1 Pages/1 Copies
C1073-1980-012	Amendment	1 Pages/1 Copies
20070003515-43	Annual List	1 Pages/1 Copies
20080084895-54	Annual List	1 Pages/1 Copies
20080195694-74	Amendment	2 Pages/1 Copies
20080586063-38	Amended List	1 Pages/1 Copies
20090255488-73	Annual List	1 Pages/1 Copies
20100102296-53	Annual List	1 Pages/1 Copies
20110048708-01	Annual List	2 Pages/1 Copies
20120024437-45	Annual List	2 Pages/1 Copies
20120851508-32	Annual List	2 Pages/1 Copies

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**FILED**  
 OFFICE OF THE  
 SECRETARY OF STATE OF THE  
 STATE OF NEVADA

**AUG 28 1980**

ANDRE SUE DIA PAPA SECRETARY OF STATE

1073-80

FILING FEE: \$10.00 DE C002/0  
 GARG & BERKLEY/FREDERIC I. BERKLEY  
 415 SO. SIXTH ST., STE. 101  
 LAS VEGAS, NV 89101

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

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

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

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

**ARTICLE I**

This corporation shall be known as:

**THE MILTON I. SCHWARTZ HEBREW ACADEMY**

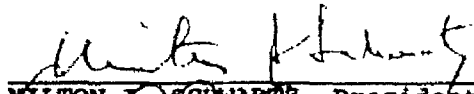

IN WITNESS WHEREOF, the undersigned, the President and Secretary of the Board of Trustees of THE HEBREW ACADEMY, a

///

///

///

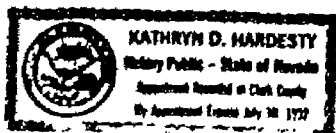
Nevada non-profit corporation, have executed and acknowledged these presents this 14<sup>th</sup> day of August, 1990.

  
 MILTON I. SCHWARTZ, President  
  
 LENARD E. SCHWARTZER, Secretary

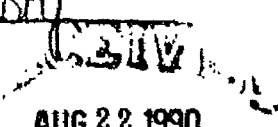
STATE OF NEVADA       )  
                                   SS:  
 COUNTY OF CLARK       )

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

WITNESS MY HAND AND OFFICIAL SEAL.



  
 NOTARY PUBLIC

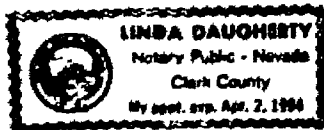
  
 AUG 22 1990

STATE OF NEVADA       )  
                              ss:  
COUNTY OF CLARK       )

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

WITNESS MY HAND AND OFFICIAL SEAL.

*Linda Daugherty*  
NOTARY PUBLIC



# Exhibit 5

001704

001704

# Exhibit 5

1990

## BYLAWS OF

THE MILTON I. SCHWARTZ HEBREW ACADEMY

## ARTICLE I

NAME AND OFFICE

1. Name: The name of this corporation is The Milton I. Schwartz Hebrew Academy (hereinafter referred to as The Academy) and shall remain so in perpetuity.
2. Office: The principal office of the corporation shall be at 9700 W. Hillpointe Road, Las Vegas, Nevada.

## ARTICLE II

TRUSTEES

1. The governing board of the corporation shall be known as the Board of Trustees and the membership of the Board of Trustees shall constitute the corporation.
2. The Board of Trustees shall be composed of fourteen members elected by the Board of Trustees and the school head.
3. In the event the parents of the students of The Academy form a parent-teacher organization with dues paying members representing at least fifty percent of the student body, which holds regular meetings, such organization shall be entitled to one representative to the Board of Trustees at the discretion of the Board of Trustees and, dependent upon the activity level and services rendered to The Academy by the parent-teacher organization.
4. In the event of a vacancy during the term of a trustee, the Board of Trustees shall appoint, after due consultation with the nominating committee, a person to fill the unexpired term.

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

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

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

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

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



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

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

#### ARTICLE III

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

#### ARTICLE IV

##### COMMITTEES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### ARTICLE V

##### DESCRIPTION AND DUTIES OF OFFICERS OF THE BOARD

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

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

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

#### ARTICLE VI

##### MEETINGS OF THE BOARD OF TRUSTEES

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

#### ARTICLE VII

##### ELECTIONS

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

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

#### ARTICLE VIII

##### AMENDMENTS

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

#### ARTICLE IX

##### RULES

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

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

KNOW ALL MEN BY THESE PRESENT:

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

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

Amber H. H. H.  
Edith H. H.  
Shirley H. H.  
Robert S. H. H.  
Keri H. H.  
Willa H. H.  
Clott H. H.  
Sam H. H.  
Richard H. H.  
Georg H. H.  
Tanner H. H. H.

# Exhibit 6

001714

001714

# Exhibit 6



**Deposition of:**

Neville Pokroy, M.D.

**Case:**

In the Matter of the Estate of Milton I. Schwartz  
P061300

**Date:**

02/25/2014



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1 present at this meeting and that this line of  
2 questioning is relevant as to ascertaining what Milton  
3 I. Schwartz's knowledge and understanding was  
4 concerning the naming of the school at or about the  
5 time he executed the same, and this line of questioning  
6 establishes a historical baseline for what Mr. Schwartz  
7 understood.

8 MR. COUVILLIER: I think the Court was clear  
9 on it, and I'm not going to get into a debate with  
10 Mr. Freer. But I do object to it, and I hope we don't  
11 spend a lot of line of questioning on the historical  
12 aspects, Alan, just, you know, to stick with the will  
13 that happened in 2005 and Mr. Schwartz's intentions at  
14 the time that he executed the will, which I think is  
15 what the Court is looking for.

16 BY MR. FREER:

17 Q. That being said, Mr. Pokroy, at the meeting,  
18 was there any discussion about naming the Hebrew  
19 Academy after Milton I. Schwartz?

20 A. My recollection, that there was a discussion  
21 at that particular moment in time, I don't remember  
22 details. But certainly the discussion took place, and  
23 indeed, we followed it up by naming the school after  
24 Milton I. Schwartz.

25 Q. Do you recall having any discussions with

1 Milton at or about that time that the school was going  
2 to be named after him?

3 A. Yes.

4 Q. And what is your recollection of those  
5 discussions?

6 A. We had a hand in soliciting Mr. Schwartz to  
7 help us, because we were given an eviction notice from  
8 our previous housing at Beth Sholom. I think they gave  
9 us about a year because they needed the space, so we  
10 had to find another location. We needed funds. The  
11 land in Summerlin had been negotiated by the principal  
12 and others, and so we were looking for financial help.  
13 And my wife and I spoke to Milton to encourage him to  
14 be involved, and he said yes.

15 Q. Did Milton ask at that -- did Milton ask about  
16 naming the school after him?

17 A. When we solicited him, no, but it clearly was  
18 discussed at subsequent meetings, and his name was on  
19 the school thereafter.

20 MR. FREER: We'll mark that as Exhibit No. 3.

21 (Exhibit No. 3 was marked for  
22 identification.)

23 BY MR. FREER:

24 Q. Now, before we move to Exhibit No. 3, I'm  
25 going to draw your attention down to the third

# Exhibit 7

001718

001718

# Exhibit 7

**Deposition of:**

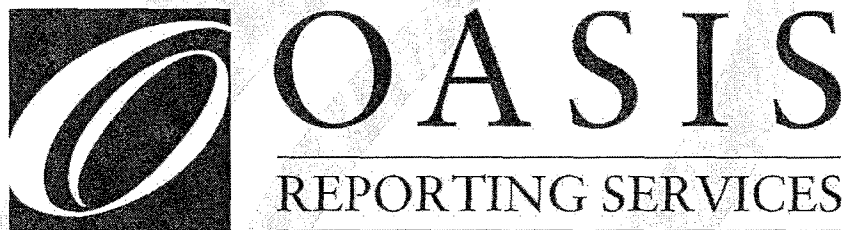
Neville Pokroy, M.D.

**Case:**

In the Matter of the Estate of Milton I. Schwartz  
P061300

**Date:**

02/25/2014



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1 paragraph, second sentence on Exhibit No. 2. It states  
2 a letter should be written to Milton Schwartz stating  
3 that the academy will be named after him. Do you  
4 recall whether or not that occurred?

5 MR. COUVILLIER: Objection. Relevance, and it  
6 violates the Court's November 11th order, and from here  
7 on out, we'll just refer to the order, Court's order.

8 THE WITNESS: I have no recollection of having  
9 seen this particular letter.

10 BY MR. FREER:

11 Q. Okay. Do you recall -- strike that. Are you  
12 aware of Milt ever understanding that the Hebrew  
13 Academy would be named after him; namely, the Milton I.  
14 Schwartz Hebrew Academy, in perpetuity?

15 MR. COUVILLIER: Same objection. Relevance,  
16 and it violates the Court's order.

17 BY MR. FREER:

18 Q. If you want, I can have her --

19 A. I've got --

20 Q. -- read the question back.

21 A. I've got the question.

22 Q. Okay.

23 A. Should I respond?

24 Q. Yes, please. You can respond.

25 A. I do not recall those specific words. My

1 understanding that when he gave the donation -- and  
2 this is conjecture -- is that it was implicit in his  
3 donation.

4 Q. And you said "it," what was "it"?

5 A. That the naming was implicit, that it would  
6 remain there.

7 Q. Okay. Did you have any discussions with  
8 Milton about the permanency of the name?

9 A. No.

10 MR. COUVILLIER: And, Alan, if I could just  
11 interpose.

12 When you said his donation, which donation  
13 were you talking about Dr. Pokroy?

14 THE WITNESS: His initial donation to allow  
15 the school to go forward.

16 MR. COUVILLIER: Thank you, sir.

17 THE WITNESS: Which also brought him to be  
18 Chairman of the Board.

19 BY MR. FREER:

20 Q. When did Milton become Chairman of the Board?

21 A. Soon after he agreed to proceed with the  
22 financial contribution.

23 Q. And what was the amount --

24 A. To my recollection.

25 Q. What was the amount of that financial

# Exhibit 8

# Exhibit 8



**Deposition of:**

Lenard E. Schwartzer, Esq.

**Case:**

In the Matter of the Estate of Milton I. Schwartz  
P061300

**Date:**

02/25/2014



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1 a letter that was written that said I was -- by me that  
2 said I was no longer on the board in '92.

3 Q. Okay. All right. Do you recall being on the  
4 board at or about the time the Hebrew Academy switched  
5 its name to the Milton I. Schwartz Hebrew Academy?

6 A. Yes.

7 Q. What do you recall with respect to the name  
8 change?

9 A. I don't have any specific recollection of a  
10 board meeting where that was done. I do have a  
11 specific recollection that the name of the school was  
12 changed to the Milton I. Schwartz Hebrew Academy at the  
13 time the school was moving to the new location on  
14 Hillpointe because Mr. Schwartz donated a very large  
15 sum and arranged for the balance of the financing for  
16 the construction of the new school building.

17 And it was -- was then and today -- my  
18 understanding that the school would be named the Milton  
19 I. Schwartz Hebrew Academy in perpetuity in light of  
20 that financial donation and his -- you know, I got the  
21 impression he guaranteed the loans with the bank.

22 Q. Okay. You used the phrase "in perpetuity."  
23 What is your understanding as to why that term "in  
24 perpetuity" came about?

25 A. Well, it came about because in the discussions

# Exhibit 9

# Exhibit 9

**Deposition of:**

Lenard E. Schwartzer, Esq.

**Case:**

In the Matter of the Estate of Milton I. Schwartz  
P061300

**Date:**

02/25/2014



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1 And, therefore, asking about documents and  
2 bylaws that occurred decades before the will was  
3 executed are not relevant to the question or to the  
4 issue and violate the scope of the Court's order and,  
5 therefore, improper.

6 MR. FREER: And I will incorporate by  
7 reference my response raised in the prior deposition of  
8 Neville Pokroy, but summarized as essentially our  
9 position is, it is relevant to ascertaining the  
10 decedent's understanding and mindset at the time he  
11 executed the will in 2004.

12 MR. COUVILLIER: Well, we believe that his  
13 mindset is reflected on the actual words of the will.

14 MR. FREER: That being said, I will have the  
15 reporter read the question back to you again --

16 THE WITNESS: Okay.

17 MR. FREER: -- and then you can answer.

18 (Record read.)

19 THE WITNESS: Yes, it does comport with my  
20 recollection concerning the naming of the school and,  
21 particularly, that it shall remain so in perpetuity.

22 BY MR. FREER:

23 Q. Okay.

24 Do you have any knowledge or understanding as  
25 to what the term "in perpetuity" may have meant to

1 Milton I. Schwartz in connection with the naming of the  
2 school?

3 MR. COUVILLIER: Same objection as to  
4 relevance and violation of the Court's order.

5 THE WITNESS: My recollection is that all the  
6 parties at the time understood that in perpetuity meant  
7 forever. I mean, it's not a difficult English word or  
8 unusual English word. It's not a legal -- legalism or  
9 anything. It meant what its common English meaning is.  
10 It's forever. I guess lawyers use it because they all  
11 had to learn the rule against perpetuities in law  
12 school or something like that.

13 BY MR. FREER:

14 Q. I always thought lawyers used in perpetuity  
15 because they could charge more by the word. Let the  
16 record reflect that was a joke.

17 MR. FREER: Hand that to the court reporter,  
18 please. Is this No. 7?

19 (Exhibit No. 7 was marked for  
20 identification.)

21 BY MR. FREER:

22 Q. Mr. Schwartzer, I'm handing you what's been  
23 marked as Exhibit No. 7. It's a letter that purports  
24 to be from you to Milton I. Schwartz dated July 17,  
25 1992. Do you recall this document?

# Exhibit 10

# Exhibit 10

**Deposition of:**

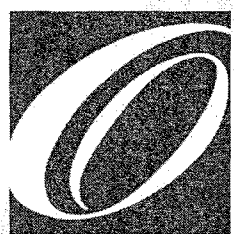
Roberta Sabbath, Ph.D.

**Case:**

In the Matter of the Estate of Milton I. Schwartz  
P061300

**Date:**

03/05/2014



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1 for?

2 MR. COUVILLIER: Same objection.

3 BY MR. LUSZECK:

4 Q. And by the name change, I mean from the Hebrew  
5 Academy to the Milton I. Schwartz Hebrew Academy?

6 MR. COUVILLIER: Same objection.

7 THE WITNESS: When you say "supposed to," what  
8 does "supposed to" mean?

9 BY MR. LUSZECK:

10 Q. Was it your understanding that it was going to  
11 be in perpetuity? Was it your understanding that the  
12 name change was supposed to be for a temporary period  
13 of time?

14 MR. COUVILLIER: Same objection. Leading the  
15 witness.

16 MR. KRAMETBAUER: You can answer.

17 THE WITNESS: My understanding was that it was  
18 for in perpetuity.

19 BY MR. LUSZECK:

20 Q. Do you recall any specific conversations  
21 during the board meeting or with any other members of  
22 the board of trustee around this time, August 14th,  
23 1989, regarding that topic?

24 MR. COUVILLIER: Same objection.

25 MR. KRAMETBAUER: You can answer the question.

# Exhibit 11

001732

001732

# Exhibit 11

**Deposition of:**

Tamar Lubin Saposhnik, Ph.D.

Volume I, Pages 1 - 93

**Case:**

In the Matter of the Estate of Milton I. Schwartz  
07P061300

**Date:**

06/09/2016



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1 A. Yes.

2 Q. Okay. Do you recall if that was in 1989?

3 A. Yes.

4 Q. Okay.

5 A. Yeah.

6 Q. Do you recall --

7 A. I think we have stuff, galas -- I'm sure there's  
8 even pictures. Anyway, there's lots of stuff here.

9 Q. Okay. Do you recall describing Mr. Schwartz as an  
10 example of the fulfillment of the American dream?

11 A. Yes.

12 Q. Okay.

13 A. Yeah. I spoke to him, you know, personally one on  
14 one and I explained to him what the meaning of that would be  
15 for the Jewish people, for him as a leader.

16 Q. Okay. Do you recall the school changing its name  
17 from The Hebrew Academy to the Milton I. Schwartz Hebrew  
18 Academy?

19 A. Yes.

20 Q. Can you tell me how that came about?

21 A. Well, I spoke with Milton at the time and I said it  
22 would be a great idea if we get the funding, that we would  
23 change the name from The Hebrew Academy to the  
24 Milton I. Schwartz Hebrew Academy.

25 Q. Okay. Did you have an understanding with respect to

1 that name change being a perpetual name change?

2 A. Oh, yes. In perpetuity. I believe he mentioned  
3 that word.

4 Q. What's your understanding of what that term means?

5 A. My understanding?

6 Q. Yes.

7 A. From here to kingdom come.

8 Q. Okay. And do you recall if that was all the board's  
9 understanding when that name change was made?

10 A. Yes.

11 MR. KEMP: Form. Foundation.

12 BY MR. LeVEQUE:

13 Q. You can answer the question.

14 A. Yes. I -- I recall that. It was understood by  
15 myself and the board members that the name would be there in  
16 perpetuity.

17 Q. Okay. Counsel lodged a foundation objection, so I'm  
18 going to try parsing this out a little bit.

19 A. Okay.

20 Q. Do you recall having a board meeting -- board  
21 meeting or board meetings where the name change was discussed?

22 A. Do I remember specifically, but knowing myself, I'm  
23 sure there were. I wouldn't ever do anything on my own.

24 Q. Okay.

25 MR. LeVEQUE: Four, please.

# Exhibit 12

# Exhibit 12

## STATE OF NEVADA

**ROSS MILLER**  
Secretary of State

**SCOTT W. ANDERSON**  
Deputy Secretary  
for Commercial Recordings

OFFICE OF THE  
SECRETARY OF STATE

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Job: C20130412-0697

April 12, 2013

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**SCOTT W. ANDERSON**  
Deputy Secretary  
for Commercial Recordings

OFFICE OF THE  
SECRETARY OF STATE

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Through Date:

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Document Number(s)	Description	Number of Pages
C1073-1980-001	Articles of Incorporation	6 Pages/1 Copies
C1073-1980-003	Amendment	4 Pages/1 Copies
C1073-1980-005	Amendment	3 Pages/1 Copies
C1073-1980-007	Amendment	1 Pages/1 Copies
C1073-1980-008	Amendment	1 Pages/1 Copies
C1073-1980-010	Amendment	1 Pages/1 Copies
C1073-1980-012	Amendment	1 Pages/1 Copies
20070003515-43	Annual List	1 Pages/1 Copies
20080084895-54	Annual List	1 Pages/1 Copies
20080195694-74	Amendment	2 Pages/1 Copies
20080586063-38	Amended List	1 Pages/1 Copies
20090255488-73	Annual List	1 Pages/1 Copies
20100102296-53	Annual List	1 Pages/1 Copies
20110048708-01	Annual List	2 Pages/1 Copies
20120024437-45	Annual List	2 Pages/1 Copies
20120851508-32	Annual List	2 Pages/1 Copies

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Respectfully,

A handwritten signature in black ink, appearing to read "Ross Miller".

ROSS MILLER  
Secretary of State

Certified By: F Lincoln  
Certificate Number: C20130412-0697  
You may verify this certificate  
online at <http://www.nvsos.gov/>

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STATE OF NEVADA

Filing Fee \$25.00 C32919

**CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION**  
(after organizational meeting)

**OCT 19 1994**

1073-80

DMITRY A. LAU SECRETARY OF STATE

The Milton I. Schwartz Hebrew Academy

Name of Corporation

No

We the undersigned Ira David Sternberg and  
President or Vice President (or Chairman)

Robert Rakita of The Milton I. Schwartz Hebrew Academy  
Secretary or Assistant Secretary Name of Corporation

do hereby certify:

That the Board of Directors of said corporation at a meeting duly convened, held on the 25th  
day of August, 1994, adopted a resolution to amend the original articles as follows:

Article I is hereby amended to read as follows:

This corporation shall be known as:

THE HEBREW ACADEMY

**RECEIVED**

**SEP 20 1994**

Secretary of State

[Signature]  
President or Vice President (or Chairman)  
[Signature]  
Secretary or Assistant Secretary

State of NEVADA )  
County of Clark ) ss.

On September 13th 1994, personally appeared before me, a Notary Public,  
IRA D. Sternberg and Robert Rakita, who acknowledged  
Names of Persons Appearing and Signing Document  
that they executed the above instrument.



TERRY BOTHMANN  
Notary Public - Nevada  
(NOTARY STAMP OR SEAL)  
Clark County  
My appt. exp. Mar. 25, 1998

Terry Bothmann  
Signature of Notary

# Exhibit 13

# Exhibit 13

## Exhibit U

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

EST-00266

OBJ Ex. Page 48 of 55

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

EST-00266

OBJ Ex. Page 49 of 55

# Exhibit 14

001744

001744

# Exhibit 14

# THE HEBREW ACADEMY

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



Dr. Roberta Sabbath  
School Head

May 23, 1996

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

Dear Milton:

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

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



Accreditation: Northwest Association of Schools and Colleges



License: State of Nevada Department of Education



Member: National Association of Independent Schools

11/11/99-1996 11:18

1 702 2557232

P.02

EST-00011

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


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

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

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

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

Very truly yours,



Dr. Roberta Sabbath  
School Head

MAY-29-1996 11:18

1 782 2337232

P. 00

EST-00012



# Exhibit 15

# Exhibit 15

**Deposition of:**

Roberta Sabbath, Ph.D.

**Case:**

In the Matter of the Estate of Milton I. Schwartz  
P061300

**Date:**

03/05/2014



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1 was, perhaps, Gertrude Rudiak might have been the  
2 fifth, I would -- she would have been the fifth, if I  
3 recall correctly.

4 BY MR. LUSZECK:

5 Q. Okay. What was the purpose of providing this  
6 letter to Milton?

7 MR. COUVILLIER: Same objection.

8 MR. KRAMETBAUER: If you remember.

9 THE WITNESS: I could only logically conclude  
10 from the intent that it was to reassure him of the name  
11 reversion back to his name, and the hopes is it  
12 references his continuing involvement and goodwill, and  
13 that seems to be the intent the letter.

14 BY MR. LUSZECK:

15 Q. Okay.

16 A. We did everything we could at that time to  
17 rebuild the bridges that we felt had been broken and to  
18 retain in the stability of the school and to guarantee  
19 its future growth.

20 Q. Were bridges between the school and Milton  
21 broken at that time?

22 A. I do not recall that. What we did do, as I  
23 said, was every possible way we could think of to  
24 stabilize, to help the school grow, we would reach out.

25 Q. Okay.

# Exhibit 16

001750

001750

# Exhibit 16