

Case No. 78341

**In the Supreme Court of Nevada**

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

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

Appellant,

*vs.*

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

Respondent.

Electronically Filed  
Jan 29 2020 04:38 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

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

**APPELLANT'S APPENDIX**

**VOLUME 9**

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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. Evidence of Contract Formation

“[T]he question of whether a contract exists is one of fact[.]”<sup>42</sup> “Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration.”<sup>43</sup> A contract can be formed when the parties have agreed to the material terms, even though the contract’s exact language is not finalized until later.<sup>44</sup>

An abundance of admissible evidence has been produced and discovered in this proceeding supporting the Executor’s claim that the late Milton I. Schwartz and the School entered into an agreement for perpetual naming rights. In fact, the School has zero competent and admissible to evidence to refute this.

The Schwartz naming rights agreement was formed in 1989. Mr. Schwartz himself testified in an affidavit before his death that he donated \$500,000 (not \$1 million) to the School “for which it would guarantee that its name would change in perpetuity to the MILTON I. SCHWARTZ HEBREW ACADEMY.” See Statement of Disputed Facts, at ¶ 1, *supra*. The School’s internal records show that Mr. Schwartz did, in fact, pay 100% of his pledge. *Id.* at ¶ 4.

Agents of the School with authority to bind the School have admitted to the existence of the naming rights agreement. Dr. Lubin, the school’s Headmaster from approximately 1979 to 1994, has testified that Mr. Schwartz “made a large gift to the school [and that] the school has borne his name since 1989... in consideration of that grant.” *Id.* at ¶ 6. Dr. Lubin further testified that she “personally solicited Mr. Schwartz’s donation to the [School], the very donation resulting in the [S]chool being named for him. *Id.* at ¶ 7. Dr. Lubin further testified the School’s amendment to its Bylaws was consistent with her understanding that Mr. Schwartz received perpetual naming rights to the School. *Id.* at ¶ 8.

The School’s former Headmaster is the not the only agent of the School who has admitted under oath of the formation and existence of the Schwartz Naming Rights Agreement. Leonard Schwarzer, Esq. was a member of the School’s board when Mr. Schwartz and the School entered

<sup>42</sup> *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005)

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*



1 in to the naming rights agreement. *Id.* at ¶ 9. Mr. Schwartz has testified that he has a specific  
 2 recollection that the name of the School was changed to the Milton I. Schwartz Hebrew Academy  
 3 in perpetuity for the donation. *Id.*

4 The School's former Executive Director, Roberta Sabbath, who participated in the  
 5 negotiation with Mr. Schwartz when she was on the School's board, has also testified that she  
 6 physically received the check from Mr. Schwartz and that the money was to "name the building  
 7 after him in perpetuity, and he was very specific about that." *Id.*

## 8 **2. Evidence of Breach**

9 In December 2007, the School resolved changed its legal name from The Milton I.  
 10 Schwartz Hebrew Academy to The Dr. Miriam and Sheldon G. Adelson Educational Institute.  
 11 See Statement of Disputed Facts, at ¶ 18. On March 21, 2008, the School did, in fact, change its  
 12 legal name. *Id.* The School does not dispute this. In addition to changing its legal name, the  
 13 School also renamed grades 5-8 the Adelson Middle School *Id.* Then, in 2013, the School  
 14 renamed grades K-4 (which it had kept as the Milton I. Schwartz Hebrew Academy per its own  
 15 resolution) to the Adelson Lower School. *Id.*, at ¶ 20. There is, therefore, no genuine dispute that  
 16 the School materially breached the Schwartz Naming Rights Agreement.

## 17 **3. Damages**

18 The Estate is damaged as it no longer has the benefit of its bargain with the School. The  
 19 Estate submits that the appropriate remedy for the breach is specific performance of the  
 20 agreement. Under Nevada law, however, the Court does not address this remedy until after the  
 21 jury has made a finding of breach. The Estate also submits that Mr. Schwartz made substantial  
 22 gifts of money to the School between 1989 and 2007 which were made in reliance on the naming  
 23 rights agreement. Principal alone, Mr. Schwartz gave the School \$555,903.75 in reliance on that  
 24 agreement. See Statement of Disputed Facts, at ¶ 22.

## 25 **4. The School's \$1 million red herring.**

26 The School claims that summary judgment must be granted because there is conflicting  
 27 testimony concerning the amount of money pledged by Mr. Schwartz. All they have managed to  
 28

1 do is raise disputes of fact which support the Estate's position that summary judgement should be  
2 denied.

3 Before he died, Mr. Schwartz testified that he "solicited contributions from Paul Sogg and  
4 Robert Cohen and [t]hat as a result of [his] efforts, Paul Sogg pledged to donate \$300,000 and ...  
5 Robert Cohen pledged to donate \$100,000." See Statement of Disputed Facts, at ¶ 5. Mr.  
6 Schwartz further testified that both his \$500,000 and the Sogg/Cohen donations were conditions  
7 precedent to the donation of the School's land from Summerlin. *Id.* Mr. Schwartz never testified  
8 that his naming rights were conditioned upon obtaining another \$500,000 from other donors. Mr.  
9 Schwartz also did not say this in his interview with Dr. Adelson that he pledged \$1 million. In  
10 fact, he said quite the opposite. Mr. Schwartz said that Dr. Lubin requested \$1 million from him  
11 but that he could not afford making a \$1 million gift.<sup>45</sup> He therefore decided to give Dr. Lubin  
12 \$500,000. *Id.*

13 The School also conveniently ignores the fact that the best evidence of amounts pledged  
14 and paid is its own internal records. During discovery, the School produced an internal document  
15 titled "THE HEBREW ACADEMY BUILDING FUND PLEDGES JULY 1, 1988 THROUGH  
16 FEBRUARY 21, 1990." This document establishes that the total amount Mr. Schwartz pledged  
17 was \$500,000 and that he paid his pledge in full. See Statement of Disputed Facts, at ¶ 4.

18 Jonathan Schwartz never testified that the naming rights agreement was \$1 million nor has  
19 his testimony been inconsistent as the School unpersuasively argues. The Verified Petition for  
20 Declaratory relief states: "In August 1989, Milton Schwartz donated \$500,000 to the [School] in  
21 return for which the [School] would guarantee that its name would change in perpetuity to the  
22 "Milton I. Schwartz Hebrew Academy."<sup>46</sup> During his deposition, Jonathan Schwartz testified that  
23 it was his understanding that his father gave \$500,000 and that he helped raise another  
24 \$500,000.<sup>47</sup> Jonathan further testified that he based his belief on what his father told him and what  
25

26 <sup>45</sup> See School's Motion for Summary Judgment, at Exhibit 19.

27 <sup>46</sup> See Petition for Declaratory Relief, on file with Court, at p. 2.

28 <sup>47</sup> See Jonathan Schwartz Deposition Transcript, at 14:17-16:11, a true and correct copy being attached hereto as **Exhibit X**.

he had heard from other board members. *Id.* Jonathan's testimony is not the best evidence of the agreement as his belief was largely formed on conversations he had with others. The best evidence of the agreement is the testimony of Mr. Schwartz, the Bylaws, the testimony of the School's agents during the relevant time period, and the School's internal records.

**5. *The Schwartz Naming Rights Agreement is evidenced by several writings which collectively formed a written contract.***

The School claims that, because there is no official document titled "naming rights agreement," the agreement, if any, must have been an oral agreement.

As a preliminary matter, the School's effort to attack the agreement by raising the issue of whether it was oral or written is a collateral issue. The School's own board members have admitted to and acknowledged the existence of the Schwartz Naming Rights Agreement and its material terms. The material terms were that Mr. Schwartz would donate \$500,000 in exchange for the School agreeing to name itself the Milton I. Schwartz Hebrew Academy in perpetuity. The agreement was formed for the purpose of funding the construction of the new school on Hillpointe. Clearly, the intent of the parties was to name the new school (which at the time was one building) the Milton I. Schwartz Hebrew Academy:

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

A. Dr. Lubin and I went there. She had – Dr. Lubin and I went there to firm up this agreement with the idea that property would be purchased and a building would be built.

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

A. Yes.

Q. Okay.

A. Yes.

Q. And what was your understanding as to what that million dollars was to be used for?

A. **It was to name the building after him in perpetuity, and he was very specific about that.**<sup>48</sup>

Notwithstanding the abundance of testimonial evidence and admissions that the Schwartz Naming Rights Agreement was indeed very real, and notwithstanding the fact that both parties to

<sup>48</sup> See Sabbath Deposition, Ex. I, at 15:13-16:3.

1 the agreement fully performed, the following documents evidence collectively in writing the  
2 material terms of the Schwartz Naming Rights Agreement:

3 A. Three (3) checks drawn on Milton I. Schwartz's accounts, dated August 14, 1989,  
4 August 14, 1989 and August 23, 1989, made payable to the Hebrew Academy in the  
5 collective amount of \$500,000.00.<sup>49</sup>

6 B. School's August 14, 1989 Board meeting minutes, which thanks Mr. Schwartz for his  
7 donation and evidences that the School resolved to send a letter to Mr. Schwartz  
8 "stating the Academy will be named after him."<sup>50</sup>

9 C. The School's Bylaws were amended in 1990 to reflect that the School resolved to  
10 change the legal name of the School to the Milton I. Schwartz Hebrew Academy in  
11 perpetuity.<sup>51</sup>

12 D. The School's Articles of Incorporation were amended in 1990 to change the legal  
13 name of the School to the Milton I. Schwartz Hebrew Academy.<sup>52</sup>

14 **6. The statute of frauds does not apply because writings exist which prove the**  
15 **existence of the Agreement. Moreover, even if the Agreement were**  
16 **completely oral, both parties performed.**

17 First, the statute of frauds does not apply because separate writings may be considered  
18 together to establish a sufficient writing or memorandum.<sup>53</sup> As established in the previous section,  
19 several writings, when reviewed together, set forth the existence of a legally enforceable  
20 agreement.

21 Second, performance removes an oral agreement from the statute of frauds.<sup>54</sup> Here, both  
22 parties fully performed. Mr. Schwartz tendered the \$500,000 to the School; and the School  
23 changed its name to The Milton I. Schwartz Hebrew Academy "in perpetuity."  
24

25 <sup>49</sup> See School's Motion for Summary Judgment, at Exhibit 8.

26 <sup>50</sup> See School's Motion for Summary Judgment, at Exhibit 10.

27 <sup>51</sup> See 1990 Amended Bylaws, a true and correct copy being attached hereto as **Exhibit \_**.

28 <sup>52</sup> See School's Motion for Summary Judgment, at Exhibit 11.

<sup>53</sup> *Edwards Industries, Inc. v. DTE/BTE, Inc.*, 112 Nev. 1025, 1032-33, 923 P.2d 569 574 (1996)

<sup>54</sup> *Id.*

1 Third, the School should be estopped from asserting the statute of frauds defense. To  
 2 constitute equitable estoppel, "the party relying on it must be influenced by the acts or silence of  
 3 the other and it must appear that the acts or conduct of the party estopped caused the party relying  
 4 to act as he would not have acted or he cannot complain that he was deceived to his prejudice."<sup>55</sup>  
 5 Here, the evidence in the record establishes that Mr. Schwartz relied on the School's promise to  
 6 name the School after him in perpetuity. He would not have donated the \$500,000 otherwise. The  
 7 Court, therefore, should preclude the School from asserting the defense.

8 **B. Even if the Jury Finds That no Contract was Formed, Mr. Schwartz Nevertheless**  
 9 **Relied on the School's Promise to his Detriment.**

10 "Broadly speaking, Nevada follows the doctrine of promissory estoppel articulated in the  
 11 Restatement (Second) of Contracts."<sup>56</sup> The Restatement describes promissory estoppel as follows:

12 A promise which the promisor should reasonably expect to induce  
 13 action or forbearance on the part of the promisee or a third person  
 14 and which does induce such action or forbearance is binding if  
 15 injustice can be avoided only by enforcement of the promise. The  
 16 remedy granted for breach may be limited as justice requires.<sup>57</sup>

17 "To establish promissory estoppel four elements must exist: (1) the party to be estopped  
 18 must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must  
 19 so act that the party asserting estoppel has the right to believe it was so intended; (3) the party  
 20 asserting the estoppel must be ignorant of the true state of facts; (4) he must have relied to his  
 21 detriment on the conduct of the party to be estopped."<sup>58</sup>

22 The School contends that the doctrine of promissory estoppel precludes entry of summary  
 23 judgment because it "lacks essential terms and because Milton Schwartz did not pay the full  
 24 donation that he promised to pay."<sup>59</sup>

25 <sup>55</sup> *Id.* (citing *Zunino v. Paramore*, 83 Nev. 506, 509, 435 P.2d 196, 197 (1967)).

26 <sup>56</sup> *Dynalectric Co. of Nevada, Inc. v. Clark & Sullivan Constructors, Inc.*, 127 Nev. 480, 483, 255  
 27 P.3d 286, 288 (2011)

28 <sup>57</sup> Restatement (Second) of Contracts § 90(1) (1981).

<sup>58</sup> *Pink v. Busch*, 100 Nev. 684, 689, 691 P.2d 456, 459–60 (1984) (citations omitted).

<sup>59</sup> See School's Motion for Summary Judgment, at p. 21.

As to the latter contention, the School's assertion relies on their take on the facts. Repeatedly, the School in its motion misses the point of Rule 56. The purpose of a motion for summary judgment is to get rid of claims that aren't supported by any evidence; not to ask the court to consider weight and credibility of evidence. Mr. Schwartz testified under penalty of perjury that he gave \$500,000 as consideration for the School's promise. He never promised \$1 million of his own money nor was the naming rights contingent upon him securing another \$500,000 from other people. There is some conflicting evidence on this point. Dr. Sabbath, for example, testified that she thought Mr. Schwartz handed Dr. Lubin a check for \$1 million. Dr. Lubin testified that she received a check for \$500,000 and that Mr. Schwartz owed an additional \$500,000. The School's own records, on the other hand, show that the total amount pledged was \$500,000 and that all of it was paid. Notably, the School performed which evidences the likelihood that, whatever the amount was, it was paid because why would the School have performed otherwise.

As to the former contention, the promise does not lack essential terms. The School's counsel clearly has an idea and an opinion as to what it thinks ought to have been included in a naming rights agreement.<sup>60</sup> Counsel's opinion, however, is irrelevant. Importantly, none of the witnesses in this case who were board members at the time the Agreement was entered into have testified that they were uncertain as to what its essential terms were. The name of the School (and at that time the School held itself out to the world by its corporate name) was to be The Milton I. Schwartz Hebrew Academy in perpetuity.

***1. Assuming that the Schwartz Naming Rights Agreement is not a legally enforceable contract under Nevada law, both the School and Mr. Schwartz believed it was at the time it was negotiated.***

The "true facts" in this case are that the School changed its name "in perpetuity" to the Milton I. Schwartz Hebrew Academy because of the generous donation that Mr. Schwartz made. According to Dr. Sabbath, Mr. Schwartz was "very specific" about requiring naming rights for his donation. If the Court later determines that this bargained for exchange somehow cannot be

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<sup>60</sup> See MSJ at p. 20.

1 enforced under a contract theory, it is clear that both parties believed that such an agreement was  
2 legally enforceable.

3 **2. By receiving and depositing Mr. Schwartz's checks, the School clearly**  
4 **evidenced an intent that it would perform on its promise and maintain Mr.**  
5 **Schwartz's naming rights in perpetuity.**

6 The School's conduct demonstrates that it acted as if the Schwartz Naming Rights  
7 Agreement was legally enforceable. In fact, the School did not cease to operate as the Milton I.  
8 Schwartz Hebrew Academy until after Mr. Schwartz passed away.

9 **3. Mr. Schwartz Clearly believed that the Schwartz Naming Rights Agreement**  
10 **was legally enforceable.**

11 Mr. Schwartz would not have insisted that the School be named after him "in perpetuity"  
12 if he knew or believed that "in perpetuity" was not legally enforceable.

13 **C. The Issue of Whether the Court Will Award Specific Performance is not yet Ripe.**

14 "[I]n a case where legal claims are tried by a jury and equitable claims are tried by a  
15 judge, and those claims are based on the same facts, the trial judge must follow the jury's implicit  
16 or explicit factual determinations in deciding the equitable claims."<sup>61</sup> "The trial court must do so  
17 in determining both liability and relief on the equitable claims."<sup>62</sup>

18  
19 <sup>61</sup> *Teutscher v. Woodson*, 835 F.3d 936, 944 (9th Cir. 2016) (quotations omitted) (citing *L.A.*  
*Police Protective League v. Gates*, 995 F.2d 1469, 1473 (9th Cir. 1993)).

20 <sup>62</sup> *Id.* (citing *Miller v. Fairchild Indus.*, 885 F.2d 498, 506–07 (9th Cir. 1989) (holding that the  
21 district court in deciding a Title VII equitable claim will be bound by all factual determinations  
22 made by the jury in deciding the plaintiff's legal claims)). See also *Johnstech Int'l Corp. v. JF*  
*Microtechnology SDN BHD*, 3:14-CV-02864-JD, 2018 WL 3036759, at \*1 (N.D. Cal. June 19,  
23 2018) (holding that the trial court may not make findings of fact contrary to the jury's express or  
24 implied factual determinations where equitable claims are predicated on the same facts as the  
25 legal claims that were submitted to the jury at trial). It should be noted that these cases held as  
26 such because the Seventh Amendment to the United States Constitution provides that "in suits at  
27 common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury  
28 shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the  
United States, than according to the rules of the common law." The Supreme Court of Nevada has  
held, however, that "the right to a trial by jury under the Nevada Constitution is coextensive with  
that guaranteed by the federal constitution." *Blanton v. North Las Vegas Mun. Court.*, 103 Nev.  
623, 629 (1987). Notwithstanding, Nevada does permit a trial court to first adjudicate equitable  
claims before submitting the legal claims to a jury. See *Awada v. Shuffle Master, Inc.*, 123 Nev.

Before the Court can consider whether it is willing to consider the remedy of specific performance, the jury must first determine whether (1) there was a legally enforceable agreement; (2) whether the parties performed; and (3) whether there was a breach.<sup>63</sup> Moreover, the issue of whether damages or specific performance is the best remedy for the breach can and should also be determined by the jury. See NRCP 39(c).<sup>64</sup>

**D. In the Modern Era, The Majority of Jurisdictions Treat Charitable Pledges as Enforceable Under Contract and Promissory Estoppel Principles; not Under Inter Vivos Gift Theories.**

In Nevada, there have not been any cases that specifically address the enforceability of charitable naming rights agreements. However, other courts in the United States have enforced charitable pledges between parties based on (1) contract theory, (2) promissory estoppel, or (3) a hybrid of (1) and (2).

Under general contract theory, a contract requires three elements in order to be enforceable between parties: (1) a promise, (2) acceptance, and (3) consideration. In cases involving charitable pledges, whether written or unwritten, usually elements (1) and (2) have been met, but from a pure contract theory, the pledges do not meet element (3), since charitable pledges, by their nature, are made out of generosity, rather than in exchange for goods or services. However, despite the lack of formal consideration in almost all cases involving charitable pledges, various courts have deemed that certain promises, benefits, and rights that are received by pledgors in exchange for their charitable pledges will satisfy the element of consideration, resulting in an enforceable contract between the parties.

In *Massachusetts Eye & Ear Infirmary v. Eugene B. Casey Foundation* (2006), the U.S. District Court for the District of Massachusetts, in applying Massachusetts law, found that “in

612, 624, 173 P.3d 707, 714 (2007). In this case, however, there has been no bifurcation of the equitable and legal claims.

<sup>63</sup> See *Serpa v. Darling*, 107 Nev. 299, 305, 810 P.2d 778, 782 (1991) (Specific performance is available as a remedy “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 it.”).

<sup>64</sup> “The decision whether to grant a request for an advisory jury is within the district court’s discretion.” *Harmon v. Tanner Motor Tours*, 79 Nev. 4, 20, 377 P.2d 622, 630-31 (1963).



1 accepting the Foundation's gift of a projected \$2,000,000.00, MEEI understood that the clear  
 2 language of the schedule of payments required that it use those funds only 'to do the Voice  
 3 Restoration Research Program'...Even if this Court were to apply the traditional standard for  
 4 evaluating consideration, those facts tend to demonstrate that consideration was given for the  
 5 gift." 417 F.Supp.2d 192.

6 *In East Carolina University Foundation, Inc. v. First Citizens Bank & Trust Company*  
 7 (2014), the Court of Appeals of North Carolina stated the following in a case involving not only a  
 8 charitable pledge to a university, but also the pledgor's designation of the use of the scholarship  
 9 funds and the naming of the endowment: "Our Supreme Court has held that an exchange of a  
 10 pledge and a promise to designate funds as directed constitutes sufficient consideration to support  
 11 a contract." 767 S.E.2d 150.

12 *In Matter of Versailles Foundation, Inc.* (1994), the Supreme Court, Appellate Division,  
 13 First Department, New York, stated that under New York law, "it is well settled that charitable  
 14 pledges 'are enforceable on the ground that they constitute an offer of a unilateral contract which,  
 15 when accepted by the charity by incurring liability in reliance thereon, becomes a binding  
 16 obligation." 202 A.D.2d 334.

17 Based on the reasoning in the cases cited above, this Court should adopt the contract  
 18 theory for enforceable pledges in this case because there was absolute and certain consideration  
 19 exchanged: the School received \$500,000 and Mr. Schwartz received perpetual naming rights to  
 20 the School.

21 Alternatively, for the reasons set forth *supra*, this Court could deem Mr. Schwartz's  
 22 donation as enforceable based on promissory estoppel. Promissory estoppel is a theory on which  
 23 the majority of courts that use the theory will enforce a promise which the promisor should  
 24 reasonably expect to induce action or forbearance on the part of the promisee or a third person  
 25 and which does induce such action or forbearance is binding if injustice can be avoided only by  
 26 enforcement of the promise. For example, in *Matter of the Estate of Timko v. Oral Roberts*  
 27 *Evangelistic Association* (1974), where a decedent had promised to pay off the future mortgage  
 28

1 on a building and a charity relied upon the decedent's promise by placing a down payment on the  
 2 building, the Court of Appeals of Michigan held that "the doctrine of promissory estoppel is  
 3 applicable to enforce a voluntary unilateral promise to make a charitable contribution." 215  
 4 N.W.2d 750.

5 **E. As Demonstrated, Ample Evidence Exists in the Record to Establish that Mr.**  
 6 **Schwartz Fully Funded His Promised Donation of \$500,000.00, and a Bargained**  
 7 **for Exchange Occurred. Accordingly, the Estate's Fourth (offset of bequest under**  
 8 **will), Sixth (revocation of gift and constructive trust) Seventh (specific**  
 9 **performance) and Eighth (injunctive relief) Claims for Relief Should not be**  
 10 **Dismissed.**

11 The School seeks summary judgment on the Estate's claims for offset of bequest under  
 12 will, revocation of the gift and constructive trust, specific performance, and injunctive relief  
 13 because it claims Mr. Schwartz's gift was not fully funded and/or there is no legally enforceable  
 14 contract. Again, this argument relies on the School's self-serving selection of the facts. Multiple  
 15 witnesses have testified that the gift was \$500,000, not \$1,000,000; multiple documents  
 16 demonstrate that Mr. Schwartz's pledge was \$500,000; and the School's own performance  
 17 evidences that it received the total amount pledged by Mr. Schwartz because it did, in fact, name  
 18 itself after Mr. Schwartz in perpetuity. Accordingly, summary judgment should be denied on all  
 19 of these claims.

## 20 V.

### 21 COUNTERMOTION

22 EDCR 2.20(f) states:

23 An opposition to a motion which contains a motion related to the same subject  
 24 matter will be considered as a counter-motion. A counter-motion will be heard  
 25 and decided at the same time set for the hearing of the original motion and no  
 26 separate notice of motion is required.

27 The School's Motion for Summary Judgement generally asserts that there are no genuine  
 28 issues of material fact that a jury would need to determine to afford relief on the merits of the  
 Estate's claims. In addition to opposing the School's motion on grounds that genuine issues of  
 material fact exist for all claims for relief, the Estate submits that this Court should decide in its  
 ruling whether the jury should hear and consider the Estate's equitable claim for specific

1 performance. The Estate's request for an advisory jury under NRCP 39(c), therefore, is within the  
2 same subject matter as the School's underlying Motion for Summary Judgment.

3 NRCP 39(c) provides:

4 **Advisory Jury and Trial by Consent.** In all actions not triable of right by a  
5 jury the court upon motion may try any issue with an advisory jury or, the court,  
6 with the consent of all parties, may order a trial with a jury whose verdict has the  
7 same effect as if trial by jury had been a matter of right.

8 A request for an advisory jury as to issues to which parties are not entitled to a jury as a matter of  
9 right is addressed to this Court's discretion.<sup>65</sup>

10 The Estate has brought both legal and equitable claims against the School, all of which are  
11 scheduled to be adjudicated in a trial by jury on August 20, 2018. The equitable and legal claims  
12 have not been bifurcated. Accordingly, good cause exists to issue an order declaring that all  
13 claims of all parties in this proceeding shall be determined by the jury.

#### 14 VI.

#### 15 CONCLUSION

16 For the above and foregoing reasons, the Court should deny the School's Motion in its  
17 entirety and grant the Estate's Countermotion.

18 DATED this 6<sup>th</sup> day of July, 2018.

19 SOLOMON DWIGGINS & FREER, LTD.

20 /s/ -- Alexander G. LeVeque

21 Alan D. Freer (#7706)  
22 [afreer@sdfnlaw.com](mailto:afreer@sdfnlaw.com)  
23 Alexander G. LeVeque (#11183)  
24 [aleveque@sdfnlaw.com](mailto:aleveque@sdfnlaw.com)  
25 9060 West Cheyenne Avenue  
26 Las Vegas, Nevada 89129  
27 Telephone: (702) 853-5483  
28 Facsimile: (702) 853-5485  
*Attorneys for A. Jonathan Schwartz*

65 *Harmon v. Tanner Motor Tours of Nev., Ltd.*, 79 Nev. 4, 20, 377 P.2d 622, 630 (1963).

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*/s/ -- Sherry Curtin-Keast*

An employee of Solomon Dwiggin & Freer, Ltd.

# EXHIBIT “A”

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 "\_" 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.

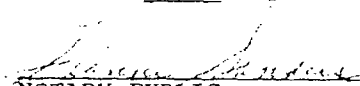
6 18. That Affiant was informed by Dr. Edward Goldman, the  
7 Assistant Superintendent, Administrative Operations and Staff Relations  
8 of the Clark County School District, and a member of the Board of  
9 Directors, that there is an inadequate degree of critical skills  
10 teaching in the upper 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   
20 NOTARY PUBLIC



DIANNE SANDERS  
NOTARY PUBLIC  
My Exp. Date 11/1/93

# EXHIBIT “B”

03-31-1993 09:08AM FROM

TO

3878770 P.02

SECOND 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 of made of my own personal knowledg  
except where stated on information and belief, and as to thos  
matters, Affiant believes them to be true, and if called as  
witness, Affiant would competently testify thereto.

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

3. This Affidavit is submitted in support of Plaintiff'  
Second Reply to Defendants' Supplemental Points and Authorities i  
Opposition to Plaintiff's Motion for Declaratory Judgment ar  
Injunctive Relief.

4. That Affiant has been a member of the Board o  
Directors of the MILTON I. SCHWARTZ HEBREW ACADEMY since 1989, ar  
the Board of Directors have never allowed the use of proxies at m  
meetings.

5. That Affiant donated \$500,000 to the Hebrew Acade  
with the understanding that the school would be renamed the MILT  
I. SCHWARTZ HEBREW ACADEMY in perpetuity. That subsequent to th  
donation being made the By-Laws were changed to specifically relie  
that fact and that as a result of the change, Article I, Paragra  
1 of the By-Laws read "The name of this corporation is the MILT  
I. Schwartz Hebrew Academy (hereinafter referred to as The Academ  
and shall remain so in perpetuity."

///

EST-00311

002022

03-31-1993 09:09AM FROM

TO

3878770

P.03

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

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

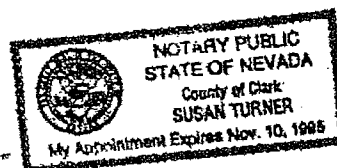
8. That the donation of \$500,000 by Affiant was condition precedent to the donation of the land by Summerlin; tha Affiant believes that the donation of \$400,000 by Mr. Sogg and Mr Cohen was also a condition precedent to the donation of the land by Summerlin.

FURTHER AFFIANT SAYETH NAUGHT.

*Milton I. Schwartz*  
MILTON I. SCHWARTZ

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

*Susan Turner*  
Notary Public



**EXHIBIT “C”**

## 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.

Ambrose Halbur  
Edith  
Michael Halbur  
Robert S. Halbur  
Keri Bentzler  
Walter Polway  
Alfred Olson  
Samuel  
Richard E. Halbur  
George Halbur  
Tanner Lubin-Apachin



# EXHIBIT “D”

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

NAME	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 RUDIAK	\$ 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

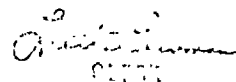
AC402057

# EXHIBIT “E”

1 SCOTT MICHAEL CANTOR, ESQ.  
 Nevada Bar No. 001713  
 2 GRAZIADEI & CANTOR, LTD.  
 302 E. Carson Avenue, Suite 400  
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FILED

Mar 11 4 14 PM '93



5  
 6 DISTRICT COURT  
 7 CLARK COUNTY, NEVADA  
 8

9 THE BOARD OF DIRECTORS of the )  
 MILTON I. SCHWARTZ HEBREW )  
 10 ACADEMY, )

CASE NO. A314725  
 DEPT. NO. III  
 DOCKET NO. "E"

11 Plaintiff,

12 vs.

13 THE SECOND BOARD OF DIRECTORS )  
 of the MILTON I. SCHWARTZ )  
 HEBREW ACADEMY; IRA STERNBERG; )  
 14 GERI RENTCHLER; ROBERT DISMAN; )  
 ROBERTA SABBATH; RICHARD ELLIS )  
 15 SCOTT HIGGINSON; BOB RAKITA; )  
 and TAMAR LUBIN, )

DATE OF HEARING: 3-15-93  
 TIME OF HEARING: 9:00 am

16 Defendants.  
 17

18 AFFIDAVIT OF TAMAR LUBIN  
 19 aka TAMAR LUBIN SAPOSHNIK

20 STATE OF NEVADA )  
 21 COUNTY OF CLARK ) ss:

22 TAMAR LUBIN, also known as TAMAR LUBIN SAPOSHNIK, being  
 23 first duly sworn upon her oath, deposes and says:

24 1. That I am an individual of legal years residing in  
 25 Clark County, Nevada; I am familiar with all facts related in  
 26 this Affidavit and I am competent to testify thereto of my own  
 27 personal knowledge.

28 2. That I make this Affidavit in Opposition to the

CE14



1 Plaintiff's Motion for Injunctive and Declaratory Relief and in  
2 support of the Defendants' Countermotions.

3 3. That I am currently a member of the Board of Trustees  
4 of the MILTON I. SCHWARTZ HEBREW ACADEMY and the School Head or  
5 Administrator. As such, I am in charge of the administration of  
6 all school programs and functions, finance, budgeting, fund  
7 raising, purchasing, scheduling, testing, recruitment,  
8 curricular development, programming, student progress and  
9 activities, staff and personnel development and monitoring,  
10 evaluation and improvement of all school programs. I have  
11 served in the capacity as School Head since 1979.

12 4. I received my Bachelor of Arts Degree from the State  
13 University of New York, at Rochester, New York, in Education and  
14 Linguistics in 1974. I received a Masters of Education Degree  
15 from the University of Rochester, at Rochester, New York, in  
16 Educational Administration and Curriculum Development in 1975.  
17 I received my Doctor of Education Degree from the University of  
18 Rochester, at Rochester, New York, in Educational  
19 Administration, Curriculum Development and Special Education in  
20 1979.

21 5. I have been certified by the New York State Department  
22 of Education and the Nevada State Department of Education in  
23 Administration and Supervision of grades Kindergarten through  
24 12, in Special Education of grades Kindergarten through 12, in  
25 Elementary and Junior High School Education and, by the New York  
26 State Department of Education, in Hebrew, grades 7 through 12.

27 6. I have been a teacher since 1952. Between 1952 and  
28 1969, I taught school, first at the Redman School, London,

1 England, then, fourth and eighth grades and at Community High  
2 School, Rochester, New York, then, 11th and 12th grades and  
3 adult education. From 1974 to 1976, I was assistant principle of  
4 Sinai and Hillel Day Schools, Rochester, New York. My  
5 responsibilities included assisting in staff development,  
6 assembly of resource materials, the demonstration of their use  
7 in the classrooms, development of a resource center, the  
8 devising and supervision of remedial and gifted programs and the  
9 preparation of the annual budget and monthly financial  
10 statements.

11 7. From 1976 to 1977, I was an instructor at Brockport  
12 Elementary School, Brockport State University, Brockport, New  
13 York, providing an educational program for racially diverse  
14 students at the primary level in an open plan setting. From  
15 1976 to 1979, I was an instructor in undergraduate courses of  
16 the University of Rochester, New York in intermediate and  
17 advanced literature.

18 8. In 1984, I was the recipient of an Educational  
19 Excellence Award by the Clark County School District. In 1987,  
20 I was a founding member of the Jewish Community Day School  
21 Network of America. In 1987, I was a founder of the Association  
22 of Private and Parochial Schools of Nevada and have served as  
23 its President from 1988 to the present. In 1988, I secured 17  
24 acres of land for the campus of the Hebrew Academy and, in 1989,  
25 developed the new campus construction and fund raising programs.  
26 The first phase campus was completed in December, 1990.

27 9. In 1990, I was named in "Who's Who in American  
28 Education" and honored by the new elementary campus being named

1 the "The Tamar Lubin-Saposhnik Elementary School;" in 1987 and  
2 1988, I was named in "Who's Who in World Jewry."

3 10. In 1991, I was honored as the recipient of the Women  
4 of Achievement Award for Education from the Chamber of Commerce  
5 in Southern Nevada.

6 11. Since my association with the Hebrew Academy, the  
7 student population has more than quadrupled. I was virtually  
8 single-handedly responsible for securing the Nevada State School  
9 License and received the Nevada State Teachers Grant for  
10 Excellence. The Academy has been awarded first, second and  
11 third prizes at the City's annual science fairs and, on my own  
12 initiative, the school has been accredited by the Northwest  
13 Association of Schools and Colleges since 1986, the first  
14 Southern Nevada elementary school to be so honored and only the  
15 second in the State of Nevada. Under my administration, the  
16 school has also received the Presidential Academic Fitness Award  
17 for outstanding academic achievement, and, in 1988, became the  
18 only member of the National Association of Independent Schools  
19 from Nevada, and placed first in the Nevada State "National  
20 Geographic" geography contest.

21 12. As stated above, I have served as President of the  
22 Association of Private and Parochial Schools of Nevada since  
23 1988. In 1985, I offered a seminar on "Women in School  
24 Administration" at the annual conference of the National  
25 Association of Elementary School Principals. From 1980 to 1983,  
26 I offered courses in "Women in Administration" at the University  
27 of Nevada Las Vegas. From 1979 to the present, I have served as  
28

1 a member and, in 1983, the Treasurer of the Board of Trustees of  
2 the Las Vegas Symphony.

3 13. I have prepared research papers on "Strategies for  
4 Remedial Reading: a perceptual deficit theory-an organizational  
5 approach;" "Intelligence Testing: Uses and Abuses and Their  
6 Educational and Social Implications;" "The Administrators' Role  
7 in School Improvement;" "The Art and Science of Teacher  
8 Evaluation;" "Financing Educational Excellence;" and "Women in  
9 School Administration."

10 14. I have published several articles in newspapers and  
11 magazines and have made radio and television appearances  
12 regarding schooling, early childhood education centers and  
13 private versus public education. For certificates, articles and  
14 studies regarding my credentials and personal and professional  
15 accomplishments and those of the school, please see Exhibit  
16 group CC.

17 15. In August of 1979, I arrived to Las Vegas from  
18 Rochester, New York, to head a private Hebrew day school. What  
19 I found was utter chaos. Hovering was the tragic aftermath of a  
20 kidnaping, a bus fatality, a \$94,000.00 budget deficit, and  
21 total administrative and educational mismanagement. (My  
22 predecessor was not a credentialed school administrator). As if  
23 these conditions were not enough, there were no programs, no  
24 facilities, no funds, no faculty and worst of all, there was no  
25 support, but rather an overwhelming community psyche completely  
26 set against the establishment of a Hebrew day school in its  
27 midst. Jewish leaders and Jewish institutions shunned the  
28 school and one requested a written disclaimer.



1 16. It is needless to state that what was required at the  
2 outset was nothing short of a miracle. I chose to stay and I  
3 gave the school all I had: blood, sweat, tears, unrelenting  
4 drive, tenacity and profound commitment.

5 17. Thirteen and a half years later, The Hebrew Academy is  
6 a well-established, accredited and highly reputable institution  
7 of learning. It secured its own campus in Summerlin, more than  
8 quadrupled its student population, retained a core of master  
9 teachers, formulated a comprehensive curriculum and created an  
10 ethos. The Las Vegas community is the beneficiary. To date,  
11 Jewish leaders and Jewish institutions are not only pleased to  
12 associate with The Academy, they even seek credit for its  
13 profound accomplishments.

14 18. Following is a brief history of the school:

15 a) Founded in 1979, the Hebrew Academy, a state  
16 licensed school, was the first non-profit, non-parochial  
17 elementary private school in Las Vegas, Housed at Temple  
18 Beth Sholom, the school opened with 57 students in  
19 kindergarten through 6th grade.

20 b) During the past decade, The Academy has expanded  
21 its programs and facilities to accommodate its ever growing  
22 student population. In 1983, the school relocated to the  
23 Temple's Community Center on Bracken Avenue and added 7th,  
24 8th and 9th grades. In 1986, The Hebrew Academy became the  
25 only accredited elementary school in Las Vegas by the  
26 Northwest Association of Schools and Colleges and joined  
27 the National Association of Independent Schools as a full  
28 member school.

1 c) In 1987, as the founding School Head, I began  
2 negotiations with Summerlin, a division of Summa  
3 Corporation, for the grant of a parcel of land for a campus  
4 for The Academy and launched a major fund raising campaign.  
5 Two years later, the school was gifted a 17-acre land grant  
6 for the construction of its new campus. In the summer of  
7 1990, The Academy's new facility was completed and renamed  
8 The Milton I. Schwartz Hebrew Academy.

9 d) Through the years, The Academy has grown and  
10 changed while retaining its character of tradition, ethics  
11 and excellence that has made it one of the finest schools  
12 in the State. A reflection of this success is its new  
13 campus for Pre-K through 10th grade in 1993-94 school year.  
14 In addition to a superior academic core curriculum, the new  
15 facility houses the Early Childhood Development Institute,  
16 a unique learning program for 3 and 4 year olds, the first  
17 of its kind in Nevada, and provides four foreign languages:  
18 Hebrew, Spanish, French and Japanese, and very elaborate  
19 computer and science programs.

20 e) The new campus includes an auditorium, a large and  
21 well-equipped library, a science lab and a computer center,  
22 a spacious teacher's lounge, and a student book shop.  
23 Future school improvements, according to its master plan,  
24 will include a complete gymnasium, tennis courts, athletic  
25 fields and an Olympic size swimming pool. The academic  
26 program will expand to include grades 10-12 during the  
27 years 1993-1995, respectively, thus providing a complete  
28 institution of learning, Pre-K through high school. Second

1 phase of the school's master plan is now in progress; it  
2 includes athletic courts, expansion of the auditorium to a  
3 capacity of 700 and the addition of a swimming pool to  
4 enhance the anticipated new summer program for next school  
5 year.

6 19. Milton Schwartz became elected to the Board of  
7 Trustees of the Hebrew Academy after making a large gift to the  
8 school. Also in consideration of that grant, the school has  
9 borne his name since 1989. In the first year of his  
10 administration, the student body, which had been enrolled prior  
11 to his election to the Board, numbered 250 students. In the  
12 first two years of recruitment under his chairmanship, the  
13 enrollment of the school dropped from 250 students to 215  
14 students. Since Mr. Schwartz lost his re-election bid to the  
15 chairmanship of the Board and a member of the Board of Trustees,  
16 recruitment has succeeded in raising enrollment to 225 students.  
17 Based upon the current recruitment figures, we anticipate having  
18 280 students in the Academy for the next school term.

19 20. When Mr. Schwartz first became chairman, the school  
20 accommodated children in grades Kindergarten through eighth  
21 grade; since he has left the chairmanship, we have expanded  
22 from pre-Kindergarten through grade nine and, next year, we will  
23 educate students in pre-Kindergarten through grade ten.

24 21. I personally solicited Mr. Schwartz's donation to the  
25 Academy, the very donation resulting in the school being named  
26 for him. Prior to Mr. Schwartz's chairmanship, I initiated  
27 contributions from Paul Sogg, from Robert Cohen, from George  
28 Rudiak and others. Although these contributions were initiated

1 prior to Mr. Schwartz's chairmanship, they were paid during his  
2 chairmanship in the amount of \$300,000.00, \$100,000.00 and  
3 \$50,000.00, respectively. During the period of contribution  
4 initiation prior to his chairmanship, I also initiated other  
5 pledges, totaling approximately \$150,000.00, which were also  
6 paid under his chairmanship. These funds were solicited  
7 specifically for the school building fund, a fund which was  
8 established prior to his association with the school.

9 22. I have attended each meeting of the Board of Trustees  
10 since my association with the school in 1979.

11 23. I was present at the Board of Trustees meeting of May  
12 21, 1992. At that meeting, the Board unanimously voted to hold  
13 elections of the Trustees and the Officers of the Academy on  
14 June 18, 1992. This vote was made pursuant to Article II,  
15 Section 5 of the By-Laws, which establishes the "regular June  
16 meeting" as the date for the election of Trustees.

17 24. June 18, 1992, was determined to be the date of the  
18 "regular" June meeting pursuant to Board action of January,  
19 1992, establishing the third Thursday of each month as the  
20 "regular" meeting date.

21 25. I received a letter from Mr. Schwartz, under date of  
22 May 19, 1992, a copy of which was sent to all Board members,  
23 indicating that the Trustees' election would be held at the June  
24 Board meeting, pursuant to the By-Laws.

25 26. The Board, at no time, authorized Mr. Schwartz to  
26 cancel, postpone or delay the elections of June 18, 1992.

27 27. At the meeting of May 21, 1992, Mr. Schwartz appointed  
28 a By-Laws committee consisting of Dr. Edward Goldman, Lenard

1 Schwartz, Don Schlesinger and Fred Berkley. He directed the  
2 committee to meet, to consider proposed amendments to the By-  
3 Laws and to report the proposed amendments to himself and to the  
4 Board at the June 18, 1992 meeting. At no time did either he,  
5 Dr. Goldman or any other member of the Board state, suggest or  
6 inquire as to whether the elections set for June 18, 1992 should  
7 be postponed in the event that recommendations were not made at  
8 the June 18 meeting or in the event that recommendations offered  
9 at the June 18 meeting were not acted upon.

10 28. At the preceding Board meeting, April 16, 1992, Mr.  
11 Schwartz appointed a nominating committee and named Dr. Goldman  
12 as its chair. Pursuant to the By-Laws, the nominating committee  
13 was to report nominations to the Board and officerships at least  
14 30 days prior to the election of the Trustees and Officers. Dr.  
15 Goldman failed to do this and, instead, offered a slate of  
16 candidates at the May 21, 1992 meeting.

17 29. Previously, pursuant to Article II, Section 10 of the  
18 By-Laws, I made nominations to the Board. My nominations were  
19 the only timely nominations. However, the Board voted  
20 unanimously to waive the 30 day report requirement to allow the  
21 nominating committee's nominees to stand election on June 18,  
22 1992. Had the Board not done so, Mr. Schwartz, whom I did not  
23 nominate and who was nominated only by the nominating committee,  
24 would not have been eligible to stand election.

25 30. As the School Head, I have always conferred with the  
26 President or Chairman, as she or he has been variously called,  
27 to set a proposed agenda for the upcoming Board of Trustees  
28 meetings. This habit continued under Mr. Schwartz's

1 chairmanship. In the event that I could not meet with Mr.  
2 Schwartz personally, we discussed the proposed agenda by  
3 telephone. On three occasions after May 21, 1992, and prior to  
4 his issuance of the agenda of June 11, 1992, I telephoned him to  
5 discuss the agenda. Twice, my secretary was told by him that he  
6 had been contacted and would phone me back; he did not. The  
7 third time, I was informed that the agenda had already been  
8 mailed and that it was too late. This was the first time since  
9 1979 that an agenda for a Board of Trustees meeting had been  
10 prepared without my participation.

11 31. I attended the regular meeting of June 18, 1992, which  
12 had also been scheduled for the election of Trustees and  
13 Officers. Milton Schwartz made several proposals to postpone  
14 the election. Each proposal was entertained by the Board,  
15 discussed and rejected. Mr. Schwartz became frustrated. He  
16 first tried to unilaterally adjourn the meeting, without putting  
17 the motion for adjournment to a vote. Two attorney members of  
18 the Board, Lenard Schwartz and Don Schlesinger, consulted  
19 Roberts Rules of Order, newly revised (1990 Edition) and advised  
20 him that they were of the opinion that he did not have authority  
21 to adjourn the meeting without a vote of the Board. When his  
22 efforts to adjourn the meeting failed, he threatened to hire  
23 counsel to move to set aside the elections if they were to be  
24 held that day. He claimed variously that the meeting was  
25 illegal, that the elections were illegal and that he was  
26 "confused".

27 32. Mr. Schwartz indicated that his agenda did not call  
28 for elections and Mr. Schlesinger and Mr. Schwartz, again,

1 consulted Roberts Rules of Order and were of the opinion that an  
2 agenda was only a suggestion for business to be conducted at the  
3 meeting and was not binding unless approved by the vote of the  
4 Board.

5 33. The resolution of Mr. Schwartz's efforts to adjourn  
6 the meeting or to continue the election were not hurried. At  
7 Mr. Schlesinger's request, the meeting was twice adjourned to  
8 allow parties to caucus, to discuss and to air their views  
9 amongst each other.

10 34. The election proceeded and ballots were distributed.  
11 Mr. Schwartz stayed through the counting of the ballots and,  
12 with others, oversaw the counting of the ballots by the  
13 elections committee. Mr. Schwartz took a ballot, stated that he  
14 would not vote for officers but he would vote for directors and  
15 marked a ballot. That ballot was collected with the others.

16 35. Not only did Mr. Schwartz oversee the counting of the  
17 ballots but, although he was a candidate for election to an  
18 office, he was one of four people to actually count the ballots.  
19 When the tally was made, he stormed out of the meeting without  
20 adjourning it. The meeting was eventually adjourned by Daniel  
21 Goldfarb, then the highest ranking officer remaining at the  
22 meeting.

23 36. Mr. Schwartz lost his election by a margin of seven  
24 votes to two votes in favor of Mr. Sternberg. All contested  
25 officers' elections were decided by at least a three vote  
26 margin.

27 37. After the election, there was an orderly transition of  
28 business to the new Board. Mr. Schwartz did not come to the

1 school or, to my knowledge, make any overt effort to conduct  
2 business in behalf of the Academy; he made no contact with the  
3 administrative offices, with me as School Head or, to my  
4 knowledge, any assistant in the Administrative offices.

5 38. At the conclusion of Mr. Schwartz's term on June 30,  
6 1992, the Academy had total assets of somewhat more than  
7 \$383,000.00. As of December 31, 1992, a period of six months  
8 under the operation of the Defendant Board, the Academy's assets  
9 totaled nearly \$483,000.00.

10 39. Under the administration of the Defendant Board, the  
11 Academy secured a new loan, paying-off an existing loan with a  
12 fluctuating rate of interest with no ceiling. The new loan is  
13 fully amortized over 30 years, thus avoiding the need to  
14 negotiation terms for payment of the balloon payment reduction 4  
15 years hence. The loan also made additional cash available to  
16 commence second-phase construction, construction required  
17 pursuant to the Academy's agreement with Suma Corporation as a  
18 condition for Summerlin's grant of the 17 acres for the school's  
19 campus.

20 40. I have read the Affidavits of Milton Schwartz and  
21 others filed by the Plaintiff and must express my genuine shock  
22 and dismay that intentional misstatements have been made in such  
23 a cavalier fashion. In response to the various allegations that  
24 I am detrimental to the Academy or that the current Board is  
25 about to cause immediate harm, I advise the Court, as follows.

26 41. At no time before the June 18, 1992 election did Mr.  
27 Schwartz or Mr. Novick express to me, either directly or  
28 indirectly, at any meeting of the Board or at any time outside



1 of the Board meeting, their desire to terminate me as  
2 Administrator or to not renew my contract; and the only  
3 reference made in any of the minutes of any Board member being  
4 dissatisfied with me was made at a March, 1991, Board meeting  
5 chaired by Mr. Schwartz. Mr. Schwartz disclosed that two  
6 directors wanted me fired and stated clearly that he did not  
7 count himself among their supporters. In fact, Mr. Schwartz had  
8 provided me with a letter of recommendation, a copy of which has  
9 been attached to Defendants' Supplemental Opposition as Exhibit  
10 Q.

11 42. The allegation that the Defendant Board did nothing to  
12 try to resolve the conflict which Mr. Schwartz has created is  
13 false. Lenard Schwartz attempted to arrange mediation between  
14 Mr. Schwartz and the Defendant Board. After consultation among  
15 each other and our counsel, the Defendant Board agreed to  
16 mediation by Mr. Schwartz and Mr. Novick, at Mr. Schwartz's  
17 office. We agreed that the meeting would be without the benefit  
18 of counsel, as the aim was to come to some mutually agreeable  
19 resolution of the dispute, not a trial of the dispute by de  
20 facto litigation. The date originally set for the meeting was  
21 canceled because Mr. Schwartz was out of town at the Republican  
22 National Convention. When he returned, we were then advised  
23 that Mr. Schwartz wished to change the location of the meeting  
24 to his office and to bring his counsel to show us that the  
25 election was illegal and to mediate from that premise. (Please  
26 see Mr. Schwartz's letter, Exhibit N). It was the Board's  
27 consensus that Mr. Schwartz was not attempting to mediate in  
28 good-faith and was doing exactly what we were told would not be

1 done in such a mediation, attempt a de facto litigation of the  
2 legal issues.

3 43. In 1991, a list was left in the administrative offices  
4 with the name of a Trustee, Dr. Neville Pokroy, at the top. The  
5 list contained the names of parents of various students and  
6 purported to be a list of parents who were dissatisfied with my  
7 administration. This was found during the student recruitment  
8 period and, at my instruction, my secretary, Julie James,  
9 telephoned each parent on the list to inquire as to their  
10 dissatisfaction. Julie James reported to me that, to a person,  
11 the parents contacted indicated that they had not spoken with  
12 Dr. Pokroy, had not given any consent to their names being used  
13 regarding my administration and had no serious complaints about  
14 my administration. Incidentally, Dr. Pokroy was one of the first  
15 parents that term to re-enroll his children in the Academy and  
16 provided me with a letter of reference which is attached hereto  
17 as Exhibit DD; other laudatory parents' letters attached as  
18 group Exhibit EE. See also Affidavit of Julie James, Exhibit  
19 AA.

20 44. The allegation that I somehow abused a child by making  
21 him sit in his own vomit is insidious. I was in the  
22 administrative office with Julie James when a student from the  
23 sixth grade class came into the office. He reported that the  
24 teacher needed help because a student had vomited. The sub-  
25 contracted janitor, Bud Scurlock, was not available. Julie and  
26 I went to the classroom and found this young student sitting at  
27 his desk with a lapful of vomit. The vomit covered not only him  
28 but his desk and books. Rather than having the student stand up

1 and causing more of a mess, I asked him to sit still while  
2 cleaning supplies were brought to the classroom. The other  
3 students were running about the classroom and I tried to assist  
4 the teacher in restoring order by having them sit in their  
5 seats. When the cleaning materials were brought into the  
6 classroom, I attended to cleaning the student first, so as to  
7 get the vomit off of his person without spreading it onto the  
8 floor, the furniture and other students and, then, had Julie  
9 escort him immediately to the office and call his parents. I  
10 then cleaned the rest of the mess.

11 45. This allegation has been made by Bud Scurlock, who is  
12 the husband of the only teacher who was not offered a contract  
13 renewal for the following school term. Mrs. Scurlock was not  
14 asked to return because she was a divisive force among the  
15 faculty and had caused rifts between various teachers, which  
16 made their adherence to the curriculum and their  
17 responsibilities strained and difficult.

18 46. Before discussing the non-renewal of her contract, I  
19 made every effort to mediate between Mrs. Scurlock and the other  
20 teacher with whom she had primary disagreements. Although the  
21 other teacher was amenable to compromise, Mrs. Scurlock was not.

22 47. The allegation that I represented that all teachers  
23 would be rehired for the next term is false. I gave a report to  
24 the chairman at the April, 1992 meeting and was asked to  
25 reiterate the report by the chairman at the May, 1992 meeting.  
26 I indicated that, at that time, (May, 1992), and as the case  
27 actually was, all the teachers were expressing eagerness for  
28 contract renewals. (See Exhibit B). Contract renewals were not

1 offered until after the consideration of the budget in June,  
2 1992. See Memo #16 to all teachers, Exhibit FF. Thereafter,  
3 the decision was made not to afford Mrs. Scurlock a renewal  
4 contract for the reasons stated, above. Three other teachers  
5 who had been offered renewals chose not to renew, two because  
6 they had made plans to move out-of-state and one who was offered  
7 a better paying position at the Clark County School District.  
8 The Academy employs a total of twenty teachers and our turn-over  
9 has been on average with other local private schools and the  
10 Clark County School District.

11 48. With regard to contract and other issues, the teachers  
12 had expressed the desire to meet directly with members of the  
13 Board, without my presence or Mr. Schwartz's presence. Bud  
14 Scurlock reported this desire to Mr. Schwartz. Schwartz called  
15 the teacher forward who had initiated this proposal and informed  
16 her that she could not have such a meeting at "my school." A  
17 letter which this teacher wrote regarding this incident is  
18 attached hereto as Exhibit GG. Therefore, the meeting was held  
19 at a teacher's private home and Schwartz faxed notes to the  
20 Board members advising them not to attend that meeting.

21 49. Therefore, any misunderstanding or concern regarding  
22 the contract procedure was a direct result of Mr. Schwartz's  
23 refusal to allow the teachers to air their concerns openly and  
24 directly to the members of the Board. In this regard, it is  
25 interesting that Mr. Schwartz's former wife, Joanne Stevens,  
26 appeared at the Teachers Appreciation dinner after dining with  
27 Mr. Schwartz and attempted to distribute pamphlets implying that  
28 somehow I was responsible for contract problems with the

1 teachers. To this day, I find her allegations somewhat  
2 abstruse. Stevens appeared at the dinner in a state of  
3 intoxication and was aggressive, bordering on the violent. I  
4 was concerned that she was about to hit me and another member of  
5 the Board, Geri Rentchler. Stevens was required to settle down  
6 or leave by the owners of the house and some other members of  
7 the Board in attendance. To this day, I am not sure of what her  
8 complaints were or how I was alleged to have been responsible  
9 for them.

10 50. The pamphlets which Stevens distributed contained  
11 copies of teacher employment contracts which could only have  
12 come from the administrative files or from someone with access  
13 thereto. I overheard her state at that confrontation that she  
14 had just come from a dinner meeting with her former husband,  
15 Milton Schwartz. The day prior to this confrontation, she had  
16 come to the administrative offices to register her daughter and  
17 complimented my administration of the Academy. See Affidavit of  
18 Terry Bothmann, Exhibit BB.

19 51. The Plaintiff attaches a Petition of Parents in behalf  
20 of Jackie Edery. The signatures obtained on that Petition were  
21 solicited by a 6th grade student, who was asked to solicit  
22 signatures on the Petition. A copy of that student's letter is  
23 attached hereto and made a part hereof as Exhibit HH. After  
24 Edery's termination for incompetence and misrepresenting his  
25 credentials, he considered litigation against the Academy, then  
26 decided not to litigate and, before he left town, met with me  
27 personally to apologize for his misrepresentation and the  
28 problems which his dismissal had caused. Mr. Schwartz, who now

1 opposes me on the Jackie Edery issue, previously supported me.  
2 The minutes of the Board of Trustees' meeting of March 26, 1991,  
3 a copy of which is attached as Exhibit S to the Defendants'  
4 Supplemental Opposition states clearly at page 2: "Mr. Schwartz  
5 brought up the Jackie Edery issue and stated that Dr. Lubin has  
6 the right to hire and fire teachers." At the June 25, 1991  
7 Board meeting, the Board considered actually paying Edery, who  
8 had brought claims by his attorney, Dan Marks, but that Motion  
9 was tabled upon my representation that Edery had met with me and  
10 apologized over the incident. A copy of the June 25, 1991  
11 minutes are attached hereto as Exhibit II.

12 52. Mr. Scurlock, the school's janitor, who has made a  
13 variety of allegations against me, accused me of harassing  
14 Edward Cusato and Cathy Ballog regarding their friendship.  
15 Attached hereto and made a part hereof as group Exhibit JJ, are  
16 letters and other data found in Mr. Cusato's computer file.  
17 This relationship was so notorious that even students were  
18 commenting about it but, at no time, did I harass either Mr.  
19 Cusato or Ms. Ballog. Their relationship was their own business  
20 so long as it did not interfere with their professional  
21 responsibilities.

22 53. Scurlock has also accused me of ranting and raging at  
23 a child's parent, George Shipman. At no time did such an event  
24 occur and Mr. Shipman's letter under date of March 5, 1993, is  
25 attached hereto as Exhibit KK.

26 54. Throughout the Plaintiff's documents, it alleges that  
27 parents are clamoring for my dismissal. A careful review of the  
28 lists relied on by the Plaintiff shows that they have simply

1 duplicated and reduplicated names and that the number of parents  
2 are actually very few. However, once complaining parents were  
3 advised as to the true facts, rather than the rumors and  
4 suspicions which abounded, their complaints were assuaged. For  
5 example, attached hereto as Exhibit LL is a letter from one of  
6 the parents, Debra Rein, asking that her name be retracted.  
7 Several other parents called in to retract their statements of  
8 dissatisfaction.

9 55. Ira Martel's horrendous letter is attached as an  
10 Exhibit to the Plaintiff's documents. My response is attached  
11 hereto as Exhibit MM.

12 56. In April, 1992, the 6th Edition of "Trustee Handbook"  
13 by Barbara Hadley Stanton, published by the National Association  
14 of Independent Schools, of which the Academy is a full member,  
15 was adopted by the Board unanimously to govern the Board's  
16 operations, policies, actions and relationship of the Board  
17 viz., the administrative staff, faculty and, etc. Since its  
18 adoption, Mr. Schwartz has consistently voiced opposition to the  
19 policies established by the National Association of Independent  
20 Schools, despite the fact that he has absolutely no formal  
21 training or education in that regard. I can only describe Mr.  
22 Schwartz's efforts of that of "micromanaging" the affairs of the  
23 Academy from a position of ignorance regarding school  
24 curriculum, administration, policies and functions. For  
25 example, the guidelines for organizing and running committees  
26 provides that the School Head should be and ex officio member by  
27 virtue of his or her office of all committees but Mr. Schwartz  
28 has unilaterally prevented me from attending various committee

1 functions, particularly the nominating committee and By-Laws  
2 committee.

3 57. The guidelines also recommend that, if there is a  
4 conflict between the Chair and the Administrative head, the  
5 chair should consider resigning. (Trustee Handbook, page 56).

6 58. I have found the Plaintiff's tactic of exaggeration an  
7 overstatement very interesting. For example, in the minutes of  
8 March 26, 1991, Exhibit S to the Defendants' Supplemental  
9 Opposition, it is clear that only two Board members expressed a  
10 desire to fire me. In Milton Schwartz's Supplemental Affidavit,  
11 these two Directors become "some of the Directors". In the body  
12 of the Plaintiff's Reply, Plaintiff's counsel argues that these  
13 two Directors, who became "some Directors" in M. Schwartz's  
14 Affidavit, are now "many" Directors.

15 59. Mr. Schwartz also alleges that the Academy is only  
16 running at 40% capacity, implying that the school is 60% vacant.  
17 However, a comparison of Jewish Community Day Schools for the  
18 school term 1990-1991, the last period for which I have figures,  
19 shows that in Jewish communities with a Jewish population  
20 equivalent to that of Clark County, the Academy is the school  
21 with the largest population of students. The only metropolitan  
22 areas with larger student populations in day schools included  
23 New York City, New York, San Francisco, California, Pittsburgh,  
24 Pennsylvania, San Diego, California, West Palm Beach, Florida,  
25 Denver, Colorado, and Cincinnati, Ohio, all of which have much  
26 larger Jewish populations than Clark County. A copy of the  
27 Jewish Community Day School Study for the 1990-1991 term is  
28 attached hereto and made a part hereof as Exhibit NN.



1           60. The Plaintiff relies upon a letter from Carol Woolley  
2 to attack my competency and credibility. However, the facts are  
3 that Carol Woolley was a teacher who was not competent. Many  
4 parents expressed negative concerns about this teacher and, one  
5 of them, Sarah Rohde, observed Mrs. Woolley in the classroom and  
6 prepared a report to me under date of December 3, 1990, a copy  
7 of which is attached hereto as Exhibit OO. Mrs. Rohde found  
8 Woolley to appear frustrated with students' behavior, nagged at  
9 them, scolded them and lectured them about behavior or poor  
10 classwork and concluded that almost all of the attention she  
11 gave the students was negative. Conversely, the students who  
12 sat quietly and did their work, following all classroom rules,  
13 received no praise or attention for doing well. The students  
14 who received negative attention did not change their behavior  
15 because of Woolley's threats or warnings.

16           61. Dr. Neville Pokroy was the Trustee who was most vocal  
17 in his concern about Ms. Woolley. Nevertheless, it was Dr.  
18 Pokroy, himself, who solicited Woolley's letter which has been  
19 attached to the Plaintiff's Reply. I attempted to work with  
20 Woolley based upon the Rohde report and comments and feedback  
21 from other parents and based upon my own evaluation. Mrs.  
22 Woolley chose to resign for, in her own words, "medical reasons"  
23 as of February 22, 1991. A copy of Mrs. Woolley's resignation  
24 under date of February 21, 1991, is attached hereto as Exhibit  
25 PP.

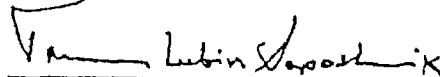
26           62. The Plaintiff has attempted to portray me as being a  
27 cause of dissention with the teachers when, in fact, it was the  
28 Board of Trustees, as a whole, under the express guidance of Mr.

1 Schwartz, that was the cause of most teacher complaints.  
 2 Attached hereto and made a part hereof as Exhibit QQ, is a copy  
 3 of a letter signed by 13 of the then 16 teachers at the Academy,  
 4 who expressed unrest imposed upon the faculty staff and  
 5 administration by Mr. Schwartz, acting through the Board, and  
 6 who, at the same time, were "totally supportive of Dr. Lubin,  
 7 her leadership, philosophies and policies of the Academy."

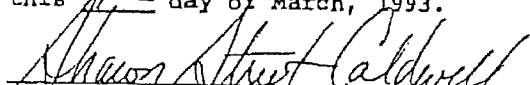
8 63. I have always endeavored to discharge my duties and  
 9 responsibilities as the Head Administrator of the Hebrew  
 10 Academy, and I do not believe I am exaggerating when I say that  
 11 the success of the Academy and its rapid growth and development  
 12 have been due primarily to my singularly devoted efforts. It is  
 13 unfortunate that Mr. Schwartz has confused his own sense of  
 14 self-importance with that of the Academy's students without  
 15 regard for the best interests of the students or the future of  
 16 the Academy.

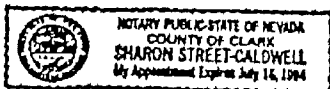
17 64. Lastly, I wish to note that not one member of the  
 18 fugitive Board has a child enrolled at the Hebrew Academy.

19 FURTHERMORE, your Affiant sayeth naught.

20   
 21 TAMAR LUBIN, also known as  
 22 TAMAR LUBIN SAPOSHNIK

23 SUBSCRIBED and SWORN to before me  
 24 this 11<sup>th</sup> day of March, 1993.

25   
 26 Notary Public in and for said  
 27 County and State



# EXHIBIT “F”

**Deposition of:**

Tamar Lubin Saposhnik, Ph.D.

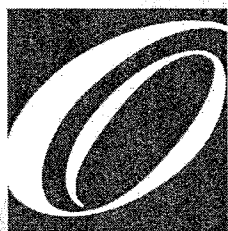
Volume I, Pages 1 - 93

**Case:**

In the Matter of the Estate of Milton I. Schwartz  
07P061300

**Date:**

06/09/2016



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Page 1	Page 3
<p>1 DISTRICT COURT</p> <p>2 CLARK COUNTY, NEVADA</p> <p>3</p> <p>4 In the Matter of the Estate of )</p> <p>5 ) Case No. 07P061300</p> <p>6 MILTON I. SCHWARTZ, )</p> <p>7 ) Dept. No.: 26/Probate</p> <p>8 )</p> <p>9 )</p> <p>10 )</p> <p>11 )</p> <p>12 )</p> <p>13 )</p> <p>14 )</p> <p>15 )</p> <p>16 )</p> <p>17 )</p> <p>18 )</p> <p>19 )</p> <p>20 )</p> <p>21 )</p> <p>22 )</p> <p>23 )</p> <p>24 )</p> <p>25 )</p> <p>DEPOSITION OF TAMAR LUBIN SAPOSHNIK, Ph.D.</p> <p>Taken at</p> <p>Las Ventanas at Summerlin</p> <p>10401 West Charleston Boulevard</p> <p>Las Vegas, Nevada 89135</p> <p>On Thursday, June 9, 2016</p> <p>At 9:36 a.m.</p> <p>Reported by: Sarah M. Winn-Boddie, CCR No. 868</p>	<p>1 INDEX</p> <p>2 WITNESS PAGE</p> <p>3 TAMAR LUBIN SAPOSHNIK, Ph.D.</p> <p>4 Examination by Mr. LeVeque 4</p> <p>5 Examination by Mr. Kemp 82</p> <p>6</p> <p>7</p> <p>8 EXHIBITS MARKED</p> <p>9 1 Amended Deposition Subpoena Duces Tecum 4</p> <p>10 2 Photocopy of Book "From Chaos to Order" 20</p> <p>11 3 August 4, 1989 Board Meeting Minutes 32</p> <p>12 4 August 30, 1990 Letter and Attachment 36</p> <p>13 5 October 18, 1990 Board Meeting Minutes 40</p> <p>14 6 Bylaws of The Milton I. Schwartz Hebrew Academy 45</p> <p>15 7 Arbitration Exemption: Declaratory Judgment 55</p> <p>16 8 June 18, 1992 Board Meeting Minutes 56</p> <p>17 9 December 16, 1992 Board Meeting Minutes 59</p> <p>18 10 January 14, 1993 Board Meeting Minutes 64</p> <p>19 11 Supplemental Affidavit of Milton I. Schwartz 66</p> <p>20 12 August 25, 1994 Board Meeting Minutes 71</p> <p>21 13 May 7, 1996 Board Meeting Minutes 74</p> <p>22 14 May 19, 1996 Board Meeting Minutes 77</p> <p>23 15 May 23, 1996 Letter 79</p> <p>24</p> <p>25</p>
Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2 For A. Jonathan Schwartz, Executor of the Estate of</p> <p>3 Milton I. Schwartz:</p> <p>4 ALEXANDER G. LeVEQUE, ESQ.</p> <p>5 Solomon Diggins &amp; Freer</p> <p>6 9060 West Cheyenne Avenue</p> <p>7 Las Vegas, Nevada 89129</p> <p>8 (702) 853-5483</p> <p>9</p> <p>10 For The Dr. Miriam and Sheldon G. Adelson Educational</p> <p>11 Institute:</p> <p>12 WILLIAM S. KEMP, ESQ.</p> <p>13 Kemp, Jones &amp; Coulthard</p> <p>14 3800 Howard Hughes Parkway</p> <p>15 17th Floor</p> <p>16 Las Vegas, Nevada 89169</p> <p>17 (702) 385-6000</p> <p>18</p> <p>19 *****</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 THURSDAY, JUNE 9, 2016; LAS VEGAS, NEVADA</p> <p>2 9:36 a.m.</p> <p>3 -oOo-</p> <p>4 Whereupon,</p> <p>5 (In an off-the-record discussion held prior to the</p> <p>6 commencement of the proceedings, counsel agreed to waive the</p> <p>7 court reporter's requirements under Rule 30(b)(4) of the</p> <p>8 Nevada Rules of Civil Procedure.)</p> <p>9 Whereupon,</p> <p>10 TAMAR LUBIN SAPOSHNIK, Ph.D.,</p> <p>11 having been first duly sworn to testify to the truth, the</p> <p>12 whole truth, and nothing but the truth, was examined and</p> <p>13 testified as follows:</p> <p>14</p> <p>15 MR. LeVEQUE: Could you mark this as Exhibit 1,</p> <p>16 please?</p> <p>17 (Exhibit 1 marked for identification.)</p> <p>18 MR. LeVEQUE: Thank you.</p> <p>19 EXAMINATION</p> <p>20 BY MR. LeVEQUE:</p> <p>21 Q. Good morning, Doctor. Could you please state and</p> <p>22 spell your full name for the record?</p> <p>23 A. Tamar, T-a-m-a-r, Lubin, L-u-b-i-n, Saposhnik,</p> <p>24 S-a-p-o-s-h-n-i-k.</p> <p>25 Q. Thank you very much.</p>

Page 45	Page 47
1 A. Okay.	1 MR. KEMP: Same objection.
2 Q. Do you understand what a personal guarantee is on a	2 THE WITNESS: Yes.
3 loan?	3 BY MR. LeVEQUE:
4 A. Of course.	4 Q. I'm going to direct you to the last page of this
5 Q. Okay. Do you have a recollection if Mr. Schwartz	5 exhibit, which is page 9.
6 personally guaranteed a construction loan by a bank for the	6 A. Yes.
7 initial construction of the school?	7 Q. And you see that it's dated -- can you read the
8 A. I think so, yes.	8 date?
9 Q. Okay.	9 A. Yeah. 19th day of December, 1990.
10 (Off-the-record discussion.)	10 Q. Okay. Can you find your signature in here?
11 MR. LeVEQUE: We'll go off the record.	11 A. Yes.
12 (Recess taken from 10:26 a.m. to 10:30 a.m.)	12 Q. Which one is it?
13 (Exhibit 6 marked for identification.)	13 A. The bottom.
14 BY MR. LeVEQUE:	14 Q. So the signature on this document is your signature,
15 Q. All right, Doctor. Showing you what's been marked	15 correct?
16 as Exhibit 6 to your deposition, do you recognize this	16 A. Yeah. It's my signature.
17 document?	17 Q. All right. Let me ask you a hypothetical question.
18 A. Yeah.	18 Do you believe that if Mr. Schwartz did not make the
19 Q. Okay. And what do you recognize it to be?	19 half-million-dollar gift that he made and that he did not
20 A. Well, it's a -- the bylaws for the name of Milton I.	20 solicit the \$300,000 gift from Mr. Sogg --
21 Schwartz.	21 A. Mm-hmm.
22 Q. All right. First page of Exhibit 6, do you see the	22 Q. -- do you believe that the school would have been
23 first article where it says "Article I, name and office"?	23 able to have been built on the loan that -- excuse me -- on
24 Do you see that?	24 the land that was provided by the Howard Hughes Corporation?
25 A. Mm-hmm. Yes.	25 MR. KEMP: Form. Foundation.
Page 46	Page 48
1 Q. And you see that it states "Name: The name of this	1 THE WITNESS: Probably.
2 corporation is The Milton I. Schwartz" --	2 BY MR. LeVEQUE:
3 A. Yes.	3 Q. Okay.
4 Q. -- "Hebrew Academy" --	4 A. Unless somebody from heaven would come and dropped a
5 A. Mm-hmm.	5 million dollars.
6 Q. Let me finish. I'm sorry.	6 Q. Well, let me make sure I understand your answer. Do
7 A. Okay.	7 you think it would have happened or do you think it would not
8 Q. Open parentheses, "hereinafter referred to as The	8 have happened?
9 Academy," close parentheses, "and shall remain so in	9 A. Probably not, but how can one say to certainty --
10 perpetuity"?	10 Q. Fair enough.
11 (Reporter interjection.)	11 A. -- you know? Like what if somebody comes from
12 BY MR. LeVEQUE:	12 somewhere and says, Oh, guess what?
13 Q. Do you see where I read that?	13 Q. Fair enough.
14 A. Yes.	14 All right. From the time that Mr. Schwartz became
15 Q. Okay. Now, is this bylaw consistent with your	15 chairman of the board, which was, as we've seen, in August of
16 understanding that Mr. Schwartz received in exchange for his	16 1989, through the school year that ended in 1991, what's your
17 initial gift of \$500,000 the naming of the school rights to be	17 recollection of enrollment at the school? Did it increase?
18 held --	18 Did it decrease? Do you remember?
19 A. Yes.	19 A. It usually increases, so it increased, not
20 Q. -- in perpetuity?	20 decreased.
21 MR. KEMP: Form.	21 Q. Okay. Was there any year -- well, let me ask you
22 THE WITNESS: Yes.	22 this: When did you stop working for the school?
23 BY MR. LeVEQUE:	23 A. I'd say 1980-something. I'm not sure the last --
24 Q. Okay. And I believe you testified that your	24 it's probably somewhere. I don't want to say a date that --
25 understanding what perpetuity means is forever and ever?	25 Q. No, I understand.

# EXHIBIT “G”

**Deposition of:**

Samuel Ventura

**Case:**

In the Matter of the Estate of Milton I. Schwartz  
07P061300

**Date:**

07/11/2016



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Samuel Ventura

In the Matter of the Estate of Milton I. Schwartz

Page 1	Page 3
<p>1 DISTRICT COURT</p> <p>2 CLARK COUNTY, NEVADA</p> <p>3</p> <p>4 In the Matter of the Estate of )</p> <p>5 ) Case No.: 07P061300</p> <p>6 MILTON I. SCHWARTZ )</p> <p>7 Deceased. ) Dept. No.: 26/Probate</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 DEPOSITION OF SAMUEL VENTURA</p> <p>13 Taken on Monday, July 11, 2016</p> <p>14 at 1:37 p.m.</p> <p>15 At Solomon, Dwiggins &amp; Freer, Ltd.</p> <p>16 9060 West Cheyenne Avenue</p> <p>17 Las Vegas, Nevada</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 Reported By: Ewa Barnes, CCR No. 889</p>	<p>1 E X H I B I T S</p> <p>2 NUMBER PAGE</p> <p>3 "1" Notice of Taking Deposition of Sam 4</p> <p>4 Ventura Pursuant to Amended Deposition</p> <p>5 Subpoena Duces Tecum</p> <p>6 "2" The Hebrew Academy Building Fund 12</p> <p>7 Pledges, July 1, 1988, through</p> <p>8 February 21, 1990, Bates stamped</p> <p>9 AC402057</p> <p>10 "3" Bylaws of The Milton I. Schwartz 14</p> <p>11 Hebrew Academy. Bates stamped</p> <p>12 EST-00097 - EST-00105</p> <p>13 "4" The Milton I. Schwartz Hebrew 34</p> <p>14 Academy Resolutions of the Board</p> <p>15 of Trustees, December 13, 2007,</p> <p>16 Bates stamped AC404207 - AC404211</p> <p>17 "5" The Adelson Educational Campus, The 46</p> <p>18 Milton I. Schwartz Hebrew Academy</p> <p>19 Board Minutes, February 12, 2008,</p> <p>20 Bates stamped AC404350 - AC404351</p> <p>21 "6" The Milton I. Schwartz Hebrew 47</p> <p>22 Academy Resolutions of the Board</p> <p>23 of Trustees, February 2008,</p> <p>24 Bates stamped AC404268 - AC404270</p> <p>25 "7" The Milton I. Schwartz Hebrew 48</p> <p>Academy Resolutions of the Board</p> <p>of Trustees, February 12, 2008,</p> <p>Bates stamped AC404265 - AC404267</p> <p>"8" Petition for Declaratory Relief 49</p>
Page 2	Page 4
<p>1 APPEARANCES OF COUNSEL:</p> <p>2</p> <p>3 For A. Jonathan Schwartz, Executor of the Estate of</p> <p>4 Milton I. Schwartz</p> <p>5 SOLOMON, DWIGGINS &amp; FREER, LTD.</p> <p>6 By: Alexander G. LeVeque, Esq.</p> <p>7 9060 West Cheyenne Avenue</p> <p>8 Las Vegas, Nevada 89129</p> <p>9 (702) 853-5483</p> <p>10 (702) 853-5485 Fax</p> <p>11 aleveque@sdfnlaw.com</p> <p>12</p> <p>13 For The Dr. Miriam and Sheldon G. Adelson Educational</p> <p>14 Institute:</p> <p>15 KEMP, JONES &amp; COULTHARD, LLP</p> <p>16 By: David T. Blake, Esq.</p> <p>17 3800 Howard Hughes Parkway, 17th Floor</p> <p>18 Las Vegas, Nevada 89169</p> <p>19 (702) 385-6000</p> <p>20 (702) 385-6001 Fax</p> <p>21 d.blake@kempjones.com</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 LAS VEGAS, NEVADA; MONDAY, JULY 11, 2016</p> <p>2 1:37 P.M.</p> <p>3 -0-</p> <p>4 Whereupon --</p> <p>5 SAMUEL VENTURA,</p> <p>6 the witness herein, having been first</p> <p>7 duly sworn, was examined and testified</p> <p>8 as follows:</p> <p>9</p> <p>10 EXAMINATION</p> <p>11 BY MR. LEVEQUE:</p> <p>12 Q. Good afternoon. Could you please state and</p> <p>13 spell your name for the record.</p> <p>14 A. Samuel Ventura, last name is V-e-n-t-u-r-a.</p> <p>15 Q. Thank you.</p> <p>16 Could you mark this Exhibit 1, please.</p> <p>17 (Exhibit 1 was marked.)</p> <p>18 BY MR. LEVEQUE:</p> <p>19 Q. Okay. Mr. Ventura, what's been handed to you as</p> <p>20 an exhibit to your deposition, and this is the notice for</p> <p>21 your deposition today, if you could pick it up, I just want</p> <p>22 to ask you a couple questions about it.</p> <p>23 A. Yeah.</p> <p>24 Q. This document is actually two things. It's a</p> <p>25 notice of deposition. That's the first document. And then</p>
<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</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<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</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Page 13	Page 15
<p>1 A. Paul Sogg. Paul B. Sogg. Yes, I see him.</p> <p>2 Q. Do you remember Mr. Sogg donating a significant</p> <p>3 amount of money to the school as well for the construction?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Do you know if Mr. Schwartz facilitated in any</p> <p>6 way the donation from Mr. Sogg?</p> <p>7 MR. BLAKE: Objection. Form and foundation.</p> <p>8 THE WITNESS: It's a small town. Mr. Paul B.</p> <p>9 Sogg was a longtime friend of mine. Before he passed away,</p> <p>10 he sold me his business. It was a self storage. So I do</p> <p>11 know Paul Sogg very well.</p> <p>12 BY MR. LEVEQUE:</p> <p>13 Q. Okay.</p> <p>14 A. I'm not sure, and I don't know if</p> <p>15 Mr. Schwartz -- I knew he donated \$300,000. I'm trying to</p> <p>16 recall. No, I don't recall, and I don't remember if</p> <p>17 Mr. Schwartz is the gentleman or managed to talk to Paul to</p> <p>18 put the money. I really don't.</p> <p>19 Q. All right. That's fair enough. You do recall,</p> <p>20 though, that in exchange for the half million dollars that</p> <p>21 Mr. Schwartz donated to the school, the school was named</p> <p>22 after him; correct?</p> <p>23 A. That's correct.</p> <p>24 MR. BLAKE: Objection. Form. Foundation.</p> <p>25 THE WITNESS: Sorry.</p>	<p>1 Milton I. Schwartz Hebrew Academy and shall remain so in</p> <p>2 perpetuity.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Was this part of the agreement that the school</p> <p>6 had with Mr. Schwartz, that the bylaws would be amended to</p> <p>7 reflect that the school would be known in perpetuity as the</p> <p>8 Milton I. Schwartz Hebrew Academy?</p> <p>9 MR. BLAKE: Objection. Form. Foundation.</p> <p>10 Calls for a legal conclusion, and also mischaracterizes his</p> <p>11 testimony.</p> <p>12 Go ahead and answer.</p> <p>13 BY MR. LEVEQUE:</p> <p>14 Q. If you can remember it.</p> <p>15 A. I don't think I remember that far.</p> <p>16 MR. LEVEQUE: Can you read it back?</p> <p>17 BY MR. LEVEQUE:</p> <p>18 Q. I'll restate. Was the money and the bylaws part</p> <p>19 of the deal between the school and Mr. Schwartz concerning</p> <p>20 the naming rights?</p> <p>21 MR. BLAKE: Objection. Form and foundation.</p> <p>22 Calls for a legal conclusion.</p> <p>23 You can answer.</p> <p>24 THE WITNESS: Yes.</p> <p>25 ///</p>
Page 14	Page 16
<p>1 BY MR. LEVEQUE:</p> <p>2 Q. Okay. Was it your understanding that it was an</p> <p>3 agreement between the school with respect to the naming</p> <p>4 rights, that in exchange for Mr. Schwartz's pledge of half</p> <p>5 a million dollars, the school as consideration would name</p> <p>6 the school after him?</p> <p>7 MR. BLAKE: Objection. Form, foundation, and</p> <p>8 calls for a legal conclusion.</p> <p>9 You can answer.</p> <p>10 THE WITNESS: Yes.</p> <p>11 (Exhibit 3 was marked.)</p> <p>12 BY MR. LEVEQUE:</p> <p>13 Q. Okay. I'm showing you what's been marked as</p> <p>14 Exhibit 3 to your deposition, Mr. Ventura, are bylaws from</p> <p>15 the school. This version of bylaws was the enacted bylaws</p> <p>16 of 1990.</p> <p>17 If you could turn to the last page of Exhibit 3,</p> <p>18 I think I see your signature, but I just want to confirm.</p> <p>19 A. Yeah. Signature is here.</p> <p>20 Q. Is it the one that is one, two, three -- fourth</p> <p>21 from the bottom?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And if you go to the first page of</p> <p>24 Exhibit 3, the first article talks about the naming of the</p> <p>25 school, where it says: The name of the corporation is The</p>	<p>1 BY MR. LEVEQUE:</p> <p>2 Q. Do you recall some time in 1992 a lawsuit being</p> <p>3 filed by a group of people who claimed to be the board and</p> <p>4 another group of people who claimed to be the board and</p> <p>5 eventually got resolved, but there was a lawsuit between</p> <p>6 the two boards?</p> <p>7 A. No, I don't recall.</p> <p>8 Q. Okay. Do you recall there being a fundamental</p> <p>9 disagreement between Mr. Schwartz and Dr. Lubin on how to</p> <p>10 run the school?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Do you remember the school, I think I want to</p> <p>13 say around 1993, 1994, took off the name Milton I. Schwartz</p> <p>14 from the Hebrew Academy as a result of that dispute between</p> <p>15 the two?</p> <p>16 A. Yes, I do.</p> <p>17 Q. And do you recall that Dr. Lubin was -- her</p> <p>18 employment was terminated by the school?</p> <p>19 A. I was not -- when she was terminated, I was not</p> <p>20 a board member. I resigned maybe two months before that or</p> <p>21 maybe -- I don't remember the timing. A few months, maybe</p> <p>22 a year or something. I was the first gentleman who</p> <p>23 resigned and pulled the children out of the school because</p> <p>24 of the way the school was running by Tamar Lubin.</p> <p>25 Q. Okay.</p>

# EXHIBIT “H”

**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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Lenard E. Schwartz, Esq.

In the Matter of the Estate of Milton I. Schwartz

Page 1	Page 3
<p>1 DISTRICT COURT</p> <p>2 COUNTY OF CLARK, NEVADA</p> <p>3</p> <p>4 In the Matter of the Estate of ) Case No. P061300</p> <p>5 MILTON I. SCHWARTZ, ) Dept. No.: 26/Probate</p> <p>6 Deceased. )</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 DEPOSITION OF LENARD E. SCHWARTZER, ESQ.</p> <p>16 Taken on Tuesday, February 25, 2014</p> <p>17 At 1:00 p.m.</p> <p>18 At 9060 West Cheyenne Avenue</p> <p>19 Las Vegas, Nevada</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Reported by: Carla N. Bywaters, CCR 866</p> <p>25 Job No. 8969</p>	<p>1 I N D E X</p> <p>2 WITNESS PAGE</p> <p>3 LENARD E. SCHWARTZER, ESQ.</p> <p>4 Examination by Mr. Freer 4</p> <p>5 Examination by Mr. Couvillier 21</p> <p>6 Examination by Mr. Freer 25</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9 NUMBER DESCRIPTION MARKED</p> <p>10 6 February 19, 2014 Affidavit of 6</p> <p>11 Service; February 18, 2014 Amended</p> <p>12 Deposition Subpoena (Duces Tecum)</p> <p>13 7 July 17, 1992 Letter, Schwartz 14</p> <p>14 to Schwartz, EST-00189</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2 For A. Jonathan Schwartz:</p> <p>3 ALAN D. FREER, ESQ.</p> <p>4 Solomon Dwiggin &amp; Freer, Ltd.</p> <p>5 West Cheyenne Professional Centre</p> <p>6 9060 West Cheyenne Avenue</p> <p>7 Las Vegas, Nevada 89129</p> <p>8 For The Dr. Miriam and Sheldon G. Adelson Educational</p> <p>9 Institute:</p> <p>10 MAXIMILIANO D. COUVILLIER III, ESQ.</p> <p>11 Lionel Sawyer &amp; Collins</p> <p>12 300 South Fourth Street</p> <p>13 Suite 1700</p> <p>14 Las Vegas, Nevada 89101</p> <p>15 Also Present:</p> <p>16 A. JONATHAN SCHWARTZ</p> <p>17</p> <p>18 * * * * *</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 P R O C E E D I N G S</p> <p>2 (Witness sworn.)</p> <p>3 THE WITNESS: And Lenard is spelled</p> <p>4 L-e-n-a-r-d, middle initial E., Schwartz,</p> <p>5 S-c-h-w-a-r-t-z-e-r. If you need to contact me, my law</p> <p>6 office would be best. That's Schwartz and McPherson</p> <p>7 2850 South Jones Boulevard, Suite No. 1, Las Vegas,</p> <p>8 Nevada 89146, and the telephone there is (702)228-7590.</p> <p>9 LENARD E. SCHWARTZER, ESQ.,</p> <p>10 having been first duly sworn, was</p> <p>11 examined and testified as follows:</p> <p>12 EXAMINATION</p> <p>13 BY MR. FREER:</p> <p>14 Q. Thank you, Mr. Schwartz.</p> <p>15 A. I've been here before.</p> <p>16 Q. You've had your deposition taken before?</p> <p>17 A. I've had my deposition taken before, and I've</p> <p>18 taken many depositions.</p> <p>19 Q. Great. Is there any -- I'm going to dispense</p> <p>20 with asking you the standard questions. Is there</p> <p>21 anything today that would affect your testimony that</p> <p>22 you're about to give?</p> <p>23 A. Not that I could think of other than we're</p> <p>24 asking things that happened about 14 years ago.</p> <p>25 Q. You don't have a memory like a steel trap?</p>

Page 5	Page 7
1 A. A rusted steel trap, probably, but --	1 you were served with?
2 Q. Well --	2 A. I was served with the document marked as
3 A. I mean, I do have memory of that time and	3 Exhibit 6 except for the cover page, which is the
4 period, yes.	4 Affidavit of Service.
5 Q. Okay. I appreciate it. Are you aware of why	5 Q. Good. If you would turn to page 3 of that
6 you're here today for your deposition?	6 deposition subpoena, there's a list of items to be
7 A. Yes. I spoke to Mr. Luszeck, and he informed	7 produced.
8 me that there's a dispute with regard to the estate	8 A. Yes.
9 providing more funds to the school over the issue of	9 Q. And we had asked that you bring with you any
10 whether or not the school, the lower school, would	10 documents you had on file concerning, you know, naming
11 retain the name The Milton I. Schwartz Hebrew Academy.	11 issues and the Milton I. Schwartz Hebrew Academy. Did
12 MR. COUVILLIER: And I would just like to add,	12 you have a chance to review those requested items?
13 from our perspective, is whether there's a gift	13 A. Yes, I did.
14 provided for under Mr. Schwartz's will, whether that	14 Q. Did you have any documents responsive to
15 contains a provision that the school be named in	15 those?
16 perpetuity.	16 A. No. I spent sometime looking at my office and
17 THE WITNESS: I know there's another side to	17 at home, and I did not find any files or any documents
18 the story. There's two attorneys, at least two	18 that would correspond to the items requested to be
19 attorneys involved. If there were three attorneys,	19 produced. If I had documents that were in computers,
20 there would be three sides to the story.	20 I'm now two law firms away from where I was in the
21 BY MR. FREER:	21 1990 -- early 1990s.
22 Q. That's true. Do you have any knowledge or	22 So that wasn't retained on the computer in my
23 opinion as to what your understanding is concerning the	23 office or at the comp -- and probably I'm three
24 dispute?	24 computers away on the computer at home, and I looked
25 A. Concerning the probate dispute, whether the	25 for files relating to the Hebrew Academy at home, and
Page 6	Page 8
1 gift should be made or not, I have no opinion. And I	1 to tell you the truth, the only ones I could find was
2 wouldn't since I'm not a -- my practice has been mostly	2 my son's report cards, certificates, and things like
3 in the area of bankruptcy for the last years, it's -- I	3 that.
4 wouldn't opine on probate matters. I limit my practice	4 Q. So 14 years is beyond your retention policy?
5 to business, commercial, and bankruptcy matters.	5 A. Both at home and in the office; although, I
6 Q. Okay. Other than speaking with Mr. Luszeck at	6 probably could have asked my mother, and she'll find
7 my firm, have you had any conversations with anybody	7 things of mine from 40 years ago.
8 else concerning the litigation, the naming issues or	8 Q. All right. Did you ever serve on the board of
9 the probate?	9 the Hebrew Academy?
10 A. With my wife.	10 A. Yes, I did.
11 Q. I will not ask as to the communications with	11 Q. Okay. And how long did you serve?
12 you and your wife. All right. Do you recall being	12 A. I don't remember the specific number of years.
13 served with a subpoena in this matter?	13 I would guess eight years, and the reason why I think
14 A. Yes, I was.	14 it's eight years is because my son attended the school
15 Q. Okay. And I'll just go ahead and have that	15 for approximately nine years. And I went on the board
16 marked. If you would pass that over to the court	16 early on when he started attending the school, and I
17 reporter, please.	17 left either the year he went to high school at another
18 (Exhibit No. 6 was marked for	18 school or the year before that. I'm not sure which.
19 identification.)	19 Q. Okay. And using that as a marker,
20 Q. I'm handing you what's been marked as Exhibit	20 approximately, what years would that have been?
21 No. 6 which on the first page is an Affidavit of	21 A. That would have been probably around '95 --
22 Service and then thereafter follows an Amended	22 well, '85, '86 -- no -- '86, '87 to '92.
23 Deposition Subpoena Duces Tecum.	23 Q. Okay.
24 A. Yes.	24 A. The only reason I guess I would date it not
25 Q. Is what I've handed you consistent with what	25 being longer than '92 is because I was given a copy of

Page 9	Page 11
<p>1 a letter that was written that said I was -- by me that</p> <p>2 said I was no longer on the board in '92.</p> <p>3 Q. Okay. All right. Do you recall being on the</p> <p>4 board at or about the time the Hebrew Academy switched</p> <p>5 its name to the Milton I. Schwartz Hebrew Academy?</p> <p>6 A. Yes.</p> <p>7 Q. What do you recall with respect to the name</p> <p>8 change?</p> <p>9 A. I don't have any specific recollection of a</p> <p>10 board meeting where that was done. I do have a</p> <p>11 specific recollection that the name of the school was</p> <p>12 changed to the Milton I. Schwartz Hebrew Academy at the</p> <p>13 time the school was moving to the new location on</p> <p>14 Hillpointe because Mr. Schwartz donated a very large</p> <p>15 sum and arranged for the balance of the financing for</p> <p>16 the construction of the new school building.</p> <p>17 And it was -- was then and today -- my</p> <p>18 understanding that the school would be named the Milton</p> <p>19 I. Schwartz Hebrew Academy in perpetuity in light of</p> <p>20 that financial donation and his -- you know, I got the</p> <p>21 impression he guaranteed the loans with the bank.</p> <p>22 Q. Okay. You used the phrase "in perpetuity."</p> <p>23 What is your understanding as to why that term "in</p> <p>24 perpetuity" came about?</p> <p>25 A. Well, it came about because in the discussions</p>	<p>1 Q. Okay. It's 14 -- well, it's more than. We're</p> <p>2 talking about what, 1995, '96, so it's almost 20 years</p> <p>3 ago.</p> <p>4 A. But it was my firm -- it is my firm impression</p> <p>5 and recollection today that the words "in perpetuity"</p> <p>6 were used more than once, not merely by me, in the</p> <p>7 discussions.</p> <p>8 MR. FREER: Okay. Would you hand him</p> <p>9 Exhibit 4, please.</p> <p>10 BY MR. FREER:</p> <p>11 Q. I'm handing you what's been marked Exhibit</p> <p>12 No. 4 for identification purposes. It's the Bylaws of</p> <p>13 The Milton I. Schwartz Hebrew Academy, Bates number</p> <p>14 EST-00097 through 105. If you would, would you turn to</p> <p>15 the back, and let me know if you identify your</p> <p>16 signature on that document?</p> <p>17 A. On the second line of the last page, it looks</p> <p>18 like my signature.</p> <p>19 Q. Okay. I'll give you a minute to look at it.</p> <p>20 Do you recall this document or do you recall signing</p> <p>21 this document?</p> <p>22 A. I might have even drafted this document, but I</p> <p>23 don't recall it one way or the other.</p> <p>24 Q. That was my next question.</p> <p>25 A. I mean, there's a good chance I drafted the</p>
Page 10	Page 12
<p>1 that was had with Milton when he was discussing with</p> <p>2 board members, and I don't remember at a board meeting.</p> <p>3 I just remember it was part of the discussions, and we</p> <p>4 had non-board meetings where there would be several</p> <p>5 board members meet with Milton.</p> <p>6 There were times when I would discuss things</p> <p>7 with Milton, because I think at some point in time, I</p> <p>8 did legal work for the school on a pro bono basis, and</p> <p>9 I was considered the attorney (indicating) for the</p> <p>10 board.</p> <p>11 We used the term "in perpetuity," because</p> <p>12 since it was by far the largest amount of money anybody</p> <p>13 had ever donated to the school at the time, and it made</p> <p>14 it possible to build the new school on Hillpointe.</p> <p>15 Without that donation, there wouldn't be -- there</p> <p>16 wouldn't have been a school built.</p> <p>17 Q. Okay.</p> <p>18 A. So, in consideration of that, it was our</p> <p>19 understanding and I believe it was our agreement that</p> <p>20 the school would be named the Milton I. Schwartz Hebrew</p> <p>21 Academy as long as it was a Hebrew day school.</p> <p>22 Q. Okay. Do you ever recall Milton using the</p> <p>23 term "in perpetuity"?</p> <p>24 A. I don't have any recollection of specific</p> <p>25 conversations from that period of time.</p>	<p>1 document.</p> <p>2 Q. Okay. But you don't have any specific</p> <p>3 recollection as you sit here right now?</p> <p>4 A. This is 25 years -- this is 24 years ago. I</p> <p>5 just would not be able to say specifically I remember</p> <p>6 doing this particular document.</p> <p>7 Q. Okay. I'll turn your attention to</p> <p>8 paragraph 1, and I'll read it aloud. It says, "The</p> <p>9 name of this corporation is the Milton I. Schwartz</p> <p>10 Hebrew Academy hereinafter referred to as The Academy</p> <p>11 and shall remain so in perpetuity."</p> <p>12 Does that paragraph comport with your</p> <p>13 recollection and understanding of the naming of the</p> <p>14 school?</p> <p>15 MR. COUVILLIER: I'm going to raise an</p> <p>16 objection, Mr. Schwartz, if you would, please. I</p> <p>17 object on the grounds that this line of questioning</p> <p>18 violates the Court's November 12, 2013 order again, the</p> <p>19 order which limits the discovery in this first phase of</p> <p>20 the discovery as to whether the purpose or conditions</p> <p>21 of the bequest in Section 2.3 of Mr. Milton I.</p> <p>22 Schwartz's will, dated 2005, was for the school to be</p> <p>23 named the Milton I. Schwartz Hebrew Academy in</p> <p>24 perpetuity as it's raised in the First Claim for</p> <p>25 Relief.</p>

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<p>1 And, therefore, asking about documents and</p> <p>2 bylaws that occurred decades before the will was</p> <p>3 executed are not relevant to the question or to the</p> <p>4 issue and violate the scope of the Court's order and,</p> <p>5 therefore, improper.</p> <p>6 MR. FREER: And I will incorporate by</p> <p>7 reference my response raised in the prior deposition of</p> <p>8 Neville Pokroy, but summarized as essentially our</p> <p>9 position is, it is relevant to ascertaining the</p> <p>10 decedent's understanding and mindset at the time he</p> <p>11 executed the will in 2004.</p> <p>12 MR. COUVILLIER: Well, we believe that his</p> <p>13 mindset is reflected on the actual words of the will.</p> <p>14 MR. FREER: That being said, I will have the</p> <p>15 reporter read the question back to you again --</p> <p>16 THE WITNESS: Okay.</p> <p>17 MR. FREER: -- and then you can answer.</p> <p>18 (Record read.)</p> <p>19 THE WITNESS: Yes, it does comport with my</p> <p>20 recollection concerning the naming of the school and,</p> <p>21 particularly, that it shall remain so in perpetuity.</p> <p>22 BY MR. FREER:</p> <p>23 Q. Okay.</p> <p>24 Do you have any knowledge or understanding as</p> <p>25 to what the term "in perpetuity" may have meant to</p>	<p>1 MR. COUVILLIER: Again, I'll raise the</p> <p>2 objection as to relevance. This document has nothing</p> <p>3 to do with Milton I. Schwartz's 2004 will.</p> <p>4 THE WITNESS: I recognize this as a letter</p> <p>5 that I wrote. I don't specifically recall writing this</p> <p>6 letter, either, but it does appear to be on the formal</p> <p>7 stationery of the law firm I was at in 1992, and it</p> <p>8 does appear to have my signature on it.</p> <p>9 BY MR. FREER:</p> <p>10 Q. Okay. And I will refer your attention to the</p> <p>11 last sentence on that letter: "It's your school, it</p> <p>12 has your name on it forever, I know you will do the</p> <p>13 right thing."</p> <p>14 Do you have any recollection of drafting that</p> <p>15 sentence?</p> <p>16 MR. COUVILLIER: Same objection.</p> <p>17 THE WITNESS: I don't -- the answer is: I</p> <p>18 don't recall writing this letter in 1992, but it</p> <p>19 comports with my understanding that the name of the</p> <p>20 school was going to be the Milton I. Schwartz Hebrew</p> <p>21 Academy forever or in perpetuity, whichever term I</p> <p>22 would use at the time.</p> <p>23 BY MR. FREER:</p> <p>24 Q. Okay. Do you recall having any discussions</p> <p>25 with Milt concerning this document?</p>
Page 14	Page 16
<p>1 Milton I. Schwartz in connection with the naming of the</p> <p>2 school?</p> <p>3 MR. COUVILLIER: Same objection as to</p> <p>4 relevance and violation of the Court's order.</p> <p>5 THE WITNESS: My recollection is that all the</p> <p>6 parties at the time understood that in perpetuity meant</p> <p>7 forever. I mean, it's not a difficult English word or</p> <p>8 unusual English word. It's not a legal -- legalism or</p> <p>9 anything. It meant what its common English meaning is.</p> <p>10 It's forever. I guess lawyers use it because they all</p> <p>11 had to learn the rule against perpetuities in law</p> <p>12 school or something like that.</p> <p>13 BY MR. FREER:</p> <p>14 Q. I always thought lawyers used in perpetuity</p> <p>15 because they could charge more by the word. Let the</p> <p>16 record reflect that was a joke.</p> <p>17 MR. FREER: Hand that to the court reporter,</p> <p>18 please. Is this No. 7?</p> <p>19 (Exhibit No. 7 was marked for</p> <p>20 identification.)</p> <p>21 BY MR. FREER:</p> <p>22 Q. Mr. Schwartz, I'm handing you what's been</p> <p>23 marked as Exhibit No. 7. It's a letter that purports</p> <p>24 to be from you to Milton I. Schwartz dated July 17,</p> <p>25 1992. Do you recall this document?</p>	<p>1 A. Not -- I don't recall having any -- where does</p> <p>2 it specif -- I don't have any specific recollection of</p> <p>3 discussing this document with Milt, no.</p> <p>4 Q. Okay. Do you have any recollection of</p> <p>5 discussing the contents of that document with Milton?</p> <p>6 A. No. I don't even remember why the document</p> <p>7 was written.</p> <p>8 Q. Okay.</p> <p>9 A. I was at that time still, I would consider,</p> <p>10 friendly with Mr. Schwartz; although, we're not</p> <p>11 friends. We didn't go out to dinner or do things</p> <p>12 together, but we were friendly, and I was friendly with</p> <p>13 Ira Sternberg who was, at the time, the president of</p> <p>14 the board of trustees.</p> <p>15 And, again, I was friendly with Mr. Sternberg,</p> <p>16 but we didn't if we had lunch together more than once,</p> <p>17 more than a couple of times, I don't recall it. His</p> <p>18 son was a schoolmate of my son, so in the eight years</p> <p>19 that my son was in the school, we had certainly</p> <p>20 interacted numerous times.</p> <p>21 And it appears from the letter that there was</p> <p>22 some kind of issue between the board and Mr. Schwartz,</p> <p>23 and I would very much want that kind of thing to be</p> <p>24 smoothed over.</p> <p>25 Q. Okay. Do you know whether Mr. Schwartz ever</p>



Page 17	Page 19
<p>1 referred to the school as "my school"?</p> <p>2 MR. COUVILLIER: Same objection.</p> <p>3 THE WITNESS: I would think so, because I</p> <p>4 would refer to -- if I was speaking to him, I would</p> <p>5 call it his school or your school, if I was speaking to</p> <p>6 Milton Schwartz, and I think he would think of it as</p> <p>7 his school because he's -- besides the money, he had</p> <p>8 spent a lot of time and effort making the school be...</p> <p>9 successful. I mean, it went from a much -- very small</p> <p>10 school to a much larger school due to his efforts.</p> <p>11 BY MR. FREER:</p> <p>12 Q. Okay. You mentioned having discussions with</p> <p>13 Milton about the school. When is the last time you</p> <p>14 recall having a discussion with Milton about the</p> <p>15 school?</p> <p>16 A. The last time I spoke to Milton was at the</p> <p>17 gala.</p> <p>18 Q. Okay.</p> <p>19 A. And I looked up that in papers I did have in</p> <p>20 2007, I believe, and I spoke with Mr. Schwartz at that.</p> <p>21 I was very happy, too, that he was being honored. I</p> <p>22 thought it was well deserved, of course, and I went up</p> <p>23 to him at the party, at that gala, and met -- talked to</p> <p>24 him for a few moments about how wonderful that his</p> <p>25 school had continued to grow.</p>	<p>1 A. In the period of time where I was on the</p> <p>2 board, it never came up, so the answer is no.</p> <p>3 Q. During your tenure on the board, there was</p> <p>4 never any indication that the school would change its</p> <p>5 name or drop Milton's name from the --</p> <p>6 A. No. It's my -- I know that -- I'm trying --</p> <p>7 I'm not -- I'm very vague about the time that</p> <p>8 Mr. Adelson started becoming a major donor to the</p> <p>9 school and the campus. But it was, if you ask me my</p> <p>10 impression, my impression was it was always going to be</p> <p>11 the Milton I. Schwartz Hebrew Academy on the Sheldon</p> <p>12 and Miriam Adelson campus.</p> <p>13 Q. Does that distinction that you just discussed</p> <p>14 have to do with the lower school and the upper school?</p> <p>15 A. Well, there wasn't really an upper school at</p> <p>16 the time I was on the board, and that's part of the</p> <p>17 reason why I ceased being on the board is because there</p> <p>18 were about 20 students -- when my son was in the eighth</p> <p>19 grade, there were about 20 students in the eighth grade</p> <p>20 class, and they were trying to start the high school.</p> <p>21 And my son did not want to go to high school</p> <p>22 with a very small class and we agreed with him, and he</p> <p>23 went to public high school. And Tamar-Lubin was very</p> <p>24 upset with that decision, and it wound up resulting in</p> <p>25 our youngest daughter leaving Hebrew Academy after</p>
Page 18	Page 20
<p>1 And I believe at that point in time he</p> <p>2 introduced me to Mr. Adelson who was the other honoree</p> <p>3 or something at that gala and --</p> <p>4 Q. Do you recall anything that Milton said to you</p> <p>5 during that conversation?</p> <p>6 A. Other than "thank you very much," I don't.</p> <p>7 Q. Okay.</p> <p>8 A. I don't. I really don't. It was not a -- it</p> <p>9 was a two- to five-minute discussion at most. He had</p> <p>10 lots of people coming up to him and speaking to him at</p> <p>11 the gala.</p> <p>12 Q. Prior to that, do you have a recollection of</p> <p>13 when the last time you spoke to Mr. Schwartz about the</p> <p>14 school?</p> <p>15 A. No, I -- I don't. I just don't recall any</p> <p>16 actual discussions with him about the school. I would</p> <p>17 see Mr. Schwartz on occasion usually at fundraising</p> <p>18 functions over the years. He donated to lots of things</p> <p>19 and I was aware of that, and I can't -- I don't recall</p> <p>20 any specific discussions post board membership to the</p> <p>21 gala.</p> <p>22 Q. Okay. Did you ever have any discussions with</p> <p>23 Milton concerning removing his name off of the school?</p> <p>24 A. It never came up.</p> <p>25 Q. Okay.</p>	<p>1 kindergarten and going to the Las Vegas Day School.</p> <p>2 Q. Did Milton ever discuss his estate plan with</p> <p>3 you?</p> <p>4 A. No.</p> <p>5 Q. Did he ever discuss -- did you ever have any</p> <p>6 discussions with Milton concerning his leaving a</p> <p>7 bequest to the school?</p> <p>8 A. No.</p> <p>9 Q. Did you ever have any discussions with Milton</p> <p>10 concerning conditioning gifts or bequests?</p> <p>11 A. No. He had his -- had his own attorneys. I</p> <p>12 mean, I was never his -- I never was his attorney. I,</p> <p>13 on occasion, acted as the attorney for the school, but</p> <p>14 I was never Milton's attorney.</p> <p>15 MR. FREER: Okay. I think we're just about</p> <p>16 done. I'm going to take a quick break, go talk to my</p> <p>17 client for a moment --</p> <p>18 THE WITNESS: Sure.</p> <p>19 MR. FREER: -- and then we may be back to wrap</p> <p>20 up my portion of the deposition.</p> <p>21 (Recess taken.)</p> <p>22 MR. FREER: All right. Let's go back on</p> <p>23 record.</p> <p>24 Mr. Schwartz, I have no further questions</p> <p>25 for you at this time. I will reserve my right to call</p>

Page 21	Page 23
<p>1 you back as a witness. If the Court allows the</p> <p>2 broadening of discovery, we may end up calling you back</p> <p>3 to discuss other issues that are consistent with other</p> <p>4 claims in defense that have been raised in this matter,</p> <p>5 and at this point, I'll pass the witness.</p> <p>6 MR. COUVILLIER: Thank you.</p> <p>7 EXAMINATION</p> <p>8 BY MR. COUVILLIER:</p> <p>9 Q. Mr. Schwartz, have you ever seen a copy of</p> <p>10 Mr. Schwartz's will --</p> <p>11 A. No.</p> <p>12 Q. -- last will and test -- okay. Has anyone</p> <p>13 ever told you that Mr. Schwartz had a will?</p> <p>14 A. Only by the fact that there's a probate</p> <p>15 litigation going on about the will has informed me</p> <p>16 about that.</p> <p>17 Q. So just through this matter here?</p> <p>18 A. I probably heard about this litigation before</p> <p>19 I was subpoenaed, either through newspapers or through</p> <p>20 people in the Jewish community who knew it was going</p> <p>21 on.</p> <p>22 Q. Has anyone ever discussed the contents of</p> <p>23 Mr. Schwartz's will with you?</p> <p>24 A. Only to the extent that I spoke with</p> <p>25 Mr. Luszeck.</p>	<p>1 BY MR. COUVILLIER:</p> <p>2 Q. So you're not aware of whether he amended his</p> <p>3 will at any point in time?</p> <p>4 A. No, I am not.</p> <p>5 Q. Did you know Mr. Schwartz in 2004, in February</p> <p>6 of 2004?</p> <p>7 A. Well, I knew him before and I knew him after,</p> <p>8 so I had to know him in between.</p> <p>9 Q. But I mean did you see him often?</p> <p>10 A. I did not see him often. I believe I would</p> <p>11 have seen him occasionally at charity dinners. I might</p> <p>12 have seen him at a restaurant. If I did, I would go</p> <p>13 over and say hello.</p> <p>14 Q. Just in passing and sort of --</p> <p>15 A. In passing, but I don't recall having any</p> <p>16 business meetings or legal meetings or I don't even</p> <p>17 know recall having lunch with him in that period of</p> <p>18 time; although, I may have.</p> <p>19 Q. Did he seem to you to be in good health?</p> <p>20 A. For a man his age, yes.</p> <p>21 Q. And did he seem to you to be of sound mind?</p> <p>22 A. Yes. I have never known him not to be of</p> <p>23 sound mind.</p> <p>24 Q. He was a sharp gentleman, wasn't he?</p> <p>25 A. He's a smart guy, and he appeared smart, and</p>
Page 22	Page 24
<p>1 Q. And what did he tell you about the will?</p> <p>2 A. He told me exactly what I said at the</p> <p>3 beginning, which is there's a dispute over whether a</p> <p>4 gift in the will should be made if the school hasn't</p> <p>5 retained the name the Milton I. Schwartz Hebrew</p> <p>6 Academy, and that's the only portion of the will I have</p> <p>7 any knowledge of whatsoever. The only other knowledge</p> <p>8 I have of Mr. Schwartz's personal finances are probably</p> <p>9 the things that came up in the Supreme Court decision</p> <p>10 regarding his divorce.</p> <p>11 Q. From Abigail?</p> <p>12 A. From Abigail, and I was aware over the years</p> <p>13 that he was in the taxicab business and the hospital</p> <p>14 business. I was aware that he was partners with</p> <p>15 Mr. Liatus. At some points in time in the taxicab</p> <p>16 business because I have some litigation, actually, with</p> <p>17 this firm here that was -- that I became aware of</p> <p>18 regarding the daugh -- Mr. Ray Liatus's daughter.</p> <p>19 MR. COUVILLIER: I think we were all involved</p> <p>20 in that litigation.</p> <p>21 MR. FREER: I wasn't involved in that one.</p> <p>22 THE WITNESS: So I'm just saying, that's</p> <p>23 general knowledge, no specific knowledge of</p> <p>24 Mr. Schwartz's finances and no knowledge of the terms</p> <p>25 of his will other than what I have just told you.</p>	<p>1 he appeared -- had verbal and --</p> <p>2 Q. You had mentioned earlier that you had the --</p> <p>3 it was your impression that the Milton I. Schwartz</p> <p>4 Hebrew Academy was to be located within or inside the</p> <p>5 Adelson campus?</p> <p>6 A. Yes.</p> <p>7 Q. How did you develop that impression?</p> <p>8 A. Well, to be begin with, the school was always</p> <p>9 going to be named the Milton I. Schwartz Hebrew</p> <p>10 Academy, and my understanding is the name of the whole</p> <p>11 ground area at some point in time became -- began to be</p> <p>12 called the Adelson campus.</p> <p>13 I think that's what's public knowledge, that</p> <p>14 it was called the Adelson campus, and I have a vague</p> <p>15 recollection of the building at the school having on</p> <p>16 like the pediment or something the Milton I. Schwartz</p> <p>17 Hebrew Academy. So that's why I would think it was the</p> <p>18 Milton I. Schwartz Hebrew Academy on the Adelson</p> <p>19 campus.</p> <p>20 Q. Were you aware that the school had changed its</p> <p>21 name to the Hebrew Academy in 1994?</p> <p>22 A. I don't recall that. I might have been aware</p> <p>23 at the time because I probably was on the board at the</p> <p>24 time, but I don't recall that. My recollection is that</p> <p>25 I always -- when Michael started, which would have been</p>

In the Matter of the Estate of Milton I. Schwartz

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I, LENARD E. SCHWARTZER, ESQ., witness herein, do hereby certify and declare under penalty of perjury the within and foregoing transcription to be my deposition in said action; that I have read, corrected, and do hereby affix my signature to said deposition.

LENARD E. SCHWARTZER, ESQ.	_____
Witness	Date

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1 REPORTER'S CERTIFICATE  
2 STATE OF NEVADA )  
3 ) ss  
COUNTY OF CLARK )  
4 I, Carla N. Bywaters, a duly certified court  
5 reporter licensed in and for the State of Nevada, do  
hereby certify:  
6 That I reported the taking of the deposition of  
7 the witness, LENARD E. SCHWARTZ, ESQ., at the time  
and place aforesaid;  
8 That prior to being examined, the witness was by  
9 me duly sworn to testify to the truth, the whole truth,  
and nothing but the truth;  
10 That I thereafter transcribed my shorthand notes  
11 into typewriting and that the typewritten transcript of  
said deposition is a complete, true and accurate record  
12 of testimony provided by the witness at said time to  
the best of my ability.  
13 I further certify (1) that I am not a relative,  
employee or independent contractor of counsel of any of  
14 the parties involved in said action; nor a person  
financially interested in the action; nor do I have any  
15 other relationship with any of the parties or with  
counsel of any of the parties involved in the action  
16 that may reasonably cause my impartiality to be  
questioned; and (2) that transcript review pursuant to  
17 NRPC 30(e) was not requested.  
18 IN WITNESS WHEREOF, I have hereunto set my hand in  
the County of Clark, State of Nevada, this 10th day of  
19 February 2014.  
20  
21  
22  
23  
Carla N. Bywaters, CCR 866

002076

# EXHIBIT “I”

**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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Roberta Sabbath, Ph.D.

In the Matter of the Estate of Milton I. Schwartz

DISTRICT COURT

COUNTY OF CLARK, NEVADA

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

DEPOSITION OF ROBERTA SABBATH, Ph.D.

Taken on Wednesday, March 5, 2014

At 10:16 a.m.

At 9060 West Cheyenne Avenue

Las Vegas, Nevada

Reported by: Carla N. Bywaters, CCR 866

Job No. 8972

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

1 that million dollars was to be used for?

2 A. It was to name the building after him in  
3 perpetuity, and he was very specific about that.

4 Q. Okay. Would you mind describing to me how  
5 that conversation went?

6 MR. KRAMETBAUER: If you remember.

7 MR. COUVILLIER: And, Jeff, let me --  
8 Dr. Sabbath, I'm sorry, I need to interpose an  
9 objection. I'll object to the course of questioning  
10 here as it is irrelevant, and it violates the Court's  
11 November 12, 2013 order which limited discovery to only  
12 the preliminary issue of whether the purpose and  
13 condition of the bequest under Section 2.3 of  
14 Mr. Milton I. Schwartz's will of 2004 was for the  
15 school to be named the Milton I. Schwartz Hebrew  
16 Academy in perpetuity, which is also contained in the  
17 Executor's First Claim for Relief, and any question  
18 regarding any agreements or discussions or any source  
19 that happened a decade before that will are not  
20 relevant and a violation of the order.

21 BY MR. LUSZECK:

22 Q. We obviously disagree and believe that any  
23 agreement between Milton and the school to have the  
24 school named after him in perpetuity is relevant and is  
25 within the scope of the order.



1 MR. KRAMETBAUER: Can you go ahead and repeat  
2 the question.

3 MR. LUSZECK: I can't, but she can.

4 (Record read.)

5 THE WITNESS: When you say "how the  
6 conversation went," what do you mean by that?

7 BY MR. LUSZECK:

8 Q. What was discussed during the conversation?  
9 Obviously, you testified that you and Dr. Lubin went  
10 over there to talk about some type of land donation for  
11 the Hebrew Academy, and my understanding is, is that  
12 Milton made a donation for a million dollars at that  
13 time.

14 A. Uh-huh.

15 Q. And there was some type of agreement, I  
16 believe you testified to, that the school would be  
17 named after him in perpetuity. So I'm just curious if  
18 you recall any of the specific conversation that took  
19 place during that meeting?

20 A. I don't --

21 MR. COUVILLIER: I'll object. Same objection  
22 as to relevance --

23 THE WITNESS: Oh.

24 MR. COUVILLIER: -- and mischaracterization of  
25 the witness's previous testimony. He's summarizing

1 what he believed your testimony was, but we'll let the  
2 record reflect what your testimony was with respect to  
3 his previous question.

4 THE WITNESS: I don't even remember what my  
5 testimony was, which --

6 MR. KRAMETBAUER: That's okay.

7 MR. COUVILLIER: That's why she's taking it  
8 all down.

9 THE WITNESS: Thank you.

10 MR. KRAMETBAUER: Is there a question pending?

11 MR. LUSZECK: There was, yeah.

12 MR. KRAMETBAUER: Okay.

13 BY MR. LUSZECK:

14 Q. Let's just start from the beginning again,  
15 okay, and we've gone over this a little bit earlier,  
16 and I apologize if this is confusing.

17 You previously testified that you and  
18 Dr. Lubin had gone over to Milton's residence to  
19 discuss a donation --

20 A. Uh-huh, yes.

21 Q. -- to the Hebrew Academy?

22 A. That is correct.

23 Q. Is that correct?

24 A. That is correct, yeah.

25 Q. What was discussed during that meeting?

1 MR. COUVILLIER: Same objection. You can  
2 answer.

3 THE WITNESS: Okay. But I should answer?

4 MR. KRAMETBAUER: Yeah.

5 THE WITNESS: The specifics are I remember  
6 that we -- it was a rather celebratory. We were -- he  
7 handed us the check, and that's what I remember.

8 BY MR. LUSZECK:

9 Q. Okay.

10 A. It was celebratory.

11 Q. Okay. And when he handed you the check, was  
12 there an agreement that the Hebrew Academy would be  
13 named the Milton I. Schwartz Hebrew Academy in  
14 perpetuity?

15 MR. COUVILLIER: Objection. Same objection.  
16 It violates the purpose and scope of the Court's  
17 November 12th order.

18 MR. KRAMETBAUER: You can answer the question.

19 THE WITNESS: I know there was a document, and  
20 I recall that it was presented as a legal document. I  
21 do not recall whether it was at that meeting or some  
22 other time, but I recall the legal document which uses  
23 the phrase "in perpetuity" for the naming of the Milton  
24 I. Schwartz Hebrew Academy.

25 \\\

1 BY MR. LUSZECK:

2 Q. Okay. Was it your understanding that the  
3 Hebrew Academy was going to retain the name of the  
4 Milton I. Schwartz Hebrew Academy in perpetuity?

5 MR. COUVILLIER: Same objection. Asked and  
6 answered.

7 THE WITNESS: Should I go ahead and answer.

8 MR. KRAMETBAUER: You can answer the question.

9 THE WITNESS: It was, very strongly. It was  
10 very important to Milton. I do remember that.

11 BY MR. LUSZECK:

12 Q. Okay. How do you know that it was important  
13 to Milton?

14 A. He expressed it, and I remember him saying  
15 make sure that it says in perpetuity, and it -- so that  
16 is how I know it was important to him.

17 Q. Okay. Do you recall how many times -- sorry.  
18 Will you repeat her response back?

19 (Record read.)

20 Q. Do you know approx -- how many times did he  
21 express that to you?

22 A. I do not recall how many times.

23 Q. Okay. How would you describe your  
24 relationship with Milton? Did you consider him a  
25 friend? Was he kind of a business associate?

1 A. Just give me a moment.

2 Milton was an important community leader, and  
3 I was a member of the community.

4 Q. Okay. When was the last time that you spoke  
5 with him?

6 A. He called me a few years ago, five years ago  
7 maybe, not -- I'm not sure of the exact, called the  
8 school and a memo was put on my door at school, and  
9 there were -- and sometime passed before I got that  
10 note for whatever reason -- it was a Spring Break -- I  
11 do not remember.

12 And I did call him back and he said, "Roberta,  
13 do you have anything that's related to the in  
14 perpetuity issue, the naming of the school?" I do not  
15 remember the exact words, but I understood that to be  
16 his request. And I said, "No, Milton, I don't, and I  
17 remember him specifically saying, "Oh, that -- I -- I  
18 have it or I'm on top of it or -- or it doesn't  
19 matter" -- the fact that I didn't have anything --  
20 "goodbye." So it was a very short conversation.

21 Q. Okay. Did he indicate to you why he was  
22 looking for documentation with that language on it?

23 A. No, he did not.

24 Q. Okay.

25 A. No, he did not.

1 Q. Did you have a discussion with him at that  
2 time with respect to the naming rights of the school  
3 and whether the school was going to retain the name of  
4 Milton I. Schwartz Hebrew Academy in perpetuity?

5 A. No, I did not.

6 MR. COUVILLIER: Same objection. It violates  
7 the Court's order. And, Jeff, if I may interpose.  
8 What was the time that we're talking about, maybe in  
9 terms of years, that this discussion took place; what  
10 year was it?

11 THE WITNESS: I had said about five years ago,  
12 give or take a couple of years.

13 MR. COUVILLIER: Thank you.

14 THE WITNESS: I don't know when he -- when did  
15 he pass away?

16 MR. SCHWARTZ: '7 -- '07.

17 THE WITNESS: '7, so it was longer than five,  
18 obviously.

19 MR. KRAMETBAUER: That's okay.

20 THE WITNESS: Okay.

21 BY MR. LUSZECK:

22 Q. Were you still employed by the Hebrew Academy  
23 at that time?

24 A. No.

25 Q. Okay. Were you on the board or serving in any

1 type of capacity with the school at that time?

2 A. No, I was not.

3 Q. Do you know why he called you requesting that  
4 information?

5 A. I thought I answered that. I really didn't  
6 know. He simply called asking if I had a document --  
7 that document.

8 Q. Okay. Between the time -- strike that.

9 You previously testified that you served as  
10 the Interim Director of the school from 1996 to 1999?

11 A. I think I said approximately '96 to '99.

12 Q. Fair enough.

13 A. I'm sorry.

14 Q. No. I understand this is a long time ago.

15 A. Thank you.

16 Q. I understand completely. Between 1999 and  
17 that phone call which occurred approximately five years  
18 ago that you just testified to --

19 A. Or longer, apparently.

20 Q. Okay.

21 A. Thank you.

22 Q. How many conversations, if any, did you have  
23 with Morton between that time between --

24 A. With who?

25 Q. -- between approximately 1999 --

1 MR. SCHWARTZ: Milton.

2 BY MR. LUSZECK:

3 Q. -- or Milton -- between approximately 1999 and  
4 approximately five years ago, how many conversations,  
5 if any, did you have with Milton during that timeframe?

6 A. Zero.

7 Q. Okay. How long did you serve on the board of  
8 directors of the Hebrew Academy?

9 A. That's a good one. This is embarrassing, but  
10 I don't remember how many years I served on. My  
11 husband was one of the founding board members when the  
12 school began. Our son is 38. He started kindergarten,  
13 what, 35 years ago, and somewhere along the way, I also  
14 became a board member. Our three children were in the  
15 school.

16 Q. Okay.

17 A. So I cannot give you a specific year when I  
18 became a board member.

19 Q. Okay. Are you aware of any -- are you aware  
20 at some point in time the Hebrew Academy changed its  
21 name to the Milton I. Schwartz Hebrew Academy?

22 A. Yes.

23 Q. Okay. Do you know approximately when that  
24 change occurred?

25 A. I do not remember a year.



1 Q. Okay.

2 A. I cannot recall a year.

3 MR. LUSZECK: Can you give her Exhibit 2?

4 BY MR. LUSZECK:

5 Q. Dr. Sabbath, the court reporter has handed you  
6 what has previously been marked as Exhibit 2, and you  
7 can definitely take as much time as you need to review  
8 the document. But my question is going to be to you:  
9 Have you ever seen that document before? And, by all  
10 means, take as much as time as you need to review it.  
11 Have you seen that Exhibit 2 before, Dr. Sabbath?

12 A. I don't recall.

13 Q. Okay. Exhibit 2 purports to be a Minutes of  
14 the Board of Trustees for a Special Meeting dated  
15 August 14th, 1989.

16 A. Right.

17 Q. I realize this was a long time ago.

18 A. Right.

19 Q. However, do you recall if you were present for  
20 this meeting?

21 A. I do not recall being there. I see it says I  
22 made a motion, but I don't remember --

23 Q. Okay.

24 A. -- being there.

25 Q. If you go to the third paragraph which starts

1 with George Rudiak -- I don't know if I'm pronouncing  
2 that correctly?

3 A. Yes, you are.

4 Q. It says, "George Rudiak moved that the Board  
5 accepts, with thanks, the donations from Milton  
6 Schwartz, George and Gertrude Rudiak, and Paul Sogg. A  
7 letter should be written to Milton Schwartz stating the  
8 Academy will be named after him."

9 A. Uh-huh.

10 Q. Do you recall why it was proposed that a  
11 letter be written to Milton to name the academy after  
12 him?

13 MR. COUVILLIER: Objection. This violates the  
14 Court's November order, and it's irrelevant to Milton  
15 Schwartz's will which occurred 16 years after this  
16 purported meeting. It has nothing to do with his will.

17 MR. KRAMETBAUER: Do you remember the  
18 question?

19 THE WITNESS: Would you say the question  
20 again?

21 MR. LUSZECK: Would you repeat that?

22 (Record read.)

23 THE WITNESS: No, I do not recall.

24 BY MR. LUSZECK:

25 Q. How long was the name change supposed to last

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 “J”

**Deposition of:**

Neville Pokroy, M.D.

**Case:**

In the Matter of the Estate of Milton I. Schwartz  
P061300

**Date:**

02/25/2014



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)

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Neville Pokroy, M.D.

In the Matter of the Estate of Milton I. Schwartz

DISTRICT COURT

COUNTY OF CLARK, NEVADA

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

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           A.    I want to correct myself. My wife knows that  
2   I am here.

3           Q.    Okay. I'm not going to ask you about any  
4   conversations that you had with your wife. Other than  
5   your wife, anybody else?

6           A.    No.

7           Q.    Spoken to anybody other than wife about the  
8   litigation?

9           A.    No.

10          Q.    Okay. Or concerning the naming rights issues?

11          A.    No.

12               MR. FREER: Would you please mark that as  
13   Exhibit No. 2.

14                       (Exhibit No. 2 was marked for  
15                       identification.)

16   BY MR. FREER:

17          Q.    Doctor, I've handed you a document labeled  
18   Hebrew Academy Minutes of the Board of Trustees,  
19   Special Meeting, August 14th, 1989, Bates number  
20   EST-00075, and ask you to take a moment to read that  
21   document and let me know when you're ready.

22          A.    I have read it.

23          Q.    Okay. Does that document refresh your  
24   recollection at all concerning when you may have served  
25   on the board?

1 A. Yes, it does, indeed.

2 Q. Okay. And what is your best recollection?

3 A. My recollection here -- this is dated 1989 --  
4 so, in fact, my time on the board was further past than  
5 I had recalled by -- I was out about five or six years.

6 Q. Okay. Do you recall relative to this document  
7 approximately how long you had been serving on the  
8 board at that point in time?

9 A. Approximately two years.

10 Q. Okay. So you started on the board around  
11 1987?

12 A. I believe so.

13 Q. And working forward on that eight-year period,  
14 then, you were on the board until approximately 1995?

15 A. Yes. I was on the board at the previous  
16 location and was instrumental in helping to move the  
17 school to the new location.

18 Q. Okay. How did you come to be involved with  
19 the school?

20 A. I've served on many of the local Jewish and  
21 non-Jewish philanthropic organizations and non-profits  
22 and believed in the concept of this particular  
23 institution, and I had a son in the school prior to  
24 this, and at the time I had another son and a daughter  
25 in the school.



1 Q. Okay. Now, it looks like three lines down  
2 from identifying those who were present at the meeting  
3 is Neville Pokroy. Do you recall being present at this  
4 particular meeting?

5 A. Yes.

6 Q. Do you recall what was being discussed at that  
7 particular meeting?

8 MR. COUVILLIER: Doctor, before you answer the  
9 question, I'm going to assert an objection on the  
10 record. I think this is beyond the scope of allowable  
11 discovery in this Phase 1.

12 The Court had clarified that the purpose of  
13 discovery in this Phase 1 was to determine whether the  
14 purpose and condition of the bequest under Section 2.3  
15 of Milton Schwartz's will dated February of 2005 was  
16 whether there was a condition that the school be named  
17 the Milton I. Schwartz Academy in perpetuity, which is  
18 also the same claim raised in the executor's petition  
19 for relief.

20 This document and this line of questioning  
21 precedes the will, has no relevance to the will,  
22 precedes the will by over a decade, about 15 years, and  
23 I object to this line of questioning.

24 MR. FREER: I will just put on the record, the  
25 basis for the questions are that Milton I. Schwartz was

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 “K”

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

AUG 22 1990

AGUIRRE SUL DEL PAPA SECRETARY OF STATE

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

FILED

AUG 29 2 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 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.



Kathryn D. Hardesty  
NOTARY PUBLIC

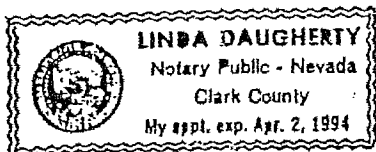
STATE OF NEVADA )

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


# EXHIBIT “L”



1 LAW OFFICE OF DANIEL MARKS  
 2 DANIEL MARKS, ESQ., NSB #002003  
 3 302 East Carson, #702  
 4 Las Vegas, Nevada 89101  
 5 (702) 386-0536 - FAX: (702) 386-6812  
 6 Attorney for Plaintiff

FILED

DEC 21 4 29 PM '92

CLERK

## DISTRICT COURT

## CLARK COUNTY, NEVADA

8 The Board of Directors of  
 9 the MILTON I. SCHWARTZ  
 10 HEBREW ACADEMY,

11 Plaintiff,

12 vs.

Case No. 1314725  
 Dept. No. III  
 Docket E

13 The Second Board of Directors of  
 14 The MILTON I. SCHWARTZ HEBREW  
 15 ACADEMY; IRA STERNBERG; GERI  
 16 RENTCHLER; ROBERT DISMAN;  
 17 ROBERTA SABBATH; RICHARD ELLIS;  
 18 SCOTT HIGGINSON; BOB RAKITA;  
 19 TAMARA LUBIN, and ROES I-X,

ARBITRATION EXEMPTION:  
 DECLARATORY JUDGMENT

20 Defendants.

21 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

22 COMES NOW the Plaintiff, through its Counsel, DANIEL MARKS,  
 23 ESQ., and for a complaint against Defendants, alleges as follows:

24 1. That the Plaintiff, The Board of Directors of the MILTON  
 25 I. SCHWARTZ HEBREW ACADEMY, (hereinafter ACADEMY) are residents of Clark  
 26 County, Nevada.

27 2. That the Defendants referred to as The Second Board of  
 28 Directors of the ACADEMY are residents of Clark County, Nevada.

3. That the ACADEMY is a non-profit school organized and  
 existing under the laws of the State of Nevada.

///

1           4. That the names and capacities of Defendants ROES I through  
2 X are unknown to Plaintiff at the time of the filing of this Complaint,  
3 and Plaintiff therefore sues said Defendants by such fictitious names.  
4 At such time that the Plaintiff determines the true identities of  
5 Defendants ROE I through X, Plaintiff will amend this Complaint to set  
6 forth the proper names of those Defendants.

7           5. That on or about the 18th day of June, 1992, the above  
8 named Defendants attempted to elect a Second Board of Directors to take  
9 over the power from the duly elected Board. These Members are as  
10 follows:

11           President:       Ira Sternberg  
12           Secretary:     Geri Rentchler  
13           New Trustees:  Robert Disman  
14                            Roberta Sabbath  
15           Trustees:     Richard Ellis  
16                            Scott Higginson  
17                            Bob Rakita  
18           School Head:   Tamar Lubin

19           6. That pursuant to Nevada law and Robert's Rules of Order,  
20 Plaintiff is the duly elected Board of Directors of the ACADEMY.

21           7. That on the 5th day of November, 1992, the Plaintiff, The  
22 Board of Directors of the ACADEMY, held a special meeting and authorized  
23 the filing of this Complaint.

24           8. That Plaintiff seeks a declaratory judgment declaring it  
25 to be the Board of Trustees of the ACADEMY.

26           9. That pursuant to NRCP 57, Plaintiff is entitled to a  
27 declaratory judgment because the confusion and illegal actions of the  
28 Second Board have threatened to cause irreparable injury to the  
ACADEMY.

1 10. That there is a substantial risk that the actions of the  
2 Defendants will cause irreparable injury to the ACADEMY, unless such  
3 actions are preliminarily and permanently enjoined by this Court. The  
4 Plaintiff is without an adequate remedy at law to obtain this relief.

5 11. That because of the actions of the Defendants, the  
6 Plaintiff has been required to retain Counsel to bring this action.  
7 Plaintiff should be awarded attorney's fees plus all costs incurred  
8 herein.

9 WHEREFORE, the Plaintiff, the Board of Directors of the MILTON  
10 I. SCHWARTZ HEBREW ACADEMY, pray for the following equitable relief:

11 (a) A preliminary injunction, enjoining The  
12 Second Board of Directors of the ACADEMY, IRA  
13 STERNBERG, GERI RENTCHLER, ROBERT DISMAN, ROBERTA  
14 SABBATH, RICHARD ELLIS, SCOTT HIGGINSON, BOB  
15 RAKITA, TAMAR LUBIN, and ROES I through X, from  
16 taking any further actions regarding the ACADEMY  
17 without the prior approval of the Board of  
18 Directors of the ACADEMY, or this Court;

19 (b) A permanent injunction, enjoining The  
20 Second Board of Directors of the ACADEMY,  
21 IRA STERNBERG, GERI RENTCHLER, ROBERT DISMAN,  
22 ROBERTA SABBATH, RICHARD ELLIS, SCOTT HIGGINSON,  
23 BOB RAKITA, TAMAR LUBIN, and ROES I through X, from  
24 taking any further actions regarding the ACADEMY  
25 without the prior approval of the Board of  
26 Directors of the ACADEMY, or this Court;

27 (c) A declaratory judgment declaring The  
28 Board of Directors of the ACADEMY to be the

1 legitimate Board of Directors of the ACADEMY;

2 (d) The Board of Directors of the ACADEMY's  
3 attorney's fees and costs necessary to prosecute  
4 this action;

5 (e) Any other relief which this Court deems  
6 just and equitable.

7 DATED this \_\_\_\_\_ day of December, 1992.

8 LAW OFFICE OF DANIEL MARKS

9  
10 By

DANIEL MARKS, NSB #002003  
302 East Carson, Suite 702  
Las Vegas, NV 89101  
Attorney for Plaintiff

# EXHIBIT “M”

**FILED**  
 IN THE OFFICE OF THE  
 SECRETARY OF STATE OF THE  
 STATE OF NEVADA  
**CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION**  
 (after organizational meeting)

Filing Fee \$25.00 C32919

**OCT 19 1994**

1073-80

The Milton I. Schwartz Hebrew Academy

CERTIFICATE LAU SECRETARY OF STATE

Name of Corporation

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 29 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  
 Signature of Notary



TERRY BOTHMANN  
 Notary Public - Nevada  
 (NOTARY STAMP OR SEAL)  
 Clark County  
 My exp. exp. Mar. 25, 1998

# EXHIBIT “N”

1 LAW OFFICE OF DANIEL MARKS  
 2 DANIEL MARKS, ESQ., NSB #002003  
 3 KEITH M. LYONS JR., ESQ., NSB #004682  
 4 302 East Carson, #702  
 5 Las Vegas, Nevada 89101  
 6 (702) 386-0536 - FAX: (702) 386-6812  
 7 Attorney for Plaintiff

FILED

JUL 26 10 51 AM '94

*Lawrence R. Bourne*  
 CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

8 MILTON SCHWARTZ, President  
 9 of the Board of Directors of  
 10 the HEBREW ACADEMY, on behalf of  
 11 the Board of Directors of the  
 12 HEBREW ACADEMY,

Plaintiffs,

12 vs.

Case No. A 314725  
 Dept. No. VJ  
 Docket VJ

13 The Second Board of Directors of  
 14 the HEBREW ACADEMY, IRA STEINBERG,  
 15 GERI RENTCHLER, ROBERT DISMAN,  
 16 ROBERTA SABBATH, RICHARD ELLIS,  
 17 SCOTT HIGGINSON, BOB RAKITA,  
 18 TAMAR LUBIN, and ROES I-X,

Defendants.

17 \_\_\_\_\_/  
 18 THE MILTON I. SCHWARTZ  
 19 HEBREW ACADEMY,

20 Counterclaimant/  
 21 Third-Party Plaintiff,

21 vs.

STIPULATION AND ORDER FOR  
DISMISSAL WITH PREJUDICE

22 THE BOARD OF DIRECTORS of the  
 23 MILTON I. SCHWARTZ HEBREW  
 24 ACADEMY, (the Plaintiff entity)

Counterdefendants,

25 and

26 MILTON I. SCHWARTZ, PHYLLIS  
 27 DARLING, ABIGAIL RICHLIN,  
 28 MICHAEL NOVICK and ED GOLDMAN,

Date: N/A  
 Time: N/A

Third-Party Defendants.



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

CE-02

JUL 27 1994

1





1 COMES NOW: Plaintiff, MILTON SCHWARTZ, President of the Board  
2 of Directors of the HEBREW ACADEMY, on behalf of the Board of Directors  
3 of the HEBREW ACADEMY; Counterdefendant, the BOARD OF DIRECTORS of the  
4 MILTON I. SCHWARTZ HEBREW ACADEMY, (the Plaintiff entity); and Third-  
5 Party Defendants, MILTON I. SCHWARTZ, PHYLLIS DARLING, ABIGAIL RICHLIN,  
6 MICHAEL NOVICK and ED GOLDMAN by and through their attorney, DANIEL  
7 MARKS, ESQ., and Defendant, The Second Board of Directors of the HEBREW  
8 ACADEMY, IRA STEINBERG, GERI RENTCHLER, ROBERT DISMAN, ROBERTA SABBATH,  
9 RICHARD ELLIS, K SCOTT HIGGINSON, BOB RAKITA, and TAMAR LUBIN and  
10 Counterclaimant/Third Party Plaintiff, THE MILTON I. SCHWARTZ HEBREW  
11 ACADEMY, by and through its attorneys, SCOTT MICHAEL CANTOR, ESQ., and  
12 hereby stipulate as follows:

13 1. That this Complaint and Counterclaim be dismissed with  
14 prejudice;

15 2. That each party shall bear its own costs and attorney's  
16 fees; and

17 3. The hearing currently set in front of the Discovery

18 / / / /

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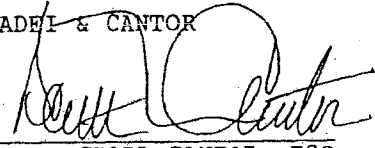
28 / / / /

1 Commissioner on the 26th day of July, 1994, at 9:45 A.M., shall be  
2 vacated.

3 LAW OFFICE OF DANIEL MARKS

GRAZIADEI & CANTOR

4  
5 By   
6 DANIEL MARKS, ESQ., NSB #002003  
7 302 East Carson, Suite 702  
8 Las Vegas, NV 89101  
9 Attorney for Plaintiff

By   
SCOTT MICHAEL CANTOR, ESQ.  
302 East Carson Ave., Ste. 400  
Las Vegas, NV 89101  
Attorney for  
Counterclaimants

8 DATED: July 21, 1994

DATED: July 21, 1994

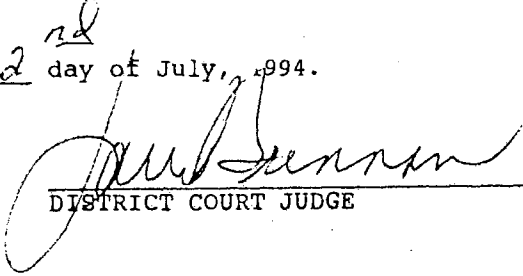
10 ORDER FOR DISMISSAL WITH PREJUDICE

11 Pursuant to the foregoing Stipulation and good cause appearing  
12 therefore,

13 IT IS HEREBY ORDERED that the above-entitled action be and the  
14 same is hereby dismissed with prejudice, with each party to bear its own  
15 attorneys fees and costs.

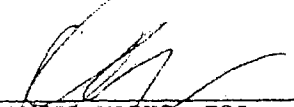
16 IT IS FURTHER ORDERED that the hearing currently set in front  
17 of the Discovery Commissioner on the 26th day of July, 1994, at 9:45  
18 A.M., is vacated.

19 DATED AND DONE this 22<sup>nd</sup> day of July, 1994.

20  
21   
22 DISTRICT COURT JUDGE

23 Submitted by:

24 LAW OFFICE OF DANIEL MARKS

25  
26 By   
27 DANIEL MARKS, ESQ., NSB #002003  
28 302 East Carson, Suite 702  
Las Vegas, Nevada 89101  
Attorney for Plaintiff

# EXHIBIT “O”

**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

1771-29-1996 11:18

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EST-00011

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 238723

P.83

EST-00012

**The Milton I. Schwartz  
HEBREW ACADEMY**

8700 West Hillpointe Road  
Las Vegas, Nevada 89134  
Tel: (702) 255-4500 Fax: (702) 255-7232



Dr. Roberta Sebbath  
School Head



Accreditation: National Association of Schools and Colleges



Licensor: State of Nevada Department of Education



Member: National Association of Independent Schools

REV-23-1996 11:46

TEL 2557232

P.B.

EST-00013

# EXHIBIT “P”

Dear Friends:

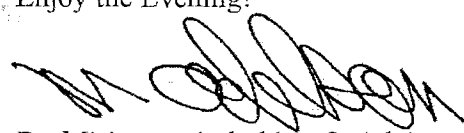
Welcome! It is our pleasure and privilege to chair The Milton I. Schwartz Hebrew Academy Gala. It is an inspiration to see so many in the community supporting not only The M.I.S. Hebrew Academy, but also The Adelson School. At last year's event, we presented plans to create a world class high school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

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

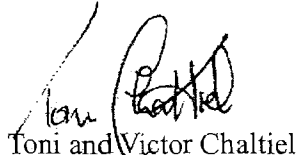
Many people have worked hard to create the success of our current Pre-K through 8<sup>th</sup> grade program and the beginning of our new high school. Tonight, we come together both to honor our "Pursuit of Excellence" Award winner and to say thank you to our wonderful teaching and administrative staff,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

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

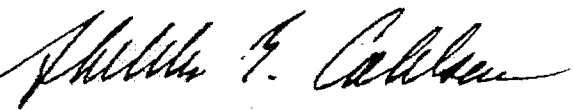
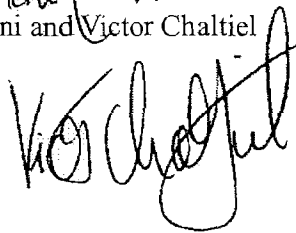
Enjoy the Evening!



Dr. Miriam and Sheldon G. Adelson



Toni and Victor Chaltiel



# EXHIBIT “Q”



**The Adelson School is more  
than classes and lessons, more than teachers and books,  
it is an Education for Life.**



Located adjacent to The M.I.S. Hebrew Academy, The Adelson School opens in the fall of 2007 for grades 9 and 10, with grade 11 opening the fall of 2008 and grade 12 in 2009.

With a major gift, Dr. Miriam and Sheldon G. Adelson have made possible a world-class high school for Las Vegas. The Adelson School provides students with the opportunity to continue their Jewish education and to receive an education for life. The mission is simple: to raise up a new generation of Jewish leaders for whom Jewish values and tradition shape and guide their vision, and for whom knowledge creates possibilities for moral action, good character and shalom.

Taking a holistic approach to learning, the educational emphasis academically stimulates each student while providing emotional and physical support along the way. Students will see the relationship of all knowledge to life, to moral vision and to the creation of culture, while learning invaluable lessons in critical thinking and ethics rooted in Jewish heritage.

Instilled with an education for life, students of The Adelson School will find connections to their past and a path to their future. They will go on with unparalleled preparation for higher education.





**The Milton I. Schwartz Hebrew Academy  
is dedicated to cultivating a love of learning  
and a sense of self-worth.**



The Milton I. Schwartz Hebrew Academy was established in 1988 through the generosity of Milton I. Schwartz and others who answered a need in the Las Vegas community for a strong secular and Judaic educational institution for elementary school-aged children. Since then, The M.I.S. Hebrew Academy has expanded to include preschool through 8th grade. The school is the only accredited Jewish day school in the State of Nevada.

This is a nurturing and safe community where students build a strong academic foundation, love of learning and self-confidence. High academic standards are integrated into a rich and pluralistic Jewish practice. Individualized instruction supports each student's development. Just as important as intellectual growth are social skills, respect for community and Jewish ethics.

Students in good standing matriculate from The Milton I. Schwartz Hebrew Academy to The Dr. Miriam and Sheldon G. Adelson School, the first Jewish high school in the Las Vegas area.



CONFIDENTIAL  
TO BE SUBMITTED TO THE COURT FOR  
IN CAMERA REVIEW

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*IN CAMERA* REVIEW

**EXHIBIT “R”**

CONFIDENTIAL  
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IN CAMERA REVIEW

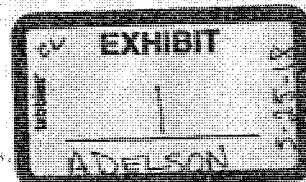
**EXHIBIT “S”**

CONFIDENTIAL  
TO BE SUBMITTED TO THE COURT FOR  
IN CAMERA REVIEW

**EXHIBIT “T”**

# EXHIBIT “U”





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

617-742-5720

T-184 P.03/04 F-376



ROSS MILLER  
Secretary of State  
204 North Carson Street, Ste 1  
Carson City, Nevada 89701-4299  
(775) 684 5708  
Website: secretaryofstatebiz

Filed in the office of	Document Number
<i>Ross Miller</i>	20080195694-74
Ross Miller	Filing Date and Time
Secretary of State	03/21/2008 11:20 AM
State of Nevada	Entry 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

Chairman

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 03-01-2008  
Revised 03/01/08

EST-00250

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

617-742-6720

T-154 P.04/04 F-376

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."

Please refer to the attached document for the full text of the amendment to the articles of incorporation.

EST-00251

# EXHIBIT “V”

**Deposition of:**

Paul Schiffman

**Case:**

In the Matter of the Estate of Milton I. Schwartz  
07P061300

**Date:**

06/16/2016



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)

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Paul Schiffman

In the Matter of the Estate of Milton I. Schwartz

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4		4	BY MR. BLAKE 43
5	In the Matter of the Estate of ) Case No.	5	BY MR. LEVEQUE 43
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9		9	EXHIBITS
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11		11	Exhibit 1 "The Milton I. Schwartz Hebrew 14
12		12	Academy Board of Trustees
13	DEPOSITION OF PAUL SCHIFFMAN	13	Meeting, Tuesday, January 10,
14	Taken on June 16, 2016	14	2006," AC401239 to -40
15	By a Certified Court Reporter	15	Exhibit 2 "The Milton I. Schwartz Hebrew 28
16	At 1:04 p.m.	16	Academy Board of Trustees
17	At 9060 West Cheyenne Avenue	17	Meeting, Tuesday, February 21,
18	Las Vegas, Nevada	18	2006, 6:00 P.M., AC401310 to
19		19	-11
20		20	Exhibit 3 Letter dated 5-8-06 from 29
21		21	Victor Chaltiel and Rhonda
22		22	Glyman to "Dear Hebrew Academy
23		23	Board Members and Campus
24	Reported by Janet C. Trimmer, RPR, CRR, CCR 864	24	Project Leaders," AC401382
25	Job No. 17364	25	Exhibit 4 Document titled "Introducing 35
			the only Jewish high school in
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			Executive Board of Trustees
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1	APPEARANCES:	1	EXHIBITS (CONTINUED):
2	FOR A. JONATHAN SCHWARTZ, EXECUTOR OF THE ESTATE OF	2	NUMBER DESCRIPTION PAGE
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4	SOLOMON DWIGGINS & FREER, LTD.	4	Adelson School, The Milton I.
5	BY: ALEXANDER G. LEVEQUE, ESQ.	5	Schwartz Hebrew Academy Board
6	9060 West Cheyenne Avenue	6	of Trustees Meeting, Tuesday,
7	Las Vegas, Nevada 89129	7	March 20, 2007," AC404057 to
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10	INSTITUTE AND THE DEPONENT:	10	Adelson School, The Milton I.
11	KEMP, JONES & COULTHARD, LLP	11	Schwartz Hebrew Academy Board
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20		20	Adelson High School, The
21		21	Milton I. Schwartz Hebrew
22		22	Academy Board of Trustees
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24		24	2007," AC404163 to -64
25		25	Exhibit 12 "The Dr. Miriam and Sheldon G. 71
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			Academy Resolutions of the
			Board of Trustees," AC404207
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<p>1 Milton I. Schwartz -- do you recall any conversations 2 where Mr. Schwartz was involved in those discussions? 3 A. I do not. 4 Q. Okay. Who was involved in those discussions? 5 A. I know that the Adelsons were involved. I 6 know that Victor Chaltiel was involved and 7 board members, but I'm hesitant to say. I don't 8 remember who was -- else was in the room at those 9 times. 10 Q. Okay. Did you provide any input and 11 suggestions? 12 A. Yes. 13 Q. Do you recall what those were? 14 A. I objected to the one name of being the 15 college preparatory academy. I did not like that. 16 Q. How come? 17 A. It wasn't going to meet the needs of the 18 school. There would be students who would not be 19 going off to college, in the case of going into the 20 armed services. 21 Q. With respect to the building known as The 22 Milton I. Schwartz Hebrew Academy, did you ever 23 develop an understanding with respect to whether the 24 name of that building was going to be a permanent part 25 of the naming of the school?</p>	<p>1 Q. But it was after litigation had commenced in 2 this case? 3 A. Yes. 4 Q. And when you say the board asked you, who in 5 the board asked you? Do you recall? 6 A. It was a conversation that was directed by 7 the board chair, Victor Chaltiel, to follow the 8 board's wishes. 9 Q. Were you present during any of the 10 discussions the board had concerning this issue? 11 A. Yes. 12 Q. All right. Who else do you recall providing 13 input and commentary on that decision amongst the 14 other board members? 15 A. I really can't recall. 16 Q. Okay. Do you recall if Mr. Adelson provided 17 any input? 18 A. Yes, he did. 19 Q. Okay. So you at least recall Mr. Adelson. 20 What about Dr. Adelson? 21 A. She was not present. She was not on the 22 board. 23 Q. Okay. Mr. Chaltiel? 24 A. Yes. It's Chaltiel [pronouncing]. 25 Q. Chaltiel?</p>
Page 22	Page 24
<p>1 A. No. 2 Q. Okay. When the name of the school was 3 finally decided upon, was there concurrently any 4 discussion of removing the name of The Milton 5 I. Schwartz Hebrew Academy on the building that housed 6 18 months through 4th grade? 7 A. No. 8 MR. BLAKE: Object to the form of the 9 question. Vague. 10 BY MR. LEVEQUE: 11 Q. But you are aware that at some point the name 12 of Milton I. Schwartz Hebrew Academy was removed from 13 that building? 14 A. I am. 15 Q. All right. Can you tell me how that 16 happened, if you know? 17 A. Yes. It was during a board meeting that we 18 were having, the board was having a conversation, 19 discussion about the litigation, and at that point the 20 board had decided to ask me to have the name removed 21 from the building. 22 Q. The board did? 23 A. Yes. 24 Q. Do you recall when that was? 25 A. No. Just a couple of years ago.</p>	<p>1 A. Uh-huh. 2 Q. Okay. Irv Steinberg? 3 A. Don't remember him being in the room. 4 Q. Okay. Actually, that would have been after 5 the fact. 6 Okay. Upon the direction to remove the name 7 from the building, what physical acts did you do to 8 accomplish that directive? 9 A. I spoke to the head of our custodial 10 services. I asked him to remove the name and the 11 picture that was hanging in the school, and asked that 12 that be put into storage in the school and that it be 13 preserved. 14 Q. And is it still preserved, at least to your 15 knowledge? 16 A. To my -- last that I saw, it was preserved. 17 That's over a year ago. 18 Q. Okay. Other than the picture and the 19 signage -- is that what was removed? 20 A. Uh-huh. 21 Q. Is that a "yes"? 22 A. Yes. 23 Q. Other than the picture and the signage, were 24 there any other mementos of Milton I. Schwartz around 25 the school, like a bust or sculpture, paintings or</p>

Page 25	Page 27
<p>1 anything like that?</p> <p>2 A. Just the painting that I spoke about.</p> <p>3 Q. Okay. What about any of the classrooms</p> <p>4 within the school? Were there any of those classrooms</p> <p>5 that were named after Mr. Schwartz that were removed?</p> <p>6 A. No.</p> <p>7 Q. At the time that you were given this</p> <p>8 directive to remove the namesake of Mr. Schwartz, were</p> <p>9 you concurrently provided a directive to change the</p> <p>10 letterhead of the school?</p> <p>11 A. No.</p> <p>12 Q. Okay. Are you aware that the letterhead did</p> <p>13 change?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And are you aware that the letterhead</p> <p>16 changed which ultimately resulted in The</p> <p>17 Milton I. Schwartz Hebrew Academy logo and name being</p> <p>18 removed from the letterhead?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recall when that occurred?</p> <p>21 A. That was way on in the beginning of the</p> <p>22 school, but I can't recall the date.</p> <p>23 Q. When was your last date of employment at the</p> <p>24 school?</p> <p>25 A. Middle of August of this past year. So it</p>	<p>1 you a reason why they made the decision?</p> <p>2 MR. BLAKE: Objection. To the extent that</p> <p>3 the reason why involves litigation, I would object</p> <p>4 that that's work-product-privilege information, and I</p> <p>5 would instruct you not to answer.</p> <p>6 MR. LEVEQUE: I'm not sure if that's</p> <p>7 privileged, Counsel.</p> <p>8 MR. BLAKE: If you want to talk about it off</p> <p>9 the record, we can, or if you want to talk about it on</p> <p>10 the record.</p> <p>11 MR. LEVEQUE: We can go off the record.</p> <p>12 (Off record.)</p> <p>13 MR. LEVEQUE: Okay. With respect to the last</p> <p>14 question that was asked, Counsel instructed his client</p> <p>15 not to answer. We attempted to contact the discovery</p> <p>16 commissioner to resolve the discovery dispute. We</p> <p>17 were advised we might have a chance of getting ahold</p> <p>18 of the discovery commissioner around 1:45 p.m., at</p> <p>19 which time I'll try to re-call the discovery</p> <p>20 commissioner.</p> <p>21 MR. BLAKE: Can I make a point of</p> <p>22 clarification as well?</p> <p>23 MR. LEVEQUE: Sure.</p> <p>24 MR. BLAKE: Just to clarify, I instructed the</p> <p>25 witness not to answer to the extent that a response to</p>
Page 26	Page 28
<p>1 would have been 2015.</p> <p>2 Q. Okay. And would that be the expiration of a</p> <p>3 contract that you had?</p> <p>4 A. I did not have a contract.</p> <p>5 Q. Oh, okay. At some point you had a contract,</p> <p>6 though; correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Did that contract expire on its own</p> <p>9 terms?</p> <p>10 A. Yes.</p> <p>11 Q. All right. Following that, were you deemed</p> <p>12 as an at-will employee? Do you know?</p> <p>13 A. I asked that I be deemed an at-will employee.</p> <p>14 Q. And I understand that you are retired?</p> <p>15 A. Yes, I am.</p> <p>16 Q. Congratulations.</p> <p>17 A. Thank you.</p> <p>18 Q. How many years were you employed?</p> <p>19 A. Forty-three.</p> <p>20 Q. Did you have any of your relatives attend the</p> <p>21 school?</p> <p>22 A. No.</p> <p>23 Q. Going back to your prior testimony concerning</p> <p>24 the direction you received from the board to remove</p> <p>25 the namesake of Mr. Schwartz, did the board ever give</p>	<p>1 the question called for a discussion regarding the</p> <p>2 litigation that we were involved in.</p> <p>3 THE REPORTER: Two.</p> <p>4 (Exhibit 2 was marked for identification.)</p> <p>5 BY MR. LEVEQUE:</p> <p>6 Q. Okay. Showing you what's been marked as</p> <p>7 Exhibit 2, Mr. Schiffman, are more board</p> <p>8 meeting minutes. This time it's from a board meeting</p> <p>9 on February 21st, 2006. Do you recognize it as such?</p> <p>10 A. I do.</p> <p>11 Q. And I just want to direct your attention to</p> <p>12 the second paragraph where it states "Victor</p> <p>13 discussed." Do you see that sentence?</p> <p>14 A. Yes.</p> <p>15 Q. (Reading):</p> <p>16 "Victor discussed the Dr. Miriam &amp;</p> <p>17 Sheldon Adelson College Preparatory School."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Is this the name you took issue with because</p> <p>21 of "College Preparatory School"?</p> <p>22 A. I did.</p> <p>23 Q. All right. Just a forewarning, we are going</p> <p>24 to go through a lot of extremely boring board minutes</p> <p>25 today.</p>

# EXHIBIT “W”



**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**.

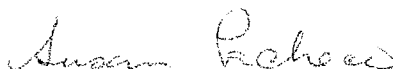
9. Mr. Schwartz was also instrumental in causing others to make donations to MISHA. He was also aware of and welcomed MISHA's attempt to attract donors by providing naming rights to certain classrooms because its served a dual purpose by preserving his legacy and allowing others to become associated 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 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					

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

# EXHIBIT “X”

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  
23 JOB NO. 322729

24

25

002145



1 Videotaped deposition of JONATHAN  
2 SCHWARTZ, Volume 1, taken at 3800 Howard Hughes  
3 Parkway, Suite 1700, Las Vegas, Nevada, on  
4 Thursday, July 28, 2016, at 9:40 a.m., before Heidi  
5 K. Konsten, Certified Court Reporter in and for the  
6 State of Nevada.

7

## 8 APPEARANCES OF COUNSEL

9 For the Dr. Miriam and Sheldon G. Adelson  
Educational Institute:

10

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12 DAVID T. BLAKE, ESQ.  
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16

For the Estate of Milton I. Schwartz:

17

18 ALAN D. FREER, ESQ.  
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19 9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129  
(702) 853-5483  
(702) 853-5485 Fax  
20 aleveque@sdfnvlaw.com

21

Also present: Terrell Holloway, Videographer

22

23

\* \* \* \* \*

24

25

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 personally gave half a million dollars, and then  
2 he rose -- raised another half a million dollars  
3 to total the million.

4 I think one of the other donors was Paul  
5 Sogg, and I'm -- I think Mr. Sogg donated  
6 \$300,000. And whoever donated the other \$200,000  
7 escapes me at the moment.

8 Q Okay. You do understand that this is  
9 not the version that -- that Dr. Lubin says in the  
10 book. In the book, she says that he was to give a  
11 million dollars and he only gave 500,000. That's  
12 what the book says.

13 If you want me to show it to you, I'll  
14 be happy to.

15 A It's not relevant, one way or the other,  
16 to me.

17 Q Okay. All right. Why is it not  
18 relevant?

19 A Because I know what the agreement was.  
20 The agreement was that he donate half a million  
21 and raise half a million, regardless of whether  
22 the entire million came from him or came from him  
23 and other parties --

24 Q It's your position that you know what  
25 the agreement was better than Dr. Lubin, one of

1 the parties to the agreement?

2 A I don't know that Tamar Lubin was even  
3 at the meeting. I don't know. I just know what  
4 my father told me, and I know what I've heard from  
5 the other board members that I've discussed it  
6 with. I know what I've heard from the testimony  
7 during this case, and I know what the -- the  
8 practice of the school was for years.

9 And besides that -- this whole issue of  
10 what that agreement was was resolved in a prior  
11 litigation.

12 Q Okay. Let's -- let's stick with 1989.

13 You understand what a naming rights  
14 agreement is; right?

15 A Not really.

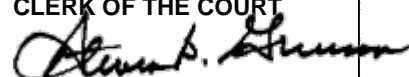
16 Q Didn't you prepare a naming rights  
17 agreement and attach it to the May -- May 10,  
18 2010, letter that we have here as Exhibit 3?

19 A We prepared a settlement agreement.

20 Q Okay. A settlement agreement that is  
21 entitled -- and by the way, I think I should start  
22 out by saying I admired your father greatly, and I  
23 think the contribution he gave to the school  
24 and -- you know, the fact that we're in this  
25 adversarial relationship does not mean that, you

52

52



1 **ERR**

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14 Telephone: (702) 853-5483

15 Facsimile: (702) 853-5485

16 *Attorneys for A. Jonathan Schwartz,*

17 *Executor of the Estate of Milton I. Schwartz*

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 In the Matter of the Estate of

21 MILTON I. SCHWARTZ,

22 Deceased.

Case No.: 07P061300

Dept. No.: 26/Probate

23 **ERRATA TO OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT**  
24 **REGARDING STATUTE OF LIMITATIONS**

25 A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz ("Executor"), by and  
26 through his Counsel of Record, the law firm Solomon Dwiggins & Freer, Ltd., hereby files this  
27 Errata to his Opposition to Motion for Partial Summary Judgment Regarding Statute of  
28 Limitations, filed with this Court on July 6, 2018.

The Declaration of A. Johnathan Schwartz, at Exhibit A, was not executed.

///

///

///

1 Therefore, attached hereto, as Exhibit A, is a copy of the executed Declaration of A.  
 2 Johnathan Schwartz as should have been filed and incorporated within the Opposition as though  
 3 originally filed.

4 DATED this 10<sup>th</sup> day of July, 2018.

6 SOLOMON DWIGGINS & FREER

8 By: 

9 ALAN D. FREER, ESQ.

10 Nevada State Bar No. 7706

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 20 *Executor of the Estate of Milton I. Schwartz*

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 DWIGGINS & FREER  
 TRUST AND ESTATE ATTORNEYS



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 10, 2018, I caused a true and correct copy of the foregoing **ERRATA TO OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING STATUTE OF LIMITATIONS** to be served via the Court's Odyssey/Wiznet service provider, pursuant to NRCP 5(b)(2)(D), EDCR 8.05 (a-f) and Rule 9 of N.E.F.C.R., to the following party(ies):

J. Randall Jones, Esq.  
 Dave Blake, Esq.  
**KEMP, JONES & COULTHARD, LLP**  
 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
 Las Vegas, NV 89169  
[r.jones@kempjones.com](mailto:r.jones@kempjones.com)  
[d.blake@kempjones.com](mailto:d.blake@kempjones.com)  
*Attorneys for The Dr. Miriam and Sheldon G. Adelson  
 Educational Institute*

  
 An Employee of SOLOMON DWIGGINS & FREER, LTD.

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**DECLARATION OF A. JONATHAN SCHWARTZ, EXECUTOR OF THE ESTATE OF  
MILTON I. SCHWARTZ, IN SUPPORT OF OPPOSITION TO MOTION FOR PARTIAL  
SUMMARY JUDGMENT REGARDING STATUTE OF LIMITATIONS**

I, A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz, hereby declare under penalty of perjury under the laws of the State of Nevada as follows:

1. This Declaration and the assertions contained herein are based upon my personal knowledge, except that which is stated upon information and belief, and as to such matters, I believe them to be true.

2. I am the Executor of the Estate of Milton I. Schwartz.

3. I make this Declaration in Support of the Opposition to Motion for Partial Summary Judgment Regarding Statute of Limitations (the "Opposition").

4. In August, 1989, my father Milton I. Schwartz (hereinafter to as "Mr. Schwartz" or "my father"), entered into an agreement to rename the Hebrew Academy as "The Milton I. Schwartz Hebrew Academy" in perpetuity.

5. On December 18, 1990, the Board of Trustees executed a document entitled "Bylaws of the Milton I. Schwartz Hebrew Academy," which provided, in relevant part, that "[t]he name of this corporation is The Milton I. Schwartz Hebrew Academy (hereinafter referred to as The Academy) and shall remain so in perpetuity." *See*, Opposition, at Exhibit 5.

6. As the result of a dispute that arose between Mr. Schwartz and the Board of Trustees in or about 1992, the Board of Trustees filed a Certificate of Amendment of Articles of Incorporation on October 19, 1994, changing the name of the school back to the "Hebrew Academy." *See*, Opposition, at Exhibit 12.

7. In or about May, 1996, the Board of Trustees, by and through Dr. Roberta Sabbath, reached out to Mr. Schwartz in an effort to reconcile the dispute, and offered to rename the school back to the Milton I. Schwartz Hebrew Academy as originally intended in 1989. *See*, Opposition, at Exhibit 14.

8. As a result of the agreement made between my father and the Board of Directors to reinstate Mr. Schwartz's name as originally intended, on April 13, 1999, the Board of Trustees

1 executed a document entitled "BYLAWS OF THE MILTON I. SCHWARTZ HEBREW  
2 ACADEMY," which provides in relevant part: "The name of the Corporation is the Milton I.  
3 Schwartz Hebrew Academy and will remain so in perpetuity.

4 9. Based upon numerous conversations with my father and documents he provided to  
5 me prior to his death, it was my understanding that, notwithstanding the donations made by Dr.  
6 Miriam and Sheldon G. Adelson, the school, specifically grades Pre-K through Eighth and the  
7 campus would remain the "Milton I. Schwartz Hebrew Academy," while the high school, grades  
8 9 through 12, would be named the Adelson School.

9 10. My father passed away on August 9, 2007.

10 11. Indeed, the School's actions prior to my father's death were consistent with this  
11 understanding. Specifically, prior to my father's death, in 2007 School held its annual Gala  
12 fundraiser (the "2007 Gala"), at which my father was the honorary attendee. Included within  
13 invitations and advertisements disseminated by the School for the 2007 Gala was a letter (the  
14 "2007 Gala Letter") which included the following provisions consistent with the agreement  
15 between the Board of Directors and my father:

- 16 (i) "It is an inspiration to see so many in the community supporting not  
17 only The M.I.S. Hebrew Academy, but also The Adelson School.  
18 At last year's event, we presented plans to create a world class high  
19 school adjacent to The Milton I. Schwartz Hebrew Academy." *See*, 2007 Gala Letter, a true and correct copy of which is attached  
20 hereto as **Exhibit A-I**. (Emphasis added).
- 21 (ii) Many people have worked hard to create the success of our current  
22 Pre-K through 8th grade program and the beginning of our new  
23 high school. *Id.* (Emphasis added).
- 24 (iii) With vision and foresight, Mr. Schwartz and a few others  
25 generously answered the need in Las Vegas for a strong secular and  
26 Judaic educational institution for elementary school-aged children  
27 by creating and continuously supporting **The Milton I. Schwartz**  
28 **Hebrew Academy**. **The School, established in 1988, has since**  
**expanded to include preschool through 8th grade.** *Id.*  
(Emphasis added).

12. Unbeknownst to me, approximately four (4) months after my father's death, on December 13, 2007, the Board of Trustees executed a document entitled "THE MILTON I. SCHWARTZ HEBREW ACADEMY RESOLUTIONS OF THE BOARD OF TRUSTEES," which included a Resolution as follows (the "2007 Resolutions"): Article I. of the Corporate Articles be and hereby is amended and restated in its entirety to state that: "This corporation shall be known in perpetuity as 'The Dr. Miriam and Sheldon G. Adelson Educational Institute.'" *See*, Opposition, at Exhibit 24

13. Additionally, and also unbeknownst to me, on March 21, 2008, the Board of Trustees filed a Certificate of Amendment to Articles of Incorporation for Nonprofit Corporation (the "2008 Amendment"), which, in relevant part, provides that "This Corporation shall be known in perpetuity as 'The Dr. Miriam and Sheldon G. Adelson Educational Institute.'" *See*, Opposition, at Exhibit 26.

14. I had no knowledge of the 2007 Resolutions or 2008 Amendment at the time they were effectuated. The first I became aware of the documents was when the School disclosed the same during the discovery period of this litigation.

15. Although I began to hear rumors that the School had taken actions contrary to the agreement between the Board of Trustees and my father shortly after his death regarding the name of the school, I did not rely upon such rumors because the School's actions and conduct after my father's death were contrary thereto, and appeared reasonably consistent with the agreement between the Board of Directors and my father. Specifically:

- (a) After my father's death, I continued to make donations payable to the Milton I. Schwartz Hebrew Academy, which the School accepted;
- (b) The School sent me several correspondences acknowledging the donations;
- (c) The correspondences sent to me by the School were on letterhead that bore the name "Milton I. Schwartz Hebrew Academy," *see*, Opposition, at Exhibits, 28, 29, 30, 31, and 32;

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- 1 (d) Each of the correspondences and envelopes attached as Exhibits 28, 29, 30,  
2 31, and 32 are true and correct copies of the same that were sent by the  
3 School and received by me;  
4 (e) At no time during the years following my father's death did the School  
5 inform me that they would not accept my donations because they were  
6 made payable to the Milton I. Schwartz Hebrew Academy. Rather, each of  
7 my donations were accepted without question; and  
8 (f) I visited the School several times after my father died in 2009, 2010, 2011,  
9 and 2012, and at such times I saw that the signage on the Pre-K through  
10 Eighth grade buildings still bore the name "The Milton I. Schwartz Hebrew  
11 Academy" and my father's picture was still present.

12 16. Based upon the School's conduct, as set forth above, I reasonably relied upon its  
13 continued use of the name "The Milton I. Schwartz Hebrew Academy," and believed that the  
14 School continued to honor its agreement with my father.

15 17. Had I been made aware of the true facts and circumstances of the School's breach  
16 of the agreement between my father and the Board of Directors, I would have proceeded with  
17 court intervention immediately.

18 18. As a result of the rumors, of which I did not rely upon due to the School's conduct,  
19 I wrote a letter to the Board of Directors on May 10, 2010, with a proposed settlement agreement  
20 attached thereto out of an abundance of caution so as to resolve any alleged issues. *See*, May 10,  
21 2010 Letter, a true and correct copy of which is attached hereto as **Exhibit A-II**.

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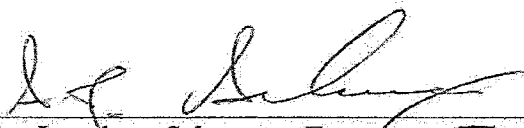
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1           19.     Although I had heard the rumors regarding the School's actions (alleged actions at  
2 the time of such rumors) and proposed an agreement out of an abundance of caution, as of at least  
3 2011, the School's conduct continued lead me to believe that it had not breached its agreement  
4 and I reasonably relied upon such conduct.

5           Dated this 5th day of July, 2018.

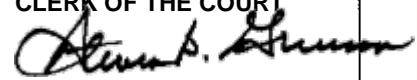
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8 A. Jonathan Schwartz, Executor of the Estate of  
9 Milton I. Schwartz  
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*Attorneys for The Dr. Miriam and  
Sheldon G. Adelson Educational Institute*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

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

**THE ADELSON CAMPUS' OPPOSITION TO  
THE ESTATE'S COUNTERMOTION FOR  
ADVISORY JURY**

Hearing Date: August 9, 2018  
Hearing Time: 9:30 am

The Dr. Miriam Adelson and Sheldon G. Adelson Educational Institute (the "Adelson Campus") by and through its counsel, hereby submits its Opposition to the Estate of Milton I. Schwartz's (the "Estate") Countermotion for Advisory Jury.

This Opposition is made and based upon the following Points and Authorities, any exhibits attached thereto, the pleadings and papers on file herein, the oral argument of counsel, and such other or further information as this Honorable Court may request.

DATED this 23<sup>rd</sup> day of July, 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*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

In an unrelated counter motion to its opposition to the Adelson Campus's Motion for Summary Judgment Regarding Breach of Contract, the Estate requests this Court issue an order declaring that all claims of all parties shall be determined by the jury. As explained below, the Court should deny the Estate's request for an advisory jury as (1) Nevada legal authority provides that the Court should allow the jury to make all legal determinations and reserve all equitable determinations for itself; and (2) the Estate's Counter motion is improper because it violates EDCR 2.20(f) as it is completely unrelated to the subject matter of the Estate's Opposition.

### II.

#### LEGAL ARGUMENT

##### **A. It is Appropriate for the Court to Allow the Jury to Decide the Legal Issues and Reserve for Court Determination All Equitable Issues**

"The decision whether to grant a request for an advisory jury is within the district court's discretion." *Harmon v. Tanner Motor Tours*, 79 Nev. 4, 20, 377 P.2d 622, 630-31 (1963). However, "it is elemental that in a suit in equity, the judgment or decree must be based upon findings of the court rather than a jury verdict..." *Musgrave v. Casey*, 68 Nev. 471235 P.2d 729, 731, (1951). In an action in equity, there is no right to a trial by jury, so even if a court impanels an advisory jury to assist in its determinations, the jury verdict may be entirely disregarded by the court as the verdict of an advisory jury is non-binding. *See Johnston v. De Lay*, 63 Nev. 1, 158 P.2d 547 (1945); *Misty Management Corp. v. First Judicial Dist. Court*, 783 Nev. 253, 428 P.2d 196 (1967).

The Estate's specific performance claim, seeking an order compelling the Adelson Campus to change its name to the Milton I. Schwartz Hebrew Academy, is a purely equitable claim, not requiring an advisory jury. *See Holiday Inns of America, Inc. v. Lussi*, N.D.N.Y.1967, 42 F.R.D. 27, 153 U.S.P.Q. 158. It is proper for the Court to allow the jury to decide the legal issues and reserve for court determination all equitable issues, including the Estate's specific performance claim. *See Sanguinetti v. Strecker*, 1978, 577 P.2d 404, 94 Nev. 200. Accordingly, pursuant to NRCP 39(c) and the above-referenced legal authority, the Estate's Counter motion should be denied.



**B. The Estate's Request for an Advisory Jury Should be Denied as Result of it Being Made in an Improper Countermotion.**

Instead of properly bringing its request for an advisory jury in a motion, the Estate chose to make its request in a countermotion with its opposition to the Adelson Campus's Motion for Summary Judgment Regarding Breach of Contract. EDCR 2.20(f) requires that a proper countermotion must be "related to the same subject matter." Here, the Adelson's Campus Motion for Summary Judgment only addresses breach of contract arguments. Therefore, the Estate's instant request for an advisory jury in a countermotion, a wholly unrelated issue to the subject motion, patently violates EDCR 2.20(f), requiring the Countermotion's denial.

**III.**

**CONCLUSION**

For all the reasons indicated above, the Adelson Campus respectfully requests that this Court to deny the Estate's improper Countermotion.

DATED this 23<sup>rd</sup> day of July, 2018.

Respectfully Submitted,


KEMP, JONES & COULTHARD, LLP



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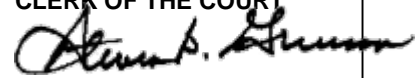
**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of July, 2018, I served a true and correct copy of **THE ADELSON CAMPUS' OPPOSITION TO THE ESTATE'S COUNTERMOTION FOR ADVISORY JURY** via the Eighth Judicial District Court's CM/ECF electronic filing system, addressed to all parties on the e-service list.

  
An employee of Kemp, Jones & Coulthard, LLP

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

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

**THE ADELSON CAMPUS' REPLY IN  
SUPPORT OF ITS MOTION FOR PARTIAL  
SUMMARY JUDGMENT REGARDING  
FRAUD**

Hearing Date: August 9, 2018  
Hearing Time: 9:30 am

The Dr. Miriam and Sheldon G. Adelson Educational Institute (the "Adelson Campus" or the "School") by and through its counsel, hereby submits its Reply in Support of its Motion for Partial Summary Judgment Regarding Fraud.

This Reply is made and based upon the following Points and Authorities, any exhibits attached thereto, the pleadings and papers on file herein, the oral argument of counsel, and such other or further information as this Honorable Court may request.

DATED this 2<sup>nd</sup> day of August, 2018.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

The Estate of Milton I. Schwartz (the “Estate”) provides no legitimate factual or legal basis to deny the Adelson Campus’ request for summary judgment on the Estate’s claim of fraud in the inducement. A party opposing summary judgment “bears the burden to ‘do more than simply show that there is some metaphysical doubt’ as to the operative facts in order to avoid summary judgment in the moving party’s favor.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005) (quoting *Matsushita Electric Industrial Co., Ltd., et al. v. Zenith Radio Corp., et al.*, 475 U.S. 574, 586 (1986)). Here, most of the alleged “evidence” that the Estate includes in its Opposition is inadmissible or immaterial alleged facts and rhetoric in response to the Adelson Campus’ request for summary judgement, thus it cannot properly preclude entry of summary judgment. *See Anderson v. Liberty Lobby, Inc.*, 106 S. Ct. 2505, 2510 (1986) (Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.)

As explained in the Adelson Campus’ Motion, the undisputed facts in this case establish, as a matter of law, that the Estate cannot meet its burden at trial to prove each essential element of its claim of fraud in the inducement. Summary judgment shall be entered “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). In order to prevail on a claim of fraud in the inducement, the moving party must prove that “the promisor had no intention to perform ***at the time the promise was made.***” *See Menalco v. Buchan*, 2010 WL 428911, \*30 (D. Nev. Feb. 1, 2010)(emphasis added). However, the Estate’s Opposition fails to identify any testimony or evidence demonstrating an *actual genuine issue of material* fact that at the time the Board of Trustees allegedly agreed to name the school after Milton Schwartz they had no intention to do so. As result of this overt failure, summary judgment should be granted in the Adelson Campus’ favor as to the Estate’s claim for fraud in the inducement.

## II.

## LEGAL ARGUMENT

A. **The Estate Submitted No Evidence, Let Alone Admissible Evidence, Demonstrating that School had No Intention to Perform at the Time the Promise was Made.**

In order to prevail on its fraud in the inducement claim, the Estate must establish intentional wrongful conduct, such as evidence that “the promisor had no intention to perform **at the time the promise was made.**” *See Menalco v. Buchan*, 2010 WL 428911, at \*31 (D. Nev. Feb. 1, 2010) (emphasis added) (citing *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 825 P.2d 588, 592 (Nev.1992)); *J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 291, 89 P.3d 1009, 1018 (2004). Unsurprisingly, and in the face of the deposition testimony of the former Board members<sup>1</sup>, the Estate provides no deposition testimony or any other admissible evidence raising a genuine issue of material fact that the Board of Trustees had no intention to actually name the school after Milton Schwartz at the time it allegedly agreed to name school after Mr. Schwartz. Merely characterizing the Board of Trustee’s actions in 1996<sup>2</sup> as an “empty promise” without any actual evidence of the Board of Trustee’s lack of intent in 1996 to fulfill the alleged promise to name the school after Milton Schwartz is the very specious rhetoric, conclusory statements, and gossamer threads of whimsy that cannot defeat summary judgment. *See Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005).

Instead of attempting to meet its substantial burden, the Estate relies on the conclusory argument that fraud in the inducement exists solely because the name of the school was changed in December 2007. *See Opp.* at 9:18-19. However, “the mere failure to fulfill a promise or perform in the future, however, will not give rise to a fraud claim absent evidence that the promisor had no intention to perform **at the time the promise was made.**” *See Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 112, 825 P.2d 588, 592 (1992)(emphasis added) citing *Webb v. Clark*, 274 Or. 387, 546 P.2d 1078 (1976). At the summary judgment phase, mere allegations that the School breached an alleged agreement nearly 11 years after it was allegedly agreed to is not enough demonstrate a genuine issue of material fact as

<sup>1</sup> See Exhibits 1-5 to Motion for Partial Summary Judgment Regarding Fraud.

<sup>2</sup> Interestingly, the Estate contends in its Opposition to the Adelson’s Campus Motion for Summary Judgment Regarding Breach of Contract that the contract was formed in 1989, yet in its opposition to this Motion, the Estate asserts the naming rights agreement that was breached was formed in 1996.

1 to a fraud claim. *See id* and Oppo at 9:1-3. Again, the Estate has failed to point to any evidence that *at*  
 2 *the time* Milton Schwartz agreed to donate money and drafted his will leaving money to School, the  
 3 Board had the intention of removing Milton Schwartz's name from the school. The absence of such  
 4 evidence is fatal to the Estate's fraud in the inducement claim requiring summary judgment be entered  
 5 in the Adelson Campus' favor.

6 **B. Like Fraud in the Inducement, a Claim for Intentional Misrepresentation Requires the**  
 7 **Promisor to Have Knowledge that the Representation was False When It was Made.**

8 The Adelson's Campus' Motion seeks summary judgment on the Estate's fraud in the  
 9 inducement claim. Yet, in a desperate and misguided attempt to avoid summary judgment, the Estate  
 10 argues that summary judgment is precluded because there is a genuine issue of material fact as to the  
 11 existence of an intentional misrepresentation, a claim not currently asserted in this action by the Estate,  
 12 and it is entitled to present this evidence in support of a claim for intentional misrepresentation for  
 13 consideration at trial. *See Opp.* at 12:6-17. This argument is nothing but a red herring and should be  
 14 summarily disregarded.

15 Nevertheless, any request by the Estate to amend its operative Petition to include a claim for  
 16 intentional misrepresentation should fail as the claim is futile because the Estate cannot provide the  
 17 Court any admissible evidence the Board had any knowledge that its alleged representations to Milton  
 18 Schwartz about naming the school after him were false at the time they were allegedly made. *See supra*  
 19 II(A). Under Nevada law, a claim for intentional misrepresentation requires the following elements: (1)  
 20 a false representation by defendant; (2) **defendant's knowledge that the representation was false**  
 21 **when made**; (3) an intent by defendant to induce plaintiff to act or refrain from acting; (4) justifiable  
 22 reliance by plaintiff; and (5) damages to plaintiff resulting from the fraud. *See Bergsrud v. Bank of Am.,*  
 23 *NA*, 2017 WL 4560185, at \*5 (D. Nev. Oct. 11, 2017) (emphasis added) (citing *Bulbman, Inc. v. Nevada*  
 24 *Bell*, 825 P.2d 588, 592 (Nev. 1992). Like its claim for fraud in the inducement, the Estate cannot  
 25 produce any admissible deposition testimony or evidence that demonstrates that the School had any  
 26 knowledge that its alleged representations to Milton Schwartz about naming rights were false **at the**  
 27 **time they were allegedly made**. Due to the Estate's inability to establish all of the essential elements  
 28

1 for a claim of intentional misrepresentation, the claim is futile and any request for leave to amend  
2 should be denied.

3 **C. Contrary to the Estate's Contention, Not All of the Evidence It Cites in Support of Its**  
4 **Opposition is Admissible.**

5 Much of the Estate's statement of disputed facts are supported only by inadmissible hearsay  
6 that cannot support a basis for denying the Adelson Campus' pending dispositive motions. Contrary to  
7 the Estate's argument the following documents do not fall within any of the exception to the generally  
8 applicable prohibitions on hearsay.

9 **1. Exhibit 1 to Opp. – Supplemental Affidavit of Milton I Schwartz dated February 22, 1993**  
10 **in support of Plaintiffs' Reply to Defendant's Opposition to Plaintiff's Motion for**  
11 **Declaratory Judgment and Injunctive Relief; Plaintiff's Opposition to Defendant's**  
12 **Countermotion for Sanctions; Plaintiff's Opposition to Defendant's Countermotion to**  
13 **Dismiss or, in the Alternative, for a More Definite Statement; and Plaintiff's**  
14 **Countermotion to Strike Defendant's Opposition (hereinafter the "Supplemental**  
15 **Affidavit of Milton Schwartz").**

16 The Estate relies on the Supplemental Affidavit of Milton Schwartz for the purpose of  
17 demonstrating that the Board of Trustees allegedly agreed to change the name of the school to the  
18 "Milton I. Schwartz Hebrew Academy" in perpetuity. *See* Opp. at 2:13-14. Therefore, the out-of-court  
19 statements in the Supplemental Affidavit are being sought to be introduced for the truth of the matters  
20 asserted therein. However, the Supplemental Affidavit of Milton Schwartz is inadmissible hearsay  
21 with no exception due to the untrustworthy and self-serving nature of the Affidavit as result of it being  
22 prepared in support of litigation, as demonstrated by the pleadings the Supplemental Affidavit was  
23 submitted in support. *See* Ex. 1 to Opp. at ¶ 3. The hearsay statements made in the Supplemental  
24 Affidavit of Milton Schwartz are too untrustworthy to be admissible.

25 "It is a general rule that self-serving declarations-that is, statements favorable to the  
26 interest of the declarant-are not admissible in evidence as proof of the facts asserted,  
27 regardless of whether they were implied by acts or conduct, were made orally, or  
28 were reduced to writing. The rule which renders self-serving statements  
inadmissible is the same in criminal prosecutions as in civil actions. The vital  
objection to the admission of this kind of evidence is its hearsay character; the  
phrase 'self-serving' does not describe an independent ground of objection. Such  
declarations are untrustworthy; their introduction in evidence would open the door  
to frauds and perjuries, and the manufacturing of evidence. The fact that the  
declarant has since died does not alter the general exclusionary rule."



1 *Chrysler Motors Corp. v. Davis*, 226 Ga 221, 173 S.E.2d 691 (1970). "The party wishing to introduce  
 2 hearsay evidence must rebut the presumption of unreliability by appropriate proof of trustworthiness.  
 3 A witness's death is not enough to justify discarding the trustworthiness requirement of the residual  
 4 hearsay exception." *Stolarczyk v. Senator Int'l Freight Forwarding, LLC*, 376 F. Supp. 2d 834, 841  
 5 (N.D. Ill. 2005).

6 Nothing in Supplemental Affidavit of Milton Schwartz suggests circumstances under which  
 7 one can be assured of accuracy. Statements made in anticipation of litigation are suspect: "**Precedent**  
 8 **teaches that courts typically should not admit documents made in anticipation of litigation as**  
 9 **they 'lack sufficient guarantees of trustworthiness to be excepted from the hearsay rule.'**" *See id*  
 10 (emphasis added) (citing *Moffett v. McCauley*, 724 F.2d 581, 584 n. 1 (7th Cir.1984) (citing *Palmer v.*  
 11 *Hoffman*, 318 U.S. 109, 111, 63 S.Ct. 477, 87 L.Ed. 645 (1943)). The statements contained in the  
 12 Supplemental Affidavit are favorable to Milton Schwartz and to him alone, and he had substantial  
 13 motivation, with all respect, to embellish, as he clearly appreciated that he was laying out his litigation  
 14 position. While the Estate argues that Milton's statements were given under the penalty of perjury,  
 15 Milton Schwartz was never subject to cross-examination by anyone concerning the statements and there  
 16 is nothing inherently trustworthy about the statements. Therefore, the Estate has failed to rebut the  
 17 applicable presumption of inadmissibility of hearsay statements.

18 **2. Exhibit 3 to Opp. – Is an unsigned letter dated August 14, 1989 addressed to Milton**  
 19 **Schwartz ("August 14, 1989 Letter").**

20 Like the Supplemental Affidavit of Milton Schwartz, the Estate is seeking to utilize the out-of  
 21 –court statements contained in the August 14, 1989 Letter to show that the Board allegedly agreed to  
 22 name the school after Milton Schwartz in perpetuity. *See Opp.* at 2:18-19. Contrary to the Estate's  
 23 argument August 14, 1989 Letter does not qualify under the business records exception to hearsay. It  
 24 was produced by Susan Pacheco and not on any school or business letterhead. *See Ex. 3 to Opp.*  
 25 Furthermore, it is unsigned and does not even reference the individual or organization that was  
 26 allegedly sending the letter to Milton Schwartz and whom was to sign the letter. Susan Pacheco, Milton  
 27 Schwartz's secretary, testified in her deposition that Milton Schwartz dictated the letter to her, but there  
 28 was no indication that he did so in an official business capacity. *See Exhibit 1*, S. Pacheco Dep. at  
 15:20-16:3. Ms. Pacheco confirmed the purported letter was never signed:

1 Q. Do you know if he obtained a signature from the school on this letter?

2 A. No.

3 Q. Did he ever tell you whether he obtained a signature from anybody at the  
4 school on this letter?

5 A. I don't recall.

6 Q. Have you ever seen a copy of this letter that's been signed?

7 A. I don't recall.

8 *See id* at 18:6-15. The August 14, 1989 Letter in reality is more akin to a self-serving declaration by  
9 Milton Schwartz than anything else. Thus, the business records exception is inapplicable.

10 The business records exception is also inapplicable because the circumstances surrounding the  
11 preparation of August 14, 1989 Letter indicates a lack of trustworthiness. As discussed previously, the  
12 statements contained in the letter are favorable to Milton Schwartz and to him alone, and he had  
13 substantial motivation to aggrandize, as he clearly appreciated that he was preparing a self-serving  
14 letter that has not been seen by the school or signed by a representative of the school. *See id*. Lastly,  
15 the risk of irreparable prejudice to the Adelson Campus substantially outweighs any probative value  
16 this document may have at trial. *See* NRS 48.035. For these reasons, the Estate's proffered exceptions  
17 to the hearsay rule are inapplicable and the August 14, 1989 Letter is inadmissible.

18 **3. Exhibit 13 to Opp. – Spreadsheet of donations allegedly made and solicited by Milton**  
19 **Schwartz.**

20 Generally, the Rule authorizing the admission of an exhibit summarizing contents of  
21 voluminous documents is not a back-door vehicle for introduction of evidence which is otherwise  
22 inadmissible. *See Peat, Inc. v. Vanguard Research, Inc.*, 378 F.3d 1154, 1160 (11th Cir. 2004). The  
23 Estate's spreadsheet summary of donations that Milton Schwartz allegedly made to the school between  
24 1988 and 2007 ("Donation Litigation Spreadsheet") is inadmissible hearsay that does not fall within  
25 any exceptions. As discussed above, "courts typically should not admit documents made in anticipation  
26 of litigation as they 'lack sufficient guarantees of trustworthiness to be excepted from the hearsay  
27 rule.'" *See Stolarczyk v. Senator Int'l Freight Forwarding, LLC*, 376 F. Supp. 2d 834, 841 (N.D. Ill.  
28 2005) (internal citations omitted). Susan Pacheco testified in her deposition that Jonathan Schwartz  
asked her to create this spreadsheet specifically for use in this litigation. *See* Ex. 1 at 44:15-45:25. In

1 addition, a summary, such as the Donation Litigation Spreadsheet, may only be admitted into evidence  
 2 if the originals or duplicates of the evidence the summary is based upon have been made available to  
 3 the other parties at a reasonable time and place. See FRE 1006. Here, Ms. Pacheco testified that she is  
 4 unable to produce the checks and check registers the Donation Litigation Spreadsheet allegedly  
 5 summarizes because she believes those documents were shredded after she used them to create the  
 6 Donation Litigation Spreadsheet. *See* Ex. 1 at 45:15-25.<sup>3</sup> Accordingly, the spreadsheet lacks sufficient  
 7 guarantees of trustworthiness and the Estate is unable lay any evidentiary foundation (*i.e.*, receipts,  
 8 checks, ledgers, etc.) to substantiate the Donation Litigation Spreadsheet at the time of trial. For these  
 9 reasons, the Donation Litigation Spreadsheet is inadmissible.

### 10 III.

### 11 CONCLUSION

12 For all the reasons indicated above, the Adelson Campus respectfully requests this Court to  
 13 grant its Motion for Summary Judgment Regarding Fraud.

14 DATED this 2<sup>nd</sup> day of August, 2018.

15 Respectfully Submitted,

16 KEMP, JONES & COULTHARD, LLP

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25  
 26  
 27  
 28 <sup>3</sup> The destruction of relevant evidence is telling and adds further concern as to the reliability of this summary.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of August, 2018, I served a true and correct copy of **THE ADELSON CAMPUS' REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING FRAUD** via the Eighth Judicial District Court's CM/ECF electronic filing system, addressed to all parties on the e-service list.

  
An employee of Kemp, Jones & Coulthard, LLP

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002170

# EXHIBIT 1

1

DISTRICT COURT

2

CLARK COUNTY, NEVADA

3

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 SUSAN PACHECO

14

LAS VEGAS, NEVADA

15

FRIDAY, MARCH 6, 2015

16

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22

23

24

REPORTED BY: KAREN L. JONES, CCR NO. 694, CSR 9464

25

JOB NO.: 239421

002172

SUSAN PACHECO - 03/06/2015

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1 A. The files that I keep at my office.  
2 They're not personal.

3 Q. Where is your office located?

4 A. 6050 South Ft. Apache Road, Suite 200 A,  
5 as in apple, Las Vegas, Nevada 89148.

6 Q. And why would you have a copy of this  
7 letter in your files?

8 A. I kept -- I was Mr. Schwartz's personal  
9 secretary and I kept all the documents that -- all  
10 his documents that have to do with his businesses  
11 and with the Milton I. Schwartz Hebrew Academy. He  
12 also kept files. So I'm not going to say I kept  
13 every single piece of paper. Let me clarify that.

14 Q. Besides yourself and Mr. Schwartz, do  
15 you know anybody else that kept copies of his  
16 files --

17 A. No.

18 Q. -- regarding the school?

19 A. No.

20 Q. Do you know who prepared this letter?

21 A. Yes.

22 Q. Who prepared the letter?

23 A. Milton Schwartz.

24 Q. Do you know when he prepared it?

25 A. August 14th, 1989.

SUSAN PACHECO - 03/06/2015

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1 Q. Did Mr. Schwartz himself prepare the  
2 letter?

3 A. He dictated it to me and I typed it.

4 Q. Was there anybody else present when he  
5 dictated the letter to you?

6 A. Probably not.

7 Q. Why do you say that?

8 A. Because normally it was he and I in the  
9 office, and in 1989, I don't remember the exact date  
10 of August 14th, 1989, where I was sitting, so  
11 probably not. 99.9 percent sure the answer is no  
12 one else was there.

13 Q. And I understand it's been a while. So  
14 I ask for just your best testimony and your best  
15 recollection.

16 After Mr. Schwartz dictated the letter,  
17 what did you do next?

18 A. Handed it back to him.

19 Q. And what did he do with the letter?

20 A. I don't recall.

21 Q. Did he ask you to do anything with the  
22 letter?

23 A. I don't recall.

24 Q. Do you recall if you took -- if you made  
25 copies of the letter?



SUSAN PACHECO - 03/06/2015

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1 be in his name and he was preparing the letter for  
2 them to sign so it would be easier for them.

3 He often, when things -- he often put  
4 things in writing -- as soon as he said something,  
5 he put it in writing. So that's what he did here.

6 Q. Do you know if he obtained a signature  
7 from the school on this letter?

8 A. No.

9 Q. Did he ever tell you whether he obtained  
10 a signature from anybody at the school on this  
11 letter?

12 A. I don't recall.

13 Q. Have you ever seen a copy of this letter  
14 that's been signed?

15 A. I don't recall.

16 Q. Would there be anything in your files  
17 that you could look at or that maybe I could show  
18 you or Jeff could show you to help refresh your  
19 recollection?

20 A. No, not that I'm aware of.

21 Q. When did you pull a copy of this letter  
22 from your files?

23 A. Today.

24 Q. And besides today, when was the last  
25 time you recall seeing this letter?

SUSAN PACHECO - 03/06/2015

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1 calls for a legal conclusion. Do you want me to  
2 just object to form whenever you say that from here  
3 on out? Is that easiest?

4 MR. COUVILLIER: Sure.

5 THE WITNESS: That threw me off. Can  
6 you ask me again?

7 BY MR. COUVILLIER:

8 Q. Sure. I'll reread it, Ms. Pacheco.

9 Are you aware of any agreements between  
10 Milton I. Schwartz and the school which required the  
11 school to return all monetary gifts to Milton if the  
12 school ever changed its name from the Milton I.  
13 Schwartz Hebrew Academy?

14 A. No.

15 Q. Okay. Ms. Pacheco, I'm going to turn  
16 now to Exhibit No. 6. And let me have you just look  
17 at the first page of Exhibit No. 6. Actually,  
18 page 1 and 2 of Exhibit 6. Do you see those?

19 A. Uh-huh.

20 Q. You prepared this document, correct?

21 A. Correct.

22 Q. When did you prepare it? And by this  
23 document, I'm sorry, pages 1 and 2 of Exhibit 6; you  
24 prepared that, correct?

25 A. Correct.

SUSAN PACHECO - 03/06/2015

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1 Q. When did you prepare these two pages?

2 A. I didn't date it, so I'm not sure.

3 Q. Did you do page 1 and page 2 of  
4 Exhibit 6 at the same time?

5 A. Yes.

6 Q. Is this a document that you prepared  
7 within the last three years?

8 A. Yes.

9 Q. Is this a document that you prepared --  
10 well, strike that. Why did you prepare this  
11 document?

12 A. For this case.

13 Q. Who asked you to prepare it?

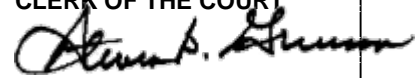
14 A. Jonathan.

15 Q. And would you tell me how you then went  
16 about preparing pages 1 and 2 of Exhibit 6?

17 A. To the best of my recollection, I went  
18 through check registers. I was asked to produce the  
19 checks and I have not been able to produce those.  
20 We moved our office in September and when we did  
21 that, we shredded a lot of documents from 2006 back.  
22 And I believe -- I know that we shredded a bunch of  
23 bank statements and checks and whatnot. So I'm  
24 pretty sure that's where they went, is in the  
25 shredder.

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**DISTRICT COURT**  
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Case No.: P061300  
Dept. No.: 26/Probate

**THE ADELSON CAMPUS' REPLY IN  
SUPPORT OF ITS MOTION FOR PARTIAL  
SUMMARY JUDGMENT REGARDING  
STATUTE OF LIMITATIONS**

Hearing Date: August 9, 2018  
Hearing Time: 9:30 am

The Dr. Miriam and Sheldon G. Adelson Educational Institute (the "Adelson Campus" or the "School") by and through its counsel, hereby submits its Reply in Support of its Motion for Partial Summary Judgment Regarding Statute of Limitations.

This Reply is made and based upon the following Points and Authorities, any exhibits attached thereto, the pleadings and papers on file herein, the oral argument of counsel, and such other or further information as this Honorable Court may request.

DATED this 7<sup>th</sup> day of August, 2018.

KEMP, JONES & COULTHARD, LLP



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Sheldon G. Adelson Educational Institute*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

It is Jonathan Schwartz's contention in this matter that under the alleged naming agreement, the corporation, entire campus, the middle school, and any future acquired land and/or buildings were to be named after Milton Schwartz. *See Exhibit 1*, J. Schwartz July 28, 2016 Dep. at 23:9-14 and 23:3-7. Jonathan Schwartz testified that he learned of changes to the name of the school and diminishment of the perceived naming interest beginning in 2007. *See Ex. 2 to Mot. for Partial Summary Judgment Regarding Statute of Limitations at 51:3-16.* Jonathan Schwartz also asserted in his May 10, 2010 letter to the Board that the School's actions over the past for 2 ½ years breached the naming rights agreement, and specifically referenced the Adelson Educational Campus and Adelson Middle School names as in violation of the alleged agreement. The irrefutable evidence in this matter also demonstrates that Jonathan Schwartz was on notice and had reasonable access to information in 2008, including the publicly filed Certificate of Amendment to Articles of Incorporation and the Adelson Campus' website, that would have allowed him to discover the alleged violations of the purported naming rights agreement he asserts form the basis for the Estate's claims. Notwithstanding the recognized and easily available facts in 2008, Jonathan Schwartz waited until May 28, 2013, to institute this action. Thus, there is no genuine issue of material fact that the Estate's claims for breach of an oral contract and fraud in the inducement, and all derivative claims, are untimely.

Yet, in an effort to resuscitate its untimely claims, the Estate now alleges for the first time that the doctrine of equitable estoppel precludes the Adelson Campus from asserting a statute of limitations defense. This assertion fails for a variety of reasons, including the fact that the Estate has failed to show how any action of the Adelson Campus induced Jonathan Schwartz from timely filing his claim. Again, it is important to note that in May 2010, Jonathan Schwartz told the Board that what it had been doing for the past 2 ½ years was in violation of the purported naming rights agreement. This statement demonstrates that Jonathan was not ignorant to the true state of the facts and was aware of the name change of the school and the actions of the Board in the years leading up to sending the letter. Even after sending the May 10, 2010 letter, the Estate waited over three (3) years to finally file its Petition

premiered on the same naming issues that Jonathan Schwartz stated had been occurring for 2 ½ years prior to his letter. Despite its attempts to distract and muddy the waters, the Estate has presented no evidence which could support a finding that the Adelson Campus is equitably estopped from seeking summary judgment on its statute of limitations defense. Moreover, and contrary to the Estate's contention, the applicability of equitable estoppel, including any disputed issue of fact, is to be decided by the court, even if there are disputed issues of fact. *See Hopkins v. Kedzierski* 170 Cal. Rptr. 3d 551, 568 (2014).

As there is no genuine issue of material fact that the Estate's claims are time barred under the applicable statutes of limitations, the Adelson Campus respectfully requests the Court grant summary judgment in the Adelson Campus' favor.

## II.

### ADDITIONAL STATEMENT OF UNDISPUTED FACTS

It has always been Jonathan Schwartz's contention that the entire campus and the middle school were to be named after his father, Milton Schwartz, and the failure to do so would be in breach of the alleged naming rights agreement his father had with the School. In his deposition, Jonathan Schwartz confirmed this contention:

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

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

*See Ex. 1, J. Schwartz July 28, 2016 Dep. at 23:9-14.*

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

A. No, that's what it was.

*See id* at 23:3-7.

While Jonathan Schwartz may feign ignorance about his knowledge of the alleged violations of the purported naming rights agreement by the Adelson Campus, the undisputed evidence irrefutably

1 demonstrates that Jonathan Schwartz was on notice and had reasonable access to information as early  
 2 as March 21, 2008 that would have permitted him to discover the alleged violations of the purported  
 3 naming rights agreement including:

- 4 • Jonathan Schwartz testified in his deposition that he learned of changes to the name of the  
 5 school and diminishment of the perceived naming interest he alleges his father obtained as  
 6 these events happened throughout the years “2007, ‘8, ‘9, ‘10, ‘11, ‘12, ‘13, ‘14 . . . .” *See*  
 7 Exhibit 2 to Mot. for Partial Summary Judgment Regarding Statute of Limitations at 51:3-16.
- 8 • The Certificate of Amendment to Articles of Incorporation providing notice that The Milton  
 9 I. Schwartz Hebrew Academy was being renamed the Dr. Miriam and Sheldon G. Adelson  
 10 Educational Institute, was filed with the Nevada Secretary of State on **March 21, 2008**. *See*  
 11 Exhibit 1 to Motion for Partial Summary Judgment Regarding Statute of Limitations.
- 12 • The Adelson Campus’ website snapshot from **September 7, 2008** stated that “[t]he **Adelson**  
 13 **Educational Campus** consists of three schools:”, including the “**The Dr. Miriam and**  
 14 **Sheldon G. Adelson Middle School**, spanning grades 5-8...” *See Exhibit 2*, Wayback  
 15 machine screenshot dated September 7, 2008 of Adelsoncampus.org; *see also Exhibit 3*, J.  
 16 Hanlon June 22, 2016 Dep. at 73:16-77:18 (wherein Alex LeVeque, counsel for the Estate,  
 17 explains how he got the September 7, 2008 website snapshot from the School’s website.)
- 18 • The Estate affirmatively stated in its Petition for Declaratory Relief filed on May 28, 2013,  
 19 that the “Executor became aware of the Academy’s breach on or about March 2010.” *See* the  
 20 Estate’s Petition for Declaratory Relief filed May 28, 2013 at 5:10-11.
- 21 • In early March 2010, Jonathan Schwartz sent a proposed settlement agreement to both the  
 22 Head of Schools, Paul Schiffman, and the **President of the Adelson School and Adelson**  
 23 **Educational Campus**, Victor Chaltiel, regarding the Estate’s purported naming rights  
 24 violations. *See Exhibit 4*, Draft Agreement, EST-0020-23. This Draft Agreement clearly  
 25 denotes and demonstrates Jonathan Schwartz understood that the land the School occupies  
 26 was named and referred to as the Adelson Educational Campus.
- 27 • On May 10, 2010, Jonathan Schwartz sent a letter via hand delivery, certified mail, and  
 28 facsimile to the Board and a second proposed settlement agreement due to what he perceived



1 as naming rights violations by the School for the past 2 and 1/2 years. *See* Exhibit A-II to  
 2 Opp. to Motion for Partial Summary Judgment Regarding Statute of Limitations, EST-0001-  
 3 23. In his letter, Jonathan Schwartz states in pertinent part that:

4 The fact that the School has apparently been re-titled the Adelson  
 5 Educational Campus and that the middle school has been re-named the  
 6 Adelson Middle School violated the Agreement and the 2007 Gala Docs.

6 ...

7 The Draft Settlement basically accepts what the school is already doing  
 8 despite the fact that some of what the school has done **in the last 2 and ½**  
 9 **years breached the Agreements.** *See id* at EST-00003 (emphasis added).

10 Even though the Estate contends that the earliest Jonathan Schwartz could have been on notice  
 11 is 2011 or 2012, the undisputed facts demonstrate that he not only had **reasonable access to**  
 12 **information as of March 21, 2008**, that would have allowed him to discover the alleged violations of  
 13 the purported naming rights agreement, but he admittedly had notice of the breach as his own letter in  
 14 2010 spells out. One cannot get better evidence of the running of the statute of limitations than the  
 15 written admission of the Plaintiff of that fact. Accordingly, the statute of limitations for the Estate's  
 16 claims for relief had elapsed by the time the Estate finally filed its Petition on May 28, 2013, and these  
 17 claims must be dismissed as a matter of law.

### 18 III.

### 19 LEGAL ARGUMENT

#### 20 A. The Estate's Equitable Estoppel Argument is Meritless.

21 Recognizing that its claims are time barred under the applicable statute of limitations, the Estate  
 22 now argues that it would have timely filed its Petition, but for the fraudulent actions of the School as  
 23 evidenced by five (5) letters or envelopes that happened to bear the name "Milton I. Schwartz Hebrew  
 24 Academy" in the letterhead and the acceptance of money from Jonathan Schwartz made out to the  
 25 "Milton I. Schwartz Hebrew Academy." *See* Opp. at 2:8-22. Equitable estoppel "comes into play only  
 26 after the limitations period has run and addresses ... the circumstances in which a party will be estopped  
 27 from asserting the statute of limitations as a defense to an admittedly untimely action because his  
 28 conduct has induced another into forbearing suit within the applicable limitations period." *See Lantzy*

v. *Centex Homes*, 31 Cal. 4th 363, 383 (2003), as modified (Aug. 27, 2003). However, the doctrine of equitable estoppel only applies if “the plaintiff proceeds diligently once the truth is discovered.” *See id* at 384. **Equitable estoppel, including any disputed issue of fact, is to be decided by the court, even if there are disputed issues of fact.** *See Hopkins v. Kedzierski* 170 Cal. Rptr. 3d 551, 568 (2014).

Here, the Estate’s argument that the Adelson Campus should be equitably estopped from asserting a statute of limitations defense fails for a variety of reasons. Noticeably absent from the Estate’s argument is any affirmative assertion that the Adelson Campus **prevented or affirmatively deterred** Jonathan Schwartz from timely filing his claim. The five (5) letters or envelopes that the Estate relies on do not demonstrate any conduct by the School that would prevent Jonathan Schwartz from timely filing suit. *See* Exs. 28-32 to Opp. While the “Milton I. Schwartz Hebrew Academy” appears on the letterhead, so does the “The Adelson School” logo. *See* Exs. 28 and 29 to Opp. When counsel for the Estate asked Board member, Phillip Kantor, in his deposition about the existence of the dual logos on the May 28, 2008, letterhead he responded:

Q. All right. I know this wasn't sent by you. I just wanted to ask you questions about the letterhead itself. Do you see on this letter that there are two logos, one for the Milton I. Schwartz Hebrew Academy and then one for the Adelson school?

A. Yes.

Q. During this period of time, May 2008, was it your recollection that the schools were still being called two different schools, the Milton I. Schwartz Hebrew Academy and the Dr. Miriam and Sheldon Adelson School?

A. Yes.

*See Exhibit 5*, P. Kantor June 23, 2016 Dep. at 81:7-23. Based on Mr. Kantor’s testimony it is clear the April 17, 2008 and May 28, 2008 letters were accurate. Thus, the Estate’s assertion that these letters demonstrate misrepresentations is wildly inaccurate. Additionally, the envelopes and letter in Exhibits 30-32, also expressly reference the existence of the “Dr. Miriam and Sheldon G. Adelson Educational Campus.” *See* Exs. 30-32 to Opp. The School clearly was not hiding the fact that the land where the school sat was called the “Dr. Miriam and Sheldon G. Adelson Educational Campus.” Absent from these letters are any statements by the School or its Board that Jonathan Schwartz should not take legal

1 action or encouragement to wait to file a legal claim that generally support an equitable estoppel  
2 finding.

3 Moreover, the Estate's suggestion that Jonathan Schwartz was somehow induced to not timely  
4 file his action is belied by Jonathan Schwartz's own statements in his May 10, 2010 letter to the Board.  
5 In the letter, Jonathan Schwartz states that some of the actions of the School in the last 2 ½ years  
6 breached the alleged naming rights agreement. *See* Ex. A-II to Opp. to Motion for Partial Summary  
7 Judgment Regarding Statute of Limitations at EST-00003. Based on this statement, it is overtly  
8 apparent that Jonathan Schwartz was not ignorant to the true state of the facts and was aware of the  
9 name change of the school and the actions of the Board in the years leading up to sending the letter. In  
10 fact, Jonathan Schwartz goes as far in the May 2010 letter to detail what he considered as the  
11 objectionable conduct:

12 The fact that the School has apparently been re-titled the Adelson Educational  
13 Campus and that the middle school has been re-named the Adelson Middle School  
14 violated the Agreement and the 2007 Gala Docs.

15 *Id.* at EST-00003.

16 The doctrine of equitable estoppel is also inapplicable due to the Estate's failure to diligently  
17 bring the action. *See Lantzy v. Centex Homes*, 31 Cal. 4th 363, 384 (2003). In his early May 2010 letter  
18 to the Board, Jonathan Schwartz alleges the School had breached the naming rights agreement for 2 ½  
19 years, yet, the Estate waited three (3) more years before filing its Petition.<sup>1</sup> If the Estate believed it had  
20 been aggrieved for the past 2 ½ years then it made little sense why it continued to wait before instituting  
21 an action. This failure to diligently bring the action further precludes the application of equitable  
22 estoppel in this matter.

23  
24 <sup>1</sup> Jonathan Schwartz states in his Declaration in support of the Estate's Opposition that "[h]ad I been aware of  
25 the true facts and circumstances of the School's breach of the agreement...I would have proceeded with court  
26 intervention immediately. *See* Exhibit A to Opp. at ¶17. This self-serving statement is completely contradicted  
27 by Jonathan Schwartz's inaction in this case. Specifically, he affirmatively asserts in his May 10, 2010 letter that  
28 he knew the School had breached the naming rights agreement for 2 ½ years, but Jonathan did not seek court  
intervention until May 28, 2013. There was nothing immediate about Jonathan's actions in this case. Due to the  
contradictory and self-serving nature of the statements, Jonathan Schwartz's Declaration is wholly unreliable  
and, without corroborating evidence, cannot create a genuine issue of material fact necessary to preclude  
summary judgment. *See Clauson v. Lloyd*, 103 Nev. 432, 434-35, 743 P.2d 631, 633 (1987).

1 In summary, there is no factual support to the Estate's contention that equitable estoppel  
2 precludes the Adelson Campus from asserting the statute of limitations as a defense. As such, the  
3 Adelson Campus should be permitted to assert that the Estate's claims are time barred under the  
4 applicable statute of limitations.

5 **B. There is No Genuine Issue of Material Fact that Jonathan Schwartz had Facts before Him**  
6 **that Would Have Put Him on Notice in March 2008 as to the Existence of an Alleged**  
7 **Breach of any Naming Rights Agreement.**

8 It is undisputed that Jonathan Schwartz had reasonable access to facts in 2008, including  
9 publicly filed governance documents and the School's website, which would put a reasonable person  
10 on notice of any alleged breach of a naming rights agreement. "[T]he statute of limitations begins to  
11 run when the [plaintiff] has before him facts which would put a reasonable person on inquiry notice of  
12 his possible cause of action[.]" *Massey v. Litton*, 99 Nev. 723, 669 P.2d 248, 251 (1983). "The focus is  
13 on the [plaintiff's] knowledge of or **access to facts** rather than on her discovery of legal theories." *Id* at  
14 252. If a party's knowledge is not "complete[,]" she [is] **under a duty to exercise proper diligence to**  
15 **learn more.**" *Aldabe v. Adams*, 81 Nev. 280, 284-85, 402 P.2d 34, 36 (1965), *overruled on other*  
16 *grounds by Siragusa v. Brown*, 114 Nev. 1384, 1393, 971 P.2d 801, 807 (1998).

17 Jonathan Schwartz testified that he learned of changes to the name of the school and  
18 diminishment of the perceived naming interest he alleges his father obtained as these events happened  
19 throughout the years "2007, '8, '9, '10, '11, '12, '13, '14 . . . ." *See* Ex. 2 to Mot. at 51:3-16. At the  
20 time he began to hear about the purported diminishment of the naming rights in 2007, Jonathan  
21 Schwartz had a duty to exercise proper diligence to learn more regarding the alleged contractual  
22 breaches and tortious conduct that he alleges occurred in this action. *See Aldabe v. Adams*, 81 Nev.  
23 280, 284-85, 402 P.2d 34, 36 (1965). It is unquestionable that in 2008, Jonathan Schwartz had  
24 reasonable access to at least two (2) sources of information regarding the purported breaches of the  
25 naming rights interest. First, the Certificate of Amendment to Articles of Incorporation filed with the  
26 Nevada Secretary of State on March 21, 2008, provided notice that the Milton I. Schwartz Hebrew  
27 Academy was being renamed the Dr. Miriam and Sheldon G. Adelson Educational Institute. *See* Ex. 1  
28 to Mot. Second, the Adelson Campus' website from September 7, 2008, stated that "[t]he Adelson

1 Educational Campus consists of three schools:”, including the “The Dr. Miriam and Sheldon G.  
2 Adelson Middle School, spanning grades 5-8...” *See* Ex. 2. Therefore, it is irrefutable that Jonathan  
3 Schwartz had access to uncontroverted facts in 2007 and 2008 that would put a reasonable person on  
4 inquiry notice of his possible causes of action in this matter.

5 While the Adelson Campus contends that Jonathan Schwartz discovered the name change as of  
6 March 21, 2008, even taking the website snapshot taken on September 7, 2008 as the date of discovery,  
7 the Estate’s claims for breach of an oral contract<sup>2</sup> and fraud in the inducement<sup>3</sup> are time-barred as the  
8 Estate did not file its action until May 23, 2013. Accordingly, the Adelson Campus requests that  
9 summary judgment be entered in its favor on the Estate’s the Estate’s second, fourth, fifth, sixth,  
10 seventh, and eighth claims for relief.

11 **C. Alternatively, the Estate’s Claim for Fraud in the Inducement is Time Barred as**  
12 **Jonathan Schwartz Admits He Became Aware of the School’s Alleged Breach No Later**  
13 **than March 2010.**

14 Assuming *arguendo* that the Court is unwilling to find that Jonathan Schwartz had access to  
15 facts in 2007 and 2008 that would put a reasonable person on inquiry notice of his possible causes of  
16 action in this matter, alternatively, the Court should find that the Estate’s causes of action accrued no  
17 later than March 2010 based on the Estate’s admission and the corroborating facts in this matter. The  
18 Estate admits in its Petition for Declaratory Relief filed on May 28, 2013, that the “Executor **became**  
19 **aware of the Academy’s breach on or about March 2010.**” *See* Petition at 5:10-11. That admission  
20 cannot be refuted by the contradictory statement by the Estate in order to gin up a contested fact. That  
21 petition was verified, under oath by Jonathan Schwartz, and this by itself is justification for granting  
22 this Motion. Moreover, in early March 2010, Jonathan Schwartz sent a proposed settlement agreement  
23 to both the Head of Schools, Paul Schiffman, and President of the Adelson School and Adelson  
24 Educational Campus, Victor Chaltiel, regarding the Estate’s purported naming rights violations. *See*  
25 Ex. 4, Draft March 2010 Settlement Agreement, EST-0020-23. This Draft Settlement Agreement  
26 irrefutably establishes that by no later than March 2010, Jonathan Schwartz discovered and understood

27 \_\_\_\_\_  
28 <sup>2</sup> The statute of limitations for breach of an oral agreement is four years. *See* NRS 11.190(2)(c).

<sup>3</sup> The statute of limitations for a claim for fraud in the inducement is three years. *See* NRS 11.190(3)(d).

1 that the land the School occupies was named and referred to as the Adelson Educational Campus. *See*  
 2 *id.* After all, it is Jonathan Schwartz's contention that the campus should be the Milton I. Schwartz  
 3 Educational Campus under the purported naming interest he alleges his father obtained. *See* Ex. 1, J.  
 4 Schwartz July 28, 2016 Dep. at 23:3-7.

5 Using the March 2010 draft settlement agreement as the alternative accrual date of the Estate's  
 6 causes of action, the Estate's fraud in the inducement claim should have been instituted no later than  
 7 March 2013. As the Estate did not file its Petition for Declaratory Relief until May 23, 2013, the Estate's  
 8 fraud in the inducement claim is time barred as a matter of law and the Adelson Campus should be  
 9 granted summary judgment on this claim.

#### 10 IV.

#### 11 CONCLUSION

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

15 DATED this 2<sup>nd</sup> day of August, 2018.

16 Respectfully Submitted,

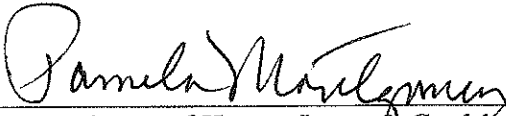
17 KEMP, JONES & COULTHARD, LLP



18  
 19  
 20 J. Randall Jones, Esq. (#1927)  
 Joshua D. Carlson, Esq. (#11781)  
 KEMP, JONES & COULTHARD, LLP  
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 Las Vegas, Nevada 89169  
 Attorneys for The Dr. Miriam and  
 Sheldon G. Adelson Educational Institute

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of August, 2018, I served a true and correct copy of **THE ADELSON CAMPUS' REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING STATUTE OF LIMITATIONS** via the Eighth Judicial District Court's CM/ECF electronic filing system, addressed to all parties on the e-service list.

  
An employee of Kemp, Jones & Coulthard, LLP

881200  
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002188

# EXHIBIT 1



1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA

3 \* \* \* \* \*

4  
5 In the Matter of the Estate  
6 of,

7 MILTON I. SCHWARTZ,

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

9 Deceased.  
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  
23 Nevada CCR No. 845 - NCRA RPR No. 816435  
24 JOB NO. 322729

25

002190

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

## **EXHIBIT 2**

http://adelsoncampus.org:80/  AUG 33P DEC   

161 captures  
7 Sep 2008 - 22 Apr 2018 2007 2008 2009       About this capture

The Adelson  
Campus logo

Header

The Adelson Our Preschool-Grad Grades Grades

## Education for Life

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One of the finest learning facilities in the country, The Dr. Miriam and Sheldon G. Adelson Educational Campus is committed to providing students with an education that prepares them for life. Our comprehensive approach emphasizes educating each student to be academically stimulated, emotionally secure and physically healthy. We want to send students who possess confidence and a strong sense of self into the world. It is our vision that our students will become the moral and ethical leaders of tomorrow.

Founded with the generous support of Dr. Miriam and Sheldon G. Adelson, the campus is the only Jewish educational center offering classes from 18 months through 12th grade in Southern Nevada. With state-of-the-art facilities and a faculty recruited nationwide, The Adelson Educational Campus delivers a world-class learning environment for motivated students.

The Adelson Educational Campus consists of three schools:

- The Milton I. Schwartz Hebrew Academy provides students from 18 months through 4th grade with a highly nurturing academic environment.
- The Dr. Miriam and Sheldon G. Adelson Middle School, spanning grades 5-8, offers students meaningful and exciting opportunities for scholarly and personal growth.
- The Dr. Miriam and Sheldon G. Adelson Upper School, encompassing grades 9-12\*, educates students to hone their critical thinking skills and prepares them for higher education.

We invite you to join us on the journey of a lifetime — an education for life.

\* Grade 12 opens fall 2009

Paul Schiffman

Paul Schiffman  
Head of School,  
The Adelson Educational Campus

## Our Mission

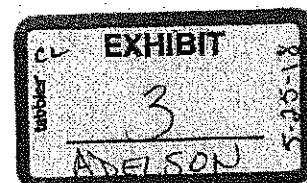
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AUGSEPDEC

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161 captures

7 Sep 2008 - 22 Apr 2018

200720082009

▼ About this capture

benet world.

# EXHIBIT 3

**Deposition of:**

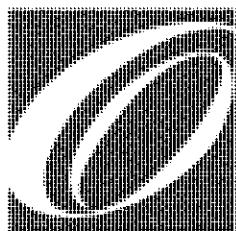
Jill Hanlon

**Case:**

In the Matter of the Estate of Milton I. Schwartz  
07P061300

**Date:**

06/22/2016



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1 agree with me, is -- well, I think in the Hebrew  
2 Academy was grades K through 6, wasn't it?

3 A. You know, my kids were in public school.  
4 It went up to 5th grade --

5 Q. Right.

6 A. -- elementary and then middle school  
7 started at 6th, I believe --

8 Q. Right.

9 A. -- so I'm not sure what -- everything in  
10 that school changed over time.

11 Q. Yeah. Okay. I think I can help you out.

12 (Exhibit No. 21 marked  
13 for identification.)

14  
15 BY MR. LEVEQUE:

16 Q. All right. Exhibit 21 -- well, let me  
17 ask you this:

18 Are you familiar with the Wayback  
19 Machine?

20 A. No.

21 Q. All right. I'll represent to you it's a  
22 Web site that archives other Web sites over a period  
23 of time, and essentially takes snapshots of the Web  
24 site as they appeared on a given date, so --

25 A. Wow.



1 Q. -- you could go back, for example, look  
2 to see how Yahoo looked in 1996. It's actually kind  
3 of fun.

4 But what I did in this exhibit is I took  
5 snapshots through the Wayback Machine of the URL  
6 known as adelsoncampus.org, and I want to ask you  
7 some questions about it because it goes to your  
8 previous testimony concerning your recollection that  
9 the middle school was eventually part of Adelson --  
10 the Adelson School.

11 MR. BLAKE: Can I interpose an objection  
12 just on this line of questioning as I have in the  
13 past? I would just object to the foundation of this  
14 document being established by your representation on  
15 the record.

16 You can go ahead and answer the  
17 questions.

18 But, Alex, do you want to agree just to  
19 have a running objection as to any foundation -- a  
20 running objection as to the foundation of any  
21 questions asked about this document?

22 I mean, I can object every question,  
23 but --

24 MR. LEVEQUE: Yes, unless -- I mean, I'll  
25 ask the witness if she has a recollection of the Web

1 site content, and then I think that would resolve  
2 the foundation issue you have.

3 MR. BLAKE: Okay.

4 MR. LEVEQUE: So saying "objection" and  
5 then I'll ask specifically if she has recollections  
6 of the content of the Web site.

7 BY MR. LEVEQUE:

8 Q. Okay. The first page of Exhibit 21 is a  
9 snapshot, and if you look -- and I apologize. The  
10 font's kind of small.

11 If you look at the top of the document,  
12 you'll see a date in black that says September 7,  
13 2008.

14 Do you see that?

15 A. Okay. Now I'm old because it looks like  
16 '05 to me.

17 MR. BLAKE: I think he's pointing --

18 THE WITNESS: I'm looking over here.

19 MR. BLAKE: I think he's referring to  
20 right there.

21 THE WITNESS: Oh, okay.

22 BY MR. LEVEQUE:

23 Q. Do you see it?

24 A. I see -- yes.

25 Q. September 7, 2008?

1 A. Yes.

2 Q. Okay. My representation to you is that  
3 this is a page from the adelsoncampus.org Web site  
4 as of September 7, 2008.

5 Fair enough?

6 A. Yes.

7 Q. Okay. Did you ever go on the Web site  
8 during your tenure?

9 A. I'm sure I did.

10 Q. Okay. Do you recall this Web page,  
11 Educational for Life?

12 A. Yes. I know they had something titled  
13 Education for Life, yes.

14 Q. Okay. If you go down to the bottom of  
15 this -- of the description of the school, you'll see  
16 some text that says, "The Adelson Educational Campus  
17 consists of three schools.

18 "The Milton I. Schwartz Hebrew Academy  
19 provides students from 18 months through 4th grade  
20 with a highly nurturing academic environment."

21 Then it goes down and says, "The  
22 Dr. Miriam and Sheldon G. Adelson Middle School,  
23 span grades 5 through 8, offers students meaningful  
24 and exciting opportunities for scholarly personal  
25 growth."

1 And then the third bullet point is, "The  
2 Dr. Miriam and Sheldon G. Adelson Upper School,  
3 encompassing grades 9 through 12, educates students  
4 to hone their critical thinking skills and prepares  
5 them for higher education."

6 Do you see all three of those?

7 A. Yes.

8 Q. Is that consistent with your recollection  
9 of how the school was divided as of September 7,  
10 2008?

11 A. Probably, yes.

12 Q. All right. And we've --

13 A. I just don't recall where grade 5 fell.

14 Q. Sure. Fair enough.

15 Do you have any reason to dispute the  
16 accuracy of the information provided on the school's  
17 Web site?

18 A. No.

19 Q. Okay. And do you see at the bottom of  
20 the summary of the school, it's provided by Paul  
21 Schiffman, Head of School?

22 A. Yes.

23 MR. BLAKE: Objection. Foundation on  
24 that one.

25 ////

# **EXHIBIT 4**

DRAFT

**AGREEMENT BETWEEN THE ESTATE OF MILTON I. SCHWARTZ  
AND THE MILTON I. SCHWARTZ HEBREW ACADEMY**

This Agreement (the "Agreement"), made and entered into this \_\_\_\_\_ day of March, 2010 by and between the Estate of Milton I. Schwartz ("Estate"), the Milton I. Schwartz Revocable Family Trust ("Trust"), by and through its Executor and Trustee, A. Jonathan Schwartz ("Schwartz") and the Milton I. Schwartz Hebrew Academy ("MISHA") and the Adelson Educational Campus and or the Adelson School (collectively, "Adelson School"), by and through its President, Victor Chaltiel ("Chaltiel") with reference to the following facts:

- A. At section 2.3 of the Last Will and Testament of Milton I. Schwartz dated February 5, 2004 (the "Will"), the Will provides, in pertinent part, a bequest to the MISHA in the amount of \$500,000 in the form of securities (stocks, bonds or cash) with the largest profit so that the Estate can take advantage of the low cost basis and increased price as directed in the sole discretion of the Executor (Jonathan Schwartz) (the "Bequest"). The purpose of the Bequest is to fund scholarships for Jewish children only ("Purpose").
- B. Pursuant to the Clark County Assessors Office, the MISHA is situated on the land known as (parcel number 138-19-516-001) (the "Land").
- C. The term the "School" or the "Schools" herein shall refer collectively to the Milton I. Schwartz Hebrew Academy, the Adelson School, and or the Adelson Educational Campus.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the parties promise, covenant and agree as follows:

- (1) Contingent upon all signatories execution of the Agreement by March 8, 2010 and delivery of the Agreement by that date to Schwartz, the Bequest shall be made to MISHA no later than March 12, 2010.
- (2) The school located on the Land (grades Pre-K through Fourth) and at any new location shall be known in perpetuity as the *Milton I. Schwartz Hebrew Academy*. Any and all by-laws, agreements, articles of incorporation, operating agreements or other documents associated with the Schools located on the Land or at any new location shall heretofore, and in perpetuity, identify grades Pre-K through Fourth as the *Milton I. Schwartz Hebrew Academy*.
- (3) The MISHA shall prominently depict signage on the face of the building housing the Pre-K through Fourth grades (facing Hillpointe Ave.) (situated on the Land) and at any new location, and at all entrances therefore, exclusively identifying it (and regularly maintaining it) as the *Milton I. Schwartz Hebrew Academy* so that it is clearly evident to the public that it is known as the *Milton I. Schwartz Hebrew Academy*. The sign facing Hillpointe Ave., located on the MISHA as of March 3, 2010 is acceptable to Schwartz.

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- (4) All letter-head, stationary, correspondence, promotional material, websites, business cards, fundraisers, advertisements, etc. (hereinafter, "Media") associated with the Schools shall clearly and prominently identify the *Milton I. Schwartz Hebrew Academy* as grades Pre-K through Fourth in perpetuity. All Media shall depict a logo bearing the name, the Milton I. Schwartz Hebrew Academy (in bold, all capped letters), no smaller than any other logo located on the face of said Media, to be reasonably approved of by the Trust and the Schools ("Logo"). The foregoing shall be completed no later than the start of the 2010-2011 school year. For purposes of clarification, the 2008 Logo of the Milton I. Schwartz Hebrew Academy which appeared on that certain tax receipt dated May 28, 2008 (attached hereto) is acceptable with the exception that the wording "MILTON I. SCHWARTZ" shall be in all capital letters, bolded.
- (5) The interior main entrance of the MISHA shall prominently house a painting and or photograph of Milton I. Schwartz ("MIS") in perpetuity, to be approved of by Schwartz, which shall include a plaque listing Milton I. Schwartz and identifying Milton I. Schwartz as the founder of the Milton I. Schwartz Hebrew Academy.
- (6) The website of the Schools shall prominently (in perpetuity) list the MISHA as grades Pre-K through Fourth and shall include a description as follows:
- The Milton I. Schwartz Hebrew Academy is home to the lower school, grades pre-K through Fourth. The Milton I. Schwartz Hebrew Academy was established in 1988 through the generosity of Las Vegas businessman Milton I. Schwartz and others who answered a need in the Southern Nevada community for a strong secular and Judaic educational institution for elementary school-aged children.*
- (7) When the Bequest is funded, it shall act to satisfy in full any obligation, liability or duty of Milton I. Schwartz, the Estate or the Trust toward or associated with the MISHA or the Adelson School. Upon MISHA's receipt of the Bequest, a full and final release of Milton I. Schwartz, the Estate, the Trust, A. Jonathan Schwartz and the heirs, assigns and beneficiaries of Milton I. Schwartz, the Estate or Trust shall be effectuated.
- (8) The MISHA shall supply the Estate of Milton I. Schwartz and the Milton I. Schwartz Revocable Family Trust (at the direction of the Trust) with a receipt for tax purposes from the MISHA listing its IRS 501 (c)(3) non-profit tax id number for the Bequest.
- (9) As specified in the Will, the Bequest shall be used solely for the purpose of funding scholarships for Jewish children only at the MISHA.
- (10) Once per year, the MISHA agrees to reasonably cooperate with members of the Milton I. Schwartz family, at a time when it would not interfere with school activities, for the Schwartz Family's access to the School for viewing and verification of compliance with

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the foregoing terms and conditions. The Schwartz Family, its agents, etc. shall indemnify and hold harmless the School for its access to the premises.

- (11) **Miscellaneous.** This Agreement constitutes the entire Agreement between the Estate, the Trust, Schwartz, the Schwartz Family, its heirs, assigns, and beneficiaries and the MISHA, Adelson School and or the Adelson Educational Campus. This Agreement confirms the understanding of the parties regarding the naming rights of the Estate of Milton I. Schwartz with regard to the Schools. No amendment, alteration or withdrawal of the Agreement shall be valid or binding unless made in writing and signed by each of the parties affected by such provision. This Agreement shall be binding upon the heirs, successors and assignees of all of the parties associated with the Schools. Each of the parties acknowledges that it has been advised to obtain legal counsel of its own choosing regarding this Agreement and that it has availed itself of said legal counsel. The terms and conditions of this Agreement shall not be construed against any party regardless of whom the Agreement was drafted by. No party to this Agreement shall assign its right or delegate its duties hereunder without the prior written consent of the other parties. Whenever possible, each provision of this Agreement shall be interpreted so as to be effective and valid under applicable law, but if any provision of the Agreement shall be prohibited or invalid under applicable law, the remainder of such provision and the remaining provisions of this Agreement shall continue in full force and effect. This Agreement represents a settlement of disputed facts. In the event of any dispute or litigation concerning the terms of this Agreement, the prevailing party shall receive reimbursement for its reasonable legal fees. Each of the signatories to this Agreement warrant and certify that they have the authority to execute the Agreement in the capacity indicated herein. This Agreement may be executed in counterparts which all together shall constitute one Agreement, binding on all parties. This Agreement shall be construed under the laws of the State of Nevada

IN WITNESS WHEREOF, the undersigned Parties hereto have executed this Agreement as of the date first written above.

Estate of Milton I. Schwartz,  
A. Jonathan Schwartz, Executor

Milton I. Schwartz Hebrew Academy,  
Victor Chaltiel, President

Milton I. Schwartz Revocable Family  
Trust, A. Jonathan Schwartz, Trustee

The Adelson School, Victor Chaltiel,  
President

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The Adelson Educational Campus, Victor  
Chaitiel, President

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# EXHIBIT 5

**Deposition of:**

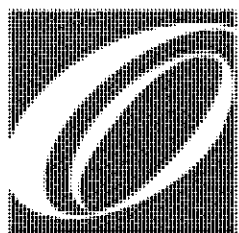
Philip A. Kantor, Esq.

**Case:**

In the Matter of the Estate of Milton I. Schwartz  
P061300

**Date:**

06/23/2016



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1           A.    I do not recall the specific action, but it is  
2 part of that struggle that I talked about earlier to  
3 come up with the right marketing message for the  
4 community.

5                               (Exhibit 18 marked)

6 BY MR. LeVEQUE:

7           Q.    Exhibit 18, Mr. Kantor, is a letter that my  
8 client received from the Hebrew Academy that was  
9 produced in discovery from the 2008 Gala Committee, and  
10 do you see that the letter is dated May 20th, 2008?

11          A.    Yes.

12          Q.    All right. I know this wasn't sent by you. I  
13 just wanted to ask you questions about the letterhead  
14 itself. Do you see on this letter that there are two  
15 logos, one for the Milton I. Schwartz Hebrew Academy  
16 and then one for the Adelson school?

17          A.    Yes.

18          Q.    During this period of time, May 2008, was it  
19 your recollection that the schools were still being  
20 called two different schools, the Milton I. Schwartz  
21 Hebrew Academy and the Dr. Miriam and Sheldon Adelson  
22 School?

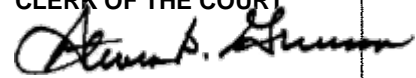
23          A.    Yes.

24               MR. BLAKE: Object to form, vague.

25        \\

56

56



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*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

**REPLY IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT REGARDING  
BREACH OF CONTRACT**

The Dr. Miriam and Sheldon G. Adelson Educational Institute (the "Adelson Campus" or the "School") by and through its counsel, hereby submits its Reply in Support of its Motion for Partial Summary Judgment Regarding Breach of Contract.

This Reply is made and based upon the following Points and Authorities, any exhibits attached thereto, the pleadings and papers on file herein, the oral argument of counsel, and such other or further information as this Honorable Court may request.

DATED this 2<sup>nd</sup> day of August, 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*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

The Estate's Opposition simply fails to set forth any admissible evidence that Milton Schwartz had an enforceable naming rights contract under Nevada law. Even after years of discovery, and a twenty-seven (27) page opposition with twenty-four (24) exhibits, the Estate still cannot identify exactly what document constitutes the written agreement it claims establishes Milton Schwartz's naming rights. And as for the myriad of different, and conflicting documents that the Estate points to as evidence of the Schwartz agreement, none of them provide the necessary, material terms of a naming rights agreement to render any one of them enforceable. Rather, the evidence simply shows that in the past the School's Boards made wholly revocable and voluntary decisions to name the Corporation after Milton Schwartz to honor his contribution and to foster present and future support, and to put his name on a building with no enforceable agreement to do so in perpetuity.

The Estate attempts to provide evidence of the agreement through inadmissible hearsay, conflicting and contradictory testimony, and miscellaneous documents which clearly do not create an enforceable naming rights agreement. Rather than supporting the Estate's contentions, the Estate's reliance on this information – it is simply inappropriate to call it evidence – actually demonstrates the appropriateness of granting summary judgment on the Estate's contract claims. In other words, the Estate's conflicting and inconsistent testimony, documents, and theories regarding the terms of the alleged agreement show that the Estate itself cannot establish what the terms of the alleged agreement were and, therefore, cannot establish that the Estate ever had an enforceable naming rights agreement as a matter of law.

An example of the inconsistent and contradictory claims of the Estate is the latest iteration of Milton Schwartz's alleged naming rights agreement. Materially contrary to other alleged agreements, the Estate now claims that the terms of the agreement are as follows: that Milton Schwartz would donate \$500,000 in exchange for legally enforceable naming rights against the "school" in perpetuity. Even if the Court accepted this latest version of the Estate's contract claims they would still fail because, as alleged, this bare-bones agreement is legally insufficiently as it clearly lacks sufficient details such as

the scope of the agreement, i.e., which document is the Estate even referring to, does it cover the one building that existed at the time or all buildings that might be built on the property in the future, does it cover other property and buildings that the School might acquire in the future, does it cover the name of the corporation, and is missing numerous material terms, including terms related to breach and remedies. The Estate's litigation position as to the scope of the alleged naming rights agreement directly conflicts with its own evidence, and serves only to demonstrate that the scope of the alleged agreement is not sufficiently definite to permit enforcement of its terms.

Further, the Estate's failure to establish the existence of a valid, written agreement to satisfy the statute of frauds that sets forth all of the required terms in sufficient detail or otherwise establish the existence of enforceable agreement precludes the Estate's contract claims as a matter of law.

Finally, even if the Estate can show the existence of an enforceable agreement between Milton Schwartz and the School, the admissible evidence shows that Milton Schwartz failed to perform under the terms of the parties' agreement. Therefore, even assuming the Estate could overcome the enormous hurdle of proving the existence of a legally enforceable naming rights agreement that can bind the School in perpetuity in spite of the lack of an actual written contract, the Estate cannot demonstrate that Milton Schwartz lived up to his end of the bargain. Accordingly, the Court must grant summary judgment on all of the Estate's contract claims.

## II.

### LEGAL ARGUMENT

#### A. The Estate Failed to Meet its Burden to Show the Existence of an Enforceable Naming Rights Agreement under Nevada Law.

The Estate failed and cannot meet its burden to establish by a preponderance of the evidence the existence and terms of a legally enforceable contract. A valid contract cannot exist when material terms are lacking or are insufficiently certain and definite. *See May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). The court must be able to ascertain what is required of the respective parties. *See id.* Here, the Estate failed produce the requisite written agreement, setting forth the material terms of the contract, as required to satisfy the statute of frauds, and instead rely solely on inadmissibly hearsay, conflicting testimony, and miscellaneous documents that cannot constitute an enforceable agreement,



even if read together. Furthermore, even assuming the Estate could proceed on the two basic terms it now contends form the entirety of the alleged naming rights agreement, these minimal terms cannot withstand scrutiny to constitute an enforceable agreement because they are woefully vague as to scope. Moreover, material terms are missing altogether. The Estate's failure to produce admissible evidence to establish the existence of a legally enforceable agreement that sets forth the requisite material terms with sufficient detail is fatal to the Estate's breach of contract claims.

**1. The Estate's own changing theories and conflicting evidence demonstrates that the Estate cannot meet its burden to establish the existence of a valid and enforceable contract.**

The Estate's own conflicting theories regarding the terms of the alleged naming rights agreement conclusively establishes the Estate's inability to succeed on its contract claims. Even at this stage in the proceedings, the Estate cannot provide the material terms of the alleged agreement.

At the onset of this litigation, the Estate alleged that Milton Schwartz donated \$500,000 to the school in return for which the school would change its name "in perpetuity" to the "Milton I. Schwartz Hebrew Academy." *See* Petition for Declaratory Relief, filed on May 28, 2013, at 2:13-15. Then, after Jonathan Schwartz was confronted with conflicting evidence that the terms of the alleged agreement were actually that Milton Schwartz would donate \$1 million in exchange for naming rights, Jonathan Schwartz testified that the agreement was actually that Milton Schwartz would donate \$500,000 and raise \$500,000 in exchange for the alleged naming rights. Ex. 9 at 14:17-24. Specifically, Jonathan Schwartz testified to the following:

Q: And it was your – was it your understanding that the agreement was that there would be 500,000 given to the school, or that there was a million, as Dr. Lubin said in her book?

A: No. Here's – here's what the agreement was: **The agreement was that my father give 500,000 and raise 500,000.** That's how the million was arrived at, and that's what he did. He personally gave half a million dollars, and then he rose – raised another half a million dollars to total the million.

*Id.* Indeed, this was Milton Schwartz's version of the story, as the Estate well knows as it relied on Milton Schwartz's statement to that effect in prior pleadings. *See* Opposition to Motion for Partial Summary Judgment, filed on May 27, 2014, at 1:24-25 (Citing to the following statement from

videotaped interview with Milton Schwartz: *"I raised a half a million and gave half a million and they agreed to name the school the Milton I. Schwartz Hebrew Academy in perpetuity."*). Thus, the "donate \$500,000 / raise \$500,000" issue is not a "straw man" set up by the school, but is Estate's own position regarding the terms of the alleged agreement.

In its Opposition, the Estate has now reverted back to the position that the terms of the alleged agreement were simply that Milton Schwartz would donate \$500,000, and in exchange the "school" would name itself the Milton I. Schwartz Hebrew Academy in perpetuity. *See* Opp. at 18:12-13. **The Estate's ever changing and inconsistent positions throughout the litigation demonstrate that Estate itself is not certain as to the material terms of the alleged contract.** This is made worse by the fact that the Estate's position directly conflicts with Milton Schwartz's own belief as to terms of the alleged agreement. Therefore, the School is entitled to summary judgment as a matter of law on the Estate's breach of contract claims because the Estate failed to demonstrate the existence of a valid and enforceable contract.

***a. The evidence relied on by the Estate serves only to demonstrate that the material terms of the alleged agreement are not sufficiently definite.***

The evidence the Estate relies on further demonstrates that the Estate cannot establish the terms of the alleged agreement with any measure of certainty, let alone by a preponderance of the evidence. For instance, although the Estate selectively references a portion of Tamar Lubin's deposition testimony to support its original theory that Milton only had to donate \$500,000 for naming rights in perpetuity, Opp. at 6:6-12, Tamar Lubin clarified that Milton Schwartz actually pledged \$1 million to the school, and that the agreement by the school to change its name was based on Milton Schwartz's \$1 million dollar pledge, but that the school only ever received \$500,000. *See* June 9, 2016 Deposition Transcript of Tamar Lubin Saposhnik, at 67:16-20, 68:10-71:11, attached hereto as **Exhibit 21**.

The Estate's reliance on statements from Tamar Lubin's 1993 affidavit are likewise unavailing because these statements fail to set forth the amount of the donation or otherwise mention an actual agreement. Opp. at 6:1-5. Thus, even assuming Tamar's hearsay statements were admissible, they do not support the Estate's position. Moreover, as discussed below, statements in that same affidavit

1 contradict and discount statements in Milton Schwartz's affidavit, which the Estate attempts to rely on  
2 to show the existence and terms of the alleged agreement.

3 Finally, the witness testimony the Estate relies on to show the terms of the alleged agreement  
4 likewise demonstrates its terms have not been established by a preponderance of the evidence. Lenard  
5 Schwartzer testified that it was his understanding that the school would be named after Milton Schwartz  
6 "as long as it was a Hebrew day school." Opp. at 7:11-13. Roberta Sabbath testified that Milton  
7 Schwartz's *million dollar* (not \$500,000) pledge was "to name *the building* after him." See Opp. at  
8 7:17-22 (emphasis added). Conversely, the Estate contends that the terms of the alleged agreement  
9 required that the corporation, entire campus, the middle school, and any future acquired land and/or  
10 buildings were to be named after Milton Schwartz in perpetuity, regardless of any other considerations.  
11 See Ex. 22, July 28, 2016 Deposition Transcript of Jonathan Schwartz, at 20:21-21:18, 22:11-27:4.  
12 These discrepancies in the Estate's own evidence regarding the terms and scope of the alleged naming  
13 rights agreement demonstrate that the terms are unknown, even to the witnesses who were allegedly  
14 present when the agreement was entered into, and necessitating summary judgment.

15 ***b. The Estate also cannot rely on Milton Schwartz's self-serving affidavit statements to***  
16 ***establish the existence of an enforceable contract.***

17 Milton Schwartz's affidavits constitute inadmissible hearsay and cannot be considered.<sup>1</sup>  
18 Milton's self-serving affidavits were prepared in support of prior litigation in which he was a party is  
19 the perfect example of hearsay that provides no assurances of accuracy.<sup>2</sup>

20 While the Estate relies on statements from Tamar Lubin's 1993 affidavit to support its claim that  
21 an agreement exists, Opp. at 15:15-22, that very same affidavit contains statements that directly conflict  
22 with Milton Schwartz's affidavit statements.<sup>3</sup> Further, in her affidavit Tamar Lubin states "I have read

23  
24 <sup>1</sup> See The Adelson Campus' Motion in Limine No. 6 to Preclude Respondent from Introducing or Relying on the Affidavit of Milton I. Schwartz, and the Reply in Support thereof.

25 <sup>2</sup> *Id.*

26 <sup>3</sup> Compare Opp. at Ex. A, ¶ 6 of the Second Supplemental Affidavit of Milton I. Schwartz, Opp. at Ex. A ("That Affiant solicited contributions from Paul Sogg and Robert Cohen. That as a result of Affiant's efforts, Paul Sogg pledged to donate \$300,000, and that as a result of Affiant's efforts Robert Cohen pledged to donate \$100,000), with Opp. at Ex. E, at ¶ 21 ("Prior to Mr. Schwartz's chairmanship, I initiated the contribution from Paul Sogg, from Robert Cohen, from George Rudiak and others. Although these contributions were initiated prior to Mr. Schwartz's chairmanship, they were paid during his chairmanship in the amount of \$300,000, \$100,000 and \$50,000, respectively.").

1 the Affidavits of Milton Schwartz and others filed by the Plaintiff and must express my genuine shock  
 2 and dismay that intentional misrepresentations have been made in such a cavalier fashion.” Opp. at Ex.  
 3 E, at ¶ 40. The Estate’s own evidence calls into question the reliability of Milton Schwartz’s hearsay  
 4 statements, providing further support that Milton Schwartz’s self-serving affidavit statements do not  
 5 contain the requisite assurances of accuracy. Therefore, while these statements are clearly inadmissible  
 6 and cannot be considered by the Court, it is telling that the Estate must rely on evidence that directly  
 7 contradicts itself to attempt to provide evidence of the terms of the alleged agreement.

8 Regardless, Milton Schwartz’s self-serving affidavit statements do not establish the existence of  
 9 a contract for irrevocable naming rights between Milton Schwartz and the school. At best, these  
 10 statements show that Milton Schwartz subjectively believed he had a naming rights agreement with the  
 11 school. However, Milton Schwartz’s subjective beliefs about the existence of a naming rights contract  
 12 with the School is irrelevant. Although mutual assent is required to form a valid contract, a party’s  
 13 subjective intent is immaterial when determining the existence of a contract. *May v. Anderson*, 121 Nev.  
 14 668, 672, 119 P.3d 1254, 1257 (2005); *James Hardie Gypsum (Nevada) Inc. v. Inquipco*, 112 Nev. 1397,  
 15 1402, 929 P.2d 903, 906 (1996), *overruled on other grounds by Sandy Valley Assocs. v. Sky Ranch*  
 16 *Estates Owners Ass’n*, 117 Nev. 948, 955 n. 6, 35 P.3d 964, 968–69 n. 6 (2001). Thus, “self-serving  
 17 testimony of the parties as to their subjective intentions or understandings is not probative evidence of  
 18 whether the parties entered into a contract.” *Id.* (quoting *Mullen v. Christiansen*, 642 P.2d 1345, 1350  
 19 (Alaska 1982)).

20 **2. The alleged agreement is unenforceable because it lacks sufficiently specific terms**  
 21 **and is missing material terms altogether.**

22 Here, no enforceable contract exists because Court is unable to ascertain what is required of the  
 23 parties and to compel compliance because the terms as alleged by the Estate are insufficiently definite  
 24 and numerous material terms are lacking. *May*, 121 Nev. at 672, 119 P.3d at 1257. (“A valid contract  
 25 cannot exist when material terms are lacking or are insufficiently certain and definite” for a court “to  
 26 ascertain what is required of the respective parties” and to “compel compliance” if necessary.).

27 The different positions taken by the Estate, as set forth above, is the best evidence that a  
 28 sufficiently definite and enforceable naming rights agreement was never entered into between the School

1 and Milton Schwartz. If the Estate itself is not even sure what the terms of the alleged agreement are,  
2 then there can be no question that its terms are not sufficiently definite for the Court to determine a  
3 contract exists.

4 Assuming the terms of the agreement are simply that (1) Milton would give \$500,000; and in  
5 exchange (2) the "school" would be named after him forever and ever no matter what, as the Estate  
6 contends, the Estate cannot succeed on its breach of contract claims as a matter of law because these  
7 terms are not sufficiently definite to enforce and material terms are notably absent.

8 First, the scope of the agreement is not sufficiently definite. The agreement does not define what  
9 the "school" is such that the parties know what must be named after Milton I. Schwartz. Because no  
10 term defining "school" exists, the Court cannot determine whether the "school" constitutes the operating  
11 entity, the original building, all new buildings, the entire campus, any annexed land, and/or some  
12 combination of the above, and, therefore, cannot determine whether a breach occurred or compel  
13 performance as requested by the Estate.

14 The conflicting testimony regarding what was to be named after Milton Schwartz demonstrates  
15 that no agreement exists. Lenard Schwartz testified that it was his understanding that the school would  
16 be named after Milton Schwartz "as long as it was a Hebrew day school." Opp. at 7:11-13. Roberta  
17 Sabbath testified that Milton Schwartz's *million dollar* (not \$500,000) pledge was "to name the building  
18 after him." See Opp. at 7:17-22 (emphasis added). Conversely, the Estate contends that the terms of the  
19 alleged agreement required that the corporation, entire campus, the middle school, and any future  
20 acquired land and/or buildings were to be named after Milton Schwartz in perpetuity, regardless of any  
21 other considerations. See Ex. 22, J. Schwartz Dep., at 20:21-21:18, 22:11-27:4. Thus, because it is still  
22 not clear what precisely was to be named after Milton Schwartz, the terms of the agreement as alleged  
23 by the Estate is wholly lacking the requisite specificity and cannot constitute an enforceable contract.

24 The detailed agreement prepared by Jonathan Schwartz in an attempt to memorialize and enforce  
25 the alleged naming right agreement between Milton Schwartz and the School is highly probative  
26 evidence that the two basic terms of the naming rights agreement as alleged by the Estate do not  
27 constitute all of the necessary terms to create an enforceable contract or set forth the agreement in  
28 sufficient detail for a court to enforce it as required under Nevada law. See proposed Agreement between

the Estate of Milton I. Schwartz and the Milton I. Schwartz Hebrew Academy, attached hereto as **Exhibit 22** at EST-0004-7. Jonathan Schwartz's proposed agreement contains the following specific and detailed terms:

- "All letter-head, stationary, correspondence, promotional material, websites, business cards, fundraisers, advertisements, etc. (hereinafter, "Media") associated with the Schools shall clearly and prominently identify the Milton I. Schwartz Hebrew Academy as grades Pre-K through Fourth in perpetuity. All Media shall depict a logo bearing the name, the Milton I. Schwartz Hebrew Academy (in bold, all capped letters), no smaller than any other logo located on the face of said Media, to be reasonably approved of by the Trust and the Schools ("Logo"). The foregoing shall be completed no later than the start of the 2010-2011 school year. For purposes of clarification, the 2008 Logo of the Milton I. Schwartz Hebrew Academy which appeared on that certain tax receipt dated May 28, 2008 (attached hereto) is acceptable with the exception that the wording "MILTON I. SCHWARTZ" shall be in all capital letters, bolded."
- The interior main entrance of the MISHA shall prominently house a painting and or photograph of Milton I. Schwartz ("MIS") in perpetuity, to be approved of by Schwartz, which shall include a plaque listing Milton I. Schwartz and identifying Milton I. Schwartz as the founder of the Milton I. Schwartz Hebrew Academy.
- The website of the Schools shall prominently (in perpetuity) list the MISHA as grades Pre-K through Fourth and shall include a description as follows:

*The Milton I. Schwartz Hebrew Academy is home to the lower school, grades pre-K through Fourth. The Milton I Schwartz Hebrew Academy was established in 1988 through the generosity of Las Vegas businessman Milton I Schwartz and others who answered a need in the Southern Nevada community for a strong secular and Judaic educational institution for elementary school-aged children.*

*Id.* at § (4)-(6).

These notably specific and detailed terms attempting to memorialize Milton Schwartz's alleged naming rights agreement serve only to demonstrate that the basic terms of the contract as alleged by the Estate cannot possibly constitute an enforceable agreement because those terms are not sufficiently detailed and material terms are missing. The Estate cannot point to any evidence that adequately addresses what the parties agreed to regarding the scope of the alleged naming agreement, including precisely what was to be named after Milton Schwartz and how and where such naming rights were to be displayed as is set forth in the draft agreement from Jonathan Schwartz.

Second, terms regarding what would happen in the event of a breach and the applicable remedies are conspicuously absent from the alleged agreement. The Estate's position is that the gift was a conditional gift and that the entire \$500,000 must be returned in the event of a breach. However, the Estate cannot point to any admissible evidence that establishes with certainty that this was the agreement. The Estate's position also fails to account for the over twenty-years that the school bore Milton's name and highlights the lack the requisite meeting of the minds. Pursuant to the Estate's position, if the school (and the campus, and the corporation, and website, and letterhead, and marketing materials, and all other printed materials, etc.) bore Milton Schwartz's name as allegedly required for ninety-eight years and eleven months, and then changed its name (or anything else) before the ninety-nine year mark, then the School would have to return the entire \$500,000. It is inconceivable that the School would have agreed to such a provision. The Estate's position on this issue only highlights precisely why the agreement as alleged by the Estate was required to have been in writing, so that the parties would understand what would happen in the event of a breach, and show that the School actually agreed to such a one-sided term.

**3. The Estate's breach of contract claim is precluded under the statute of frauds because no written agreement exists setting forth all the essential elements of the contract.**

Even if the terms of the agreement are as the Estate now contends: (1) Milton would give \$500,000; and in exchange (2) the "school" would be named after him forever, no matter what, the Estate's breach of contract claim nonetheless fails as a matter of law because **no written contract exists to satisfy the statute of frauds**. The statute of frauds requires that all agreements that cannot be performed within a year must be in writing. NRS 111.220(1).

Here, the statute of frauds applies to the alleged naming rights agreement because it requires the School to perform in "perpetuity," and, therefore, its performance clearly cannot be completed within one year. The Estate does not dispute that the statute of frauds generally applies to this agreement, but contends the statute of frauds does not preclude their breach of contract claim because multiple writings provide evidence of the contract terms, both parties fully performed, the School allegedly acknowledged

1 the agreement, and because the Adelson School is estopped from asserting this defense. All of these  
2 contentions fail.

3 ***a. The "multiple writings" relied on by the Estate do not constitute an***  
4 ***enforceable contract.***

5 The Estate summarily concludes it can satisfy the statute of frauds based on four (4)  
6 miscellaneous documents: checks, board meeting minutes, school bylaws, and the school's articles of  
7 incorporation. This contention fails as a matter of law.

8 First, the documents cited by the Estate, even when viewed together, do not evidence an  
9 enforceable contract. Nevada law permits multiple writings to be considered together to establish an  
10 enforceable contract. "Separate writings may be considered together to establish a sufficient writing or  
11 memorandum, "even though one of them was not signed by the party to be charged, and neither was a  
12 sufficient memorandum in itself." *Edwards Indus., Inc. v. DTE/BTE, Inc.*, 112 Nev. 1025, 1032–33, 923  
13 P.2d 569, 574 (1996) (citing *Ray Motor Lodge, Inc. v. Shatz*, 80 Nev. 114, 118–19, 390 P.2d 42, 44  
14 (1964)). "It is the consensus of judicial opinion that such writing must contain all the essential elements  
15 of the contract. **The substantial parts of the contract must be embodied in the writing with such a**  
16 **degree of certainty as to make clear and definite the intention of the parties without resort to oral**  
17 **evidence."** *Stanley v. A. Levy & J. Zentner Co.*, 60 Nev. 432, 112 P.2d 1047, 1053 (1941) (emphasis  
18 added). Whether a writing is legally sufficient to comply with the statute of frauds presents a question  
19 of law. *See Edwards*, 112 Nev. 1025, 1032–33, 923 P.2d 569, 574.

20 A memorandum, in order to make enforceable a contract within the statute, may  
21 be any document or writing, formal or informal, signed by the party to be charged  
22 or by his agent actually or apparently authorized thereunto, which states with  
23 reasonable certainty, (a) each party to the contract either by his own name, or by  
24 such a description as will serve to identify him, or by the name or description of  
25 his agent, and (b) the land, goods or other subject-matter to which the contract  
26 relates, and (c) the terms and conditions of all the promises constituting the contract  
27 and by whom and to whom the promises are made.

28 *Id.* (citing Restatement of Law Contracts, § 207).

In *Edwards*, the appellant also presented four documents which it contended constituted  
sufficient memoranda of the alleged agreement. *Id.* at 1032-33, 923 P.2d at 574. However, the Nevada  
Supreme Court determined that the documents did not constitute sufficient memoranda of the alleged



1 agreement, either individually or collectively. *Id.* at 1033, 923 P.2d at 574. The Court reasoned that there  
 2 was conflicting testimony regarding two of the documents, one of those two documents merely indicated  
 3 a factual circumstance, but did not establish any of the terms or promises in the alleged agreement, and  
 4 a letter between the parties was insufficient because it did not establish the consequence of a default or  
 5 establish liability. *Id.* Therefore, the statutes of frauds precluded enforcement of an alleged oral  
 6 agreement. *Id.*

7 Similarly here, even when viewed together, the miscellaneous documents relied on by the Estate  
 8 are not sufficient memoranda of an alleged oral agreement because they do not sufficiently establish the  
 9 substance of the agreement as alleged by the Estate, and material terms of the agreement, including  
 10 breach or liability, are lacking altogether.

11 The three (3) checks from Milton Schwartz to the Hebrew Academy show only that Milton  
 12 Schwartz donated \$500,000 to the Hebrew Academy in August of 1989. *See* Mot. at Ex. 8. The board  
 13 meeting minutes from August 14, 1989 merely state that the school recognizes a gift from Milton  
 14 Schwartz of an unspecified amount, and that a letter should be written to him stating the school will be  
 15 named after him. *See* Mot. at Ex. 10. **The minutes do not mention any other details and make no**  
 16 **reference to an agreement or contract.** *See id.*

17 The 1990 Amendment to the Hebrew Academy's bylaws state that the legal name of the school,  
 18 i.e., the name of the corporation only, would be changed to the "Milton I. Schwartz Hebrew Academy  
 19 in perpetuity." *See* Opp. at Ex. C. Importantly, the bylaws expressly provide that **the bylaws can be**  
 20 **amended, altered, and repealed by a majority vote of the full board at a duly noticed meeting.** *See*  
 21 Opp. at Ex. C at Art. VIII. And, indeed, the bylaws were amended to change name of the school's  
 22 operating entity to the "Hebrew Academy" in 1994. *See* Opp. at Ex. M. Therefore, the bylaws, which  
 23 are clearly subject to change merely by a majority vote of the board and, in fact, did change during  
 24 Milton's lifetime, cannot possibly form the basis of an enforceable naming rights agreement in  
 25 perpetuity.

26 For the same reasons, the 1990 Certificate of Amendment to the Hebrew Academy's Articles of  
 27 Incorporation is not sufficient, even when viewed with the other documents, to establish the naming  
 28 rights agreement as alleged by the Estate. *See* Opp. at Ex. K. The articles of incorporation likewise only

1 address the name of the operating entity and could be and, in fact, were amended during Milton  
 2 Schwartz's lifetime. Moreover, the Certificate of Amendment does not contain the phrase "in  
 3 perpetuity." *See id.* Therefore, even when viewed together, these documents cannot constitute an  
 4 enforceable contract because, as set forth above, the terms of the alleged agreement are not sufficiently  
 5 definite and several material terms are missing.

6 At most, these documents show that Milton Schwartz donated \$500,000 to the school in 1989,  
 7 and as a result, the school voluntarily decided to name its operating entity after Milton Schwartz, a  
 8 decision which could be revoked at any time with a majority vote by the board members. The Adelson  
 9 Campus does not dispute that the school initially decided to name itself after him as a result of his  
 10 generous contribution. However, a voluntary and revocable decision by various Boards to recognize and  
 11 honor Milton Schwartz for his contribution is simply not the same as an enforceable contract for naming  
 12 rights in perpetuity. The extensive and potentially burdensome term of performance required under a  
 13 contract "in perpetuity" is the precise reason why the statute of frauds applies to long-term agreements.

14 Accordingly, the Estate's failure to adduce sufficient memoranda containing "all the essential  
 15 elements of the contract" such that the "substantial parts of the contract" were "embodied in the writing  
 16 with such a degree of certainty as to make clear and definite the intention of the parties without resort  
 17 to oral evidence," renders the Estate's alleged agreement unenforceable as a matter of law.

18 ***b. The parties' alleged performance does not remove the alleged naming rights***  
 19 ***agreement from the statute of frauds.***

20 The Estate also incorrectly contends that the statute of frauds does not apply because both parties  
 21 fully performed. The fact remains that it is simply not possible for the school to fully perform under the  
 22 terms of the agreement as alleged by the Estate because it requires the school to perform in perpetuity,  
 23 or ninety-nine years. The Estate fails to provide any authority for its position that Milton Schwartz's  
 24 performance would remove the alleged agreement from the purview of the statute of frauds. In *Almeciga*  
 25 *v. Ctr. for Investigative Reporting, Inc.*, 185 F. Supp. 3d 401, 410 (S.D.N.Y. 2016), the court rejected  
 26 an argument similar to the Estate's argument here, that both parties fully performed on an agreement  
 27 that was meant to apply "in perpetuity" because the plaintiff performed within one year. "[T]he fact that  
 28 the plaintiff has fully completed her performance under the contract as that contract is described by her

1 is of no moment” where “the defendant's performance ... will continue in perpetuity... Nor would it  
 2 matter if defendants had performed for a year or more after entering into the alleged agreement and then  
 3 breached. The dispositive point is that defendants could not complete their performance within one year  
 4 since their obligation was an ongoing one.” *Id.* (citations omitted). The *Almeciga* court’s reasoning and  
 5 application of the statute of frauds is instructive here. Milton Schwartz’s alleged performance and the  
 6 School’s decision to name the School after him from 1989 to 1993, and 1999 to 2013 does not constitute  
 7 full performance where the contract is alleged to last “in perpetuity.” Therefore, the parties’ alleged  
 8 performance cannot and does not remove the alleged agreement from the statute of frauds.

9 *c. Testimony of past board members based on their individual understanding of*  
 10 *the facts do not remove the alleged agreement from the statute of frauds.*

11 The Estate contends that the testimony of prior board members regarding their individual  
 12 understanding of circumstances that took place over twenty-five years ago are sufficient to demonstrate  
 13 that an enforceable agreement was entered into between Milton Schwartz and the School, and to remove  
 14 the agreement from the statute of frauds. The Estate provides no support for its assertion. More  
 15 importantly, none of these former board member witnesses testified that they entered into any agreement  
 16 with Milton Schwartz in their official capacity and on behalf of the Board.

17 *d. The Estate did not and cannot produce any evidence to support its claim that*  
 18 *the School is equitably estopped from asserting a statute of frauds defense.*

19 The Estate provides no persuasive support for its position that the Adelson School should be  
 20 estopped from asserting a statute of frauds defense. “Estoppel or part performance must be proved by  
 21 some extraordinary measure or quantum of evidence.” *Zunino v. Paramore*, 83 Nev. 506, 509, 435 P.2d  
 22 196, 197 (1967). However, the Estate cites to no evidence to support its estoppel argument, let alone an  
 23 extraordinary measure or quantum of evidence as required under Nevada law. Therefore, the Court must  
 24 reject this argument outright.

25 **B. The Doctrine of Promissory Estoppel Does Not Apply Because No Enforceable Agreement**  
 26 **Exists and, Regardless, the Required Elements are Absent.**

27 The Estate appears to contend that the doctrine of promissory estoppel applies to save their  
 28 defective breach of contract claim. The Estate has taken the unfortunate position that Milton Schwartz’s

1 generosity to the school and its students over the years is now a detriment suffered by Milton Schwartz  
 2 simply because the name of the school no longer bears his name due to changed circumstances, and now  
 3 seeks to claw back all of the amounts that Milton Schwartz donated to the school.

4 As set forth in the Adelson Campus's Motion, promissory estoppel does not apply here because  
 5 the issue is not one of a failure of consideration – the issue is the lack of an enforceable agreement  
 6 altogether. Even assuming the Estate could show the existence of an enforceable agreement, the  
 7 elements of promissory estoppel are also missing here. The Estate has failed to provide any evidence  
 8 that any of the 1989 board members knew that the school's name would change decades after the fact  
 9 as a result of unforeseen future circumstances. Moreover, while there is no dispute that the school bore  
 10 Milton I. Schwartz's name from 1989 to 1993 and 1996 to 2013, the Estate has failed to produce the  
 11 requisite evidence to show that this was pursuant to a legally cognizable contractual agreement as  
 12 opposed to a voluntary decision to honor Milton Schwartz's generous contribution and to foster a  
 13 continuing relationship of support.

14 **C. Even Assuming an Enforceable Naming Rights Agreement Exists, There is No Admissible**  
 15 **Evidence Demonstrating that Milton Schwartz Fully Performed.**

16 Assuming for argument's sake that the Estate can show that an enforceable agreement exists,  
 17 which it cannot, all of the *admissible* evidence shows that Milton Schwartz failed to live up to his side  
 18 of the alleged agreement. Specifically, the only admissible evidence shows that Milton Schwartz  
 19 pledged a least \$1 million to the school, but only ever paid \$500,000. *See* Mot. at 4:20-5:11, 13:22-14:7.

20 In the alternative, even under the Estate's donate \$500,000 / raise \$500,000 theory, construing  
 21 all of the admissible evidence in the Estate's favor and accepting Milton Schwartz's version of the events  
 22 as true, the evidence shows that Milton Schwartz raised at most \$425,000 of the \$500,000 he had to  
 23 raise at that time. *See* Mot. at 15:14-18:21; *see also* Exs. 9, 18-19. In fact, document relied on by the  
 24 Estate to show that Milton Schwartz pledged \$500,000 shows that Paul Sogg, Robert Cohen, and George  
 25 Rudiak (the only donors even Milton Schwartz himself took credit for) pledged only \$425,000, and of  
 26 the that \$425,00 he allegedly raised, only \$325,000 was paid. *Opp.* at Ex. D. Accordingly, the Estate  
 27 has failed to set forth admissible evidence to show Milton Schwartz did, in fact, raise \$500,000 as he  
 28 himself has said he was required to do under the alleged naming rights agreement. Therefore, even if

the Court finds the existence of an enforceable agreement, under the Estate and Milton Schwartz's own version of the naming rights agreement, summary judgment is required because Milton Schwartz did not hold up his end of the alleged bargain.

**D. *Inter Vivos* Gift Principles Rather than Contract Principles Should Apply to the Alleged Naming Rights Agreement Because None of the Factors Used by Courts to Determine Contract Principles Should Apply are Present Here.**

The Estate failed to set forth any applicable precedent that the alleged naming agreement should be analyzed under contract principles rather than *inter vivos* gift principles. The non-Nevada cases relied on by the Estate are inapposite to the facts here because the charitable organization was the party attempting to enforce a charitable gift, a written agreement existed, and/or the charitable organization had incurred liability as a result of the donor's promise.

Notably, *Massachusetts Eye* is inapplicable because that case involved an actual contract under which the court could apply contract principles. 417 F.Supp.2d 192. Further, the court in that case determined that the plaintiff charitable organization had stated a claim for breach of contract because the existence of consideration in the form of express instructions for how the gift was to be used and other requirements, but no such designation of the use of the funds is present here. *Id.*

In *East Carolina University Foundation*, the court, applying North Carolina law, merely determined that the plaintiff had stated a claim for breach of contract relating to a charitable gift, and that the issue of whether a meeting of the minds occurred to create an enforceable contract was a question for the trier of fact. 767 S.E.2d 150. That case further differs from our case because the charitable organization was the party trying to enforce the gift, and, as in *Massachusetts Eye*, the alleged consideration was in the form of a designation by the donor and an agreement by the donee that the funds would be used in a certain way, neither of which are present here.

In the *Matter of Versailles Foundation*, the court noted that charitable donations become a binding contract where the charity incurs liability in reliance thereon. 202 A.D.2d 334. Clearly this case is inapplicable because it is the Estate seeking to enforce its alleged rights against the school, no such liability has been incurred by the Estate. Similarly, the *Estate of Tinko* does not support the Estate's contention that promissory estoppel applies. In that case, the charitable organization relied to its

1 detriment on the decedent's promise to pay off the mortgage on a building by making a down payment  
 2 on the building. *Id.* Although the Estate has taken the unfortunate position that Milton Schwartz's  
 3 contributions to the School constitute a similar type of detriment, the Estate's position is wholly  
 4 dissimilar, and this case is inapplicable to the Estate's promissory estoppel claim.

5 Regardless, the fact remains that even if the Court analyzes the alleged naming rights agreement  
 6 under contract rather than *inter vivos* gift principles, the Estate's claims fail as a matter of law and must  
 7 be dismissed. As a result, all of the Estate's contract claims, as well as its claims for offset of the bequest,  
 8 revocation, and constructive trust must all be dismissed.

### 9 III.

### 10 CONCLUSION

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

14 Dated this 2<sup>nd</sup> day of August, 2018.

15 KEMP, JONES & COULTHARD, LLP



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 22  
 23  
 24  
 25  
 26  
 27  
 28

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2<sup>nd</sup> day of August, 2018, service of the foregoing **REPLY IN SUPPORT OF 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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002227

# EXHIBIT 21



1

DISTRICT COURT

2

CLARK COUNTY, NEVADA

3

4

In the Matter of the Estate of )

5

MILTON I. SCHWARTZ, )

) Case No. 07P061300

6

Deceased. )

) Dept. No.: 26/Probate

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12

DEPOSITION OF TAMAR LUBIN SAPOSHNIK, Ph.D.

13

14

Taken at

15

Las Ventanas at Summerlin

16

10401 West Charleston Boulevard

Las Vegas, Nevada 89135

17

On Thursday, June 9, 2016

18

At 9:36 a.m.

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21

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24

25

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

1 APPEARANCES:

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3 Milton I. Schwartz:

3

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1 THURSDAY, JUNE 9, 2016; LAS VEGAS, NEVADA

2 9:36 a.m.

3 -oOo-

4 Whereupon,

5 (In an off-the-record discussion held prior to the  
6 commencement of the proceedings, counsel agreed to waive the  
7 court reporter's requirements under Rule 30(b)(4) of the  
8 Nevada Rules of Civil Procedure.)

9 Whereupon,

10 TAMAR LUBIN SAPOSHNIK, Ph.D.,  
11 having been first duly sworn to testify to the truth, the  
12 whole truth, and nothing but the truth, was examined and  
13 testified as follows:  
14

15 MR. LeVEQUE: Could you mark this as Exhibit 1,  
16 please?

17 (Exhibit 1 marked for identification.)

18 MR. LeVEQUE: Thank you.

19 EXAMINATION

20 BY MR. LeVEQUE:

21 Q. Good morning, Doctor. Could you please state and  
22 spell your full name for the record?

23 A. Tamar, T-a-m-a-r, Lubin, L-u-b-i-n, Saposhnik,  
24 S-a-p-o-s-h-n-i-k.

25 Q. Thank you very much.

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 BY MR. LeVEQUE:

2 Q. Okay. One of the issues in this case is that the  
3 estate of Milton I. Schwartz believes based upon the  
4 interpretation of the last will and testament that a \$500,000  
5 specific bequest can be paid to the school only if the  
6 school -- school's name stays The Milton I. Schwartz Hebrew  
7 Academy.

8 Do you understand that?

9 A. I understand --

10 MR. KEMP: Form. Foundation.

11 THE WITNESS: -- it, but I don't see it connecting.

12 There was a -- there was a promise or -- to offer a million  
13 dollars. We did receive \$500,000. That, I know for a fact.

14 BY MR. LeVEQUE:

15 Q. Right.

16 A. Did we ever receive the other half, the 500,000? I  
17 did not personally.

18 Q. Okay. When we talked about earlier in your  
19 deposition Mr. Schwartz giving the half a million dollars in  
20 exchange for the school being named for him in perpetuity, do  
21 you remember that line of questioning?

22 MR. KEMP: Objection. Mischaracterizes prior  
23 testimony.

24 BY MR. LeVEQUE:

25 Q. Do you recall that line of questioning when we were

1 talking about that?

2 A. I understand that at the time, Milton made a promise  
3 to provide a million dollars to the school and we did receive  
4 \$500,000 --

5 Q. And what --

6 A. -- in return --

7 Q. Sorry.

8 A. -- for placing his name on the school.

9 Q. For a million dollars?

10 A. Yes. The Milton I. Schwartz Hebrew Academy. That's  
11 what the name would --

12 Q. In exchange for the pledge of a million dollars?

13 MR. KEMP: Objection. Form. Foundation.

14 THE WITNESS: In other words, we received \$500,000  
15 and we did not receive the other \$500,000.

16 BY MR. LeVEQUE:

17 Q. And here's what I'm trying to clarify.

18 A. Yes.

19 Q. I think we can all agree that Mr. Schwartz  
20 pledged -- initially pledged a million dollars for the school.

21 A. That's what he pledged, yes.

22 Q. What I -- what I need to know is, in exchange for  
23 his pledge, I understand your testimony to mean that the  
24 school is going to be named after him in perpetuity.

25 A. Yes.



1 Q. Am I with you so far?

2 A. Yes. Yes.

3 Q. Okay.

4 A. Yes.

5 Q. You're saying that he paid half of that pledge?

6 A. Correct.

7 Q. Okay. But the agreement to change the name was for  
8 the full million-dollar pledge, is that fair, or was it just  
9 for the half million dollars?

10 A. For the million.

11 Q. Thank you.

12 (Exhibit 12 marked for identification.)

13 BY MR. LeVEQUE:

14 Q. All right. Doctor, the court reporter has just  
15 handed you what's been marked as Exhibit 12 to your  
16 deposition, and it is more meeting minutes, but this time it's  
17 for a meeting -- the meeting of August 25th, 1994.

18 Do you see that up at the top?

19 A. Yes.

20 Q. And do you see that in the members attending  
21 section, it identifies you as being one of the board members  
22 that was present during that meeting?

23 A. Yes.

24 Q. Okay. And the second paragraph of the actual  
25 minutes state that "Mr. Sternberg was asked by a motion to

# EXHIBIT 22

A. Jonathan Schwartz  
**ESTATE OF MILTON I. SCHWARTZ**  
2293 Duneville Street  
Las Vegas, NV 89146

May10, 2010

Mr. Sheldon G. Adelson  
MILTON I. SCHWARTZ HEBREW ACADEMY BOARD  
9700 W. Hillpointe Road  
Las Vegas, NV 89134

Via: Hand Delivery, Certified Mail & Facsimile

Dear Board Members:

I am writing this letter in an attempt to finalize a bequest made by my father in his Will to the Milton I. Schwartz Hebrew Academy ("MISHA") in the amount of \$500,000 (the "Bequest"). I have made several attempts to finalize the Bequest to the MISHA since my father passed away in 2007. I take my duty to fulfill my Dad's wishes extremely seriously. I have done everything within my power over the last two and one half years to make certain that my Dad's wishes are carried out precisely as provided for in his Will.

I have met with Paul Schiffman ("Paul") at least four times about the Bequest and I have met with Victor Chaltiel ("Victor") twice. While Paul has been very gracious, my attempts to legally finalize the Bequest have been ignored by the Board. I'm not certain why the Board has reacted this way, but I know it would be in the best interest of the MISHA to have the Bequest completed. Again, I'm writing this last letter as a final attempt to conclude the Bequest.

A knowledge of the history of the MISHA is important. My Dad's history with the School pre-dates its current location by several years. To list everything my Dad did for the MISHA and its predecessors would fill volumes. My Dad was instrumental in the Howard Hughes Corporation's gift of the land where the MISHA and the Adelson High School currently sits (the "Land"). My Dad was instrumental in developing the original MISHA building. My Dad financially supported the school for years and managed its day to day affairs lovingly. At the end of every school year, my Dad, along with a few other families, stepped up and funded whatever cash flow losses the MISHA had incurred. Tuition revenue was never enough to fund the MISHA's operations. Without those critical donations from my Dad years ago, the MISHA would have ceased operating long ago.

Milton I. Schwartz personally gave, and more importantly raised, several million dollars for

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the MISHA before many of the current board members became involved. Some of you are aware of my Dad's fund-raising because he raised those dollars from you or your families. Beyond the money, my Dad loved the school and was proud to spend his time making certain that kids in Las Vegas could obtain a quality Jewish education. Please remember, without Milton I. Schwartz, there would be no school. There would be nothing for generous philanthropists like the Adelsons and others to build upon. I urge you not to forget about the MISHA's history.

As I'm sure you're aware, the purpose of the Bequest was to fund scholarships for Jewish Children only. As the executor of my Dad's estate, I have a fiduciary duty to make certain that my Dad's wishes are respected and carried out. I have numerous letters, contracts, by-laws, documents, etc. (the "Agreements") between the school and my Dad which clearly spell out that the school is to be known as the MILTON I. SCHWARTZ HEBREW ACADEMY in perpetuity. To be clear, "in perpetuity" means forever; that's not something one can change. I've included just a few of the Agreements for your reference.

I met with Victor Chaltiel twice in February and March of 2010 during which I made another attempt to finalize the Bequest. Mr. Chaltiel and I had lunch together with Paul Schiffman and met another time at the School to talk about ways we could satisfy my family and the Adelsons. I clearly realize that the Adelsons have made a tremendous gift to the School and they deserve to be recognized for their gift. However, the Adelson's recognition cannot be at the expense of the history of the School. Milton I. Schwartz is a big part of the history of the school and that's why the school agreed to be named after him (in writing, several times).

The attached agreement is what I supplied to both Paul Schiffman and Victor Chaltiel back in early March ("Draft Settlement"). The Draft Settlement substantially represents what was discussed in my meetings with Victor and Paul, although it was never signed. I simply can't understand why the Draft Settlement didn't get signed so that we could complete this matter. By the way, despite my attempts to finalize the Bequest being ignored, I have continued to financially support the MISHA.

I feel compelled to mention a few things regarding how the School is named. While the Adelson's gifts have been remarkable and they deserve to be commemorated, it was agreed that only the High School would be known as the "Adelson High School". The fact that the School on Hillpointe was named the Milton I. Schwartz Hebrew Academy in perpetuity pre-dates the Adelsons involvement by several years ("High School Naming"). The High School Naming and the fact that the Milton I. Schwartz Hebrew Academy constitutes grades K-Eighth is clearly evidenced by the Agreements and the gala documents (signed by Mr. Adelson and Mr. Chaltiel) from 2007 ("2007 Gala Docs")(enclosed). I regret having to state the following but given what I've been told by one member of the Board, I have no choice; should my Dad's memory and its commemoration at the MISHA be reduced or compromised in any manner, I will be compelled to take appropriate legal action.

The fact that the School has apparently been re-titled the Adelson Educational Campus and that the middle school has been re-named the Adelson Middle School violates the Agreements and the 2007 Gala Docs. Again, the Adelsons made a tremendous gift and it deserves to be recognized.

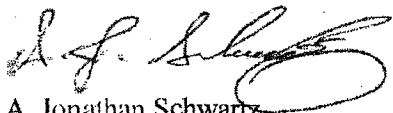
Despite the terms of the Agreements and the 2007 Gala Docs, for purposes of settlement and to do what is best for the schools, I believe (contingent upon the Settlement Agreement being executed) that the naming of the various institutions should be left as they currently are. Please refer to the attached Settlement Agreement for a complete explanation.

The Draft Settlement basically accepts what the school is already doing despite the fact that some of what the school has done in the last 2 and ½ years breaches the Agreements. This settlement is meant to respect the history of the school and to facilitate its future. I am sorry to have to go to the lengths of creating a settlement agreement to complete this Bequest, but a settlement agreement was necessary given the circumstances.

As I've commented, my Dad left \$500,000 to the MISHA. The amount of the Bequest clearly says \$500,000 in his Will. As my Dad's Executor, I don't have the authority to give any more money to the MISHA from my Dad's Estate. My Dad never committed to giving any amount in excess of the Bequest in his Will. If he had agreed to give more, it would have been memorialized in his Will the same day.

I have included a new draft settlement agreement which simply changes the dates for execution and provides two weeks to fund the Bequest should the settlement be executed. If the attached settlement agreement is not executed and returned to me by May 31, 2010, my offer to settle this dispute will automatically terminate. I really hope that we can conclude this matter amicably as I frankly find the whole issue to be distasteful. Any kind of dispute reflects poorly on the School, the Board and all of the parties involved. I urge the board of the MISHA to vote to adopt the attached settlement so that I can complete the Bequest.

Sincerely yours:



A. Jonathan Schwartz

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**AGREEMENT BETWEEN THE ESTATE OF MILTON I. SCHWARTZ  
AND THE MILTON I. SCHWARTZ HEBREW ACADEMY**

This Agreement (the "Agreement"), made and entered into this \_\_\_\_\_ day of May, 2010 by and between the Estate of Milton I. Schwartz ("Estate"), the Milton I. Schwartz Revocable Family Trust ("Trust"), by and through its Executor and Trustee, A. Jonathan Schwartz ("Schwartz") and the Milton I. Schwartz Hebrew Academy ("MISHA") and the Adelson Educational Campus and or the Adelson School (collectively, "Adelson School"), by and through its President, Victor Chaltiel ("Chaltiel") with reference to the following facts:

- A. At section 2.3 of the Last Will and Testament of Milton I. Schwartz dated February 5, 2004 (the "Will"), the Will provides, in pertinent part, a bequest to the MISHA in the amount of \$500,000 in the form of securities (stocks, bonds or cash) with the largest profit so that the Estate can take advantage of the low cost basis and increased price as directed in the sole discretion of the Executor (Jonathan Schwartz) (the "Bequest"). The purpose of the Bequest is to fund scholarships for Jewish children only ("Purpose").
- B. Pursuant to the Clark County Assessors Office, the MISHA is situated on the land known as (parcel number 138-19-516-001) (the "Land").
- C. The term the "School" or the "Schools" herein shall refer collectively to the Milton I. Schwartz Hebrew Academy, the Adelson School, and or the Adelson Educational Campus.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the parties promise, covenant and agree as follows:

- (1) Contingent upon all signatories execution of the Agreement by May 31, 2010 and delivery of the Agreement by that date to Schwartz, the Bequest shall be made to MISHA no later than June 14, 2010.
- (2) The school located on the Land (grades Pre-K through Fourth) and at any new location shall be known in perpetuity as the *Milton I. Schwartz Hebrew Academy*. Any and all by-laws, agreements, articles of incorporation, operating agreements or other documents associated with the Schools located on the Land or at any new location shall heretofore, and in perpetuity, identify grades Pre-K through Fourth as the *Milton I. Schwartz Hebrew Academy*.
- (3) The MISHA shall prominently depict signage on the face of the building housing the Pre-K through Fourth grades (facing Hillpointe Ave.) (situated on the Land) and at any new location, and at all entrances therefore, exclusively identifying it (and regularly maintaining it) as the *Milton I. Schwartz Hebrew Academy* so that it is clearly evident to the public that it is known as the *Milton I. Schwartz Hebrew Academy*. The sign facing Hillpointe Ave., located on the MISHA as of March 3, 2010 is acceptable to Schwartz.

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- (4) All letter-head, stationary, correspondence, promotional material, websites, business cards, fundraisers, advertisements, etc. (hereinafter, "Media") associated with the Schools shall clearly and prominently identify the *Milton I. Schwartz Hebrew Academy* as grades Pre-K through Fourth in perpetuity. All Media shall depict a logo bearing the name, the Milton I. Schwartz Hebrew Academy (in bold, all capped letters), no smaller than any other logo located on the face of said Media, to be reasonably approved of by the Trust and the Schools ("Logo"). The foregoing shall be completed no later than the start of the 2010-2011 school year. For purposes of clarification, the 2008 Logo of the Milton I. Schwartz Hebrew Academy which appeared on that certain tax receipt dated May 28, 2008 (attached hereto) is acceptable with the exception that the wording "MILTON I. SCHWARTZ" shall be in all capital letters, bolded.
- (5) The interior main entrance of the MISHA shall prominently house a painting and or photograph of Milton I. Schwartz ("MIS") in perpetuity, to be approved of by Schwartz, which shall include a plaque listing Milton I. Schwartz and identifying Milton I. Schwartz as the founder of the Milton I. Schwartz Hebrew Academy.
- (6) The website of the Schools shall prominently (in perpetuity) list the MISHA as grades Pre-K through Fourth and shall include a description as follows:
- The Milton I. Schwartz Hebrew Academy is home to the lower school, grades pre-K through Fourth. The Milton I. Schwartz Hebrew Academy was established in 1988 through the generosity of Las Vegas businessman Milton I. Schwartz and others who answered a need in the Southern Nevada community for a strong secular and Judaic educational institution for elementary school-aged children.*
- (7) When the Bequest is funded, it shall act to satisfy in full any obligation, liability or duty of Milton I. Schwartz, the Estate or the Trust toward or associated with the MISHA or the Adelson School. Upon MISHA's receipt of the Bequest, a full and final release of Milton I. Schwartz, the Estate, the Trust, A. Jonathan Schwartz and their heirs, assigns and beneficiaries shall be effectuated.
- (8) The MISHA shall supply the Estate of Milton I. Schwartz and the Milton I. Schwartz Revocable Family Trust (at the direction of the Trust) with a receipt for tax purposes from the MISHA listing its IRS 501 (c)(3) non-profit tax id number for the Bequest.
- (9) As specified in the Will, the Bequest shall be used solely for the purpose of funding scholarships for Jewish children only at the MISHA.
- (10) Once per year, the MISHA agrees to reasonably cooperate with members of the Milton I. Schwartz family, at a time when it would not interfere with school activities, for the Schwartz Family's access to the School for viewing and verification of compliance with

the foregoing terms and conditions. The Schwartz Family, its agents, etc. shall indemnify and hold harmless the School for its access to the premises.

- (11) **Miscellaneous.** This Agreement constitutes the entire Agreement between the Estate, the Trust, Schwartz, the Schwartz Family, its heirs, assigns, and beneficiaries and the MISHA, Adelson School and or the Adelson Educational Campus. This Agreement confirms the understanding of the parties regarding the naming rights of the Estate of Milton I. Schwartz with regard to the Schools. No amendment, alteration or withdrawal of the Agreement shall be valid or binding unless made in writing and signed by each of the parties affected by such provision. This Agreement shall be binding upon the heirs, successors and assignees of all of the parties associated with the Schools. Each of the parties acknowledges that it has been advised to obtain legal counsel of its own choosing regarding this Agreement and that it has availed itself of said legal counsel. The terms and conditions of this Agreement shall not be construed against any party regardless of whom the Agreement was drafted by. No party to this Agreement shall assign its right or delegate its duties hereunder without the prior written consent of the other parties. Whenever possible, each provision of this Agreement shall be interpreted so as to be effective and valid under applicable law, but if any provision of the Agreement shall be prohibited or invalid under applicable law, the remainder of such provision and the remaining provisions of this Agreement shall continue in full force and effect. This Agreement represents a settlement of disputed facts. In the event of any dispute or litigation concerning the terms of this Agreement, the prevailing party shall receive reimbursement for its reasonable legal fees. Each of the signatories to this Agreement warrant and certify that they have the authority to execute the Agreement in the capacity indicated herein. This Agreement may be executed in counterparts which all together shall constitute one Agreement, binding on all parties. This Agreement shall be construed under the laws of the State of Nevada

IN WITNESS WHEREOF, the undersigned Parties hereto have executed this Agreement as of the date first written above.

\_\_\_\_\_  
Estate of Milton I. Schwartz,  
A. Jonathan Schwartz, Executor

\_\_\_\_\_  
Milton I. Schwartz Hebrew Academy,  
Victor Chaltiel, President

\_\_\_\_\_  
Milton I. Schwartz Revocable Family  
Trust, A. Jonathan Schwartz, Trustee

\_\_\_\_\_  
The Adelson School, Victor Chaltiel,  
President

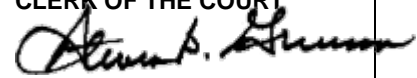
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The Adelson Educational Campus, Victor  
Chaltiel, President

*57*

*57*



Alan D. Freer (#7706)  
Alexander G. LeVeque (#11183)  
SOLOMON DWIGGINS & FREER, LTD.  
9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129  
Telephone: (702) 853-5483  
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.: P-13-061300-E  
Dept. No.: XXVI/Probate  
Date of Conference: August 3, 2018  
Time of Conference: 9:30 a.m.

**THE ESTATE'S PRETRIAL MEMORANDUM**

**Date of Pretrial Conference:** August 3, 2018  
**Location of Pretrial Conference:** Solomon Dwiggins & Freer, Ltd.  
9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129  
**Counsel Present:**  
**Estate of Milton I. Schwartz:** Alexander G. LeVeque, Esq.  
**The Dr. Miriam & Sheldon G.  
Adelson Educational Institute:** J. Randall Jones, Esq. & Joshua D. Carlson, Esq.

**I.**

**BRIEF STATEMENT OF FACTS**

This case is about a legal dispute between the private school presently known as the Dr. Miriam and Sheldon G. Adelson Educational Institute (the "School") and the Estate of the late Milton I. Schwartz (the "Estate"). There are two primary disputes in this lawsuit:

1. The School alleges that the Estate is legally obligated to pay the School \$500,000 pursuant to a gift made by the late Milton I. Schwartz in his Last Will and Testament.
2. The Estate alleges that the School violated a legally enforceable agreement between the School and the late Milton I. Schwartz for naming rights to the School.

1 The School initiated this action by filing a petition in probate court to compel the Estate to  
2 pay the \$500,000 gift to the School. After the School filed its probate petition, the Estate brought  
3 claims against the School seeking to enforce the alleged naming rights agreement between the late  
4 Milton I. Schwartz and the School. The Estate has denied the School's allegations and the School  
5 has denied the Estate's allegations.

6 **A. THE ESTATE'S STATEMENT OF FACTS**

7 Milton I. Schwartz ("Milton") was instrumental in acquiring the land and raising funds for  
8 the construction of the School at its current Hillpointe location back in the late 1980s. In August  
9 of 1989, Milton personally donated \$500,000 to the School in return for which the School would  
10 guarantee that its name would change in perpetuity to the Milton I. Schwartz Hebrew Academy  
11 ("MISHA") (the "Schwartz Naming Rights Agreement"). Evidence of both the formation and  
12 performance of the Schwartz Naming Rights Agreement is abundant. Milton testified as to its  
13 formation and terms in two affidavits and did Dr. Roberta Sabbath and Dr. Lubin, both of whom  
14 negotiated the Schwartz Naming Rights Agreement on behalf of the School. In addition, other  
15 board members of the School (e.g. Leonard Schwartz, Samuel Ventura and Neville Pokroy)  
16 have testified as to its existence. Indeed, the School changed its corporate name from "The  
17 Hebrew Academy" and amended its Bylaws to state that the name of the School shall be MISHA  
18 "in perpetuity."

19 Starting in or about 2004, Sheldon and Miriam Adelson began discussions with the  
20 School's board (which included Milton) about making a charitable contribution to the School to  
21 fund the construction of a high school on the School's property. The Adelson's original idea was  
22 to build a high school and a new Jewish Community Center. In 2006, the School began  
23 construction on the high school.

24 In August of 2007, Milton passed away. Before Milton's death, MISHA operated as  
25 grades K-8 of the School and the Adelson's school operated as the high school on the MISHA  
26 campus. However, just four months after Milton's death, the School's board passed a resolution  
27 which caused the following: (1) the acceptance of a grant from the Adelson Family Charitable  
28 Foundation subject to certain conditions; (2) the changing, in perpetuity, of the School's legal

1 name from MISHA to “The Dr. Miriam and Sheldon G. Adelson Educational Institute” (the  
2 “Adelson Institute”); (3) reducing Milton’s namesake from K-8 to K-4 (the elementary grades);  
3 and (4) an amendment to the School’s Bylaws to reflect the School’s corporate name change to  
4 the Adelson Institute in perpetuity. Presently, and notwithstanding the School’s own resolution to  
5 keep the elementary grades of the School named in honor of Milton in perpetuity, the School has  
6 completely removed Milton’s namesake.

7 This case boils down to a gamble that the School made. The Adelsons have given over  
8 \$100 million to the School since they committed to build the high school. At trial, the evidence in  
9 this case will demonstrate that the School took a calculated risk in breaching the Schwartz  
10 Naming Rights Agreement in exchange for the Adelsons’ gift.

11 The Estate seeks damages and specific performance to remedy the School’s breach of the  
12 Schwartz Naming Rights Agreement. As to the former, the Estate seeks reimbursement of the  
13 initial \$500,000 that Milton gave a consideration for the Schwartz Naming Rights Agreement  
14 (restitution damages) and reimbursement of the additional gifts Milton made from 1989 through  
15 his death (reliance damages). According to Milton’s bookkeeper (who was also Acting Secretary  
16 of the School’s Executive Board from 1988-1990), total restitution and reliance damages,  
17 excluding interest, is approximately \$1,055,853.75. As to the latter, the Estate seeks an order  
18 mandating that the School restore its legal name to the Milton I. Schwartz Hebrew Academy as  
19 well as grades K-8, the original building on the Hillpointe campus, and the campus itself.

20 With regard to the dispute concerning the \$500,000 bequest to the School in Milton’s Last  
21 Will and Testament, the Estate claims that the bequest lapsed because it was made specifically to  
22 “The Milton I. Schwartz Hebrew Academy,” the School bearing Milton’s name, which no longer  
23 exists. The Estate contends that the bequest lapses as a matter of law because (1) there is no  
24 “Milton I. Schwartz Hebrew Academy”; (2) there is no successor clause in the Will; and (3) any  
25 failed gifts pass through to the residual beneficiary which is Milton’s trust. Alternatively, if the  
26 Court determines that there is a latent ambiguity, all of the extrinsic evidence that Estate  
27 anticipates will be admitted at trial overwhelmingly demonstrates that Milton’s intent was for the  
28 bequest to be given to the school bearing his name.

1 II.

2 LIST OF ALL CLAIMS FOR RELIEF

3 A. THE ESTATE'S CLAIMS (PETITION FOR DECLARATORY RELIEF AND SUPPLEMENT)

4 1. Construction of Will (First Claim for Relief, pp. 6-7)

5 The Estate seeks a declaratory judgment from the Court that the \$500,000 bequest to the  
6 School in the Last Will and Testament of Milton I. Schwartz lapsed because there is no existing  
7 entity named after Milton I. Schwartz on a perpetual basis.

8 2. Fraud in the Inducement (Second Claim for Relief, p. 7)

9 The elements of fraud in the inducement are as follows: (1) a false representation made by  
10 the Board of Trustees to Mr. Schwartz; (2) the Board of Trustees' knowledge or belief that the  
11 representation was false (or knowledge that it had an insufficient basis for making the  
12 representation); (3) the Board of Trustees' intention therewith to induce Mr. Schwartz to consent  
13 to the agreement; (4) Mr. Schwartz's justifiable reliance upon the Board of Trustees'  
14 misrepresentation; and (5) damages to Mr. Schwartz resulting from his reliance. *See J.A. Jones*  
15 *Const. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290 (2004).

16 Based on the anticipated evidence to be admitted at trial, it is clear that the Board of  
17 Trustees represented to Mr. Schwartz that the name of the School would be changed to MISHA in  
18 perpetuity on multiple occasions. Either these representations were false or the School breached  
19 its agreement when it took affirmative steps to change the name of the school.

20 After the School's initial breach of their agreement in the early 1990s, Mr. Schwartz  
21 ceased providing financial support to the School. Realizing the School needed additional funding,  
22 and taking into account that Mr. Schwartz was a major donor, in 1996, the Board of Trustees  
23 again represented to Mr. Schwartz that it would rename the school to MISHA in perpetuity in  
24 order to induce Mr. Schwartz to resume his financial donations and contributions to the School.

25 As a result of the Board's representations and conduct, Mr. Schwartz resumed his  
26 financial contributions and solicitation. Moreover, and in reliance upon the School's  
27 representations, Mr. Schwartz devised a specific bequest within his Will to provide additional  
28 financial assistance to MISHA after his death. As such, Mr. Schwartz justifiably relied upon the

1 school's representations.

2 The Estate seeks both declaratory relief concerning the voidability of the \$500,000  
3 bequest and damages proximately caused. The Estate also seeks punitive damages.

### 4 **3. Breach of Contract (Fifth Claim for Relief, p. 9)**

5 The Schwartz Naming Rights Agreement is a valid and enforceable contract under Nevada  
6 law. The Estate seeks damages and specific performance to remedy the School's breach of the  
7 Schwartz Naming Rights Agreement. As to the former, the Estate seeks reimbursement of the  
8 initial \$500,000 that Milton gave a consideration for the Schwartz Naming Rights Agreement  
9 (restitution damages) and reimbursement of the additional gifts Milton made from 1989 through  
10 his death (reliance damages). According to Milton's bookkeeper (who was also Acting Secretary  
11 of the School's Executive Board from 1988-1990), total restitution and reliance damages,  
12 excluding interest, is approximately \$1,055,853.75. As to the latter, the Estate seeks an order  
13 mandating that the School restore its legal name to the Milton I. Schwartz Hebrew Academy as  
14 well as grades K-8 and the original building on the Hillpointe campus.

### 15 **4. Promissory Estoppel (Sixth Claim for Relief, pp. 9-10)**

16 Even if the Schwartz Naming Rights Agreement is not a legally enforceable contract,  
17 Milton nevertheless relied on the School's promise to his detriment. The Estate is, therefore,  
18 entitled to restitution of all monies that Milton gave the School in reliance of the School's  
19 promise, which, excluding prejudgment interest, is approximately \$1,055,853.75.

## 20 **III.**

### 21 **LIST OF AFFIRMATIVE DEFENSES**

#### 22 **A. THE ESTATE'S AFFIRMATIVE DEFENSES**

- 23 1. Bequest Void for Mistake (Third Claim for Relief, p. 8)
- 24 2. Offset of Bequest Under Will (Fourth Claim for Relief, p. 8; Objection to School's  
25 Petition, at p. 7)
- 26 3. Revocation of Gift and Constructive Trust
- 27 4. Fraud in the Inducement (Objection to School's Petition, at p. 7)
- 28