

Case No. 78341

**In the Supreme Court of Nevada**

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

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

Appellant,

*vs.*

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

Respondent.

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Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

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

**APPELLANT'S APPENDIX  
VOLUME 11  
PAGES 2501-2750**

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1 the world is that possible appropriate to have him testify as a so-called expert  
2 witness? I've never heard of such a thing.

3 The second opinion is hearsay conversation where he says Mr.  
4 Schwartz told him in 1994, that he'd give a million dollars to the school if the  
5 school would be named for him, which of course, interestingly enough,  
6 contradicts his other statement.

7 THE COURT: No. No, this is what -- the Rabbi is the one who  
8 started the other school. And for a period of time, Milton was involved with  
9 the other school.

10 MR. JONES: Right.

11 THE COURT: And he promised them \$100,000 if they'd name that  
12 school after him.

13 MR. JONES: Oh, I'm sorry.

14 THE COURT: That's how I read that.

15 MR. JONES: Okay.

16 THE COURT: Which I think is just fact.

17 MR. JONES: Well, maybe I just misread it, but then --

18 THE COURT: I don't think that's -- that's an opinion.

19 MR. JONES: And then telling him that it was his understanding --  
20 Milton Schwartz told him that what his understanding was of his intent in  
21 naming the school.

22 Your Honor, I guess I would have to ask this Court how in the  
23 world is that appropriate in a court of law to have a rabbi come in and say,  
24 well, you know, in the Jewish faith that this is something that's important to  
25 people and, therefore, that's why he did it. I think that's appalling.



1 THE COURT: That's the ultimate question. That's the ultimate  
2 question. So, I'm not sure he can say that, but I did think some of this was  
3 proper expert testimony because many of us may not know some of these --  
4 and, you know, this is his opinion as to what the Jewish religion provides for,  
5 but there's -- on the first page of his report, it starts like the fourth paragraph,  
6 the long paragraph: In the Jewish religion, it is important for members to  
7 perform good deeds. I mean to the extent the jury needs to hear that, I  
8 think --

9 MR. JONES: And how does that relate to --

10 THE COURT: -- I think if that was just the jury.

11 MR. JONES: -- to necessarily relate to Mr. Schwartz? Because  
12 that's a general statement, so --

13 THE COURT: Right.

14 MR. JONES: -- how is it relevant to our trial unless they can relate  
15 it back to Mr. Schwartz? And the only way they could do that is through  
16 hearsay. You can't bootstrap in a, at least from my perspective -- I mean I  
17 could think of all kinds of absurd results. I'll start getting experts for all kinds  
18 of interesting propositions that would then allow me to somehow or another  
19 bootstrap hearsay testimony in.

20 Because even if he says that, what relevance does that have in this  
21 case unless it could be tied back to Mr. Schwartz and his intent that there is --  
22 that some Jewish people that have this belief and that the Jewish faith, this is  
23 an important issue. How religious was Mr. Schwartz? And if he was real  
24 religious, is that like he did this? That to me is exactly what the hearsay rule  
25 has been created to prohibit.

1                   So, I don't know -- you know, obviously the Court's going to do  
2 what it --

3                   THE COURT: Uh-huh.

4                   MR. JONES: -- it thinks is right, but I -- is there anything else that  
5 the Court thinks is appropriate for the rabbi to testify about?

6                   THE COURT: Well, I was wondering because he seemed more of a  
7 fact witness to me than an expert. He --

8                   MR. JONES: Well, he is.

9                   THE COURT: -- he has these two incidents that he relates where he  
10 says: When Milton was on his break from the Hebrew Academy, he came to  
11 me in my little school that I had started and said I'll give you \$100,000 if you  
12 name it after me, but then he, again, he mended fences and went back to the  
13 Hebrew Academy. So that's just a fact.

14                   And then he talks about how in 2004, he was associated with  
15 something different and Milton said, would you -- if I give you money, would  
16 you name the educational sanctuary after him. And the guy said, I did. He  
17 gave me the money, and I did it.

18                   So, I have problems with going on and then tying that somehow to  
19 the Schwartz -- the Milton Schwartz Hebrew Academy concept. I mean I did  
20 see that he does have expert information about the theory of within the Jewish  
21 religion of why one --

22                   MR. JONES: I --

23                   THE COURT: -- makes charitable contributions kind of like Dr.  
24 Sabbath said in her letter we're recognizing this about you.

25                   MR. JONES: I certainly understand that part of your point, Judge.

1 I don't know how that has any place in a trial in this case. There's no evidence  
2 that Mr. Schwartz did -- not from Mr. Schwartz -- Milton Schwartz -- there's no  
3 evidence from Mr. Schwartz, other than hearsay, that the reason he did this is  
4 because of the reasons as dictated by the rabbi as something that could have  
5 been the reasons he did it.

6 And so, what -- the problem with that kind of testimony is if the  
7 Court allows it in, let's just say we had a jury, then the jury hears -- they -- I  
8 think that that provides a great basis for error. Well, if the Court allowed that  
9 in, that must have been the reason that he did it. If you don't allow the  
10 hearsay in -- which I think it would be clear error to allow that kind of a  
11 statement in from the rabbi of what Milton Schwartz told him -- if you don't  
12 allow it in, then you've got this testimony in a vacuum. And the only inference  
13 to be raised as to why it came in is because it must relate to this case and that  
14 must be the reason why Milton Schwartz did this.

15 I just think it creates a terrible precedent and a terrible  
16 circumstance for testimony that is disconnected to the specific issues in this  
17 case. I'm not --

18 THE COURT: Okay.

19 MR. JONES: -- disputing that he's a rabbi and he has some  
20 rabbinical knowledge and that's all well and good, but how is that appropriate  
21 to come up in this case? There's nothing in the bequest. There's nothing in  
22 the resolution that says -- that talks about this issue and suggests in any way,  
23 shape, or form that this is why he was doing it.

24 THE COURT: So, even -- he does have religious knowledge, and  
25 it's here in this one little -- in two little paragraphs about this is the basic tenet

1 of the Jewish religion or whatever.

2 MR. JONES: Right.

3 THE COURT: I can see how he's an expert there, but I understand  
4 your concern that how he can link that to Milton is -- I mean that seemed like  
5 he's making -- I don't know how he gets there. He does have factual  
6 information, though. He has two specific incidents when he talked about  
7 money and naming things with Milton. He had two conversations. Those are  
8 just fact.

9 MR. JONES: I agree.

10 THE COURT: It's not an expert opinion. It's just a fact. He's just a  
11 fact witness.

12 MR. JONES: And those facts are blatant hearsay, and they're  
13 excluded by the hearsay rule.

14 THE COURT: No, not really. I mean --

15 MR. JONES: Why would they not be, Your Honor?

16 THE COURT: Milton came to him and said --

17 MR. JONES: It's an out-of-court statement being offered for the  
18 truth of the matter.

19 THE COURT: Right, but what did the -- Rabbi Wynne do in  
20 response? When he -- Rabbi Wynne testified the reason why at whatever this  
21 is, I don't know -- the Schule -- The reason why it ended up this being named  
22 the Milton Schwartz Education Center is because that was the condition of the  
23 gift, so I honored it. That's -- isn't that (indiscernible) testimony?

24 MR. JONES: Well, he can say that -- he can say what was in his  
25 mind --

1 THE COURT: Uh-huh. Right.

2 MR. JONES: -- his belief. He can't say what Milton Schwartz said  
3 to him.

4 THE COURT: Okay.

5 MR. JONES: There's a difference. I certainly can appreciate that  
6 point, but, again, how that's -- and that, by the way, is not being -- he's not  
7 being -- he's being offered here as an expert witness, not as a fact witness.  
8 And so, if that's the Court's position, I would vehemently object to them then  
9 trying to use him as a fact witness when they've offered him as an expert.

10 THE COURT: Okay. Thanks.

11 MR. FREER: Your Honor, you kind of hit the nail on the head with  
12 respect to he's both. He's a percipient expert, nothing different than a treating  
13 physician. We agree with you that the only expert testimony there is  
14 paragraphs 4, 5, and 6. The rest of it is fact witness. And the purpose for the  
15 expert testimony is to allow him to lay a foundation regarding the tenets of  
16 Jewish religion to put into context the statements or the conversations that he  
17 had with Milton.

18 Now, back to the whole hearsay, it does relate back because  
19 hearsay in this case in terms of the portion of the trial dealing with the  
20 construction of the will, hearsay is completely admissible for any and all  
21 reason with respect to the decedent and his intent.

22 THE COURT: Right, but here was my concern about -- he seems to  
23 just be drawing the ultimate conclusion. From my conversations with Milton, I  
24 know that he was very aware of these concepts from the Jewish religion.  
25 Indeed, he was keenly aware of the dual need to provide charity to education

1 and to preserve his namesake and legacy in order to continue his progression  
2 in the afterlife.

3 MR. FREER: And that was based on the 15 -- 13-year relationship  
4 they had with each other in the conversations.

5 THE COURT: Can an expert make that kind of conclusion?

6 MR. FREER: Well, I mean if you want to limit --

7 THE COURT: Because he's not talking about the will.

8 MR. FREER: -- if you want to limit that ultimate issue, but in terms  
9 of the hearsay discussions, I mean we briefed the hearsay with respect to  
10 intent --

11 THE COURT: Yeah.

12 MR. FREER: -- ad nauseum.

13 THE COURT: Yeah. Right.

14 MR. FREER: And --

15 THE COURT: But my problem here is that he wasn't dealing with  
16 Milton that last -- it's interesting. The last time he came back to him and said,  
17 do you need some money, \$100,000, name it after me, that was right about the  
18 time he wrote the will. I mean I know it was amended a couple of times, but  
19 that's right about the time he wrote the will in 2004.

20 But it doesn't seem to indicate that that was in the context of  
21 writing his will. And so, that's kind of the distinction here. I mean he could  
22 draw his conclusions about why Milton wrote his will the way he did, but  
23 that's not based on anything Milton might have sat down and talked to him  
24 and say, look, I want to try to honor this principle that we've talked about and,  
25 you know, how would I do this? Would it work if I do this in my will?

1           It's just a general -- I had general conversations with him about  
2 these issues. Okay. But I don't -- how can you draw that conclusion? I mean it  
3 doesn't seem to me --

4           MR. FREER: Well, maybe we limit that ultimate conclusion. But  
5 the issue here is whether or not he's allowed to testify at all.

6           THE COURT: Right.

7           MR. FREER: And, clearly, he meets the standards for an expert  
8 with respect to paragraphs 4, 5, and 6. He also has percipient testimony with  
9 respect to that. And, you know, with respect to discussions regarding the  
10 intent and stuff, you go back to the *Jones Estate* case where basically in  
11 matters of will construction, any evidence is admissible to explain what the  
12 testator meant. And so, all this does is help lead to what -- remember this  
13 Court said, the ultimate question of fact, and this is the order of 3/10/15: The  
14 ultimate question of fact will be decided by the jury on the Adelson Campus'  
15 claim to compel distribution is whether Decedent Milton I. Schwartz intended  
16 the 500,000 bequest, identified in Section 2.3 of his Last Will and Testament to  
17 be made only to an entity named after him bearing the name Milton I.  
18 Schwartz Hebrew Academy.

19           And with respect to both the Jewish tenets and beliefs and his  
20 interactions with Milton, that is evidence that is relevant to what Milton  
21 understood and intended when he drafted his will. Did he draft --

22           THE COURT: So, again, because your couching this guy as an  
23 expert, which puts him kind of in a different category in the jury's mind.  
24 Based upon such conversations, it is my firm belief and understanding that  
25 this was Milton's lifelong practice and intent to make contributions that would

1 bear his name and ensure a legacy for his name. Indeed, from our  
2 conversations, it was Milton's clear intent that the Milton I. Schwartz Hebrew  
3 Academy be named after him in perpetuity for reasons including, but not  
4 limited to, religious beliefs that he could only progress in the afterlife through  
5 good deeds bearing his name.

6 MR. FREER: That's a great conclusion, Your Honor. I would love to  
7 keep that conclusion, but if Your Honor's got problems with it --

8 THE COURT: I don't --

9 MR. FREER: -- we'll have a limiting instruction with respect to --

10 THE COURT: I'll --

11 MR. FREER: -- the ultimate -- with that ultimate conclusion.

12 THE COURT: Yeah, how can he come to this? He can't invade the  
13 province of the jury.

14 MR. FREER: He's a very talented man, Your Honor.

15 THE COURT: Okay. All right. He can't invade the province of the  
16 jury.

17 MR. FREER: So, I mean but bottom line, what we're looking for is  
18 just having the foundation laid as to what the Jewish customs and beliefs  
19 were --

20 THE COURT: Uh-huh.

21 MR. FREER: -- because we're talking about what did Milton  
22 understand and what were his beliefs when he was drafting that will.

23 THE COURT: Uh-huh.

24 MR. FREER: Having him talk about paragraphs 4 ,5 ,and 6 with  
25 respect to the donative intent, and the meetings, and the dual purposes, that's



1 clearly within his realm as an expert. If Your Honor wants to limit the amount  
2 of testimony that it has in terms of coming to an ultimate conclusion based on  
3 that, that's fine, but he should be allowed to testify as to those Jewish tenets  
4 and beliefs, and he should be allowed to testify as to his personal knowledge  
5 of interactions with Milton in terms of drawing an ultimate conclusion. I will  
6 stipulate here and now that he can't draw an ultimate conclusion.

7 THE COURT: Okay. Thank you.

8 MR. JONES: Think about what they're saying, Judge. They're  
9 saying they want to be able to get the rabbi to say in the Jewish faith, this is  
10 why you do something like this. And that alone -- so what happens in closing  
11 argument? What does a lawyer say? The lawyers says that's why -- as the  
12 rabbi told you, that's why Milton Schwartz did this. That's why this was  
13 important.

14 So, even though there will be no testimony to that effect, that's  
15 what the lawyer's going to say in argument.

16 THE COURT: Uh-huh.

17 MR. JONES: That is totally inappropriate because that wouldn't be  
18 what the evidence is. This is testimony that you're suggesting that it be  
19 allowed, it would be given in a vacuum. So, there's a general proposition.  
20 That's like stereotyping that every Jewish person in the world, this is the only  
21 reason they would have done it because that is the only reason they want it in  
22 is to create an inference that that's why Milton Schwartz did it.

23 And, by the way, you cannot be an expert witness and a percipient  
24 witness. You can't be both.

25 THE COURT: Right.

1 MR. JONES: So --

2 THE COURT: Well, a treating doctor technically is, but --

3 MR. JONES: Well, you're right.

4 THE COURT: But --

5 MR. JONES: A treating doctor is an exception.

6 THE COURT: Right. But --

7 MR. JONES: I'm sorry. Go ahead, Your Honor.

8 THE COURT: -- but I mean this is not in the same context. He  
9 doesn't talk about this being in the context if I was his religious advisor. He  
10 talks about this in the context of they were friends and they talked about  
11 religion, and they --

12 MR. JONES: And that's really interesting --

13 THE COURT: Okay.

14 MR. JONES: -- but it has nothing to do with admissible evidence in  
15 a court of law by an expert witness.

16 THE COURT: Uh-huh.

17 MR. JONES: And think of the prejudicial effect. You get to say the  
18 statement. It's like the smoking gun kind of thing. You get to throw out the  
19 smoking gun, and then in closing argument the lawyer gets to point and say  
20 they're the ones that were holding the gun.

21 THE COURT: Uh-huh.

22 MR. JONES: It's just completely -- I've never heard of any such a  
23 thing. And, by the way, this whole idea of the decedent's intent, that's okay to  
24 talk about, that is in connection with a will issue, an issue in the will.

25 THE COURT: Right.

1 MR. JONES: The will has nothing to do with naming rights. I defy  
2 Counsel to point to me where it says in the will that I've given this half a  
3 million dollars for the naming rights. It doesn't say that.

4 THE COURT: Right. Yeah. And so, I understand that, which is why  
5 it seems to me that I appreciate the fact that he's identified as an expert, but it  
6 really seems that he's more of a percipient witness because he had these two  
7 interactions with Milton that were consistent with how he acted in the naming  
8 of the Milton I. Schwartz Hebrew Academy. Those were -- just because -- it  
9 does go to -- in the context of a will, it does go to what did the person who  
10 wrote the will mean in those words. And that's where we get into this whole  
11 problem of what if there's no more Milton I. Schwartz Hebrew Academy.

12 So, that testimony, it seems to me, is relevant to the idea of would  
13 he have only wanted it to be -- if it was the Milton I. Schwartz Hebrew  
14 Academy or would it -- because with no -- this is about drafting wills. This is  
15 all this is relevant to. This is not relevant to did he have an agreement, did  
16 they breach the agreement. It's not. This is a very -- that's why it's such a  
17 mess.

18 This is about the will. And that's what I keep saying, this is about  
19 the will. What did he mean when he said in his -- and I understand we've  
20 gotten into this whole -- of whether there was an agreement in perpetuity, but  
21 it's really about this will. What does that language mean when you don't have  
22 a successor clause that says, I leave this to the Regional Justice Center or  
23 whatever successor courthouse there may later be. That's the will. That's the  
24 will issue.

25 All he's talking about here is I dealt with him twice in which -- the

1 way he dealt with me is consistent with how -- why he would have -- this is  
2 what he would have meant in -- the jury should think this is what he meant in  
3 the will.

4 MR. JONES: No, you see I --

5 THE COURT: So, that's the problem with this. It's trying to jumble  
6 up three different things.

7 MR. JONES: And I believe that --

8 THE COURT: I'm sure he meant well, and he was just telling the  
9 truth about his interactions.

10 MR. JONES: Sure.

11 THE COURT: But I have real problems with it, the way it's written.

12 MR. JONES: Well, obviously, as do we, Your Honor.

13 THE COURT: Yeah.

14 MR. JONES: And we would ask that he be stricken. It's not  
15 appropriate for him to testify in this case. It's just not. Any testimony he gives  
16 that is not clearly hearsay is speculative in nature.

17 THE COURT: Right. Okay.

18 MR. JONES: So, as to what Mr. Schwartz's intent was in 1990.

19 THE COURT: Right. Yeah. Because, of course, it predates. But I'm  
20 only talking about -- this to me is relevant to the will --

21 MR. JONES: I understand what you're saying.

22 THE COURT: -- which he wrote in 2004.

23 MR. JONES: I understand.

24 THE COURT: And it's consistent with what he at the -- here at the  
25 same time was talking to his friend about, about giving money to his

1 organization which, in fact, named a room after him. That's interesting. That's  
2 relevant to the will, but the rest of it I just have a real problem with.

3 MR. JONES: So, you're ruling is, Your Honor?

4 THE COURT: So, I mean I understand they named him as an  
5 expert. And I appreciate the fact that he is an expert. I don't know that there is  
6 any way you could couch his testimony other than invading the province of  
7 the jury with respect to what went on. And besides it's very speculative  
8 because this all went on before he ever knew him. So, that's my problem with  
9 most of this.

10 The two anecdotes about the two times he dealt with Milton on  
11 naming rights issues, those to me are relevant, but they're facts. He's not an  
12 expert. Those are just facts that I had two interactions with Milton, other than  
13 our long relationship. I get that, but I met him in 1994 in the middle of his fight  
14 with the Hebrew Academy and he was talking about -- and he made this offer.  
15 We didn't accept it, whatever. That goes to when he then wrote his will in  
16 2004.

17 I mean I can see how there's -- the 2004 one to me is much more  
18 relevant to the will. That's around the same time and it's totally consistent  
19 with what he was doing in this odd language that he used. I mean did Oshins  
20 really write this will? I think -- didn't Jonathan write it for him? I think  
21 Jonathan wrote it for him. He and Jonathan stepped down. Didn't they write  
22 this will together? Because this will is, I could tell you, not work product out of  
23 that office. It seems this was a self-drafted will, as I recall. Really odd  
24 language. It would not have looked like that had any of these people actually  
25 written it for him.

1           So, if the argument is can he be introduced as an expert?  
2   Although he has information and expertise, which is undeniable, undeniable  
3   that he is an expert on the teachings of the Jewish religion, that to me -- I just  
4   don't see how you can get that in, because you have to make this ultimate  
5   conclusion that this is why he wrote the will the way he wrote it. And an  
6   expert can't do that. An expert can't do that.

7           So, I don't see how his testimony could be anything other than as a  
8   fact witness based on these interactions that he personally had with Milton.  
9   He just -- it's unrelated to why he did what he did. He can't say in 18 -- 19 --  
10   not 18 -- 1988 that this was what motivated Milton. I just don't see how he can  
11   do it. I don't think there's any way you can use it as expert testimony from  
12   him.

13           I do disagree with you, although I think it's incredibly specific as to  
14   does he have factual testimony he can give. That's a different question, and --

15           MR. JONES: Well, they didn't offer him as a fact witness, Your  
16   Honor.

17           THE COURT: -- in a different way. So --

18           MR. JONES: And we would object if they try to offer him as a fact  
19   witness now.

20           THE COURT: Okay. All right. So, that's the question then. If you --  
21   it's a Rule of Civil Procedure question, which does apply in probate. You know  
22   they don't want to. He's identified as an expert witness, and -- but really what  
23   he is to me is a fact witness, but he wasn't identified as a fact witness.

24           MR. JONES: He's not.

25           THE COURT: And so, if he can't testify as an expert, can he testify

1 at all? That's the question.

2 MR. JONES: We would object to him -- we'd move to strike him as  
3 a witness and certainly we didn't move to strike him as a fact witness, because  
4 they never offered him as such. And so, had they done that, we would have  
5 moved to strike him as a fact witness as well.

6 THE COURT: Okay.

7 MR. FREER: In response to that, Your Honor, what he's going to  
8 testify as a fact witness is already laid out. They already deposed him with  
9 respect to the facts.

10 THE COURT: But it's the civil procedure concept that --

11 MR. FREER: And --

12 THE COURT: -- if you identify somebody as an expert witness and  
13 it turns out they're not allowed to testify as an expert witness, can they still  
14 testify as a fact witness?

15 MR. JONES: I certainly don't believe they can. I've never seen that  
16 happen once.

17 THE COURT: That an expert's stricken as an expert, but --

18 MR. FREER: Well, when they're stricken as an expert, they're not  
19 offered -- allowed to give expert testimony. But with respect to that percipient  
20 testimony that's already there, they could still provide that. There's no harm  
21 or --

22 THE COURT: Usually an expert that's stricken, they don't have any  
23 personal knowledge.

24 MR. FREER: Correct.

25 THE COURT: They very seldom have personal knowledge. I mean

1 sometimes they -- I mean they just -- I don't ever know an expert who has  
2 personal knowledge. This is very unusual. Usually you don't see an expert  
3 with personal knowledge.

4 MR. JONES: Your Honor, let me put it this way, I've never seen an  
5 expert witness -- and as you said, a doctor's a good example. A doctor that  
6 has been identified as an expert witness, who has been stricken as an expert,  
7 but then was allowed to testify as a fact witness or a percipient witness. So, I  
8 would object to them trying to at this point offer the rabbi as a fact witness  
9 when he has been offered up to this point in time, a week and a half before  
10 trial, as an expert witness.

11 THE COURT: Okay.

12 MR. FREER: And I would go back to there being no prejudice. If  
13 Your Honor wants examples or us to look at it, we can turn around and come  
14 back on the -- what is it, the 15th, and address the issue whether he can testify  
15 as a percipient witness if he's stricken as an expert.

16 THE COURT: Okay. That's the ruling is that -- because I'm with Mr.  
17 Jones. Like I said, the only thing I can think of is a doctor. And doctors do  
18 come in all the time, and they don't give any expert opinions. They just talk  
19 about their treatment. But they were identified that they're going to come in  
20 and talk about their treatment. We're going to have an expert who testifies  
21 about the whole global picture. This person was just a chiropractor, and he  
22 did three treatments. They come in all the time like that.

23 So, that -- it's really just the rule of civil procedure, which is if you  
24 identify an expert witness who also is within his expert opinions has personal  
25 knowledge like a doctor, some doctors come in and give expert opinions all



1 the time, and they have personal interactions with the person and they're  
2 based on facts they actually know. But this is one where he was identified as  
3 an expert. I don't know what your disclosure said. To me, it's just a civil  
4 procedure issue of can he now testify because he absolutely has personal facts  
5 known to him. Can he testify in that context?

6 So, that would be the only question to be answered because  
7 otherwise I don't see any way he can testify. It just -- everything he says sort  
8 of leads to the ultimate question for the jury is why was he doing this. The  
9 two factual interactions seem to me to go -- well, actually, really only the  
10 second one, now that I think about it. The second one goes very much to at  
11 the same time he was writing his will, he made this other offer to this -- what is  
12 this? It's a Schule. I don't know what that means.

13 MR. FREER: A Schule is a school I believe.

14 UNIDENTIFIED SPEAKER: A study group.

15 THE COURT: Okay. A study group? Okay. He made the offer to  
16 this Schule to give them \$100,000 to name -- to naming the room after him.  
17 That's the same time he's writing his will. So, that to me is relevant. That is a  
18 fact that is relevant, but if he wasn't identified as offering facts, just as an  
19 expert, can he still testify?

20 So, if you want to research that, fine, and we can talk about it on  
21 Wednesday, but otherwise I don't see any way he can testify.

22 MR. FREER: Okay. We will supplement, Your Honor.

23 THE COURT: It's a real limited issue that he can testify at all and  
24 not as an expert, absolutely not as an expert.

25 MR. JONES: Your Honor, if they're going to do that, we're

1 supposed to respond to that when?

2 THE COURT: I don't know. Just bring me -- I don't need to see it in  
3 writing. Just if you can bring me something, because I don't know of anything  
4 out there that says -- has ever really addressed this. I've never seen it. It's  
5 bizarre.

6 MR. JONES: I haven't either. That's why --

7 THE COURT: It just seems to me that if you're not -- if you're not --  
8 if a witness isn't identified, they can't testify. Okay, fine. So, when an expert's  
9 identified, and he's stricken because it's not expert testimony, but he has some  
10 interesting facts to relay, relevant facts, can he still do that? That's the  
11 question. Good luck writing a Westlaw query on that. I don't know how  
12 you're going to find it.

13 MR. JONES: Your Honor, while I'm thinking about it, could we get  
14 -- maybe by Tuesday, can we get -- we're going to have the hearing on the jury  
15 issue. Could we get by --

16 THE COURT: On Wednesday?

17 MR. JONES: -- Noon by Tuesday, could you get us your  
18 opposition?

19 MR. FREER: The opposition? Yeah.

20 THE COURT: Something -- if there's something out there that says,  
21 here's a matter of law --

22 MR. LeVEQUE: By noon Tuesday?

23 MR. FREER: For the Wednesday hearing?

24 THE COURT: And we don't have time for them to respond in  
25 writing.

1 MR. JONES: Thank you.

2 THE COURT: Unless you want to do close of business Monday,  
3 and they have until close of business Tuesday. I just -- I mean I just don't  
4 know -- I'll be surprised if you can find anything. It's such a -- it just isn't  
5 something that happens. And it's -- I think if someone can --

6 MR. JONES: So, he's stricken as an expert but --

7 THE COURT: Yeah.

8 MR. JONES: -- there's a question in the Court's mind as to whether  
9 or not he would be appropriate as a fact?

10 THE COURT: He could still be allowed to testify as a fact witness.

11 MR. JONES: All right. I understand. And the parties will further  
12 brief the issue.

13 THE COURT: Okay. Rushforth is entirely different.

14 MR. JONES: I would --- well, I would think so, Your Honor, only  
15 because I've had -- I've actually tried this a time or two in my career, and I've  
16 never been successful with it. Every opinion he has with I guess the exception  
17 of Opinion Number 5 that based upon the extrinsic of parol evidence, he can  
18 tell the Court what Mr. Schwartz's intent was, which I think I guess if that's the  
19 case, why would we need a jury or the Court depending on who it is.

20 THE COURT: Right. So, again, the question of the report itself not  
21 coming in, you're moving to exclude in its entirety. My question is, is there  
22 something he has that meets hallmark -- that he meets hallmark. I don't know  
23 that we really need to discuss that issue.

24 MR. JONES: You know, well, first of all, that's an interesting  
25 question.

1 THE COURT: But we've got to --

2 MR. JONES: He's a lawyer, so presumably he could testify about  
3 legal issues --

4 THE COURT: Right.

5 MR. JONES: -- and interpretation of documents.

6 THE COURT: Right. Practicing --

7 MR. JONES: I'm not going to dispute that.

8 THE COURT: Right.

9 MR. JONES: I've just never seen a court allow a lawyer to come in  
10 and tell the Court what the law was as an expert witness.

11 THE COURT: Right. And then --

12 MR. JONES: That's what they're trying to do. I mean --

13 THE COURT: Exactly. And that's I think a distinction. I agree and  
14 that's the way they said they were planning on presenting it was that Mr.  
15 Rushforth can testify about practices. And that's why I was asking, I don't  
16 think that an estate planner wrote this will. Am I remembering -- so I thought  
17 that Milton dictated it to Jonathan.

18 MR. FREER: The testimony -- this is my best recollection, but my  
19 understanding is that they got an exemplar -- kind of a template copy from an  
20 attorney. Jonathan sat down and Milt -- with Milt, and they typed the --

21 THE COURT: Yeah.

22 MR. FREER: -- typed the will. Jonathan's an attorney.

23 THE COURT: Right. He is, but I mean I think Mr. Rushforth, in  
24 distinction from being an attorney -- I mean I could sit down and write my own  
25 will. But he's an estate planner. He's got -- and above all these things, he's

1 written these -- it's different. So, what he as an estate planner would do -- like  
2 that's what I was saying, I could not believe the Oshin -- the Oshin's Firm did  
3 not write that will. It just doesn't look like a will that came out of the attorney's  
4 office that does this for a living. It's very much a personal will. He wrote it.  
5 He wrote it.

6 MR. JONES: And I believe you have seen a few wills in your time,  
7 Your Honor.

8 THE COURT: Yeah. So, very clearly, he wrote this will.

9 MR. JONES: I don't know --

10 THE COURT: So, I guess that's the problem that I had with  
11 Rushforth is that you can testify, and he does this all the time, I see him all the  
12 time in malpractice, this is not -- you know, if you're holding yourself out to be  
13 this, then this is not good practice. That I have no problem with.

14 MR. JONES: I agree. And certainly, in a malpractice case, there's a  
15 -- what the standard of care is, is a different issue. He's testifying as to what  
16 the legal interpretation of -- well, his opinion is about the successor clause,  
17 interpretation of the legal term and supporting authority. That's a legal  
18 conclusion to this Court. That is your providence that you get to decide.

19 The opinion of NRS 133.200, the anti-lapse statute. That's your  
20 decision. That's not an expert's opinion. That is inappropriate regarding the  
21 ambiguity that exists in Milton I. Schwartz's intent of his bequest. That's the  
22 ultimate issue of the case that is the matter of law by the Court, is the  
23 document ambiguous or not. You decide that, not -- I can argue about it. Mr.  
24 Freer can argue about it, but you decide that issue.

25 And a lawyer coming in and adding on top of what Mr. Freer

1 argues about whether the will is ambiguous or not is -- then they get to double  
2 team me. He gets another lawyer to get a shot at whether that lawyer thinks  
3 there's an ambiguity. That's your decision to make.

4 MR. FREER: It's already three against two.

5 THE COURT: So, I guess just in looking through these, if we start  
6 the questions presented portion of the report, letter E, Questions Presented,  
7 and the first one being: What is the purpose of a successor clause?

8 MR. JONES: Right.

9 THE COURT: What is the standard practice in the industry for  
10 including a successor clause? So, it's two different things. One is what is a  
11 successor clause. I mean that's a matter of law. That's not -- it's going to be --  
12 if we need a jury instruction on that, it's written based on where the law is.  
13 But my question is where he's talking about the context of what is the  
14 standard of practice in the industry for -- again, this is the problem. It wasn't  
15 an estate planner that wrote the will. And so, I mean this is so personal to  
16 Milton, he wrote this himself, that I'm just not sure that the standard and  
17 practice in the industry is relevant to a question the jury would be considering.  
18 I mean because that's the hallmark issue.

19 MR. JONES: Your Honor, I think you make the point. I don't know  
20 what else I could add to it. If this is essentially -- and, again, whether Jonathan  
21 Schwartz is an attorney, he does not hold himself out as an estate planning  
22 attorney with a degree of skill and expertise of an attorney that practices in  
23 that area of the law. I mean that's just -- there's no dispute about that.

24 THE COURT: Uh-huh.

25 MR. JONES: So, what the standard and practice is in that

1 particular subspecialty of the law is irrelevant to the construction of this will,  
2 as you've already pointed out. I don't know what else I need to say about that.

3 THE COURT: Yeah. Okay. Thanks.

4 MR. FREER: Your Honor, as we pointed out in our opposition, E-1,  
5 2, and 3 are the issues that we would concede are what his testimony is  
6 limited to. With respect to explaining -- I mean he is an attorney, but we've got  
7 highly technical terms. Having an attorney explain why these attorneys use  
8 the language, you know, and why they use successor clauses and what the  
9 standard practice is, I know Your Honor's already leaning the other way, but  
10 that's why we think that he would be able to assist the jury with respect to that  
11 issue.

12 THE COURT: All right. With all due respect, I think that Mr. Jones  
13 has a point that E-1 is instructing the Court: A successor clause is intended to  
14 provide one or more alternate beneficiaries when the bequest to a specific  
15 beneficiary fails. Okay. That I think -- that's just a question of law. If a finder-  
16 of-fact needs to be instructed on what is the law, that, you know, looking at  
17 this will, ladies and gentlemen of the jury, there's no successor clause. You  
18 are informed that a successor clause is the following. And the question of the  
19 fact the jury has to make, or the finder-of-fact, is that if we don't see that  
20 language in here, then that's question number 1.

21 Similarly, question number 3, E-3, that to me is -- that's the  
22 ultimate conclusion that whoever it is that is your trier-of-fact is going to make.  
23 My -- where I'm struggling with is E-2, this whole section about standard of  
24 practice, I mean why you would do it. But the reason I got -- I mean if you  
25 were suing, like I said, you can't -- you know, I was like who wrote this. This is

1 terrible. But that's not what he's doing. He's not saying that the person who  
2 wrote this made a mistake, and it's malpractice the way they did it, which is  
3 what I see Mr. Rushforth all the time on and, yes, he is very expert at that, and  
4 I don't deny that.

5 But, again, here I'm just trying to see if there's -- I mean how is -- I  
6 understand that the kind -- he's just going to talk about standard and practice  
7 in the industry, but that's not how this will was drafted. This was drafted -- I  
8 mean this was just a gentleman who was so intimately involved in his father's  
9 estate planning. They worked on this together, and with Jonathan, he does  
10 not hold himself out. I don't know -- I mean does he do legal work for the cab  
11 company, I don't know. I just always thought he ran his dad's business, and  
12 he never held himself out to be a practicing lawyer, which is always the  
13 problem if you're giving legal advice, and you're not holding yourself out as --  
14 I just struggle with this one.

15 On the other hand, one can infer the testator really meant to say  
16 Milton I. Schwartz Hebrew Academy or its successor in interest. Well, how?  
17 How can you infer that?

18 Pecuniary bequest Milton I. Schwartz Hebrew Academy to an entity  
19 that did exist under that name creates an ambiguity. I just -- I mean it's helpful  
20 in drafting jury instructions assuming this is an issue that can go to a jury, and  
21 I'm not sure it can.

22 And this conclusion, D-1. The testator, during his lifetime, declined  
23 to make gifts to the school even though it was the legal successor of the  
24 Hebrew Academy, because it no longer bore testator's name. Do we have  
25 testimony about that?



1 MR. FREER: Say that again, Your Honor.

2 THE COURT: Did anybody testify to that? D-1. Is that a known fact  
3 that Milton stopped making gifts to the school even though he -- it was a legal  
4 successor, because it no longer bore his name?

5 MR. FREER: Yeah, I believe Jonathan and Susan Pacheco testified  
6 as to that.

7 MR. JONES: So, that's testimony about fact that somebody told  
8 him. That's not an expert opinion.

9 THE COURT: Uh-huh.

10 MR. JONES: I mean, that's like an expert getting over there and  
11 saying it's a legal opinion -- an expert opinion about what somebody told him.  
12 I mean that --

13 THE COURT: Yeah, I just -- I'm struggling with this as an expert.  
14 My conclusion. My conclusion that the decedent's will was intended to gift the  
15 Hebrew -- Milton I. Schwartz Hebrew Academy only if the schools bore his  
16 name. Unless the school bears the name indicated that, of course, fails  
17 because the pecuniary bequest -- I mean, this is the ultimate question that we  
18 started -- that we first were here talking about in 2013. This is the very first  
19 question we had. That's the whole issue in the case. I don't -- you can't -- I  
20 don't think that's appropriate for expert testimony. I just don't see how we can  
21 use this.

22 MR. FREER: Understood, Your Honor.

23 THE COURT: Okay. I'm going to grant this motion to exclude him  
24 and unlike the previous one he -- that's his role. And so, if he's excluded  
25 testifying to all that, then we're done.

1           Okay. So, what do you want to take first? Do you want to take this  
2 hearsay issues or do we want to go with these other two issues that I think are  
3 maybe -- well, I'm not going to jinx this. I'm not going to say they're easier.  
4 Seven and eight, pre-admission of documents and instructing the jury on  
5 certain issues.

6           MR. FREER: I think seven, we -- after we got together and did the  
7 exhibits --

8           THE COURT: Should we kind of agree on this?

9           MR. FREER: -- I think we're fine on seven.

10          THE COURT: Because I thought that that was the whole point of  
11 your 2.47?

12          MR. FREER: Yeah, we are now fine, so that's --

13          THE COURT: Did you agree on all of them? The last will, the --  
14 because clearly the will and the articles, those are public records. I just didn't  
15 know what -- with respect to the -- you know, they're all authenticated. What's  
16 your foundation to get them in? Are we all in agreement on that? We've got it  
17 worked out?

18          MR. FREER: Yeah, my understanding is they do have an issue --  
19 I'm sorry, I didn't mean to overstep is --

20          MR. JONES: No, go ahead. Go ahead.

21          MR. FREER: -- is that I think they have an issue with the videotape  
22 of Milton Schwartz, that they were going to withdraw that request to have it  
23 pre-admitted, but everything -- the wills, and the pledge agreement, resolution,  
24 and the other four items in their motion we --

25          THE COURT: Because we have --

1 MR. FREER: -- we have already agreed to.

2 THE COURT: -- certain things that are authenticated, no problem,  
3 the Court record and the public record. They still have to have grounds to be  
4 admitted and somebody to testify. I mean are we okay on those?

5 MR. FREER: I'll leave it to them. I just didn't want to represent  
6 that --

7 THE COURT: Okay.

8 MR. FREER: -- everything was agreed to.

9 MR. JONES: Your Honor, and Mr. LeVeque was there and Mr.  
10 Carlson.

11 MR. FREER: So, the two people that don't know anything about  
12 it --

13 THE COURT: Yeah, they're talking.

14 MR. JONES: No, I was there too, but I just want to make sure --  
15 one of them correct me if I'm wrong. We had some issues about the video  
16 interview --

17 THE COURT: Uh-huh.

18 MR. JONES: -- and when we were at the meet and confer, I believe  
19 the ultimate agreement was that the entire video could come in, but the partial  
20 transcripts -- actually, I'm kind of --

21 MR. LeVEQUE: That's what I wanted, Randall, but you -- I think --

22 MR. JONES: What did we sign?

23 MR. LeVEQUE: -- we talked about that, but you said you didn't  
24 want the video to come in, because you said that there was parts of the video  
25 that you would consider statements against interest, or party admissions, but

1 that we would stipulate to authenticity. But if you want it the other way, I'm  
2 good with that.

3 MR. CARLSON: That sounds right to my recollection, was that we  
4 stip to authenticity.

5 MR. JONES: Oh, okay.

6 THE COURT: But not admissibility?

7 MR. CARLSON: Yes.

8 THE COURT: Somebody is still going to have to come in and --

9 MR. CARLSON: I think so.

10 MR. JONES: That is -- Mr. LeVeque does remind me of the  
11 discussion.

12 MR. LeVEQUE: It was back and forth.

13 MR. JONES: There was too many things I've been trying to think  
14 about, Judge. Basically, we're not going to object to the foundational issues --  
15 authenticity and foundation. There are parts of it we believe that are  
16 admissions against -- well, I'm sorry -- statements by a party-opponent that  
17 would be hearsay, and so we have hearsay objections to some of the  
18 statements of Mr. Schwartz. Other statements of Mr. Schwartz we think come  
19 in under the exception to the hearsay rule as admissions against interest.

20 So, the -- I guess we would say to the Court the agreement is  
21 there's a stipulation as to authenticity and foundation. Is that right?  
22 Otherwise, I believe we have agreed to --

23 THE COURT: The will?

24 MR. JONES: -- we've reached a stipulation as to the other  
25 documents. In fact, I think we have even more. We have a joint exhibit list that

1 we've agreed to.

2 THE COURT: All right. So, this is mooted. It will be handled as  
3 part of the parties' stipulation based on the 2.47 meeting.

4 MR. JONES: Yes, Your Honor.

5 THE COURT: Okay. So, that will be addressed. It will instead be  
6 addressed by the parties' agreements on admissible evidence. Okay. Great.

7 Pre-instructing the jury. You know, we do have, under the general  
8 instruction portion of the new book, some these issues are addressed there.  
9 And we do read many of these things just -- you know, it's hard to believe, but,  
10 you know, when we pre-instruct the jury, we're reading. It's not something  
11 I've got memorized. There are some issues that the jury told.

12 Once the jury is selected and the -- before they're seated, this -- I'll  
13 read you -- this is what I read. We start with: This is a civil case, but it's --  
14 okay, I guess we can call it civil. Trial is to proceed in the following order, and  
15 then after instructions it's just the procedure. If I determine the facts, there's  
16 no way to correct your decision on the facts. Sometimes, there's objections to  
17 the testimony -- and we do have in here, I think -- we can read -- I have the  
18 language. For credibility or believability of a witness, we have language to  
19 read. I typically don't, but depending on what the parties want, I typically  
20 don't read that one.

21 The other things asked for here, I don't even know that there is a  
22 jury instruction on the definition of hearsay. So, I didn't see how that could  
23 even be done. The direct and circumstantial, and believability and credibility  
24 conceivably you can. Burden of the proof is generally just dealt with, you  
25 know, usually during selection. You tell them that -- you know, this is the party

1 that has the burden of proof.

2 MR. JONES: And it wouldn't be a limited -- one of the reasons we  
3 asked for that, Your Honor, it has come up at just about every trial I've had in  
4 the last ten or 15 years, because a lot of jurors -- and the Court sometimes  
5 even says it without us having to say anything. The Court says: A lot of you  
6 are familiar with -- you've heard about, you know, the criminal standard and  
7 this is not a criminal case and beyond a reasonable doubt. This is a civil case,  
8 so it just -- the only reason --

9 THE COURT: I usually go over that in jury selection.

10 MR. JONES: And if you do, that's the only point. The reason we  
11 do this -- we ask for this is we think it actually benefits both sides, assuming  
12 we have a jury. That there's a couple of basic things that kind of helps them  
13 up front understand when the lawyers get up to do opening statement, they  
14 have some context in which kind of to relate to this, like what is hearsay.

15 And, again, this is just -- we're just offering this.

16 THE COURT: Yeah.

17 MR. JONES: One of the elements of a contract, something -- you  
18 know, if didn't want to do it, I understand. I'm just -- I think that sometimes it  
19 helps a jury have some context in which to understand the opening statement.  
20 It's not a huge issue. I think it's helpful, but I leave it to the Court's discretion.  
21 It's whatever you think is best.

22 THE COURT: Okay.

23 MR. FREER: And we, just briefly, identify in our objection that it  
24 doesn't -- you know, and 16.090, basically provides unless there's a good  
25 reason to vary from the standard procedure, just stick with the standard

1 procedure. We outlined some issues, especially with any kind of pre-  
2 instruction relating to hearsay that it would be prejudicial because there's so  
3 many different avenues of where evidence is going to be admissible for --

4 THE COURT: Right.

5 MR. FREER: -- limited purposes, et cetera.

6 THE COURT: So, with respect to this request, to the extent that  
7 typically during jury selection where we have people who have been on juries  
8 before, it comes up in that context, and often times counsel will ask do you  
9 understand that in the criminal case you had to look at a different standard of  
10 care -- standard of proof and this is not a criminal case, we just have to tip the  
11 scales a little bit. I mean usually, that's how we see it. I don't -- it's not really  
12 read as an instruction to them. And I'm fine with that.

13 The description of direct and circumstantial evidence, I can read it.  
14 I typically don't, but I could read it. The believability or credibility is, again,  
15 something that I can read. Usually -- I usually don't read it, but it certainly -- I  
16 don't think there's anything that says it's improper to. It's just that I typically  
17 don't.

18 The deposition of substantive evidence, you know, usually in the  
19 final instructions we have the standard pattern instruction. I usually don't read  
20 that before, but as depositions are opened, and published, and as a -- and  
21 usually, we just tell them this is -- a lot of times you'll have people on the jury  
22 who have given depositions. So, it's not something I really instruction them  
23 on, but just as depositions come in we talk about publishing the deposition, it  
24 doesn't mean it's, you know, a book. It just means that it's going to be read to  
25 you here, you'll have a chance to hear what somebody said here, and this

1 testimony was taken under oath. It's not really an instruction.

2 Hearsay, we never define hearsay for them. That's strictly  
3 -- the judge rules on whether it is or isn't hearsay, and I've never seen an  
4 instruction -- a jury instruction on hearsay. I don't even know how you would  
5 instruct a jury on hearsay.

6 MR. JONES: It --

7 MR. FREER: Lawyers don't even understand it.

8 MR. JONES: -- yeah.

9 THE COURT: I was going to say -- I mean, that's like a whole thing  
10 on the bar exam, is this hearsay or is it not. I mean, I do not think that  
11 instructing the jury on hearsay is appropriate. My only question is, is there a  
12 strong objection -- as I said, I usually don't instruct the jury on who's got the  
13 burden of proof. In my experience, it comes up. And we deal with it in that  
14 fashion as opposed to an actual instruction.

15 I do have language on these other couple of issues here, which is --  
16 I do have credibility or believability. We start out with: You must not be  
17 influenced, by any degree, by any personal feeling of sympathy or prejudice  
18 for or against the Plaintiff, or for or against the Defendant. Both sides are  
19 entitled to the same fair and impartial consideration. The credibility and  
20 believability of a witness, essentially, is the instruction. And there are two  
21 kinds of evidence, direct and circumstantial. I typically don't read them.

22 MR. JONES: Your Honor, we don't need to belabor this. Whatever  
23 you think is appropriate. Again, I'll leave it to your sound discretion.

24 THE COURT: Okay.

25 MR. JONES: We -- I think to the extent you think it would be



1 helpful to do any of that, then we just brought it up to the Court --

2 THE COURT: Okay.

3 MR. JONES: -- and I leave it to you.

4 THE COURT: All right. Yeah, I would not read the jury or pre-  
5 instruct the jury on burden of proof. I think that it's, in my experience, almost  
6 always thoroughly examined in the context of inquiring of jurors if they  
7 understand. If the Court instructs you -- you know, if you've been on a jury,  
8 and it was criminal, it's not the same burden of proof, those kinds of things.  
9 And, also, not technically on the depositions.

10 I can read the other two. I mean I don't have any problem with it,  
11 direct and circumstantial evidence, and believability and credibility. I don't  
12 have a problem with those. I didn't say I do. All right. I guess, the -- all right.  
13 The concern I have is just whether you are -- as the concern is raised. Placing  
14 greater emphasis on those preliminary instructions that happens actually in  
15 trial, and I am -- I am concerned about that as well. Some of these things, I  
16 believe, just come up naturally in the course of selecting the jury, and it's not  
17 necessary to instruct them in the kind of detail that a jury instruction would  
18 provide.

19 So, to the extent that burden of proof comes up during jury  
20 selection, I think that's entirely appropriate. I have concerns about instructing  
21 people on the -- jurors on these other issues. I don't typically do it. So --

22 MR. JONES: Fair, enough, Your Honor.

23 THE COURT: All right. So, now we have this whole hearsay  
24 problem that is dealt with differently in probate to a certain extent and because  
25 we have this mish-mash of issues presented here, it's kind of a question of

1 context, it seems to me.

2 MR. JONES: Your Honor, I don't know how -- if you're -- we're  
3 going to get into that great detail. If we are -- could we take a short break?

4 THE COURT: Sure. Yeah, let's do that, because we're going to be  
5 here probably a little while after 5. So, yes, let's take a break until 5. Okay.

6 MR. JONES: Thank you, Your Honor.

7 [Recess at 4:50 p.m., recommencing at 5:01 p.m.]

8 THE BAILIFF: All rise. Department 26, back in session.

9 THE COURT: Okay. We're ready to go back on the record.  
10 Counsel, are we ready to proceed, or do we have some other agreement?

11 MR. JONES: Well, I wish I had an agreement we settled the case.

12 THE COURT: Yeah.

13 MR. JONES: Not that -- unfortunately, not that good of news.

14 THE COURT: Okay. Great.

15 MR. JONES: Your Honor, I told counsel during the break that,  
16 unfortunately, for me, anyway, my wife had planned a dinner with some out-  
17 of-town family members --

18 THE COURT: Sure. No problem.

19 MR. JONES: -- at 5:30.

20 THE COURT: Absolutely.

21 MR. JONES: But assuming that works for you, we could do this on  
22 Wednesday when we come over to argue --

23 THE COURT: Yes, and do we have anything on Wednesday  
24 afternoon?

25 MR. JONES: We have three left, I think, is all we have left. Four

1 has been withdrawn.

2 THE COURT: Oh, that's right one of them is withdrawn. I totally  
3 forgot.

4 MR. FREER: Right.

5 UNIDENTIFIED FEMALE: Number four?

6 MR. FREER: So, it's just the hearsay stuff.

7 THE COURT: Yeah, number four is withdrawn. So, we just have  
8 three, five, and six.

9 MR. FREER: So, on Wednesday we would come back with whether  
10 or not we can have Rabbi Wynne testify to hearsay stuff, and then the jury  
11 trial.

12 THE COURT: Because -- I'll tell you my -- I think it all comes down  
13 to the issue of prejudice. I mean, this is just stuff that he's -- anecdotally he's  
14 reported that already, so I don't know how much of a surprise it could be.  
15 Anyway, I'm not going to say anything because there might be a case out  
16 there, I don't know. I just haven't -- I've never seen it.

17 [Court and Clerk confer]

18 THE COURT: Would you -- because we're on for 10:30 after  
19 guardianship. So, would Wednesday -- would you prefer afternoon, because  
20 right now you're on at 10:30, and hopefully we can finish guardianship. Our  
21 problem with guardianships, if we have to file everything physically in court it  
22 adds, like, ten minutes to every single one of those cases, because we have to  
23 physically file -- we're supposed to file it in the courtroom. There's a reason  
24 nobody else has to do this. It's really time consuming. It's very time  
25 consuming.

1 MR. JONES: I'm available in the afternoon --

2 THE COURT: Pardon?

3 MR. JONES: -- if the Court wants to put it at 1:30, I don't know, if  
4 counsel?

5 THE COURT: Well, that may not be such a bad day. I mean, we  
6 could probably -- we can -- it looks like we can probably do it 10:30, if you think  
7 that's enough time. I mean we can work through lunch.

8 MR. FREER: We could try.

9 MR. JONES: We could try.

10 THE COURT: If we go a little bit into lunch, the that's -- I just  
11 wanted to offer you the alternative if you wanted to come afterwards.

12 MR. JONES: You know, because they're all related -- we filed it as  
13 separate motions, but they're really all totally interrelated.

14 THE COURT: They're really one, yeah.

15 MR. JONES: So, it's -- and then we'll have the issue of the jury.

16 THE COURT: Yeah, what we're going to do with the jury and --

17 MR. JONES: I don't think -- probably that won't take too long  
18 either.

19 THE COURT: What are we going to do about a jury? Do we really  
20 still need a jury. And, number two, are we -- what are we going to do about  
21 the one witness.

22 MR. JONES: Okay.

23 THE COURT: That's it. Okay. Thank you, guys.

24 MR. JONES: Thank you, Your Honor.

25 MR. FREER: Thank you, Your Honor.

1 THE COURT: Thanks for staying and helping me work through all  
2 this. Good to have it all done in advance, right.

3 [Proceedings concluded at 5:04 p.m.]  
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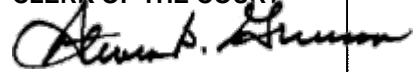
16 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
17 audio/visual proceedings in the above-entitled case to the  
18 best of my ability.  
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24 Maukele Transcribers, LLC  
25 Jessica B. Cahill, Transcriber, CER/CET-708

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

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 In the Matter of the Estate of:

15 MILTON I. SCHWARTZ,  
16  
17 Deceased

Case No.: P061300  
Dept.: 26/Probate

Hearing Date: 08/16/2018  
Hearing Time: 1:45 P.M.

18 **THE ESTATE'S MOTION FOR RECONSIDERATION OF:**

19 **THE COURT'S ORDER GRANTING SUMMARY JUDGMENT ON THE ESTATE'S**  
20 **CLAIM FOR BREACH OF ORAL CONTRACT**

21 **-AND-**

22 **EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME**

23 A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz ("Executor"), by and  
24 through his counsel, Alan D. Freer, Esq. and Alexander G. LeVeque, Esq., of the law firm of  
25 Solomon Dwiggins & Freer, Ltd., hereby submits the Executor's Motion for Reconsideration of  
26 the Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Oral Contract  
27 and *Ex Parte* Application for an Order Shortening Time ("Motion for Reconsideration").

28 ///

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1 This Motion for Reconsideration is made and based upon the pleadings and papers on file  
 2 herein, the attached Memorandum of Points and Authorities, all attached exhibits, and any oral  
 3 argument that this Honorable Court may entertain at the time of hearing.

4 DATED this 13th day of August, 2018.

5 SOLOMON DWIGGINS & FREER, LTD.

6   
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15 **EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME**

16 **EDCR 2.26. Shortening time.** Ex parte motions to shorten time may not be  
 17 granted except upon an unsworn declaration under penalty of perjury or affidavit  
 18 of counsel describing the circumstances claimed to constitute good cause and  
 19 justify shortening of time. If a motion to shorten time is granted, it must be served  
 20 upon all parties promptly. An order which shortens the notice of a hearing to less  
 21 than 10 days may not be served by mail. In no event may the notice of the hearing  
 22 of a motion be shortened to less than 1 full judicial day. A courtesy copy shall be  
 23 delivered by the movant to the appropriate department, if a motion is filed on an  
 24 order shortening time and noticed on less than 10 days' notice.

25 **DECLARATION OF ALEXANDER G. LEVEQUE IN SUPPORT OF EX PARTE**  
 26 **APPLICATION FOR AN ORDER SHORTENING TIME**

27 ALEXANDER G. LEVEQUE, ESQ. declares as follows:

- 28 1. I am an attorney duly licensed to practice law in the State of Nevada. I am  
 personally familiar with this litigation and competent to testify to the matters set forth herein.
2. I am a partner at Solomon Dwiggin & Freer, Ltd., counsel for the Estate in the  
 above-entitled action.
3. This Motion is filed in response to the Court's grant of partial summary judgment  
 at the hearing on August 9, 2018.
4. This matter is currently set to begin trial by jury on August 20, 2018.



5. Due to the fast approaching trial date, it is imperative that this matter be brought to the Court's attention at the earliest possible time to avoid any delays and the unnecessary expenditure of resources related to trial preparation. Thus, the request is made that this matter be set on shortened time at the earliest convenience of the Court.

6. Given the time sensitive nature of this Motion, I will immediately e-serve a copy of the Motion on the School's counsel once it is finished and before it is submitted to the Court for OST review.

7. This declaration is being filed in good faith and not for any improper purpose such as delay.

This declaration is made under penalty of perjury.

DATED this 13<sup>th</sup> day of August, 2018.

  
ALEXANDER G. LEVEQUE, ESQ.

### **ORDER SHORTENING TIME**

TO: ALL PARTIES AND TO THEIR RESPECTIVE COUNSEL OF RECORD:

Upon good cause shown, please take notice that the time for hearing this Motion for Reconsideration before the above-entitled Court is shortened. The hearing will be scheduled on the 16<sup>th</sup> day of August, 2018, at 1:45 p.m., in Department XXVI, or as soon thereafter as counsel can be heard.

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

  
DISTRICT COURT JUDGE

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **I.**

#### **INTRODUCTION**

It is undisputed that sometime in 2011, the School ceased to refer to the elementary grades as "The Milton I. Schwartz Hebrew Academy" and started to refer to the same as the "Lower School" of the Adelson Educational Campus. It is also undisputed that after this lawsuit was filed

1 in 2013, the School removed Milton I. Schwartz's namesake from the original school building on  
 2 Hillpointe. Such acts constitute separate actionable breaches of the Schwartz Naming Rights  
 3 Agreement. Accordingly, the Estate respectfully submits that the Court erred in granting summary  
 4 judgment on the Estate's claim for breach of an oral agreement on statute of limitations grounds  
 5 because the separate claims for removing Milton I. Schwartz's name from the elementary school  
 6 grades and the old building accrued in 2011 and 2013, respectively.

7 With regard to the School's breaches in December 2007, the Court granted summary  
 8 judgment on the Estate's claim for breach of an oral agreement because it presumably found as a  
 9 matter of law that the Estate was on inquiry notice more than four years before filing its Petition  
 10 for Declaratory relief on May 28, 2013. In order for such a determination to withstand appellate  
 11 scrutiny, this Court was required to find that the evidence presented by the School "irrefutably  
 12 demonstrates this accrual date." The Estate respectfully submits that the Court erred by making  
 13 such a finding because the record is rife with conflicting and incomplete evidence concerning  
 14 when the Estate was placed on inquiry notice such that only the finder of fact at trial can make the  
 15 determination given the genuine issues of material fact.

16 Accordingly, the Estate respectfully requests that the Court reconsider the School's  
 17 Motion for Partial Summary Judgment Regarding Statute of Limitation ("School's Motion") and  
 18 deny the same.

## 19 II.

### 20 LEGAL STANDARD FOR A MOTION FOR RECONSIDERATION

21 "A district court may reconsider a previously decided issue if substantially different  
 22 evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile*  
 23 *Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741 (Nev. 1997)  
 24 (emphasis added). "A district court may properly reconsider its decision if it "(1) is presented  
 25 with newly discovered evidence, (2) committed clear error or the initial decision was manifestly  
 26 unjust, or (3) if there is an intervening change in controlling law.'" *Smith v. Clark County Sch.*  
 27 *Dist.*, 727 F.3d 950, 955 (9th Cir. 2013) (quoting *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d  
 28

1 1255, 1263 (9th Cir.1993)). “Clear error occurs when ‘the reviewing court on the entire record is  
2 left with the definite and firm conviction that a mistake has been committed.’” *Id.* (quoting *United*  
3 *States v. U.S. Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 92 L.Ed. 746 (1948)).<sup>1</sup>

4 EDCR 2.24(a) and (c), provides, in part, that “[n]o motion once heard and disposed of  
5 may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless  
6 by leave of the court granted upon motion therefor... [I]f a motion for rehearing is granted, the  
7 court may make a final disposition of the cause without reargument or may reset it for reargument  
8 or resubmission or may make such other orders as are deemed appropriate under the  
9 circumstances.”

### 10 III.

### 11 PROCEDURAL HISTORY

12 1. The Estate’s pleading which alleged a breach of contract claim was filed on May  
13 28, 2013. *See* Petition for Declaratory Relief, on file with the Court.

14 2. The statute of limitations for an action upon a contract, obligation or liability not  
15 founded upon an instrument in writing is four (4) years. NRS 11.190(2)(c).

16 3. Accordingly, if a breach (or discovery of a breach) of an oral agreement between  
17 Milton I. Schwartz (“Milton”) and the School occurred after May 28, 2009, any claim within the  
18 Estate’s pleading for breach of such agreement would be timely.

19 4. Conversely, if a breach (or a discovery of a breach) of an oral agreement between  
20 Milton and the School occurred before May 28, 2009, any claim within the Estate’s pleading for  
21 breach of such an agreement would be untimely unless the statute of limitations is tolled for some  
22 reason.

23 5. On August 9, 2018, the Court heard the School’s Motion, which sought, in part,  
24 summary judgment on any breach of an oral agreement. The School argued that the Estate was  
25 either on actual notice or inquiry notice of the alleged breach of the Schwartz Naming Rights  
26 Agreement before May 28, 2009. The Estate argued that it was not on actual or inquiry notice,  
27

28 <sup>1</sup> See also NRCP 60(b)

1 and, even if it was, any applicable statutes of limitation should be equitably tolled and/or the  
2 School should be equitably estopped from asserting the defense due to the conduct of the School  
3 during the relevant time periods.

4 6. Immediately following the hearing on the Motion, the Court denied the School's  
5 motion for partial summary judgment regarding breach of contract, holding that genuine issues of  
6 material fact precluded summary judgment as to contract formation and terms.

7 7. The Court granted the School's Motion, in part, holding that, as a matter of law,  
8 the Estate was on inquiry notice prior to March 2010 [when a settlement offer was sent by the  
9 Estate to the School]<sup>2</sup>, but did not make any specific findings regarding when the Estate was put  
10 on inquiry notice or what the notice of breach consisted of. Accordingly, the Court also implicitly  
11 found that there were no genuine issues of material fact concerning the Estate's tolling/estoppel  
12 argument.

#### 13 IV.

#### 14 **THE SCHOOL REMOVED THE MILTON I. SCHWARTZ NAMESAKE FROM THE** 15 **ELEMENTARY SCHOOL AND THE OLD BUILDING IN 2011 AND DURING THIS** 16 **LITIGATION. ACCORDINGLY, THOSE BREACHES OF THE SCHWARTZ NAMING** 17 **RIGHTS AGREEMENT ARE UNQUESTIONABLY WITHIN THE FOUR YEAR** 18 **STATUTE OF LIMITATIONS FOR ORAL AGREEMENT**

19 In the context of a statute of limitations defense, "courts have distinguished between acts  
20 that constitute a 'single continuous breach' and those that constitute a 'series of separate  
21 breaches.'" *Fluor Fed. Sols., LLC v. PAE Applied Techs., LLC*, 728 Fed. Appx. 200, 202-03 (4th  
22 Cir. 2018) (quoting *Am. Physical Therapy Ass'n v. Fed'n of State Bds. of Physical Therapy*, 271  
23 Va. 481, 628 S.E.2d 928, 929 (2006)). "A single continuous breach occurs when 'the wrongful act  
24 is of a permanent nature' and 'produces all the damage which can ever result from it.'" *Id.*  
25 (quoting *Hampton Rds. Sanitation Dist. v. McDonnell*, 234 Va. 235, 360 S.E.2d 841, 843 (1987)).  
26 "Conversely, when wrongful acts 'occur only at intervals, each occurrence inflicts a *new injury*

27 <sup>2</sup> Based on the School's briefing, it appears that the reason it focused on the March 10, 2010  
28 Letter was because of the three-year statute of limitation for a fraud claim. The fraud claim was  
voluntarily withdrawn before oral argument and the statute of limitation for breach of an oral  
agreement is four years, not three.

1 and gives rise to a new and separate cause of action.”” *Id.* If the alleged breach is a single  
 2 continuous breach, the limitations period runs from the inception of that breach, even when that  
 3 breach continues for years. If, on the other hand, the alleged breach is one of a series of separate  
 4 breaches, separate limitations periods run for each of the separate breaches. *Id.*<sup>3</sup>

5 As the Court is aware, the Estate contends that the School entered into a naming rights  
 6 agreement with the late Milton I. Schwartz in late 1989 whereby Milton donated a substantial sum  
 7 of money to the School in exchange for perpetual naming rights. At that time, the School was (1)  
 8 relocating to its Hillpointe campus; (2) building a new building on the property; (3) educating  
 9 children in grades K-8; and (4) only one building. As evidenced by the 1990 Bylaws, the School  
 10 resolved to change its corporate name to “The Milton I. Schwartz Hebrew Academy” in  
 11 perpetuity. As evidenced by the testimony of Dr. Roberta Sabbath – a board member at the time  
 12 who personally met with Milton to negotiate the agreement – the naming rights also extended to  
 13 the original building itself. Indeed, the donation was to be used **“to name the building after**  
 14 **[Milton I. Schwartz] in perpetuity and he was very specific about that.”**<sup>4</sup>

15 When the School initially breached the Schwartz Naming Rights Agreement in December  
 16 of 2007, it partially breached by executing a new naming rights agreement with the Adelsons,  
 17 resolving to change the corporate name of the School, and renaming the middle school grades the  
 18

19 <sup>3</sup> See also *Allapattah Services, Inc. v. Exxon Corp.*, 188 F.R.D. 667, 680 (S.D. Fla. 1999), *aff’d*,  
 20 333 F.3d 1248 (11th Cir. 2003) (“To decide the propriety of invoking the continuous breach  
 21 doctrine for evaluating the time of accrual of a cause of action, the Court must first determine  
 22 whether the contract is continuous or severable in nature. Where the nature of the contract is  
 23 continuous, statutes of limitations do not typically begin to run until termination of the entire  
 24 contract. However, if the nature of the contract is severable, the statutes of limitations generally  
 25 commence to run on each severable portion of the contract when a party breaches that portion of  
 26 the contract.”) (citing *Burger v. Level End Dairy Investors*, 125 B.R. 894, 901–02  
 27 (Bankr.D.Del.1991) and *Worrel v. Farmers Bank of Del.*, 430 A.2d 469, 474–75  
 28 (Del.Super.1981)); *Builders Supply Corp. v. Marshall*, 88 Ariz. 89, 95–96 (1960) (“A ‘cause of  
 action accrues’ – in the terms of the statute of limitations – each time defendant fails to perform  
 as required under the contract.”) (citing *Morris v. Russell*, 120 Utah 545, 236 P.2d 451 (1951),  
 and others).

<sup>4</sup> See Sabbath Deposition Testimony, at 15:25-16:3, attached to the Estate’s Opposition to the  
 School’s Motion for Partial Summary Judgment Regarding Breach of Contract (“MPSJ  
 Opposition”) as Exhibit I, and attached hereto as **Exhibit 1**.

1 Middle School of the Adelson Educational Campus (the "2007 Breach").<sup>5</sup> The School did not  
 2 change the name of the elementary school nor did it remove the MISHA signage on the old  
 3 building. In fact, the School resolved at that time to keep the elementary grades named after  
 4 Milton in perpetuity.<sup>6</sup>

5 Sometime after the instant lawsuit was filed, the School committed a separate partial  
 6 breach when its board resolved to remove the MISHA signage from the elementary grades and the  
 7 original building. Indeed, Paul Schiffman, the School Head at the time, testified as to the same:

8 Q. But are you aware that at some point the name of Milton I. Schwartz Hebrew  
 9 Academy was removed from that building?

10 A. I am.

11 Q. All right. Can you tell me how that happened, if you know?

12 A. Yes. It was during a board meeting that we were having, the board was having a  
 13 conversation, discussion about the litigation, and at that point the board had  
 14 decided to ask me to have the name removed from the building.

15 Q. The board did?

16 A. Yes.

17 Q. Do you recall when that was?

18 A. No. Just a couple of years ago.

19 Q. But it was after litigation had commenced in this case?

20 A. Yes.

21 Q. Okay. Upon the direction to remove the name from the building, what physical  
 22 acts did you do to accomplish that directive?

23 A. I spoke to the head of our custodial services. I asked him to remove the name and  
 24 the picture that was hanging in the school, and asked that that be put into storage in  
 25 the school and that it be preserved.<sup>7</sup>

26 <sup>5</sup> See Board Minutes, December 2007 Resolution, and AFCF Grant Agreement, attached to the  
 27 MPSJ Opposition as Exhibit R, S, and T respectively, and attached hereto as **Exhibits 2, 3 and 4**.

28 <sup>6</sup> *Id.*

<sup>7</sup> See Schiffman Deposition Testimony, at 22:11-24:13, attached to the Estate's Opposition to the  
 School's Motion for Partial Summary Judgment Regarding Breach of Contract ("MPSJ  
 Opposition") as Exhibit V, and attached hereto as **Exhibit 5**.

1 It wasn't until after this lawsuit was initiated by the School in 2013 that the School  
 2 committed a separate breach of the Schwartz Naming Rights Agreement by removing all MISHA  
 3 signage on the old building (the "2013 Breach"). Moreover, it wasn't until sometime between  
 4 August 6, 2011 and September 19, 2011, that the School stopped referring to the elementary  
 5 school as MISHA and starting referring to it as the "Lower School" of the Adelson Educational  
 6 Campus (the "2011 Breach").<sup>8</sup>

7 In this case, the 2007 Breach, the 2011 Breach and the 2013 Breach are "a serious of  
 8 separate breaches," each with a separate running of limitations. With respect to the four year  
 9 period for breach of an oral agreement, the 2011 Breach and the 2013 Breach fall comfortably and  
 10 squarely within the four years, the latter of which did not even start to accrue until after the  
 11 Estate's Petition for Declaratory Relief was filed on May 28, 2013.

12 Accordingly, to the extent that the Court granted summary judgment on the Estate's  
 13 claims for the 2011 Breach and the 2013 Breach on statute of limitations grounds, such order is  
 14 erroneous and should be reconsidered as these breaches are separate and apart from the 2007  
 15 Breach.

#### 16 IV.

17 **THE EVIDENCE IN THE RECORD DOES NOT "IRREFUTABLY DEMONSTRATE"**  
 18 **THAT THE ESTATE WAS ON INQUIRY NOTICE OF THE 2007 BREACH BEFORE**  
 19 **MAY 28, 2009. MOREOVER, SUMMARY JUDGMENT ON THE BASIS OF STATUTE**  
**OF LIMITATIONS IS NOT PROPER WHERE ISSUES OF FACT ON TOLLING AND**  
**ESTOPPEL REMAIN**

20 **A. THERE IS NO EVIDENCE IN THE RECORD WHICH DEFINITELY ESTABLISHES THAT THE**  
 21 **ESTATE WAS ON INQUIRY NOTICE BEFORE MAY 28, 2009.**

22 Inquiry notice is subject to a "reasonable person" standard. "[A litigant] discovers his  
 23 legal injury when he knows, or, through the use of reasonable diligence, should have known of  
 24 the facts that would put a reasonable person on inquiry notice of his cause of action." *Massey v.*  
 25 *Litton*, 99 Nev. 723, 728, 669 P.2d 248, 252 (1983). "[W]hether a party is put on inquiry notice is

27 <sup>8</sup> See Wayback Machine Snapshots of School's Website, attached hereto as **Exhibit 6**.  
 28

a question of fact[.]” *Telegraph RD Trust v. Bank of America, N.A.*, 2016 WL 5400134 (Nev. Sept. 16, 2016) (unpublished)<sup>9</sup> (emphasis added) (citing *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 252-53, 277 P.3d 458, 462-62 (2012)).<sup>10</sup> “Only when evidence irrefutably demonstrates this accrual date may a district court make such a determination as a matter of law.” *Winn*, at 128 Nev. 251, 277 P.3d 462 (emphasis added). “Defendants must meet an extraordinary burden in convincing the Court that summary judgment based on inquiry notice is appropriate.” *McMahan & Co. v. Warehouse Entm’t, Inc.*, 859 F.Supp. 743, 756 (S.D.N.Y. 1994), *aff’d in part, rev’d in part*, 65 F.3d 1044 (2d Cir. 1995) (emphasis added). “In order to demonstrate inquiry notice, the defendant must demonstrate plaintiff acquired information that suggested the ‘probability’ [of the injury] not merely the ‘possibility.’” *de la Fuente v. DCI Telecommunications, Inc.*, 206 F.R.D. 369, 381 (S.D.N.Y. 2002) (emphasis added) (citing *Lenz v. Associated Inns and Restaurants Co. of America*, 833 F.Supp. 362, 371 (S.D.N.Y.1993)). Conflicting inferences about whether a litigant was on inquiry notice are “issues of fact [and] the province of the jury.” *O’Connor v. Boeing N. Am., Inc.*, 311 F.3d 1139, 1155 (9th Cir. 2002) (emphasis added).<sup>11</sup>

<sup>9</sup> A copy of the decision is attached hereto as **Exhibit 7** pursuant to NRAP 36(c)(3).

<sup>10</sup> See also *Siragusa v. Brown*, 114 Nev. 1384, 1394 (1998) (remanding for the trier of fact to determine whether plaintiff’s discovery of defendant’s involvement in alleged conspiracy was delayed due to defendant’s attempts to conceal her role and whether plaintiff could have, nonetheless, discovered defendant’s identity earlier through diligent inquiry.”).

<sup>11</sup> In *O’Connor*, plaintiffs argued that the one-year limitations period did not begin to run until they discovered their claims when UCLA released an epidemiological study concluding that employees at one of the defendant’s facilities were at increased risk of cancer. They pointed out that there was publicity before the UCLA study about other causes of cancer. The defendants (and the district court, applying the California “suspect or should suspect” test), on the other hand, believed that reports of contamination at the Rocketdyne Facilities, and news reports of contaminant studies at those facilities, nullified any suspicion that other causes might have been the source of their illness. The Ninth Circuit disagreed, holding that whether plaintiffs were on inquiry notice, in light of the evidence presented, was fundamentally a question of fact. Among other things, the court noted that until the UCLA findings were released, one could reasonably infer that plaintiffs relied on public statements that there was no immediate health threat to the community, and that a reasonable plaintiff would have imputed the cause of illness to sources other than the Rocketdyne facilities. Under these circumstances, the court also thought there were triable issues of fact as to when plaintiffs could have tested the potential causes of their diseases so as to disclose their nature and cause. Thus, the court concluded, a jury must decide whether to impute knowledge of the contamination to plaintiffs, whether they were on inquiry notice, and when they had the means to discover the facts to support their claim.



1 During the hearing on its Motion, the School relied on the deposition testimony of  
 2 Jonathan Schwartz to support its conclusion that the Estate, as a matter of law, was on inquiry  
 3 notice of the 2007 Breach before May 28, 2009. The following is the testimony the School cited:

4 Schwartz: "I hear, you know, statements from the board members, statements from,  
 5 you know, people who went their kids there, you know, 'They're – they're  
 6 not respecting your dad's legacy,' all of this kind of stuff. And this was,  
 7 you know, a series of events. And little by little, they diminished my  
 8 father's naming rights and supplanted it completely with Adelson, which  
 9 was not the agreement?"

10 Kemp: Okay. So – yeah. So at some point, it's your position that there was a  
 11 change in 2007 of the name of something. Is that – is that your  
 12 understanding is?

13 Schwartz: Yes.

14 Kemp: And what is your understanding of what changed?

15 Schwartz: I'd have to have the document in front of me. It was some filing that the  
 16 school made that changed the name of the school.

17 Kemp: And you didn't find that out until after you had filed this petition on May  
 18 28, 2013?

19 Schwartz: I didn't receive definitive proof of it. Again, as these events were occurring  
 20 in 2007, '8, '9, '10, '11, '12, '13, '14, I would hear things from parents  
 21 who sent their kids there, from board members. I mean, look, I had – I had  
 22 lunch with Sam Ventura one say at a Mediterranean restaurant on the east  
 23 side of town, where he proceeded to tell me, "Look, what Sheldon is doing  
 24 isn't right, and I disagree with it. And I told him that if they tried to do this,  
 25 you would sue the school."

26 Kemp: Okay. And when did – when was this?

27 Schwartz: Sometime in '8 or '9 – 2008, 2009. This was a long time ago, so I may be  
 28 off on the exact year.

Kemp: Okay. And would that be Paymon's Mediterranean restaurant on Sahara.

Schwartz: You got it.

Jonathan's testimony speaks for itself and, as acknowledged by the Court during oral  
 argument, raises a lot of questions concerning the specifics of what "things" he heard, from  
 whom, and when. Moreover, Jonathan was not even certain when the meeting he had with Mr.  
 Ventura occurred. Jonathan testified that he "may be off on the exact year" and further testified  
 that the meeting with Mr. Ventura occurred after Jonathan's initial meeting with Paul Schiffman:

1 Kemp: Okay. But it was sometime at or near this time, sometime also in 2008, you  
2 had the lunch with Sam Ventura where – where there were concerns  
3 expressed about the name?

4 Schwartz: It was after my initial meeting with – with Paul. I had lunch with Sam after  
5 my initial meeting with Paul.<sup>12</sup>

6 Mr. Schiffman testified that he could not remember when he first spoke to Jonathan but  
7 that it was during a lunch meeting with Jonathan and Victor Chaltiel at Marché Baccus in  
8 Summerlin. He further testified that they discussed the naming of the school:

9 LeVeque: I'm going to ask you about each of those. The meeting at Marche Baccus  
10 was you, Jonathan Schwartz, and Mr. Chaltiel; correct?

11 Schiffman: That is correct.

12 LeVeque: And you said that Mr. Schwartz raised objections to making a gift to the  
13 school. Do you recall that those were?

14 Schiffman: They were basically about the estate not having money that was there but  
15 he wanted to do something to honor his father.

16 LeVeque: And what did he suggest or propose?

17 Schiffman: It was the naming of the school. I believe it was having equal signage on  
18 the front of the school. So he wanted too – again, I'm working off of past  
19 history, but he wanted half the sign to say Milton I. Schwartz Hebrew  
20 Academy and half the sign to say Adelson Educational Campus.<sup>13</sup>

21 A genuine issue of material fact exists with respect to when this meeting occurred. It is  
22 possible, if not likely, that the meeting occurred shortly after Jonathan emailed Victor Chaltiel  
23 and Paul Schiffman on March 5, 2010 memorializing discussions that occurred at the School on  
24 March 3, 2010, concerning removal of the MISHA logo and a request to sign an agreement  
25 concerning the naming rights and payment of the bequest.<sup>14</sup>

26 ///

27 ///

28 ///

29 ///

30

<sup>12</sup> See Schwartz Deposition, at 55:18-56:2, excerpt attached hereto as **Exhibit 8**.

<sup>13</sup> See Schiffman Deposition, at 97:19-98:11, excerpt attached hereto as **Exhibit 9**.

<sup>14</sup> See Schwartz Email to Chaltiel and Schiffman, attached hereto as **Exhibit 10**.

From: Jonathan Schwartz (jonathan@miltson.com)  
 To: paul.schiffman@adelsoncampus.org;  
 Date: Tue, March 9, 2010 11:44:33 AM  
 Cc:  
 Subject: Fw: Milton I. Schwartz Hebrew Academy Agreement

Paul:

So you know, the email below and attachments were sent to Victor last Friday. I'm awaiting a response. Thank you.

Jonathan Schwartz

----- Forwarded Message -----

From: Jonathan Schwartz <jonathan@miltson.com>  
 To: vchaltiel@redhillsventures.com; jonathan@miltson.com  
 Sent: Fri, March 5, 2010 11:39:35 AM  
 Subject: Milton I. Schwartz Hebrew Academy Agreement

Victor:

It was a pleasure meeting with you and Paul Schiffman on Wednesday of this week. I always enjoy seeing the school!

As I discussed with you, I have talked about the various issues concerning the Bequest with my family since our meeting on Wednesday. Because of the various discussions I had with you and others regarding the Bequest, the attached Agreement is necessary. The Agreement makes sure that my Dad's intent is respected and followed (the "Agreement"). Primarily, the Agreement memorializes that which the School is already doing to commemorate my Dad's nearly thirty (30) year devotion to the School and its predecessors. Further, the Agreement makes sure that the original intent of the Board is complied with when it named the school; the Milton I. Schwartz Hebrew Academy. This Agreement doesn't attempt to "leverage" anything.

In speaking with my family, the one thing that we respectfully request is that you and the current Board restore the 2008 era logo of the Milton I. Schwartz Hebrew Academy to the letter-head and all other "Media". The logo was removed without discussion with my family and we believe it is reasonable and fitting for the Logo to remain on the letter-head and Media. The Agreement simply memorializes minimum guarantees so that my Dad's commemoration as the founder of the Milton I. Schwartz Hebrew Academy isn't eroded. The Agreement does not negatively effect the gifts made by Mr. Adelson, nor their commemoration as currently respected.

The only reason I put a deadline of signature by Monday is that I need to know by then so that I can sell some securities to make the funds available for the Bequest on Friday. Please forward your signed copy of the Agreement to me by either email or fax (702-387-8770). I hope that we can bring these matters to a close so that we can all approach the School with joy in our hearts moving forward. Good Shabbos!

Jonathan Schwartz

The point is that this evidence creates a genuine issue of material fact concerning when Jonathan was put on inquiry notice. In effort to clarify some of the vagueness in his deposition testimony, Jonathan submitted a declaration in support of the Estate's Opposition to the School's Motion. In his declaration, Jonathan testified that he had no knowledge of the 2007 Breach at the time it occurred and did not become aware of the actual documents (e.g. the December 2017 Resolution, the Amendment to Articles, and the Adelson Naming Rights Agreement) until the

1 School disclosed them during discovery.<sup>15</sup> Jonathan further testified that although he heard  
 2 rumors that the School had taken actions contrary to the Schwartz Naming Rights Agreement  
 3 shortly after his father's death, he dismissed those rumors because the School's actions and  
 4 conduct were contrary thereto and appeared reasonably consistent with the Schwartz Naming  
 5 Rights Agreement.<sup>16</sup> Specifically, (1) the School continued to accept donations from Jonathan to  
 6 The Milton I. Schwartz Hebrew Academy; (2) the School sent Jonathan several letters  
 7 acknowledging the donations; (3) the letters sent by the School were on letterhead the bore the  
 8 name "Milton I. Schwartz Hebrew Academy"; (4) Jonathan visited the School several times after  
 9 Milton died in 2009, 2010, 2011 and 2012, and at such times he saw that the signage on Pre-K  
 10 through Eighth grade still bore the name "Milton I. Schwartz Hebrew Academy" and his Milton's  
 11 picture was still present.<sup>17</sup>

12 The issue of fact for the jury is whether a reasonable person would have been put on  
 13 inquiry notice based on the foregoing and when. A jury could conclude that it was reasonable for  
 14 Jonathan to dismiss the rumors because he witnessed for himself that the School was continuing  
 15 to perform the Schwartz Naming Rights Agreement. In any case, the School came nowhere near  
 16 its burden of presenting evidence that "irrefutably demonstrates" that the statute of limitation for  
 17 the 2007 Breach (to the extent the agreement was oral) began running before May 28, 2009.  
 18 *Winn*, at 128 Nev. 251, 277 P.3d 462. Moreover, the Court has found that issues of fact exist with  
 19 respect to the terms of the contract (and ipso facto) whether and when a breach had occurred. Due  
 20 to this subsequent finding, the Estate cannot be said to have been put on inquiry notice as a matter  
 21 of law as to a breach. Accordingly summary judgement should have been denied.

22  
 23  
 24  
 25  
 26 <sup>15</sup> See Jonathan Schwartz Declaration, at ¶ 14, attached to the Estate's Opposition as Exhibit A,  
 and attached hereto as **Exhibit 11**.

27 <sup>16</sup> *Id.*, at ¶ 15.

28 <sup>17</sup> *Id.*

**B. ISSUES OF FACT ON TOLLING AND ESTOPPEL REMAIN PRECLUDING SUMMARY JUDGMENT ON INQUIRY NOTICE.**

Summary judgment on the basis of statute of limitations is not proper where issues of fact on equitable estoppel and/or equitable tolling remain; even when the running of a statute of limitations is undisputed. See *Harrison v. Rodriguez*, 101 Nev. 297, 299-300, 701 P.2d 1015, 1017 (1985) (reversing summary judgment and remanding for trier of fact to consider evidence supporting estoppel and fraud for purposes of tolling); *Miller v. Talton*, 435 S.E.2d 793, 797 (N.C.App. 1993) (“If the evidence in a particular case raises a permissible inference that the elements of equitable estoppel are present, but other inferences may be drawn from contrary evidence, estoppel is a question of fact for the jury.”); *Hopkins v. Kedzierski*, 225 Cal.App.4th 736, 756 (2014) (the “determination of whether a defendant’s conduct is sufficient to invoke the doctrine [of estoppel] is a factual question entrusted to the trial court’s discretion.”).

In its Opposition, the Estate presented evidence that the School was continuing to hold itself out as the Milton I. Schwartz Hebrew Academy through 2011, including, correspondence from the School dated April 17, 2008, May 28, 2008, March 4, 2010, June 28, 2010, and December 2, 2011.<sup>18</sup> A jury could reasonably conclude that these overt acts were orchestrated by the School with an intent to conceal its 2007 Breach from the Estate with the ultimate purpose of causing the Estate to refrain from filing a lawsuit. See *Harrison*, at 101 Nev. 299, 701 P.2d 1016. Accordingly, the School’s intent with which these representations were made “is an issue of fact for the jury to resolve.” *Id.*

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<sup>18</sup> See Opposition, at Exhibits 28-32, also attached hereto as **Exhibits 12-16**.


## VI.

CONCLUSION

For the above and foregoing reasons, the Court should reconsider its Order Granting Partial Summary Judgment and deny the same.

DATED this 13<sup>th</sup> day of August, 2018.

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SOLOMON  
DWIGGINS & FREER  
TRUST AND ESTATE ATTORNEYS



**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of August, 2018, service of the foregoing 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 was electronically served on counsel for the Dr. Miriam and Sheldon G. Adelson Educational Institute via the Court's electronic filing system.

*/s/ -- Sherry Curtin-Keast*

---

An employee of Solomon Dwiggins & Freer, Ltd.

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*Sdf*

# EXHIBIT “1”



**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

1

DISTRICT COURT

2

COUNTY OF CLARK, NEVADA

3

4

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

5

MILTON I. SCHWARTZ,

) Dept. No.: 26/Probate

6

Deceased.

7

8

9

10

11

12

13

14

15

DEPOSITION OF ROBERTA SABBATH, Ph.D.

16

Taken on Wednesday, March 5, 2014

17

At 10:16 a.m.

18

At 9060 West Cheyenne Avenue

19

Las Vegas, Nevada

20

21

22

23

24

Reported by: Carla N. Bywaters, CCR 866

25

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

Roberta Sabbath, Ph.D.

In the Matter of the Estate of Milton I. Schwartz

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

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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.

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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

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In the Matter of the Estate of Milton I. Schwartz

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.

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In the Matter of the Estate of Milton I. Schwartz

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

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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

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1 for?

2 MR. COUVILLIER: Same objection.

3 BY MR. LUSZECK:

4 Q. And by the name change, I mean from the Hebrew  
5 Academy to the Milton I. Schwartz Hebrew Academy?

6 MR. COUVILLIER: Same objection.

7 THE WITNESS: When you say "supposed to," what  
8 does "supposed to" mean?

9 BY MR. LUSZECK:

10 Q. Was it your understanding that it was going to  
11 be in perpetuity? Was it your understanding that the  
12 name change was supposed to be for a temporary period  
13 of time?

14 MR. COUVILLIER: Same objection. Leading the  
15 witness.

16 MR. KRAMETBAUER: You can answer.

17 THE WITNESS: My understanding was that it was  
18 for in perpetuity.

19 BY MR. LUSZECK:

20 Q. Do you recall any specific conversations  
21 during the board meeting or with any other members of  
22 the board of trustee around this time, August 14th,  
23 1989, regarding that topic?

24 MR. COUVILLIER: Same objection.

25 MR. KRAMETBAUER: You can answer the question.

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REVIEW

**EXHIBIT “2”**



CONFIDENTIAL  
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**EXHIBIT “3”**

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**EXHIBIT “4”**

# EXHIBIT “5”

**Deposition of:**

Paul Schiffman

**Case:**

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

**Date:**

06/16/2016



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Paul Schiffman

In the Matter of the Estate of Milton I. Schwartz

<

Page 21	Page 23
<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>

Paul Schiffman

In the Matter of the Estate of Milton I. Schwartz

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 “6”





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1. I am the Office Manager at the Internet Archive, located in San Francisco, California. I make this declaration of my own personal knowledge.
2. The Internet Archive is a website that provides access to a digital library of Internet sites and other cultural artifacts in digital form. Like a paper library, we provide free access to researchers, historians, scholars, and the general public. The Internet Archive has partnered with and receives support from various institutions, including the Library of Congress.
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4. The archived data made viewable and browseable by the Wayback Machine is compiled using software programs known as crawlers, which surf the Web and automatically store copies of web files, preserving these files as they exist at the point of time of capture.
5. The Internet Archive assigns a URL on its site to the archived files in the format [http://web.archive.org/web/\[Year in yyyy\]\[Month in mm\]\[Day in dd\]\[Time code in hh:mm:ss\]/\[Archived URL\]](http://web.archive.org/web/[Year in yyyy][Month in mm][Day in dd][Time code in hh:mm:ss]/[Archived URL]). Thus, the Internet Archive URL <http://web.archive.org/web/19970126045828/http://www.archive.org/> would be the URL for the record of the Internet Archive home page HTML file (<http://www.archive.org/>) archived on January 26, 1997 at 4:58 a.m. and 28 seconds (1997/01/26 at 04:58:28). A web browser may be set such that a printout from it will display the URL of a web page in the printout's footer. The date assigned by the Internet Archive applies to the HTML file but not to image files linked therein. Thus images that appear on a page may not have been archived on the same date as the HTML file. Likewise, if a website is designed with "frames," the date assigned by the Internet Archive applies to the frameset as a whole, and not the individual pages within each frame.
6. Attached hereto as Exhibit A are true and accurate copies of printouts of screenshots of the Internet Archive's records of the HTML files or PDF files for the URLs and the dates specified in the attached coversheet.
7. I declare under penalty of perjury that the foregoing is true and correct.

DATE: 8/3/18

Christopher Butler

# Exhibit A

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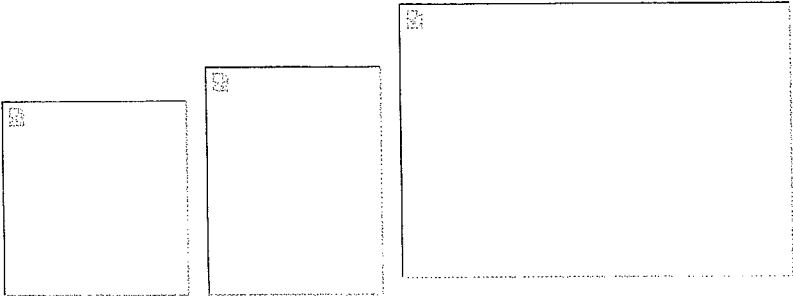
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One of the finest learning facilities in the country, The Dr. Miriam and Sheldon G. Adelson Educational Campus is committed to providing students with an education that prepares them for life. Our comprehensive approach emphasizes educating each student 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 citizens of tomorrow.

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Paul Schiffman    (+)  Site,  Email,  Web

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**Back to School Orientation -Set the Date -**  
Friday, August 26 from 9:30-11:30am

Monday, August 29, 2011

**First Day of School - August 29, 2011 -**  
8am

Sunday, November 13, 2011

**Save the Date for the 2011-2012**  
**Scholarship Gala**

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(Pre-K - Grade 4)

The Adelson Middle School  
(Grades 5-8)

The Adelson Upper School  
(Grades 9-12)

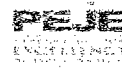
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Adelson Educational Campus - Private School Summerlin Las Vegas - About Us

### About Us - Education for Life

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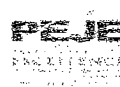
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Paul Schiffman, Head of School: EMAIL BIO



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### Diversity Statement

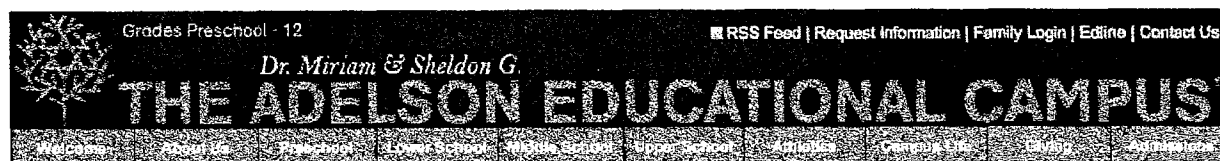
The Adelson Educational Campus accepts students of all faiths and affiliations. We contend that students who interact with diverse students in classrooms and in the broader campus environment will be more motivated and better able to participate in a heterogeneous and complex society. By creating a diverse community, we are preparing our students to be the citizens and leaders of tomorrow.

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Adelson Educational Campus - Private School Summerlin Las Vegas - About Us

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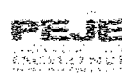
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Paul Schiffman, Head of School EMAIL BIO



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# EXHIBIT “7”

Telegraph RD Trust v. Bank of America, N.A., 383 P.3d 754 (2016)

KeyCite Yellow Flag - Negative Treatment  
Distinguished by RLP-Ampus Place, LLC v. U.S. Bank, N.A., Nev.,  
December 22, 2017

383 P.3d 754 (Table)

Unpublished Disposition

This is an unpublished disposition. See Nevada  
Rules of Appellate Procedure, Rule 36(c) before  
citing.

Supreme Court of Nevada.

TELEGRAPH RD TRUST, Appellant,  
v.  
BANK OF AMERICA, N.A., Respondent.

No. 67787

FILED SEPTEMBER 16, 2016

Attorneys and Law Firms

Law Offices of Michael F. Bohn, Ltd.

Akerman LLP/Las Vegas

Gerrard Cox & Larsen

ORDER OF AFFIRMANCE

\*1 This is an appeal from a district court judgment following a bench trial in a quiet title action.<sup>1</sup> Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

The district court determined that respondent was equitably subrogated to the rights of a previous lienholder, such that respondent held a security interest in the subject property equal to the amount of the previous lien. In applying the doctrine of equitable subrogation, the district court determined that appellant was not entitled to the protection of NRS 111.325 because appellant was not a bona fide purchaser.<sup>2</sup> See *Huntington v. Mila, Inc.*, 119 Nev. 355, 357, 75 P.3d 354, 356 (2003) (“A subsequent purchaser with notice, actual or constructive, of an interest in property superior to that which he is purchasing is not a purchaser in good faith, and is not entitled to the

protection of the recording act.”). The district court made express findings that appellant was not a bona fide purchaser because a review of the public records pertaining to the subject property would have shown that the homeowners had a history of refinancing their home loan and a history of not timely paying nominal bills, thereby putting appellant on inquiry notice that the property was encumbered by an unrecorded deed of trust.<sup>3</sup> See *Allison Steel Mfg. Co. v. Bentonite, Inc.*, 86 Nev. 494, 498, 471 P.2d 666, 668 (1970) (“A duty of inquiry is said to arise when the circumstances are such that a purchaser is in possession of facts which would lead a reasonable man in his position to make an investigation that would advise him of the existence of prior unrecorded rights.” (quotation omitted)).

Appellant first contends that the documents recorded in the property’s chain of title were not sufficient to give rise to a duty to inquire into the existence of an unrecorded deed of trust. We conclude that substantial evidence supports the district court’s contrary conclusion. See *Weddell v. H2O, Inc.*, 128 Nev. 94, 101, 271 P.3d 743, 748 (2012) (a district court’s factual findings following a bench trial are reviewed for substantial evidence); *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 252–53, 277 P.3d 458, 462–63 (2012) (whether a party is put on inquiry notice is a question of fact); cf. *In re Weisman*, 5 F.3d 417, 421 (9th Cir. 1993) (“Whether the circumstances are sufficient to require inquiry as to another’s interest in property [for purposes of determining whether a party is a bona fide purchaser] is a question of fact, even where there is no dispute over the historical facts.”). In particular, the district court found that “it was unlikely that the Roots would have paid off the New Century Loan by a means other than a new secured loan given the fact that they were apparently unable to timely pay their sewer, trash, and HOA assessments.” Thus, while appellant’s alternative explanation for the absence of a recorded deed of trust may have been reasonable, the district court’s contrary conclusion was equally reasonable in light of the evidence introduced at trial. See *Weddell*, 128 Nev. at 94, 271 P.3d at 748 (“Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.” (quotation omitted)).

\*2 Appellant next contends that even if it did have a duty of inquiry, respondents failed to produce evidence showing that such an inquiry would have revealed the existence of the 2006 unrecorded deed of trust. We conclude that this argument is misplaced, as it was appellant’s burden to show that it made a “due investigation without discovering the prior right or title

Telegraph RD Trust v. Bank of America, N.A., 383 P.3d 754 (2016)

[appellant] was bound to investigate.” *Berge v. Fredericks*, 95 Nev. 183, 190, 591 P.2d 246, 249 (1979). In other words, it was appellant’s obligation to show that it made a due investigation and that the investigation did not reveal the existence of the unrecorded 2006 deed of trust. *Id.* Here, the district court found that appellant’s search for only “open” recorded deeds of trust did not constitute a due investigation.<sup>4</sup> As the district court noted, “Importantly, Mr. Haddad [appellant’s principal] never testified that he did not suspect that there was an unrecorded trust deed on the property [a]nd in fact ... appeared to acknowledge ... that it intentionally sought to not discover an unrecorded trust deed.” These findings that, in light of the numerous other recorded liens pertaining to the subject property, were supported by substantial evidence. *See Weddell*, 128 Nev. at 101, 271 P.3d at 748 (factual findings are reviewed for substantial

evidence); *Berge*, 95 Nev. at 190, 591 P.2d at 249 (“The question whether [a putative bona fide purchaser] has made due inquiry is one of fact...”). Thus, it is insufficient for appellant to speculate that contacting the former homeowners directly might not have actually revealed the existence of the 2006 unrecorded deed of trust. *Berge*, 95 Nev. at 190, 591 P.2d at 249. In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.

All Citations

383 P.3d 754 (Table), 2016 WL 5400134

Footnotes

- 1 We direct the clerk of this court to modify the caption on the docket for this case to conform with the caption on this order, which reflects that Recontrust Company, N.A. is not a party to this appeal.
- 2 The district court based its analysis on sections 7.3(a)(2) and 7.6 of the Restatement (Third) of Property: Mortgages (1997). Because appellant has disavowed any potential applicability of section 7.6 in its reply brief, we consider only appellant’s arguments relating to section 7.3(a)(2).
- 3 Appellant argues on appeal that a deed of trust executed by former homeowner Deborah Roots in 2013 was invalid because Ms. Roots had no ownership interest in the property at that time. This argument is misplaced because respondent’s equitable subrogation argument at trial and the district court’s treatment of that argument were based on the deed of trust that Ms. Roots executed in 2006 when she had an ownership interest in the property. Because appellant has not cogently argued on appeal that the 2006 deed of trust was not properly assigned to respondent, we do not address the potential significance of that issue. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).
- 4 For this reason, appellant’s reliance on *First Fidelity Thrift & Loan Ass’n v. Alliance Bank* is misplaced because in that case, the court determined that the lender *had* made a reasonable inquiry. 71 Cal. Rptr. 2d 295, 303 (Ct. App. 1998).

# EXHIBIT "8"

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DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*  
In the Matter of the Estate  
of,  
MILTON I. SCHWARTZ,  
Case No. P061300  
Dept. No. 26/Probate  
Deceased.

---

VIDEOTAPED DEPOSITION OF

JONATHAN SCHWARTZ

Volume I

Las Vegas, Nevada

July 28, 2016

9:40 a.m.

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

1 A Yes.

2 Q And you think this was sometime in 2008?

3 A 2007 or 2008.

4 Q Whatever it was, it was after your  
5 father died?

6 A Correct. Absolutely.

7 Q At the time --

8 A Yes.

9 Q -- after the school had been  
10 constructed?

11 A Correct.

12 Q Okay. And at that point in time, the  
13 lower school still had your father's name, yes?

14 A Correct.

15 Q Okay. And the campus -- was it the  
16 Adelson Campus or was it not, if you remember?

17 A I don't recall.

18 Q Okay. But it was sometime at or near  
19 this time, sometime also in 2008, you had the  
20 lunch with Sam Ventura where -- where there were  
21 concerns expressed about the name?

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

24 You can answer.

25 THE WITNESS: It was after my initial



1 meeting with -- with Paul. I had lunch with Sam  
2 after my initial meeting with Paul.

3 BY MR. KEMP:

4 Q Okay. And the initial meeting with Paul  
5 is the meeting you referred to where you toured  
6 the high school?

7 A Correct.

8 Q So sometime after that in the 2008, 2009  
9 time period, you met with Mr. Ventura?

10 A Roughly.

11 Q Okay. All right.

12 And after Mr. Ventura told you that  
13 there was a concern about the name change, what,  
14 if anything, did you do with regards to that  
15 issue?

16 A He told me that he was going to try and  
17 set up a meeting between me and Mr. Adelson to try  
18 and resolve it. And that meeting never happened  
19 at that specific time. I met with Mr. Adelson  
20 years later.

21 Q Okay.

22 A But I did have subsequent meetings with  
23 Paul Schiffman, with Sam, with Victor Chaltiel.

24 Q Okay. You --

25 A This -- this --

# EXHIBIT “9”

## DISTRICT COURT

CLARK COUNTY, NEVADA

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

## DEPOSITION OF PAUL SCHIFFMAN

Taken on June 16, 2016

By a Certified Court Reporter

At 1:04 p.m.

At 9060 West Cheyenne Avenue

Las Vegas, Nevada

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

Job No. 17364

1 MR. BLAKE: Let me just object. To the  
2 extent that it involves communication with counsel or  
3 litigation strategy, I would instruct you not to  
4 answer. But you can answer the question to the extent  
5 it doesn't involve any of those things.

6 THE WITNESS: We actually had -- Victor  
7 Chaltiel had meetings with Jonathan Schwartz I  
8 attended. One was at Marché Bacchus --

9 BY MR. LEVEQUE:

10 Q. Marché Bacchus here in Summerlin?

11 A. Yes. And Jonathan was asked to make that --  
12 arrangements to make payment, and he discussed his  
13 objections and that he would get back to Victor to  
14 discuss that.

15 And I remember one other meeting that took  
16 place in my office with Victor present, Sam Ventura,  
17 and Jonathan Schwartz, again asking for the payment of  
18 the moneys.

19 Q. All right. I'm going to ask you about each  
20 of those. The meeting at Marché Bacchus was you,  
21 Jonathan Schwartz, and Mr. Chaltiel; correct?

22 A. That is correct.

23 Q. And you said that Mr. Schwartz raised  
24 objections to making a gift to the school. Do you  
25 recall what those were?

1 A. They were basically about the estate not  
2 having money that was there but he wanted to do  
3 something to honor his father.

4 Q. And what did he suggest or propose to do  
5 honoring his father?

6 A. It was the naming of the school. I believe  
7 it was having equal signage on the front of the  
8 school. So he wanted to -- again, I'm working off of  
9 past history, but he wanted half the sign to say  
10 Milton I. Schwartz Hebrew Academy and half the sign to  
11 say Adelson Educational Campus.

12 Q. Okay. So I'm going to break down your  
13 answer. Mr. Schwartz suggests equal signage to honor  
14 his father.

15 A. Right.

16 Q. But he also said he didn't have funds in the  
17 estate to pay the bequest?

18 A. Yes.

19 Q. And what was your response, then, to what he  
20 said?

21 A. I was more an observer and welcome for lunch.  
22 It was Victor that said he needed to honor his father  
23 and pay the commitment.

24 Q. And did Mr. Chaltiel say, If you honor the  
25 commitment to pay the school, we'll do something about

# EXHIBIT “10”

Print

Page 1 of 1

**From:** Jonathan Schwartz (jonathan@miltson.com)  
**To:** paul.schiffman@adelsoncampus.org;  
**Date:** Tue, March 9, 2010 11:44:33 AM  
**Cc:**  
**Subject:** Fw: Milton I. Schwartz Hebrew Academy Agreement

Paul:

So you know, the email below and attachments were sent to Victor last Friday. I'm awaiting a response. Thank you.

Jonathan Schwartz

----- Forwarded Message -----

**From:** Jonathan Schwartz <jonathan@miltson.com>  
**To:** vchaltiel@redhillsventures.com; jonathan@miltson.com  
**Sent:** Fri, March 5, 2010 11:39:36 AM  
**Subject:** Milton I. Schwartz Hebrew Academy Agreement

Victor:

It was a pleasure meeting with you and Paul Schiffman on Wednesday of this week. I always enjoy seeing the school!

As I discussed with you, I have talked about the various issues concerning the Bequest with my family since our meeting on Wednesday. Because of the various discussions I had with you and others regarding the Bequest, the attached Agreement is necessary. The Agreement makes sure that my Dad's intent is respected and followed (the "Agreement"). Primarily, the Agreement memorializes that which the School is already doing to commemorate my Dad's nearly thirty (30) year devotion to the School and its predecessors. Further, the Agreement makes sure that the original intent of the Board is complied with when it named the school; the Milton I. Schwartz Hebrew Academy. This Agreement doesn't attempt to "leverage" anything.

In speaking with my family, the one thing that we respectfully request is that you and the current Board restore the 2008 era logo of the Milton I. Schwartz Hebrew Academy to the letter-head and all other "Media". The logo was removed without discussion with my family and we believe it is reasonable and fitting for the Logo to remain on the letter-head and Media. The Agreement simply memorializes minimum guarantees so that my Dad's commemoration as the founder of the Milton I. Schwartz Hebrew Academy isn't eroded. The Agreement does not negatively effect the gifts made by Mr. Adelson, nor their commemoration as currently respected.

The only reason I put a deadline of signature by Monday is that I need to know by then so that I can sell some securities to make the funds available for the Bequest on Friday. Please forward your signed copy of the Agreement to me by either email or fax (702-387-8770). I hope that we can bring these matters to a close so that we can all approach the School with joy in our hearts moving forward. Good Shabbos!

Jonathan Schwartz

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 Chaitiel ("Chaitiel") 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 signatures 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 MSHFA, 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 Chaffiel, President

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

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

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The Adelson Educational Campus, Victor  
Chattiel, President

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# EXHIBIT “11”

**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."  
20 See, 2007 Gala Letter, a true and correct copy of which is attached  
21 hereto as **Exhibit A-I**. (Emphasis added).
- 22 (ii) Many people have worked hard to create the success of our current  
23 Pre-K through 8th grade program and the beginning of our new  
24 high school. *Id.* (Emphasis added).
- 25 (iii) With vision and foresight, Mr. Schwartz and a few others  
26 generously answered the need in Las Vegas for a strong secular and  
27 Judaic educational institution for elementary school-aged children  
28 by creating and continuously supporting **The Milton I. Schwartz Hebrew Academy**. The School, established in 1988, has since  
expanded to include preschool through 8th grade." *Id.*  
(Emphasis added).

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

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

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

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

- 21                   (a)     After my father's death, I continued to make donations payable to the
- 22                             Milton I. Schwartz Hebrew Academy, which the School accepted;
- 23                   (b)     The School sent me several correspondences acknowledging the donations;
- 24                   (c)     The correspondences sent to me by the School were on letterhead that bore
- 25                             the name "Milton I. Schwartz Hebrew Academy," *see*, Opposition, at
- 26                             Exhibits, 28, 29, 30, 31, and 32;
- 27
- 28

9060 WEST CHEYENNE AVENUE  
LAS VEGAS, NEVADA 89129  
TELEPHONE (702) 853-5483  
FACSIMILE (702) 853-5485  
WWW.SDNVLAW.COM

SOLOMON  
DWIGGINS & FREER  
TRUST AND ESTATE ATTORNEYS

*Sdf*

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**.

22 ///

23 ///

24 ///

25 ///

26 ///

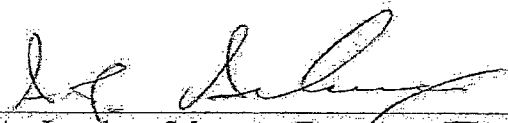
27 ///

28



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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9060 WEST CHEYENNE AVENUE  
LAS VEGAS, NEVADA 89129  
TELEPHONE (702) 853-5483  
FACSIMILE (702) 853-5485  
WWW.SDFNLAW.COM

SOLOMON  
DWIGGINS & FREER  
TRUST AND ESTATE ATTORNEYS

# EXHIBIT “12”



April 17, 2008



Exhibit AA

Mr. A. Jonathan Schwartz  
Family of Milton I. Schwartz  
2293 Duneville Street  
Las Vegas, NV 89146

Dear Jonathan:

Thank you for your leadership gift to The Dr. Miriam and Sheldon G. Adelson School and The Milton I. Schwartz Hebrew Academy 2008 In Pursuit of Excellence Gala. Your most generous support is greatly appreciated and is the reason the event was such a success!

Our mission is to instruct and inspire new generations of students who will use their knowledge, values, and vision to fulfill their own potential and build a better world.

With your kindness, you have helped ensure that children in need of financial assistance have the ability to attend the school of their choice. This year, more than 70 students require financial assistance. On their behalf, please accept our thanks and deepest gratitude.

At The Adelson School and The M.I.S. Hebrew Academy, students experience an outstanding, safe, and caring learning environment. Our teachers are dedicated professionals who are gifted experts in their individual fields of study, and who are committed to blending the quest for knowledge with the acquisition of moral character in a way that has practical consequences.

Thank you again for your meaningful support, and thank you for helping to build a better world for all of us.

Sincerely,

*Paul*

Paul Schiffman  
Head of School

*Hope you enjoy the  
enclosed video.  
Thanks Paul*

*[Signature]*  
Victor Chaltiel  
Board Chairman

*Jonathan, we  
missed you at  
the gala.*

*THANK YOU VERY*

*MUCH AGAIN*

*(let us try to meet after!)*

EST-00028

# EXHIBIT “13”

cc Dan



THE MILTON I. SCHWARTZ  
HEBREW ACADEMY

May 28, 2008

Mr. A. Jonathan Schwartz  
2293 Duneville Street  
Las Vegas, NV 89146



bill  
1/1/08  
1/1/08  
1/1/08

Dear Jonathan:

Thank you for your Tribute Journal donation supporting The Dr. Miriam and Sheldon G. Adelson School and The Milton I. Schwartz Hebrew Academy 2008 In Pursuit of Excellence Gala. Your generous contribution is greatly appreciated and is the reason the event was such a success!

With your kindness, you have helped ensure that children in need of financial assistance have the ability to attend the school of their choice and that the classroom programs are cutting edge. On their behalf, please accept our thanks and deepest gratitude.

Below is the contribution and tax-deductible information for your records.

Total Paid	\$ 12,500
Value Received	\$ 0
Deductible Contribution	\$ 12,500

We look forward to seeing you at our next event and, again, thank you so much for your generous support.

Sincerely,

Thank you!

2008 Gala Committee

9700 West Hillpointe Road

Las Vegas, NV 89134

(702) 255-4500

EST-00008

# EXHIBIT “14”



THE MILTON I. SCHWARTZ  
HEBREW ACADEMY

The Dr. Miriam & Sheldon G.  
Adelson Educational Campus

9700 West Hillpointe Road  
Las Vegas, Nevada 89134

EDUCATION FOR LIFE

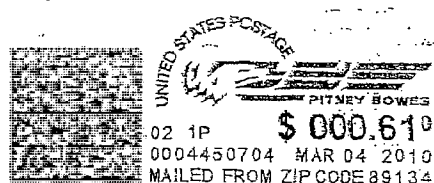
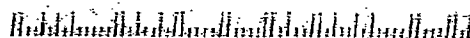


Exhibit AF

Mr. Jonathan Schwartz  
2293 Duneville St.  
Las Vegas, NV 89146

0004450704



Jonathan-

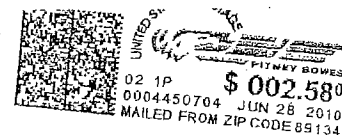
Victor informed me that you did not yet receive our save the date. I was happy to confirm your address & get this out to you right away. The invite will also be going out next week, so please keep an eye out for it. We look forward to seeing you at this year's gala fundraiser and I am happy to help in any way I can with your tribute this year. All the best!

- Davida Sims

EST-00032

# EXHIBIT “15”





THE MILTON L. SCHWARTZ  
HEBREW ACADEMY

The Dr. Miriam & Sheldon G.  
Adelson Educational Campus

9700 West Hillpointe Road  
Las Vegas, Nevada 89134

EDUCATION FOR LIFE

Jonathan Schwartz  
2293 Duneville Street  
Las Vegas, NV 89146

Exhibit W

EST-00079

# EXHIBIT “16”

The Milton I. Schwartz  
Hebrew Academy in Summerlin

9700 W. Hillpointe Rd., Las Vegas, NV 89134  
(702) 255-4500 Fax: (702) 255-7232



HEBREW ACADEMY  
SUMMERLIN

Exhibit AI

sd. ak  
Jennifer  
12-20-11

December 2, 2011

Mr. Jonathan Schwartz  
2293 Duneville Street  
Las Vegas, NV 89146

Dear Mr. Schwartz:

The Board of Trustees, staff and families at the Dr. Miriam and Sheldon G. Adelson Educational Campus want to offer our sincere appreciation for your donation of \$12,500.00 to the *In Pursuit of Excellence Gala* honoring Alan Dershowitz. Your recognition of quality education is truly invaluable.

One Hundred percent of the proceeds from this year's gala go towards scholarships for families in need. In a time when your support is more important than ever, you can feel proud to have ensured that scholarships will be available for our students in the 2012-2013 school year. The Adelson Educational Campus not only offers students Jewish values and an excellent secular education, but our mission is to provide children with an *Education for Life*. Our comprehensive approach emphasizes education each student to be academically stimulated, emotionally secure and physically healthy. Our goal is to send students who possess confidence and a strong sense of self into the world. It is your generous support that helps make this important effort possible.

Thanks again for your support as we grow and strengthen our school. We know the sacrifices and dedication it takes to send a child to private school, and likewise we are committed to teaching our students to give back as they become educated, responsible citizens of the world.

*Todah Rabah* and thank you,  
The 2011-2012 Gala Committee

*This letter is your receipt to acknowledge your contribution of \$12,500. The Adelson Educational Campus is a 501 (c) (3) nonprofit corporation as determined by the Internal Revenue Service, making the amount fully deductible to the extent allowed by law. Our non-profit tax ID# is 94-2701113*



Accreditation: Northwest Association of Schools and Colleges



License: State of Nevada Department of Education



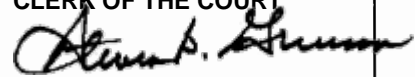
Member: National Association of Independent Schools

EST-00033



64

64



Alan D. Freer (#7706)  
[afreer@sdfnlaw.com](mailto:afreer@sdfnlaw.com)  
Alexander G. LeVeque (#11183)  
[aleveque@sdfnlaw.com](mailto:aleveque@sdfnlaw.com)  
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.: P061300  
Dept.: 26/Probate

Hearing Date: 08/16/2018  
Hearing Time: 1:45 p.m.

**SUPPLEMENT TO:**

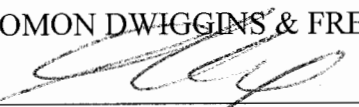
**THE ESTATE'S MOTION FOR RECONSIDERATION OF:**

**THE COURT'S ORDER GRANTING SUMMARY JUDGMENT ON THE ESTATE'S  
CLAIM FOR BREACH OF ORAL CONTRACT**

A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz ("Executor"), by and through his counsel, Alan D. Freer, Esq. and Alexander G. LeVeque, Esq., of the law firm of Solomon Dwiggins & Freer, Ltd., hereby supplements his Motion for Reconsideration with the Declaration of A. Jonathan Schwartz, attached hereto.

DATED this 14th day of August, 2018.

SOLOMON DWIGGINS & FREER, LTD.



Alan D. Freer (#7706)  
[afreer@sdfnlaw.com](mailto:afreer@sdfnlaw.com)  
Alexander G. LeVeque (#11183)  
[aleveque@sdfnlaw.com](mailto:aleveque@sdfnlaw.com)  
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*

**DECLARATION OF JONATHAN SCHWARTZ**

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

1. I have knowledge of the matters stated herein and would be competent to testify about them if called upon to do so. I make this Declaration in connection with the Court's inquiries from the bench at the hearing on the Motion for Partial Summary Judgment Regarding Statute of Limitations on August 9, 2018, and in connection with the Estate's Motion for Reconsideration on Motion for Partial Summary Judgment Regarding Statute of Limitations.

2. After the hearing on the School's Motion for Partial Summary Judgment Regarding Statute of Limitations on August 9, 2018, I searched my emails to see if there were any emails to refresh my recollection in regards to the meetings and conversations I had with Paul Schiffman, Sam Ventura and Victor Chaltiel. I was able to find some email correspondence that I believe refreshes my memory as to those meetings and conversations.

3. To clarify any confusion, I did not know about the corporate name change from the Milton I. Schwartz Hebrew Academy to the Dr. Miriam and Sheldon G. Adelson Educational Institute ("Adelson School"), until after the litigation with the Adelson School was filed and I saw the documents regarding the name change either attached to a pleading or in a discovery production.

4. In one visit I recall to the school in or around 2008, approximately a year after my father's passing, Paul Schiffman provided me a tour of the school and specifically pointed out my father's name on the pediment and his painting in the hall, informing me that "we are still honoring your dad." During that meeting we discussed the bequest, primarily to ensure that the bequest was going to be used to fund scholarships for Jewish children only. My recollection was refreshed after I discovered an email I sent to Paul Schiffman on August 28, 2008, with a memo attached which memorialized our conversation. There was no discussion about naming rights because I had no reason

1 to believe that the Schwartz Naming Rights Agreement was breached. A true and correct copy of the  
2 August 28, 2008 Email and Memo are attached hereto as **Exhibit A**.

3 5. On February 12, 2013, the Estate resolved the last of its issues with the IRS audit of the  
4 Decedent's 706, which only then placed the Estate in a position to make distributions under Section  
5 2.3 without triggering personal liability for the executor under federal tax law. On February 12, 2013,  
6 I accepted the IRS's determination of deficiency amount owing. A copy of the IRS Form 890 that I  
7 signed is attached as **Exhibit B**.

8 6. After accepting and resolving the IRS deficiency, on February 23, 2010, I had a lunch  
9 with Paul Schiffman and Victor Chaltiel and they confirmed to me that they were not going to remove  
10 my father's name from the Milton I. Schwartz Hebrew Academy. This was the lunch at Marche  
11 Baccus that Mr. Schiffman testified to in his deposition. My recollection of the date of this meeting  
12 was refreshed when I discovered an email chain between me, Paul Schiffman and Victor Chaltiel,  
13 which occurred on February 24, 2010, the day after the lunch. A true and correct copy of the February  
14 24, 2010 Email Chain is attached hereto as **Exhibit C**.

15 7. Following that meeting, I had a conversation with Sheldon Adelson on February 26,  
16 2010, wherein he appeared to be unaware of certain facts and circumstances concerning the Schwartz  
17 Naming Rights Agreement. My recollection of this conversation was refreshed when I discovered an  
18 email I sent to Messrs. Chaltiel and Schiffman on February 27, 2010. A true and correct copy of the  
19 February 27, 2010 Email is attached hereto as **Exhibit D**. As you can see, I was trying to reach an  
20 agreement where I, Mr. Adelson and the School were on the same page with respect to naming rights  
21 as it appeared to me that the School and the Adelsons were confused and/or uninformed.

22 8. Also subsequent to Mache Baccus meeting, I had lunch with Sam Ventura, in early 2013  
23 (likely February 2013) at his invitation, and he told me that he would not let Sheldon Adelson remove  
24 my father's name from the school. My recollection of the date of this meeting was refreshed when I  
25  
26  
27  
28



1 discovered an email chain between me, Sam Ventura and later on Victor Chaltiel. A true and correct  
2 copy of this Email Chain is attached hereto as **Exhibit E**.

3 9. In a subsequent tour of the school on March 13, 2013, I specifically asked Paul  
4 Schiffman about the title "Adelson Educational Campus" at the entrance to the school, to which he  
5 responded, "that only refers to the high school." The few times I drove by the Milton I. Schwarz  
6 Hebrew Academy, I still saw my father's name in large letters over the pediment of the school. My  
7 recollection of the date of this tour was refreshed when I discovered an email I sent Mr. Schiffman to  
8 thank him for the tour. A true and correct copy of the March 13, 2013, Email is attached hereto as  
9 **Exhibit F**.

10  
11 10. Indeed, I took a picture of the MISHA signage during the March 13, 2013, tour, as  
12 evidenced by the date stamp of the photograph. True and correct copies of the Photograph and Date  
13 Stamp are attached hereto as **Exhibit G**. Contrary to the assertions of the school's counsel during the  
14 August 9, 2018, hearing, I could not simply "look up at the sign to see the breach" when I was being  
15 informed that the sign in the front entrance only applied to the high school.

16 11. Every single person I spoke with, in a position of authority at the school, told me that the  
17 school had full intent to honor my father's wishes with regard to the name of the school. The officials  
18 of the school confirmed this to me over and over. I did not file the Estate's claims against the school  
19 for breach of the Schwartz Naming Rights Agreement until May 28, 2013, because until the school  
20 filed its petition to compel distribution of the bequest on May 3, 2013, I was led to believe that I and  
21 the school were still working towards a resolution. I was, quite frankly, unpleasantly surprised when I  
22 learned that the school filed a lawsuit against the Estate.

23  
24 DATED this 14 day of August, 2018.

25  
26   
27 JONATHAN SCHWARTZ  
28



# EXHIBIT “A”

**Alexander LeVeque**

---

**From:** Jonathan Schwartz <jonathan@miltson.com>  
**Sent:** Monday, August 13, 2018 2:03 PM  
**To:** Alan Freer; Alexander LeVeque  
**Subject:** MISHA---Schiffman Email dated 8/28/08  
**Attachments:** MIS.Estate.MISHA.8.28.08.wpd

[REDACTED]

Jonathan

----- Forwarded Message -----

**From:** Jonathan Schwartz <jonathan@miltson.com>  
**To:** [pschiffman@lvhebrewacademy.org](mailto:pschiffman@lvhebrewacademy.org)  
**Sent:** Thursday, August 28, 2008 11:14 AM  
**Subject:** Schwartz Gift

Paul:

Great to see you earlier this morning. Attached please find a letter which I drafted this morning which repeats the substance of our conversation today. Thanks again.

Jonathan Schwartz

**A. Jonathan Schwartz, Trustee**  
**MILTON I. SCHWARTZ REVOCABLE FAMILY TRUST**  
2293 Duneville Street  
Las Vegas, NV 89146  
(702)383-6767

August 28, 2008

Mr. Paul Schiffman  
MILTON I. SCHWARTZ HEBREW ACADEMY  
9700 Hillpointe Road  
Las Vegas, NV 89134

Re: Milton I. Schwartz Scholarship

Dear Paul:

It was a pleasure meeting with you again today at the Milton I. Schwartz Hebrew Academy ("MISHA"). It has been a pleasure getting to know you over the last year. I find the MISHA's progress to be tremendous. The development of the Adelson School is truly spectacular. You, the Adelsons and the entire Board are to be congratulated for the growth of the school.

As you know, my father made a gift in his will of \$500,000 to the MISHA for the purpose of funding scholarships for Jewish children only ("Milton I. Schwartz Scholarship Fund"). I wanted to meet with you today in order to ensure that my father's intent is properly executed.

In order to accomplish the foregoing, please have the Board of the MISHA send the Milton I. Schwartz Revocable Family Trust ("MISRT") a letter acknowledging that the anticipated Milton I. Schwartz Scholarship Fund be utilized to fund annual scholarships (each year) in perpetuity at the MISHA for the purpose of educating Jewish children only ("letter"). Please have the letter further state that the funds which make up the Milton I. Schwartz Scholarship Fund be invested to produce annual income for the purpose of funding annual scholarships.

Thank you again for your graciousness over the last year. I look forward to watching the

002630

Mr. Paul Schiffman, MISHA  
Page No. 2  
August 28, 2008:

progress of the MISHA and the Adelson School with keen interest. Good luck in the coming school year.

Sincerely yours:

A. Jonathan Schwartz, Esq.

# EXHIBIT “B”

Form <b>890</b> (Rev. October 1988)	Department of the Treasury - Internal Revenue Service <b>Waiver of Restrictions on Assessment and Collection          of Deficiency and Acceptance of Overassessment -          Estate, Gift, and Generation - Skipping Transfer Tax</b> <i>(Please see the instructions on the back of this form)</i>	Date Received by Internal Revenue Service
--	--	---

**Part 1. Consent to Assessment and Acceptance of Overassessment**


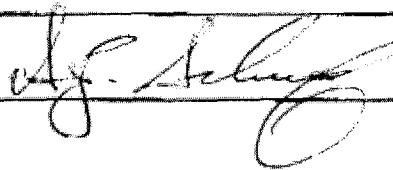


I consent to the immediate assessment and collection of any deficiencies (*increase in tax and penalties*) and accept any over-assessment (*decrease in tax and penalties*) shown below, plus any interest provided by law. I understand that by my signing this waiver, a petition to the United States Tax Court may not be made, unless additional deficiencies are determined.

Date of Death or  
Period Ending: **8/9/2007**

Item	Increase	Decrease
Tax	\$0	\$192,614
Penalty	\$0	\$0
Total	\$0	\$192,614

If the estate is required to file with the District Director of Internal Revenue evidence of payment of estate, inheritance, legacy, succession, or generation - skipping transfer taxes to any State or the District of Columbia, I understand that such evidence must be filed by \_\_\_\_\_, or the credits for these taxes will not be allowed. I also agree to the assessment and collection of the increase in estate tax and penalties of \$ \_\_\_\_\_ based on the disallowed credits, plus interest figured to the 30th day after \_\_\_\_\_, or until this increase is assessed, whichever is earlier.

Estate of **MILTON SCHWARTZ, 052-12-9515**

Executor or Administrator	Sign here  By 	Date <b>2/14/13</b>
	Address	
Executor or Administrator	Sign here  By	Date
	Address	
Donor	Name	Address
Donor's Signature	Sign here  By	Date

Form **890** (Rev. 10-88)

TOTAL P.010

# EXHIBIT “C”

**Alexander LeVeque**

---

**From:** Jonathan Schwartz <jonathan@miltson.com>  
**Sent:** Monday, August 13, 2018 1:11 PM  
**To:** Alexander LeVeque; Alan Freer  
**Subject:** FW: Milton I. Schwartz Hebrew Academy--Schiffman Email

**From:** Paul Schiffman <Paul.Schiffman@adelsoncampus.org>  
**Sent:** Wednesday, February 24, 2010 3:02 PM  
**To:** Jonathan Schwartz <jonathan@miltson.com>  
**Subject:** Re: Milton I. Schwartz Hebrew Academy

Jonathan,  
 Thank you for lunch yesterday. Always a pleasure to spend time with you.  
 Will be discussing with Victor.  
 With my best wishes,  
 Paul

On 2/24/10 2:49 PM, "Jonathan Schwartz" <jonathan@miltson.com> wrote:

Please review the email below and the attachment. I sent it to your hebrew academy email address but it apparently isn't operational

----- Forwarded Message -----

**From:** Jonathan Schwartz <jonathan@miltson.com>  
**To:** pschiffman@lasvegashebrewacademy.com; vchaltiel@redhillsventures.com  
**Sent:** Wed, February 24, 2010 2:16:50 PM  
**Subject:** Milton I. Schwartz Hebrew Academy

Victor and Paul:

It was a pleasure meeting you for lunch yesterday. I'm always happy to hear about how my father's legacy with the school is being carried on.

I just looked through some records (attached) and at least as to the letter-head, the attached shows what it was in 2008. The attached is a more accurate representation of the way the letter-head should be depicted. My one amendment to a new letter head would be that the portion of the logo which reads "Milton I. Schwartz" should be "bolded" and in all caps. Otherwise, the 2008 letter-head looks fine to me. So that there is no confusion, I think it is also reasonable that all letter-head, public releases, fund raiser documents list both logos (The MILTON I SCHWARTZ HEBREW ACADEMY & THE ADELSON SCHOOL). The letter-head should also clearly list that the MISHA is 18 months through 8th grade and the the Adelson School is 9-12th grade. I would appreciate reviewing a new draft letter-head when it is completed.

By the way, I have not received any information on the gala for the MISHA and the Adelson



School for this year. I trust that all documents in conjunction with the Gala take into account the foregoing.

The other items we discussed included but were not limited to signage on Hillpointe. Thanks again.

Jonathan Schwartz

# EXHIBIT “D”

**Alexander LeVeque**

---

**From:** Jonathan Schwartz <[jonathan@miltson.com](mailto:jonathan@miltson.com)>  
**Sent:** Monday, August 13, 2018 1:44 PM  
**To:** Alan Freer; Alexander LeVeque  
**Subject:** FW: MIS Hebrew Academy

[REDACTED]

Jonathan

**From:** Jonathan Schwartz <[jonathan@miltson.com](mailto:jonathan@miltson.com)>  
**Sent:** Saturday, February 27, 2010 10:30 AM  
**To:** [vchaltiel@redhillsventures.com](mailto:vchaltiel@redhillsventures.com); Paul Schiffman <[paul.schiffman@adelsoncampus.org](mailto:paul.schiffman@adelsoncampus.org)>  
**Subject:** MIS Hebrew Academy

Victor and Paul:

I spoke with Sheldon yesterday afternoon. Respectfully, he appears to be unaware of some of the facts and circumstances or is misinformed. I want to do what is in the best interest of the MIS Hebrew Academy and the Adelson School. I know that's what Mr. Adelson wants as well. In reflecting upon what Sheldon had to say and what you (Victor) had to say earlier this week, I was struck by your statements concerning the School's deficit.

In order to do what is best for the School, I want to meet this week to try and resolve all of the issues we talked about and emailed about. I really think that I have some ideas that respect both the Adelson family and the Schwartz family's long standing devotion to the School.

I will spend the weekend re-reviewing all of the documents associated with my Dad's Estate to find a way to get the funds to the MIS Hebrew Academy ASAP. My Dad's wishes have to be respected though. My goal is to attempt to come to an agreement no later than March 5 and to have the funds to the MIS Hebrew Academy no later than March 12.

We will need to meet at the School as I'll need to briefly to review some things to make certain my idea will work. I am available 4:30 or later on Monday. I am available 3:30 or later on Tuesday. I am available 1:00 PM or later on Wednesday. I can make myself available Thursday morning but would prefer Monday through Wednesday. I would appreciate it if you could let me know by mid-day on Monday when you would like to meet so that I can plan the rest of my week. Thank you and enjoy the weekend.

Jonathan Schwartz

# EXHIBIT “E”

**Alexander LeVeque**

---

**From:** Jonathan Schwartz <jonathan@miltson.com>  
**Sent:** Monday, August 13, 2018 12:47 PM  
**To:** Alan Freer; Alexander LeVeque; Jonathan Schwartz  
**Subject:** FW: Meeting

-----Original Message-----

From: venturaenterprises555@gmail.com <venturaenterprises555@gmail.com> On Behalf Of Samuel Ventura  
 Sent: Wednesday, March 6, 2013 4:46 PM  
 To: jonathan@miltson.com  
 Subject: Re: Meeting

I'd like to meet at the school.

Thanks,

Samuel Ventura  
 President  
 Ventura Enterprises Investment and Development, Inc  
 (702) 457-7676

On Tue, Mar 5, 2013 at 9:53 AM, Samuel Ventura <sam@venturaenterprises.com> wrote:

> Jonathan,  
 >  
 > Can we meet on March 13th at 4:00pm. Please confirm.  
 > Samuel Ventura  
 > President  
 > Ventura Enterprises Investment and Development, Inc  
 > (702) 457-7676

>  
 >  
 >  
 > ----- Forwarded message -----

> From: Redhills <redhillse@aol.com>  
 > Date: Mon, Mar 4, 2013 at 10:11 PM  
 > Subject: Re: Meeting  
 > To: Samuel Ventura <sam@venturaenterprises.com>  
 > Cc: Victor Chaltiel <vchaltiel@redhillsventures.com>

>  
 >

> ( Sam : Again March 13 at 4:00pm is perfect ; u are of course welcome  
> to attend ; please cc both Paul and myself in ur correspondance with  
> Jonathan ...Thanks , Victor)  
>  
> Victor Chaltiel; Sent from my iPhone  
>  
> On Feb 27, 2013, at 11:51, Samuel Ventura <[sam@venturaenterprises.com](mailto:sam@venturaenterprises.com)> wrote:  
>  
>> hi Victor let me know i need to be in the meeting Samuel Ventura  
>> President Ventura Enterprises Investment and Development, Inc  
>> (702) 457-7676  
>>  
>>  
>>  
>> ----- Forwarded message -----  
>> From: Jonathan Schwartz <[jonathan@miltson.com](mailto:jonathan@miltson.com)>  
>> Date: Wed, Feb 27, 2013 at 11:39 AM  
>> Subject: Meeting  
>> To: "[sam@venturaenterprises.com](mailto:sam@venturaenterprises.com)" <[sam@venturaenterprises.com](mailto:sam@venturaenterprises.com)>  
>>  
>>  
>> Sam:  
>>  
>> With reference to our conversation, I could meet the following dates and times:  
>>  
>> March 12 at 4 pm  
>> March 13 at 4 pm  
>> March 14th at 8:45 AM.  
>>  
>> Again, thank you for your efforts to resolve this matter.  
>>  
>> Jonathan Schwartz

# EXHIBIT “F”

**Alexander LeVeque**

---

**From:** Jonathan Schwartz <jonathan@miltson.com>  
**Sent:** Monday, August 13, 2018 1:53 PM  
**To:** Alan Freer; Alexander LeVeque  
**Subject:** MISHA...Schiffman Email---Tour On 3/13/13

[REDACTED]

---

**From:** Paul Schiffman <Paul.Schiffman@adelsoncampus.org>  
**Sent:** Wednesday, March 13, 2013 7:46 PM  
**To:** Jonathan Schwartz <jonathan@miltson.com>  
**Subject:** Re: Thank you

You are welcome

Sent from Paul's iPhone

On Mar 13, 2013, at 7:36 PM, "Jonathan Schwartz" <jonathan@miltson.com> wrote:

Paul

Thank you for the tour today.

Jonathan Schwartz

Sent from my Galaxy S®III



# EXHIBIT “G”

**Date taken**

**Wednesday, March 13, 2013 3:59 PM**

**Size**

**1.3 MB**

**Dimensions**

**3264 x 2448**

**Shot**

**1/4000 sec f/2.6 3.7mm**

**ISO**

**80**

**Device**

**SPH-L710**

**Folder path**

**C:\Users\Jonathan\Pictures\2014-12-30  
Samsung SII Photos**

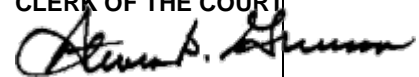
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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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8 In the Matter of the Estate of:  
9 MILTON SCHWARTZ

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11 ) CASE#: P-07-061300  
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13 ) DEPT. XXVI  
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12 BEFORE THE HONORABLE GLORIA STURMAN,  
13 DISTRICT COURT JUDGE

14 WEDNESDAY, AUGUST 15, 2018

15 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**  
16 **PRETRIAL CONFERENCE**  
17 **ALL PENDING MOTIONS**  
18

19 APPEARANCES:

20 For the Estate of Milton Schwartz: ALAN D. FREER, ESQ.  
21 ALEX G. LEVEQUE, ESQ.

22 For the Dr. Miriam and Sheldon G. J. RANDALL JONES, ESQ.  
23 Adelson Educational Institute: JOSHUA D. CARLSON, ESQ.

24  
25 RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, August 15, 2018

2  
3 [Case called at 11:21 a.m.]

4 THE COURT: So we're going to go back on the record in  
5 P061300, The Estate of Milton Schwartz, specifically the Milton  
6 Schwartz -- Estate of Milton Schwartz versus the Adelson Education  
7 Campus.

8 MR. FREER: Good morning, Your Honor. Alan Freer on  
9 behalf of the estate. Also joining me later, as soon as he finished an  
10 evidentiary hearing, will be Alex LeVeque.

11 THE COURT: Okay. Thank you.

12 MR. JONES: Morning, Your Honor. Randall Jones and Josh  
13 Carlson on behalf of the Adelson Campus.

14 THE COURT: All right. Thanks.

15 Okay. So we have a couple of matters and then we have our  
16 pretrial conference, so before we start with the pretrial conference, we  
17 should probably talk about the first motion which is our motion to strike a  
18 jury demand and that was filed by the petitioner.

19 MR. JONES: Yes, Your Honor.

20 Your Honor, our firm does not do and as you probably noticed  
21 because you are the probate judge, you don't see us in here very often  
22 on a probate matter so I am certainly admittedly not as familiar with  
23 probate matters as I am with civil jury case but it came to our attention  
24 when they filed a motion for -- and as you probably also recall, our firm  
25 came into this case more -- well more than a year into it, so jury demand

1 had been made we never even looked at it. When there was a motion to  
2 have an advisory jury, one of my associates started looking at that issue  
3 and said wait a minute, this doesn't look like it would be appropriate to  
4 have a jury in the first place and looked into that further and we've  
5 determined that we believe that it is not appropriate to have a jury in this  
6 kind of a matter.

7           They have -- the estate has raised number of issues I guess  
8 the primary argument as I understand it is well this a breach of a  
9 contract case and you are entitled to a jury trial under a breach of  
10 contract case, but -- and I know that Mr. Freer's firm does handle  
11 probate matters all the time so I presume that he does know this that  
12 under NRS 155.150 if it is a matter outside a -- strictly a will contest, it is  
13 a matter that must be tried by the court.

14           In fact, in looking at jury instructions, trying to prepare jury  
15 instructions on a case like this, one of the points that was raised by one  
16 of my associates was wait a minute, everything we're looking at here  
17 and related to a case like this says the court shall decide, the court shall  
18 decide. And so trying to even craft jury instructions in a case like this is  
19 -- I wouldn't even say difficult is -- is demonstrates the inappropriateness  
20 of having a jury under these circumstances.

21           Getting back to their point about well this is a breach of  
22 contract case, it's a breach of contract case based on a declaratory relief  
23 claim under NRS 30.010 and that provides that the matter shall proceed  
24 in the court in which the proceeding is pending and -- and in this case,  
25 we know that if it's a matter involving the estate other than a will contest,

1 it is decided by the court.

2 And if you look at their claim, it says breach of contract is the  
3 only argue -- claim that's left, a written breach of contract, essentially is  
4 the only affirmative claim that's left. Milton's lifetime gifts and bequests  
5 are conditioned on the school bearing his name perpetually and  
6 performing under the alleged naming rights agreement. The school  
7 breached the agreement. As a result, the estate is not required to  
8 distribute the bequest and the estate is entitled to damages based on  
9 Milton Schwartz' lifetime gifts. So in this case it's clear that it is a claim  
10 based on declaratory relief action for the estate, not a contest over the  
11 enforceability of a will.

12 And, Your Honor, one of the arguments they made is that  
13 we've got -- there's kind of a laches argument. The problem with that is,  
14 is I analogize it to subject matter jurisdiction argument. If there's no  
15 subject matter jurisdiction, it doesn't matter when you raise the issue.  
16 And here they're not entitled to a jury trial and they -- it would be, seems  
17 to me anyway, be plain error if we raised the issue or the Court could  
18 have raised the issue itself had the Court looked at this, and it also  
19 seemed to me last week when we were talking about this the Court  
20 seemed to question the -- raise the question itself as to is this actually  
21 kind of case that should be tried by a jury.

22 But I also, on this laches argument, would analogize it to a  
23 case that I had involving Jim Rhodes. We had a claim against Jim  
24 Rhodes years ago and we were within weeks of trial. We worked up the  
25 entire case, both sides. We were within weeks of trial. We had



1 demanded a jury trial and within a few weeks of going to trial, the  
2 Rhodes group raised the fact that there was an arbitration clause in the  
3 contract with the parties. And the judge said well wait a minute, you got  
4 to go to arbitration. We said no, that's crazy, they waived it.

5 Went to the Nevada Supreme Court. The Nevada Supreme  
6 Court said no, there's an arbitration clause and doesn't matter when you  
7 invoked it, there's an arbitration clause and sent the case to arbitration.  
8 And we had prepared for a jury trial and were ready to proceed and our  
9 big argument was wait a minute, they have waived the right to a  
10 arbitration because they have sat on their hands and proceeded all the  
11 way down this road.

12 So, Your Honor, the only other point I guess I would raise is --  
13 and this goes all the way back to a case in 1928 that we cited,  
14 *Wainwright versus Bartlett*. In the absence of a statute providing for a  
15 jury trial, appropriate proceedings have always been heard by the court  
16 without intervention of a jury. So this is -- you know, they -- because  
17 they've raised the issue of the constitution provides for jury trials, except  
18 -- and Rule 39 specifically says this: When a jury demand has been  
19 filed, the case shall be tried by a jury unless, quote, the court, upon  
20 motion or of its own initiative, finds that a right of trial by jury of some or  
21 all of those issues does not exist under the constitution or statutes of the  
22 state.

23 As we've already indicated, 155.150 provides that the Court  
24 will try these issues and especially when you're looking at a claim by the  
25 estate brought pursuant to 30.010 which also specifically provides that it

1 would be -- the case would be tried in a manner dictated by the probate  
2 court which in this case is a case to the court as opposed to a jury. And  
3 in short, Your Honor, we think it's plain error, having finally realized that  
4 this should never have been a jury demand in the first place, to allow  
5 this case to proceed with a jury under the circumstances.

6 THE COURT: Okay, well, what about the point that Mr. Freer  
7 makes that I've already turned this down once, a request to strike the  
8 jury demand, and the -- they quote from the ruling that the question of  
9 fact -- because I agree with you. A lot of this is not proper for a jury to  
10 determine and that's -- you know, we talked about that when we talked  
11 about what's the right kind of an expert that this jury could even hear  
12 from.

13 There are certain things that this jury really -- they can't make  
14 the decision. They just can't. But, you know, what was said -- and this  
15 may or may not be entirely true at this point: The ultimate question of  
16 fact to be decided by the jury on the Adelson Campus's claim to compel  
17 distribution is whether decedent, Milton I. Schwartz, intended the  
18 \$500,000 bequest identified in section 2.3 of his last will and testament  
19 to be made only to an entity named after him bearing the name Milton I.  
20 Schwartz Hebrew Academy, or whether said bequest was made to pay  
21 off the mortgage, or in the alternative for the education of Jewish  
22 children irrespective of the name of the educational institution.

23 So those kinds of questions of fact determined by a jury, but I  
24 think that probably ultimately the decision on what the -- the direction to  
25 the estate on what they have to do has to come from the Court --

1 MR. JONES: Well I guess --

2 THE COURT: -- because I -- because I'm trying to -- I think --  
3 what is a verdict that they can reach. I don't think they can reach a  
4 verdict. On will construction they can't. But those questions --

5 MR. JONES: Well those questions, Your Honor --

6 THE COURT: -- largely advisory.

7 MR. JONES: I'm sorry, say that again?

8 THE COURT: I said largely advisory, but I do think they are  
9 questions that --

10 MR. JONES: Well, but if they're --

11 THE COURT: -- you know, a jury can consider.

12 MR. JONES: Well, I guess I would ask the Court what part  
13 would not be advisory? I don't -- I -- that's where I don't see the  
14 distinction. They -- it seems to me anyway, based on the statutes that  
15 are at issue in this case, there are -- as a matter of law, there are no  
16 issues that a jury can properly reach a verdict on under 155, 150 or  
17 30.010.

18 And even the points you raised as you acknowledged  
19 yourself, well, a jury could give an advisory opinion, but that's not a  
20 verdict. An advisory opinion has no essential meaning, so we would  
21 essentially empanel a jury to give you an advisory opinion -- now the  
22 only time I've ever seen an advisory opinion be provided for is where  
23 there were other issues that the jury did have to decide. And in fact, I  
24 had a case last December in front of Judge Denton where there was an  
25 issue there about an advisory jury, but in that case there was unquestion

1 issues that -- unquestionably there were issues that a jury had to decide.

2           So -- and that's where it's -- it makes some sense to me about  
3 an advisory jury, because then you've got a situation where the jury's  
4 finding facts on certain claims that it has a -- an obligation to find the  
5 facts on and the court says well, I'm going to let -- let's see what they  
6 have to say about these other issues that are really within the exclusive  
7 providence of the court; I may or may not agree with them about that,  
8 but I want to hear what they have to say.

9           This is a different situation. And, Your Honor, if you can tell  
10 me, and I certainly would be interested to know because this is going to  
11 be critical to both sides, what issues would a jury reach a verdict on in  
12 this case that would not be advisory? That's what I don't understand.  
13 And if there are none, then I don't see how as a matter of law they would  
14 be allowed to be an advisory jury. There would be -- if that were the  
15 case, you could ask for an advisory jury in every case out there that was  
16 a bench trial, whether they were entitled to it or not.

17           So I would address your question if I -- if you can tell me, Your  
18 Honor, I'd be happy to address it, what issues you think a jury should  
19 decide ultimately in this case.

20           THE COURT: Okay. Okay, my next question then is on page  
21 5 of your brief, nice chart here, on the different issues that are pled in  
22 the response to the -- the estate's response to the petition. Construction  
23 -- typo but construction of the will: The bequest lapses because Milton  
24 Schwartz only intended the bequest to go to an entity named after him  
25 on a perpetual basis and no such entity exists.

1           So that's sort of the -- what was said that Mr. Freer quoted --  
2 quoted here, sort of what was said in his brief on page 3 that the  
3 question to be decided is about this -- since the request is to compel a  
4 distribution, is this issue does the bequest lapse seems to me to be a  
5 legal question that the Court would have to make the determination on.  
6 Although if the concept is that an advisory jury should really be the one  
7 to hear this evidence and come to the conclusion about this -- this is a  
8 30-year-long dispute. And this is the third that I know of litigation.

9           This should be a surprise to no one and I -- this is why when  
10 Milton wrote his will, he could have been a little clearer because he had  
11 been disputing this for at that point 20 years. That to me -- I can see  
12 how there's -- there's facts there that a jury listening to this, don't know  
13 any of these people, don't know anything about it, are going to sit there  
14 and say okay, let's hear this, what was -- what did Milton really intend.

15           And that's why I said with respect to our one expert, the rabbi,  
16 the reason he is significant is because he's the one person who talked to  
17 him at or about the same time he was writing his will. And in that same  
18 time period Milton had this -- demonstrated to him a very clear intent,  
19 which was I'm going to leave bequests where my name will be  
20 recognized as being a person who cared about education in the Jewish  
21 religion. And that's the testimony -- as I interpreted what the rabbi was  
22 saying, that's the testimony and that goes to this first issue which is what  
23 was Milton's intent.

24           So I thought well a jury could hear that. They couldn't hear  
25 the whole rest of it about, you know, what's the religious law and what's

1 the -- you know, I'm not sure it's every Jewish person believes the same  
2 way but at least they did. How you leave a physical -- physical evidence  
3 of your name as a last name legacy. That's kind of what I took the rest  
4 of his opinion to be. Not appropriate for a jury. But there are certain  
5 very specific facts that a jury could listen to and say okay, how does that  
6 fit into this question of what was Milton intending when he wrote the will  
7 the way he wrote it?

8 Because that's what's really important here. This wasn't  
9 something some attorney drafted up for him. This was Milton writing  
10 this. And so that's -- that's why it seemed to me that there are questions  
11 where, you know, you could put the common wisdom of our community  
12 to work on this and say, hmm, what did Milton mean? None of us knew  
13 him. I didn't know him.

14 So fraud I think you're right it's gone.

15 MR. JONES: Okay.

16 THE COURT: And I think Jonathan has acknowledged that  
17 he felt that was -- that the misrepresentations were made to him. And  
18 that's different. So that's gone.

19 And then we have void, that the bequest is void because he  
20 had a belief and understanding. Okay, it's not --

21 MR. JONES: Your Honor, to me that's a strictly legal question  
22 as to whether or not --

23 THE COURT: Yeah.

24 MR. JONES: -- what the words mean, and a jury cannot  
25 decide that issue. I -- at least that's the way I always understood the

1 law.

2 THE COURT: Okay. All right.

3 MR. JONES: I don't know how in the world that a jury could  
4 decide what those words mean as a matter of law.

5 THE COURT: Okay.

6 MR. JONES: Whether there was a mistake as a matter of  
7 law.

8 THE COURT: So this -- I guess what I'm saying is, is this  
9 really something where they really are asking for an advisory jury and it  
10 really should be bifurcated? Because the advisory jury makes a  
11 determination on what -- factually what do they believe as a -- as a  
12 factual issue looking at all of this evidence, because there's a lot, what  
13 was Milton -- what was Milton's intent. And then once they determine  
14 intent, they're done and it's really just a question at that point in time for  
15 the Court to interpret because I -- for example, Mr. Rushforth, not  
16 appropriate for a jury to hear. That's all about will construction; that's all  
17 for the Court. Doesn't mean he's wrong.

18 MR. JONES: Sure, that --

19 THE COURT: Doesn't mean he doesn't have a valuable  
20 opinion --

21 MR. JONES: -- that's his opinion.

22 THE COURT: -- that the Court could -- the Court could hear.

23 MR. JONES: Well, here's I guess my point, Judge, even --  
24 and with respect to this destruction of will, I -- and again, as lawyers,  
25 obviously we can potentially reasonably come to different conclusions,

1 but when I look at that, Jonathan Schwartz has testified under oath that  
2 the language of the will, the provision we're talking about, the bequest to  
3 the school is unambiguous. So that's the petitioner has said that under  
4 oath that he believes that language is unambiguous. And so the intent  
5 of the testator is based -- the person representing the estate and  
6 bringing the claim on behalf of the estate has taken a position that it is  
7 not ambiguous.

8 Whether it's ambiguous or not though is, I believe, an issue for  
9 the Court to decide. The Court has to first decide that it is ambiguous  
10 and only if the Court decides if it's ambiguous does it become a question  
11 of fact as to what the intent was. In which case extrinsic evidence is  
12 appropriate to be considered by the Court.

13 So -- and then it becomes a question of is that a will contest?  
14 Really? Is it there's a bequest that's listed there and what does that  
15 bequest mean? We think that is a issue for this Judge -- for this Court to  
16 decide.

17 But that said, clearly -- and the only thing that I understand is  
18 left of these issues here that are really kind of -- they're -- if you look at  
19 everything here, other than breach of contract, all the other five claims  
20 that are listed, they're all sort of different ways of saying the same thing.

21 Revocation of gift and constructive trust. In other words, it  
22 was -- it wasn't intended to be given this way and therefore we should  
23 get it back and should be held in constructive trust.

24 Offset and bequest under will. That's -- again, it's kind of this  
25 whole void by mistake argument or fraud in the inducement or



1 construction the will. Those are all really different ways of saying the  
2 same thing that the will doesn't say what the school thinks it says and  
3 therefore the bequest shouldn't be provided.

4 The only one that's different is the breach of contract. And as  
5 to the breach of contract, certainly -- based on the case law we've cited,  
6 certainly a jury cannot hear that claim.

7 So when you say it should be bifurcated, I guess again it begs  
8 the question to me, Your Honor, is what does the jury decide? Even if  
9 it's -- you look at the first one, construction of will, do they decide it's  
10 ambiguous? Because unless you've decided as a matter of law that it's  
11 ambiguous, there's nothing for the jury to hear factually. And I would  
12 contend that it's all part of a challenge of -- with the estate, it's not a  
13 matter of the interpretation of -- or excuse me, a will. It's a dispute with  
14 the estate as opposed to the interpretation of a will.

15 With that said, Your Honor, I don't know -- you know, I don't  
16 want to start repeating myself but --

17 THE COURT: Right. Well, I guess the question is what -- are  
18 you contesting the validity of a will or is this just construction of a will?  
19 Because if the bequest to the school was obtained through this theory  
20 that there was some fraud or inducement somehow, some promise that  
21 yes your name's on here and it'll be in perpetuity, give us more money --  
22 I mean kind of surprised they don't have a policy on this but, you know,  
23 whatever. The -- conceivably that could be considered construing  
24 whether that bequest in the will was obtained through some sort of  
25 improper means which is what a will contest is all about. You ended up

1 in grandpa's will because you promised to name your child after him and  
2 then you didn't.

3 So is that some sort of fraud somehow and such that you  
4 would have a will contest to say is that person properly in the will, is that  
5 school properly in the will? Conceivably could be considered a will  
6 contest.

7 MR. JONES: Well --

8 THE COURT: Just trying to figure out how you get there --

9 MR. JONES: Well, that's the --

10 THE COURT: -- and what's appropriate for the jury versus the  
11 Court.

12 MR. JONES: That's the problem. And think about the facts of  
13 this case and -- and I agree with you, we could come up with scenario  
14 like the one you just gave. I told my grandfather that I'm going to name  
15 my first child after him and he specifically goes and changes his will in  
16 reliance upon that belief, and then I don't do it and the estate contests  
17 the bequest to me. That's not -- there's no facts, no facts from any  
18 source that anybody even knew that Milton Schwartz was going to make  
19 his bequest on the basis of a fraud that they were going to bait and  
20 switch him here.

21 That -- and I understand that the rabbi may say well, yeah, he  
22 told me he was going to give that money because the school was  
23 named after him in perpetuity. But there's no evidence that anybody at  
24 the school said well we're going to get him to do that and then when he  
25 -- as soon as he dies, we're going to change the name of the school on

1 him. There just -- that evidence doesn't exist.

2 Even if you want to construe the facts most favorable to the  
3 estate, any way you look at it, you got to have some evidence at this  
4 point. We're going to trial.

5 THE COURT: Okay.

6 MR. JONES: We're a week -- less than a week from trial. So  
7 that will contest argument doesn't fit the reality of this case and therefore  
8 it doesn't apply, therefore there's nothing for a jury to legally decide in  
9 this case.

10 THE COURT: All right. Thanks.

11 Mr. Freer.

12 MR. FREER: Good morning, Your Honor. Before I start, are  
13 there any questions you'd like me to respond to or should I just dive right  
14 in?

15 THE COURT: Well one. And that is, you know, the quote on  
16 page 3 of your brief where three years ago absolutely you are correct, I  
17 turned down a similar request to strike the jury request because this  
18 question of fact is, you know, what did Milton mean when he -- because  
19 he wrote it. This isn't something some attorney tried to put into words  
20 Milton's wishes. Milton wrote it.

21 MR. FREER: Right.

22 THE COURT: So that's really key to me and -- but when I got  
23 down to the ultimate question -- what I said -- I think I said it last week is  
24 ultimately this is about a will, it's -- whatever the contract is, the Milton  
25 may have thought agreement he had with the school, ultimately it's will

1 construction and how can we leave that in the hands of the jury -- I  
2 mean so are we then only just having an advisory jury on that one  
3 issue?

4 MR. FREER: Right. So the answer is the law that we cited to  
5 the Court does allow -- there's no prohibition to having a jury decide any  
6 of these issues. We'll start with that proposition. And let me start with  
7 why, is he talks laches arguments, et cetera. The difference here is  
8 we've got the *3300 Partners* case that I cited, and I actually attached  
9 that as Exhibit 1, and that basically says that a district court can deny  
10 the motion to strike the jury demand on the basis of laches where  
11 inexcusable delay and -- causes prejudice to the others. And so this  
12 Court doesn't even need to get to that part right now because of the  
13 delay. The five-year delay we've had before even striking it, the Court  
14 doesn't have to even consider this motion.

15 In *3300 Partners*, the inexcusable delay ranges from filing the  
16 motion to strike after the time the original jury would have occurred --  
17 jury trial would have occurred to waiting as little as four months. Here  
18 we've got the five-year period.

19 With the prejudice, again the courts talk about that, that we  
20 have trial preparation and where the court's invoked -- resolved several  
21 motions in limine, jury panel called, et cetera, et cetera, that's the  
22 prejudice. So the Court doesn't even need to decide that under the  
23 *3300 Partners*.

24 Now, if your -- in terms of if Your Honor was looking at it as  
25 well what basis do we have to try this as a jury trial --

1 THE COURT: Maybe this is a better way to phrase it.  
2 Thinking about two things, how we're going to -- as Mr. Jones  
3 mentioned, how we're going to write jury instructions for a jury to  
4 understand what they're supposed to be doing and then how are we  
5 going to give them a verdict form? Because I don't see how they can  
6 reach the verdict of what Milton's intent means.

7 If they find Milton's intent was only to leave this money to a  
8 school named after him, doesn't the Court then have to say well what  
9 does that mean? Because it's like Mr. Rushforth said, one -- is one  
10 opinion that that means it lapses and it goes into the residuary. There  
11 are other options that Milton put into his will. Somebody needs to make  
12 the determination as to whether that's really the route we need to go. I  
13 mean that -- isn't that at that point the Court has to make that decision?  
14 Because I don't see how the jury can say this means that as a matter of  
15 -- as a matter of law because that's -- and then they're making a  
16 decision as a matter of law that what that -- what that intent means to  
17 the outcome of where does the \$500,000 go?

18 MR. FREER: So with respect to that, we cited some cases  
19 that basically say even where there is equitable relief, because this  
20 would be an equitable issue for the Court to determine, a jury still can  
21 determine those issues, and that's the federal circuit cases that we cited.

22 Now, the issue with responding to your question is what kind  
23 of -- how would we have a jury to determine that. Well, it's basically two  
24 questions that the jury would answer is what was Milton's intent with  
25 respect to this clause? Did he intend to leave it only to a school -- I think

1 Your Honor actually outlined that part of the question that we'd submit to  
2 the jury in the order -- in the language of the order you cited.

3 And then the answer after that is basically if the answer is yes  
4 that's what they intended or, you know, Milton only intended this to go to  
5 a school that bore his name, the second question is, is there a school  
6 that bears his name? No. What is the verdict then? It lapses. It's a --  
7 it's yes or no in terms of whether or not it operates.

8 So in terms of the jury question, you know, it would be  
9 basically a three part thing. I mean because -- actually would be two  
10 parts. What was -- was Milton's intent only to leave it to a school to his  
11 name, is there a school to his name? If the answer is yes that he  
12 intended to leave to the school in his name and there was no school in  
13 his name, then this Court -- this jury will render a verdict that the gift  
14 lapses.

15 THE COURT: And then what? By operation of law --

16 MR. FREER: Well, a lapsed gift just means that under the  
17 Nevada Supreme Court and that's -- this goes back to stuff we cited in  
18 2014. But where a gift lapses, it's just property of the estate; it goes to  
19 the residuary. The jury doesn't need to decide that. It's just an asset of  
20 the estate at that point. All they're deciding is whether -- what is the  
21 operational effect of that bequest.

22 THE COURT: Is the question too narrow though because the  
23 -- because what we -- talking about this, the \$500,000 bequest made  
24 only to an entity named after him and bearing his name, or whether said  
25 bequest was made to pay off the mortgage and this is where I'm kind of

1 -- like I think this is kind of going beyond what a jury can really do. Or,  
2 the other alternative, for education of Jewish children irrespective of the  
3 name and the educational --

4 MR. FREER: With all -- yeah, with all due respect --

5 THE COURT: -- institution.

6 MR. FREER: -- I think it's muddling conceptions under 2.3.  
7 It's I Milton Schwartz hereby give to the Milton I. Schwartz Hebrew  
8 Academy \$500,000. This money shall be used either for Jewish  
9 education or to pay off -- you know, pay off the loan or -- so the clause of  
10 how the money is used once the school receives it is different than  
11 whether or not the school exists. They don't need to make that  
12 secondary determination. That's just a restriction on the use of funds if  
13 the bequest is valid.

14 THE COURT: Okay. All right.

15 MR. FREER: So -- and then, you know, the one thing that the  
16 -- that Mr. Jones omitted in presenting -- the other issue we raised is an  
17 implied consent under Rule 39(c). And that's where we cite Second  
18 Circuit, Seventh Circuit cases and a Northern District California case.  
19 Basically that rule -- or those line of cases basically say that in addition  
20 to laches, that if a party refuses or fails to object timely, then it is -- then  
21 39(c) operates as a consent to a nonadvisory jury trial.

22 And that's exactly what we've got here. I mean we have order  
23 after order setting a jury trial. They -- they're preparing motions in  
24 limine. They're actively prosecuting and preparing for trial as if this were  
25 a jury trial. And courts are saying that constitutes the implied consent to

1 have a matter tried to a nonadvisory jury trial.

2 THE COURT: Okay. As time has gone on and we have  
3 narrowed our issues, I guess my question is again, what are we  
4 instructing this jury on? I mean aren't we asking this jury to make legal  
5 determinations that are beyond just questions of fact? Here's -- we're  
6 going to -- how are we going to instruct the jury on the law? That -- is it  
7 your proposal that jury instructions can be written that don't try to teach  
8 the jury probate but simply say if you make this factual determination,  
9 here's the law that will govern --

10 MR. FREER: Absolutely, Your Honor.

11 THE COURT: -- the outcome?

12 MR. FREER: Yes.

13 THE COURT: Okay, is that proper for a jury?

14 MR. FREER: If they stipulate to it under 39(c). There is no --  
15 there's no prohibition. I mean -- and this gets back to -- there's one  
16 other case -- you know, obviously they've had five years to draft this  
17 motion, I had 48 hours to respond.

18 THE COURT: Right.

19 MR. FREER: So there's one other case I came across,  
20 there's *Adams versus Fallon Drilling* (phonetic), and the crux of this that  
21 the Court should really look at is what is the prejudice going on here. I  
22 mean this is essentially an ambush, pulling the rug out on us two days  
23 before we're starting trial in terms of our preparation, what we've done  
24 with respect to jury notebooks, et cetera. And to just kind of say oh, let's  
25 not have a jury trial, well that's what they tried in the *Adams* case, and



1 that's at 1998 Westlaw 195981, and the court denied the motion to strike  
2 a jury trial at the last meeting saying it was tantamount to an ambush  
3 and due to the last minute and it prejudiced the other side. So we've got  
4 these other issues, you know, with respect to our prejudice.

5 Now, let's get to the jury trial -- I mean the contract issue is we  
6 outlined that there is a constitutional right to a jury trial with respect to  
7 the breach of contract. The 155.150 does not affect the issue with  
8 respect to the contract and the -- here's the reason why. If you look at it,  
9 it stands for the proposition that if a claim or cause of action arises under  
10 the probate code, and that's used by the words in matters of an estate,  
11 the issue with respect to the contract is not a matter of the estate.

12 Matters of the estate are typically accounting issues, anything that you  
13 find under Title 12. Those Title 12 specific causes of action are matters  
14 of an estate.

15 And that goes into if you look at -- and we cited this in our  
16 brief. If you in and look at the case that they cited, it really talks about  
17 why that is. It's because under common law, there was no probate.  
18 You didn't have a right to give property in probate. It was all statutory  
19 based. And so since there did not exist a jury trial right under common  
20 law, that's why that statute was put in place.

21 But that doesn't prevent a -- that statute doesn't and can't  
22 prevent any type of constitutional jury trial right as to a breach of  
23 contract. It simply can't. And the way the probate code gets around  
24 that, because obviously we don't want the probate code to violate the  
25 constitution, is it gets around it in 155.180. That expressly allows the

1 rules of civil procedure to apply when they're not specifically prohibited.

2 And so if you take 155.180, Rule -- NRCP 38, 39 and 57, then  
3 that allows the jury trial here. There isn't anything in 155.150 that says  
4 under no circumstance can any jury trial not apply except for will contest  
5 and we aren't allowing any other statute or any other code of civil  
6 procedure to provide for it. It just sets the baseline.

7 And the issue with NRS 30.110 is all that does is operate to  
8 guarantee that if a jury trial is available as a matter of right, that just  
9 because you do it in a declaratory relief context, you don't lose that  
10 declaratory relief context.

11 I see Your Honor's looking at something. Do you have a  
12 question for me?

13 THE COURT: Yeah, looking at the -- we really just have like  
14 two cases decided on this. One of them is *Wainwright* and the other  
15 one's *Peterson* I think. And they speak and -- in one they do allow a jury  
16 trial, in the other they don't. And in *Wainwright* the court talks about how  
17 probate is not really a common law concept, it's --

18 MR. FREER: It's statutory.

19 THE COURT: -- it's statutory and was -- before it was heard  
20 by the courts, it was heard by the ecclesiastical courts.

21 MR. FREER: Right.

22 THE COURT: And so they view it differently and talk about  
23 that for the -- a trial of issues of fact as in common law action is argued  
24 that this term must be taken to mean in the sense of an action common  
25 law to which a jury has always been allowed as a matter of right. So this

1 is your contract theory that --

2 MR. FREER: Correct.

3 THE COURT: -- even though it's muddled with these probate  
4 issues, you've got some true common law causes of action that are  
5 always going to be -- be right to a jury.

6 MR. FREER: Correct.

7 THE COURT: But we've never had declaratory relief be  
8 subject to a jury. You can't ask a jury to rule on declaratory relief. I  
9 don't see how you possibly could.

10 MR. FREER: Well if you look at --

11 THE COURT: So are we really talking about bifurcating a  
12 trial?

13 MR. FREER: If you look at Rule 57, that does expressly  
14 permits (sic) a right to jury trial in declaratory relief actions.

15 THE COURT: Okay.

16 MR. FREER: And what we're asking the -- what we're asking  
17 the jury to do is make these factual determinations.

18 THE COURT: Okay, but ultimately no because I -- I get the  
19 idea that the jury may be the ideal way to put these issues to the test of,  
20 you know, what was Milton's intent, what did he -- what rights did he  
21 think he had, what was he trying to achieve. I -- you know, those kinds  
22 of factual things that motivate somebody in making their testamentary  
23 distributions, but I -- I'm just struggling as we get closer to this and trying  
24 to think how are you going to instruct a jury as to what -- okay, you've  
25 made a factual determination. Now how does that apply in this

1 circumstance to this document that will result in what outcome for this  
2 will? Because to me it doesn't seem that it is entirely -- once you get  
3 past these factual determinations, it's a question of what law you apply  
4 and so for me it seems that what we're going to be doing is determining  
5 most of this in argument over jury instructions because I don't see how  
6 else you can get there.

7           You're going to have to have -- and I don't see that there's any  
8 clearly defined statement of law unless we really do put Mr. Rushforth  
9 up on the stand and really do have him try to teach this jury probate law.  
10 And just reading his opinion, I -- you can't instruct a jury on this. This is  
11 the law. It's up to a judge to try to make the decision is Mr. Rushforth's  
12 opinion correct. As a matter of law, is that what the result is, or is there  
13 some other result that they may want -- I mean I'm just not  
14 understanding how we can get the jury to make that determination. I  
15 understand and -- but I think that then we're just asking for an advisory  
16 jury.

17           The basic -- the trigger question is what was Milton trying to  
18 do when he -- when he wrote this will, what was he intending this  
19 bequest would achieve? To me those are your jury questions. I  
20 understand --

21           MR. FREER: What was --

22           THE COURT: -- or they're appropriate for a jury, they're  
23 entirely appropriate for a jury, but I -- that's the next step that I have  
24 when thinking about this -- the three alternatives that were stated here  
25 as to giving a jury a question of fact, yeah, a jury would appropriately --

1 entirely appropriate to say what was his intention on this bequest or was  
2 he -- just mean I'm giving you \$500,000 and I want you to pay off the  
3 mortgage with it? Was that the intent of that bequest? How did he  
4 mean to write that? I mean it's -- is it a question of placement of a  
5 comma or what? Like you said, what should be done with it, the  
6 direction to what was to be done with the \$500,000 should it go to this  
7 entity.

8 MR. FREER: And I don't think the jury needs to determine  
9 that at all. The jury needs to determine did Milton intend this only to go  
10 to a school bearing his name? Is there a school bearing his name? And  
11 then if the -- the law is very clear. If the answer to those two questions  
12 are no, then the gift fails.

13 THE COURT: Right, but does the jury say that or does that  
14 then come to the Court to say now what, Judge? We've established that  
15 as a matter of fact that this is Milton's intent. Now as a matter of  
16 construction of the will, what's the outcome of this question of intent?  
17 Because the question of intent is just the step -- is just step one. We still  
18 have to work our way through as -- as Mr. Rushforth did, his whole  
19 analysis.

20 I'm not saying I agree with him or disagree with him. I'm just  
21 saying he had a whole analysis that's a legal analysis. It really wasn't  
22 conditioned on any kind of fact that a jury could determine. It was the  
23 process of what's the outcome of this factual finding, what does that  
24 mean -- what will that mean in interpreting what -- what's the effect of  
25 this will? Does the whole thing -- does it just go to the residuary, does it

1 -- or does it go some other way? Was -- this was really the goal to have  
2 something out there, whatever it was, I give you options, have -- you can  
3 give it to educational scholarships, you can pay off the mortgage --

4 MR. FREER: If the gift fails, that's the end of the jury's  
5 determination with respect to this trial because then we're back into  
6 probate administration. They're no longer an interested party once they  
7 determine whether or not the jury (sic) fails. Then it's incumbent upon  
8 the petitioner to come back before the Court and petition for the  
9 distribution of that funds as we do under normal probate. But with  
10 respect to that, I mean it's basically --

11 THE COURT: But so that's my question --

12 MR. FREER: It's down to determining whether or not they're  
13 an interested party and whether or not they breached a contract.

14 THE COURT: How far can you ask a jury to go though?  
15 What's the extreme question you can ask a jury? And that's where I just  
16 thought we were probably getting too far into probate law that you won't  
17 be -- I don't understand how you can educate a jury in jury instructions  
18 as to if you find this, then this is what's going to happen. I mean that's  
19 not a -- it's not a jury instruction. That's me directing the jury that if you  
20 find this, it's going to lapse and it's just a lapsed gift and then probate  
21 law just takes over and we're done. So --

22 MR. FREER: Well they're petitioning to move for the  
23 distribution.

24 THE COURT: Right.

25 MR. FREER: And so the question is, if you want to break it

1 down to three questions: Is there an entity named the Milton I. Schwartz  
2 Hebrew Academy in existence today?

3 THE COURT: Right.

4 MR. FREER: Did Milton intend to give it only to Milton I.  
5 Schwartz Hebrew Academy? If the answer to those two questions are  
6 no, then you will deny their petition. I think it's as simple as that --

7 THE COURT: Okay.

8 MR. FREER: -- with respect to that.

9 THE COURT: All right. Thanks.

10 MR. FREER: And then I guess the one last thing you -- you  
11 touched on the issue of bifurcation. I mean the issue and the problem  
12 that we've got with bifurcation here is we've got -- the issues with the  
13 contract claim and the gift and the estoppel issues, they're all very  
14 inextricably intertwined. And so if we have to end up bifurcating  
15 something to that effect, you know, with respect to how they're  
16 interrelated, we're going to be calling witnesses twice and that's just not  
17 judicial economy.

18 What needs to happen is it needs to be tried. If this Court -- I  
19 mean and this is what I put in my conclusion is if the Court disagrees  
20 with our position that it's appropriate for a jury to try everything and you  
21 say no jury trial, jury trial doesn't happen, we've got a right to appeal,  
22 then we're back here retrying the case. If the Court grants the jury trial  
23 and we're wrong and we're not entitled to a jury on all issues, the worst  
24 that can happen is that it's an advisory opinion and we're not back trying  
25 this issue again.

1 THE COURT: But I'm not sure if I --

2 MR. FREER: It's not reversible error to have a jury determine  
3 the issues because they will have made the findings of fact. And you  
4 can -- if you always -- you can always render your own opinions at the  
5 end. We go up to appeal with respect to that and if we're entitled to a  
6 jury verdict, there we've got the jury trial. If they're entitled to an  
7 advisory opinion and your opinion based on that, then we're not here  
8 trying this case twice.

9 THE COURT: Okay. And just one thing procedural with  
10 respect to bifurcating, does bifurcating always mean we have to have  
11 two completely separate trials or does it mean that we have the  
12 testimony, the jury is just not instructed to make decisions on certain  
13 things that we've all heard in the trial? They just aren't instructed on it  
14 and they're instructed this is the very narrow issue you're here to  
15 determine, you determine your issue, period, that's the end of the story.

16 Because what would they be hearing that would somehow  
17 alter a decision on -- like I said, this basic issue of intent. I understand  
18 how intent is -- it's certainly something a jury can determine, absolutely.  
19 So --

20 MR. FREER: Jury can determine intent whether or not there  
21 was a breach to the agreement.

22 THE COURT: Okay. Thanks.

23 MR. JONES: Well, Your Honor, first of all, I mean as you said  
24 last week, this is a probate matter and -- and this whole issue that's  
25 about what Milton's intent was, at least as I understand the law, that's



1 not really the proper question. The real question is what do the words in  
2 the will mean? And the Court has to determine that first, so unless you  
3 determine as a matter of law that they're ambiguous, there's no question  
4 that even comes out about the intent so the jury would never even get to  
5 that issue.

6 We know the petitioner has testified under oath that the words  
7 are not ambiguous. So this whole question of a jury deciding what the --

8 THE COURT: Actually he's the -- you're the petitioner so --

9 MR. JONES: Well they're petitioner on their claims --

10 THE COURT: Oh, on their claims. Okay.

11 MR. JONES: -- on the other side.

12 THE COURT: Yeah.

13 MR. JONES: So the -- and I -- by the petitioner I meant  
14 Jonathan Schwartz as --

15 THE COURT: Right.

16 MR. JONES: -- petitioner in his claim trying to deny the  
17 bequest. Yet he said that these words are not ambiguous so I guess I'm  
18 confused. If the other side says the words are not ambiguous and the  
19 Court has to determine whether the words are ambiguous as a matter of  
20 law, then why would the jury ever even have to decide what the intent  
21 was?

22 It's until the Court decides -- at least until the Court decides as  
23 a matter of law that the words are ambiguous and I don't think the  
24 Court's ever done that yet. At least I've never seen a rule and so -- so  
25 essentially they're asking -- and by the way, I totally disagree with the

1 idea that it's not reversible error to have a jury when you're not entitled  
2 to a jury.

3 You went back and looked at, as you mentioned, the  
4 *Wainwright* case. He's asking the Court to do something that the  
5 Nevada -- well, Nevada has never done. So to suggest that somehow  
6 or other you're entitled to a jury trial when the law says otherwise, I think  
7 that is reversible error.

8 And I can tell you, Your Honor, if there is a jury trial and the  
9 result is we believe to be in error, we will absolutely appeal on that  
10 ground and we -- presumably if we're found to be right -- and by the  
11 way, the case law that's out there right now in Nevada says they don't  
12 get a jury trial for this. Especially in -- and, you know -- and I guess it  
13 begs the question are they saying that this aspect of the case is a will  
14 contest? And I don't know if that's the way the Court is interpreting it  
15 that the interpretation of the Milton Schwartz intent is a contest over the  
16 terms of the will and the bequest. Is that the Court's position here on  
17 this issue?

18 THE COURT: That's what I understood when it first came  
19 over here years ago was they were viewing this question of was this  
20 provision in the will based on some sort of -- for some improper  
21 reason --

22 MR. JONES: Right.

23 THE COURT: -- that would make it a void bequest, that that  
24 kind of question is a -- essentially a will contest that, you know, the  
25 statute talks about lack of capacity, fraud, those kinds of things, that

1 essentially that's what it was because Milton was induced somehow to  
2 leave money to the school with the understanding it would maintain his  
3 name on it and when that entity no longer exists, then, you know, what  
4 does that mean -- that's the second part of it is --

5 MR. JONES: So in other words, you understand this case  
6 and it seems like they're arguing that this is -- this aspect of the case at  
7 least is a will contest that deserves attorney -- a jury, excuse me.

8 Well if that's the case, Your Honor, then this claim is  
9 absolutely unequivocally time barred. They failed to bring a claim based  
10 upon a contest of the will within the statutory time period. That is done.  
11 So if -- they can't have their cake and eat it too. They can't come in here  
12 and say well this aspect's a will contest and somehow or other that  
13 bootstraps us around the statute of limitations. That's an issue that's  
14 been decided. There's no way around, period, end of story.

15 So if that's the way they're going which it -- and I don't know  
16 how they get around it because that's the only loophole they have. They  
17 have to make it a will contest in order to make it a jury trial. I -- and I  
18 agree for all the reasons you've already articulated that it wouldn't be an  
19 appropriate jury trial because you don't -- you can't get to the ultimate  
20 question, and in spite of Mr. Freer saying well yeah, then you just say  
21 well we win and you don't get the money, but you still got to go through  
22 the process of will contest which is time barred and they don't address  
23 that. That is fundamental. So that should be the end of the inquiry right  
24 there.

25 And with respect to this whole issue of laches, you brought up

1 and they point out themselves that this was a -- there was a motion  
2 before our time. I remember that because we weren't involved in it, a  
3 motion to strike the jury prior -- previously. Well then how can they say  
4 that we sat on -- the school sat on its hands on moving to strike the jury?  
5 You denied that. You certainly didn't deny it, as I understand it, with  
6 prejudice.

7 So there can be no argument whatsoever that there was a  
8 laches argument here. We waited till the discovery was done, we got  
9 down to the final point to trial and that is -- the points that Mr. Freer  
10 made is almost identical to the arguments we made in the Rhodes case.  
11 That case had been re-set as a jury trial umpteen times which we  
12 argued to the court showed that they waived it and the supreme court  
13 said doesn't matter, you don't have a right to a jury trial.

14 There is case law and the rule itself that specifically say, you  
15 know, that -- Mr. Freer tries to argue that they have a right to a jury trial.  
16 Rule 39 says right on its face unless the court, upon motion of its own  
17 initiative, finds that a right of a jury by -- or a trial by jury of some or all  
18 those issues does not exist under the constitution or the statutes of the  
19 state. The statutes say you're not entitled to a jury trial on these issues.

20 And by the way, they could have filed -- and you said, Your  
21 Honor, that they got these -- well Mr. Freer brought it up and then yeah,  
22 there are these breach of contract claims. They decided to bring the  
23 breach of contract claims under NRS 30.010. So it's not a pure breach  
24 of contract claim per se. It's a dec relief claim that says there was -- I  
25 want the court to declare there's been a breach of contract.

1 That statute says you have to try the case pursuant to the  
2 court in which it would probably be pending which is uncontestable that  
3 it's the probate court which says if it's in the probate court, you only get a  
4 jury trial if it's a will contest. If it's a will contest, it's time barred.

5 I -- any way you want to look at it, Judge, they don't get a jury,  
6 advisory or not. Unless you have any other questions --

7 THE COURT: Trying to remember --

8 MR. FREER: There --

9 THE COURT: -- Howard -- the Howard Hughes case. Did  
10 they have a jury? I don't remember now. I know it was --

11 MR. JONES: I don't remember --

12 MR. FREER: There were numerous --

13 THE COURT: There's so many cases --

14 MR. FREER: -- cases involving the Howard Hughes --

15 THE COURT: Keith Hayes, you know, was the -- the big one,  
16 the one -- Dummar.

17 MR. JONES: Yeah, the -- I know that Joe Foley, my brother  
18 Mark's former partner was -- represented the Hughes estate in that --

19 THE COURT: Right.

20 MR. JONES: -- and I -- but that was a will contest. That was  
21 -- that was a jury trial I believe because I think I remember --

22 THE COURT: I'm trying to think what it was.

23 MR. JONES: -- Mr. Foley had in his office a note from the jury  
24 or something, this is not my will written a bunch of different times the  
25 way that was supposedly his handwriting. But that was strictly -- that

1 was a will contest. Whether or not Dumont (sic) was a beneficiary under  
2 the will and he -- the estate contested well that he was a beneficiary.

3 THE COURT: Beneficiary. Uh-huh. Because I'm trying to  
4 think, you know, what the will was because it was about whether that  
5 was even -- I thought it was about whether that was even a properly --

6 MR. JONES: It was. It was --

7 THE COURT: -- Howard Hughes's will. It was --

8 MR. JONES: Remember it was a holographic will --

9 THE COURT: It was a fake will.

10 MR. JONES: -- that he supposedly wrote out in the desert or  
11 something because --

12 THE COURT: Right.

13 MR. JONES: -- Dumont or whatever what his name was  
14 picked him up --

15 THE COURT: Melvin Dummar.

16 MR. JONES: Dummar. Thank you. So yeah, that was the --  
17 whether or not that was a valid will itself, the document.

18 This is a different issue, Judge. This is an issue between the  
19 estate and the school fashioned as the remaining claim is, the remaining  
20 claim as of last Thursday is whether or not they have properly pled a  
21 declaratory relief action that the Court declared that there was a breach  
22 of contract. That is -- they are not entitled to, as a matter of law, a jury  
23 trial on that claim.

24 With respect to the issue of the bequest, if the Court construes  
25 that as a will contest, then I will renew our motion for summary judgment

1 based upon the statute of limitations.

2 THE COURT: Okay. All right. So the other four causes of  
3 action, the void by for mistake, offset -- I mean I think an offset would  
4 always be a question for the Court. The jury makes a finding this is how  
5 much it is, the Court determines if there is an offset. And then  
6 revocation and constructive trust.

7 MR. JONES: Right. Well the -- again, that --

8 THE COURT: Well why -- what's your argument that those  
9 causes of action have been abandoned or they no longer exist or?

10 MR. JONES: Well, if you want -- I guess -- the lifetime gifts  
11 and the bequests were conditioned upon the school bearing his name in  
12 perpetuity. Fraudulently induced his belief and then failed to comply  
13 with these conditions. This is their -- this is quoting their language.  
14 Thus the estate is entitled to recover all funds, so it's all -- it's essentially  
15 a fraudulent inducement claim which you ruled as a matter of law last  
16 week is barred by the statute of limitations. So that claim doesn't exist --

17 THE COURT: No, I don't think the grounds for fraud -- I think  
18 that fraud was just the fraud would have been as to Milton and the way  
19 they presented it, the fraud was as to Jonathan; that Jonathan had been  
20 misled --

21 MR. JONES: Right.

22 THE COURT: -- by this drag -- dragging out of the settlement  
23 process I thought --

24 MR. JONES: So you mean in terms of the revocation of the  
25 gift. Well then isn't that a -- essentially a will contest? Doesn't that get

1 us right back to where we were before in construction of the will? It's a  
2 will contest says what does the will mean? And whether or not that  
3 bequest should be paid or not.

4 THE COURT: Yeah. Okay.

5 I want to ask, Mr. Freer, I -- because your pretrial memo, since  
6 we need to be talking about pretrial memos, mentioned four of the  
7 causes of action as still surviving and -- one of those being fraud and  
8 maybe I'm not remembering --

9 MR. FREER: That was done before the motions in limine --

10 THE COURT: Yeah. And that's why I think as I'm  
11 remembering there really are three issues I think is your position that  
12 remain, not just the one.

13 MR. FREER: Yeah, the only one we abandoned was the  
14 fraud claim. Just real briefly, Your Honor, with respect to the argument  
15 about --

16 MR. JONES: Well, Your Honor, I'm going to object unless --

17 THE COURT: You'll get an opportunity to wrap up so --

18 MR. JONES: All right, fine, if I -- as long as I get --

19 THE COURT: -- I mean we're -- we've talked about this about  
20 long enough so we'll give Mr. Jones a final word.

21 MR. FREER: I just want to clear up the record a little bit real  
22 quickly.

23 THE COURT: Okay.

24 MR. FREER: And obviously Mr. Jones hasn't been living this  
25 like we have. With respect to the ambiguity argument, that was the



1 subject of the 2014 and 2015 motions for summary judgment. We went  
2 ad nauseam -- our position was back then in our moving papers that  
3 there was no ambiguity because if you have a strict reading of that, it  
4 lapses. And the only -- without ambiguity, the only result of that is the  
5 gift lapses, it becomes property of the estate.

6 Your Honor disagreed with us and that's what ended up with  
7 that finding that you chose, so the fact -- I mean Your Honor already  
8 implicitly made -- by refusing to grant our argument and making that  
9 finding, Your Honor already implicitly found that there's ambiguity with  
10 respect to section 2.3.

11 With respect to the will contest, again that was previously  
12 litigated way back when as well and we cited a bunch of cases saying  
13 when you're trying to revoke -- offset a will or even revoke a bequest on  
14 the basis of mistake, that that is not will contest, that's will construction.  
15 We're not running away from that.

16 And then the issue when Your Honor was looking at the last --  
17 the causes of action five and -- you know, cause of action number 6  
18 primarily is remedies. We pled it as a cause of action just to avoid  
19 anybody coming in and saying you never pled it, but I mean if you look  
20 at it, constructive trust, it's a remedy.

21 Your Honor have any other questions for me?

22 THE COURT: Yeah. It seems to me and this seems to be  
23 what they're saying if I'm reading this one right. I think it's the *Peterson*  
24 case where they talk about the overlap that they may -- not all of these  
25 issues may necessarily be proper jury questions and I guess so that's

1 my problem here is that in looking at these causes of action -- I will tell  
2 you that yes, I have always thought that -- I know there's been litigation  
3 over this for 30 years. I don't know what it's about. I don't know what  
4 the outcome of any of those prior cases was. I don't know why we got to  
5 this point. I don't know anything about it. I just know this has been a  
6 fight for 30 years.

7 So to me, yeah, it's ambiguous. I -- what does he mean? He  
8 knew that he'd been fighting over this for years and years and years.  
9 What does it mean when he writes his will this way? Have to hear  
10 everything you can hear which is why I said I think that the rabbi is  
11 relevant because at the time he was writing this, near there, he was  
12 having conversations about giving or leaving money to somebody else.

13 So that all goes into this whole idea of what was his intent. To  
14 me that seems an appropriate question for a jury, but my problem is with  
15 what they -- what the jury can decide once they decide that. I mean how  
16 much of this can they decide. I -- these other causes of action seem to  
17 be somewhat difficult for a jury to address. I think the jury could  
18 probably address the question of was there a contract and was it  
19 breached. They can determine those, but it still seems to me that at  
20 some point, whatever their factual findings are, and this is where I'm  
21 kind of getting to I just -- I'm not sure how a jury can ever reach the  
22 ultimate question under any of these theories. It seems that it all has to  
23 come back to the Court to say so what's the effect of that as a will  
24 construction question.

25 You said you're not running away from that. Ultimately you

1 have to -- somebody's got to construe this will and that's where I'm just  
2 not sure that's appropriate for the jury.

3 MR. FREER: And I guess I would rely back on the Court's  
4 prior finding the issue for the jury to determine is what did Milton mean  
5 when he put -- when he basically said what he said in his will.

6 THE COURT: Right, but that's not the end of the inquiry.

7 MR. FREER: And so I mean I would like it --

8 THE COURT: That's the problem.

9 MR. FREER: -- to where you've got a breach of contract case  
10 and you've got multiple remedies pled. So you've got mixed law and  
11 you've got mixed fact. And what happens? You have the jury determine  
12 whether or not the contract was breached and they can determine a  
13 damage amount, but with respect to the additional remedies that were  
14 pled, ultimately that comes back to the Court. So if Your Honor's  
15 concerned about this being mixed, look at it in terms of that because  
16 we've got mixed issues here.

17 THE COURT: Right. Okay. Thanks.

18 And as promised, Mr. Jones gets the last word.

19 MR. JONES: Thank you, Your Honor. Well, Mr. Freer said  
20 first of all you've already determined there's no ambiguity here. Excuse  
21 me, that there is ambiguity here implicitly. Then they're judicially  
22 estopped from arguing there's ambiguity. They've taken a position in  
23 court that there is no ambiguity. The petitioner, Mr. Jonathan Schwartz  
24 has testified under oath there's no ambiguity. That means that the Court  
25 has to make the determination.

1 Now, who -- the jury's going to decide if this is ambiguous?  
2 That's not how it works. That's not -- nobody can argue that a jury  
3 decides whether a document is ambiguous as a matter of law. Just  
4 that's not how it works.

5 The other point he argued is that this will contest issue was  
6 argued previously and that the Court determined that it was not a will  
7 contest. Well, the only way that I understand the Court is getting to the  
8 point where a jury could possibly be used in this case is if part of this  
9 case involves a will contest.

10 So that's my problem, Judge. I -- they want to have their cake  
11 and eat it too. They can't say it's not a will contest years ago to defeat a  
12 motion that would have thrown the entire case out on their side and then  
13 come in here and say well Your Honor, we agree with you that this part  
14 of it is a will contest, because that's the only way they get to a jury is if  
15 part of it's a will contest.

16 So they've argued previously, and won, that it was not a will  
17 contest and now they're coming in and saying well, yeah, part of it is a  
18 will contest so we get a jury. That is why judicial estoppel exists and I  
19 don't know how a party can get around that --

20 MR. FREER: Your Honor, I'll make the representation we've  
21 never asserted that this was a will contest. If you look back at our  
22 original pleading, we never cite 137.

23 THE COURT: Okay. Thank you.

24 MR. JONES: Well then that's fine, Your Honor, but then I  
25 guess my question is how are they supporting their position because the

1 only way that they get -- under Nevada law, under Rule 39, under NRS  
2 155.150, under 30.010, the only way they get a jury for any of this is if  
3 part of it's a will contest and you're the one who has been making that  
4 point.

5 So if they're saying it's not a will contest, then on what basis  
6 are this -- is this Court going to allow a jury to hear any of this? I don't --  
7 I can't understand how that's possible that they would be able to take  
8 both of those positions.

9 THE COURT: Okay.

10 MR. JONES: So, Your Honor, and it's goes back to the other  
11 question and I'll just reference the *Jones* case, *In re Jones* which we did  
12 cite, 72 Nevada 121. When construing the language of a will, the  
13 question before the court is not what the testatrix intended or what -- it  
14 should be testator -- what he meant to write but rather is confined to a  
15 determination of the meaning of the words used in the will.

16 So what is this jury going to be construing? That's the whole  
17 point of the ambiguity. If there's -- that's why the Court has to determine  
18 the intent from the language of the will, unless it's found by the Court to  
19 be ambiguous. And until this Court makes a ruling as a matter of law  
20 that that bequest was ambiguous, there's no right to a jury.

21 So I guess what I would ask the Court to make a ruling that  
22 the will is ambiguous as a matter of law or that it's not so that we can --  
23 both sides can have some understanding as to what the basis is to  
24 having a jury for any questions whatsoever.

25 My final point is -- and you said it yourself. Repeatedly you've

1 said it. What is this jury going to decide? What are they going to  
2 decide? That was his intent? The case law in Nevada's clear. The  
3 words convey the intent and that's something for the Court to construe,  
4 not a jury. That's why in a case like this juries are not allowed, because  
5 it's a legal issue.

6 So yeah, I don't want to have a jury trial which is going to  
7 make this a much more difficult case to try, a much longer case, when  
8 there should not be a jury. Absolutely, I like juries. I typically want  
9 juries. But when you're not supposed to have one, you're not supposed  
10 to have one.

11 THE COURT: Okay. The -- in the *Peterson* case, which was  
12 totally dissimilar, it was a question of whether they -- there'd been a  
13 revocation of a will, they talk about how it was an error to not have  
14 allowed a jury trial because the -- they say there's -- mostly this is talking  
15 about the concept of destruction of a will.

16 The -- okay, so the -- in fact they concede that the revocation  
17 of the old will had been accomplished. By revoking cause actually  
18 contained in the new will, a situation would have arisen under which the  
19 testator's mental capacity and freedom from undue influence would have  
20 been an issue for trial by jury and not for the trial as a preliminary issue  
21 before the court without a jury. Under the circumstances in that  
22 particular case, we must reject the contention that the revocation of the  
23 will was an act independent of -- revocation the 53 will was an act  
24 independent of the execution the 55 will, so in narrowing the extent of  
25 our holding to the conclusion that the revocation of the earlier will and

1 the execution of the later will constituted one transaction as to  
2 inducement and purpose and that they were for all intents and purpose a  
3 unitary transaction, we do not as a consequence dispute the correctness  
4 of the rule stated; to wit, that where regardless of whether or not a  
5 unitary nature of two transactions is present, the question of interest  
6 involved factual issues which the will contest itself presents, the  
7 contestant is entitled to a jury trial of such issues.

8 So again, in the context of a will contest, whether part of it  
9 would ordinarily have gone to the Court, submit the whole thing to a jury.  
10 So here's our problem here where if we're not having a will contest, we  
11 have the issue of a contract. So I -- if we're talking about breach of  
12 contract, that's appropriately a jury trial issue, but my problem is then is  
13 it so intertwined, as we -- they talk in this *Peterson* case, with the will  
14 that the jury hears the whole thing and that for me is a concern.

15 So it's less whether there's a right to a jury because there are  
16 issues that they're pleading where they do have a right to a jury, it's just  
17 this concern that I have since we started talking about this during the  
18 motions in limine of how much does this jury need to hear because there  
19 are certain things that while they might be entirely appropriate for a court  
20 to consider really aren't appropriate for a jury to consider.

21 So the problem here is if we get all the way through our  
22 contract -- was there a breach of contract, yes or no, then -- then what?  
23 Then we get to the next question of as we discussed years ago, the  
24 question -- if we got to the motion to compel, as opposed to the motion --  
25 the petition for breach of contract that's the other side's motion to

1 compel, then was the -- was the bequest identified in that section only to  
2 be made to an entity named after him and bearing his name.

3 Okay. Then I just -- I don't see how we can get to the next  
4 part of the question being answered by a jury. At some point it -- as I  
5 said, it almost seems like the error was in not bifurcating because some  
6 of these issues are -- it's a -- if we're just talking breach of contract, was  
7 there a contract under which the school owed a contractual duty to not  
8 change its name because they had taken money from Milton on the  
9 premise that they would remain with that name in perpetuity, that they're  
10 -- yeah, they're absolutely entitled to a jury trial on that and I don't  
11 dispute that.

12 But the problem where we have these mixed issues where  
13 that then leads us into the next petition which is are they -- you know,  
14 can the school compel payment, the -- I think the presumption is that Mr.  
15 Freer said the presumption is when I denied their motion for summary  
16 judgment that there was no ambiguity and very clearly Milton meant this  
17 to only go to a school with his name. You know, I'm not so clear on that.  
18 It seems to me that Milton had other motives and one of those being as  
19 he stated in the video as -- and as he said here in the will, this concept  
20 of just in general education. That he -- this was his motivating factor  
21 from 30 years ago when he started the school with the initial \$500,000.  
22 We need education for Jewish children in the Jewish religion as part of  
23 their -- as their school. To me that was ambiguous.

24 So if you're looking for did I make the finding there's an  
25 ambiguity here, yeah I did. I've always felt it was ambiguous. That's



1 why I said I know there was litigation about this for years. I don't know  
2 what it was about and I don't know what the outcome of it was. So we  
3 have to hear all of that.

4 We have gone forward on this on the assumption that it's a  
5 jury trial and I think there are issues appropriate for a jury trial. My  
6 concern is simply I -- we're going to have to be very careful how we  
7 address -- and this is probably going to be a problem because in  
8 openings the question's going to be how much is this jury going to be  
9 asked to decide.

10 We don't have our jury instructions yet, we don't have our  
11 verdict form. So I don't know what the different parties are viewing as  
12 proper for the jury. There are things that are proper for a jury and as  
13 was mentioned, in any contract case, you can always have the jury find  
14 the breach and what the overall damages are, but the Court then has to  
15 make certain other determinations. And that's the problem we have  
16 here. We haven't come to those conclusions which is going to make this  
17 very tricky because I do -- I'm going to deny the motion to strike the jury  
18 because I think there are issues here that we've always recognized  
19 require a jury.

20 MR. JONES: So Your Honor, I guess --

21 THE COURT: My problem is that we should have defined that  
22 a little more clearly earlier so we know exactly what we're -- because  
23 essentially we are having a bifurcated trial. We're all going to hear the  
24 same evidence. The jury's looking for something, I'm looking for  
25 something else, and we need to know exactly what it is the jury's going

1 to be asked to do.

2 MR. JONES: Along those lines for both parties' sake, I guess  
3 since we're only -- we're less than a week out from trial --

4 THE COURT: Days, yeah.

5 MR. JONES: -- we -- I think we need to know what the Court  
6 thinks are the issues that the jury will decide because like I said, we  
7 believe that since they styled this as a breach of contract under Chapter  
8 30, that it is decided by the probate court and not by a jury and we cited  
9 the case law for that effect.

10 THE COURT: Yeah.

11 MR. JONES: If the Court's saying that the jury -- are you  
12 saying that the jury will decide whether or not there was a breach of the  
13 naming rights agreement? Is that what you're citing here because  
14 obviously that makes a big difference to both sides as to what that  
15 determination is.

16 THE COURT: That -- so I think that's why we probably now  
17 need to shift to our pretrial conference and figure that out.

18 MR. JONES: Okay.

19 THE COURT: Because that really is going to be the key.  
20 What exactly -- if we look at both the pretrial memos of the two parties,  
21 what exactly are -- and how are we going to -- procedurally going to  
22 present it? Because technically what started this part of the case -- this  
23 was just a probate administration. What started this part of the case  
24 was the school saying enough trying to negotiate with Jonathan, we are  
25 going to just move the court to compel them to distribute the money to

1 us. Jonathan then counter-petitioned for these determinations.

2 To me and let's -- if you guys agree, I -- I hope we're  
3 procedurally on the same page because as we've talked, you know, my  
4 view, rules of civil procedure do apply and I think Mr. Freer would  
5 concede that. The -- and I -- and we're going to have to decide how  
6 we're going to call these -- what they're going to call these people  
7 because everybody's petitioners and it's just a mess.

8 So to my view, the school goes first, because it's their burden  
9 of proof on their motion compel, and the affirmative defenses, the  
10 counter-petition is second. So the question that the -- that's kind of my  
11 problem. I think their -- they present their case first. When we instruct  
12 the jury, we always tell them this is how the case is going to proceed,  
13 and this case is going to proceed in a somewhat odd fashion. It doesn't  
14 make sense. That's kind of backwards. But I think that's procedurally  
15 how you have to do it.

16 MR. FREER: I think during the 2.67 we discussed that issue  
17 we were going to proceed first --

18 THE COURT: Okay.

19 MR. FREER: -- but just for clarification on the record, we did  
20 do an objection to their petition and then we filed a petition for dec relief  
21 too. So to make it even more muddy, we're both petitioners, but it's all  
22 intertwined kind of like a weird little Bonsai tree.

23 THE COURT: Okay.

24 MR. FREER: But I'll defer if they want to say something  
25 else --

1 THE COURT: It may -- you -- it makes more sense. It would  
2 make a easier -- nothing about this is going to be easy. It would make a  
3 more logical presentation it seems to me to have the estate go first.  
4 Technically, I think the first petition has the right to go first, but we need  
5 to know what we're going to tell the jury and how we really are going to  
6 proceed.

7 It would make a more logical presentation and, you know,  
8 they've got the burden of proof on their affirmative defenses. It makes  
9 more sense to put those forth, explain -- put those forth and then to go  
10 forward on this motion to compel, because it kind of depends on the  
11 outcome of their affirmative defense and their request for affirmative  
12 relief in the form of dec relief as to whether the school's -- their request  
13 for relief then is just we move to compel the distribution.

14 And that seems to be mostly just related to if there are no  
15 other defenses and the jury finds this to be -- to disagree with me and  
16 the jury doesn't think it's ambiguous -- they don't have the history with  
17 this, but they may think that makes perfect sense and that they're able to  
18 divine from just the writing. I don't think anybody can do that. I think  
19 your -- you have to hear all this evidence about what Milton -- his history  
20 and what his testamentary intent was and what he was doing. I think  
21 you need to hear all that stuff that's technically their defense to the  
22 school's petition to compel.

23 MR. JONES: Your Honor, the -- well there's motions in limine  
24 on those issues too. Obviously --

25 THE COURT: Right.

1 MR. JONES: -- we haven't heard those yet, but --

2 THE COURT: Right.

3 MR. JONES: -- but all that evidence we believe would be --  
4 that I think you're referring to we believe would be improper hearsay.  
5 And I understand that there's a exception to the hearsay rule for -- on  
6 certain issues related to a --

7 THE COURT: Intent.

8 MR. JONES: -- construction of a will, but we haven't heard  
9 those yet so I -- I'm hoping the Court hasn't -- has not already made up  
10 its mind as to those motions.

11 THE COURT: No, I'm -- what I'm saying is I -- I'm just talking  
12 here about process --

13 MR. JONES: Right.

14 THE COURT: -- and they've got the burden of proof to show  
15 all those reasons why their view is they should not have to do what your  
16 petition asks for which is compel the distribution. And I just don't see -- I  
17 mean it would be such an odd case if all your client does is stand up and  
18 say here's the will, we don't think it's ambiguous, we want an order from  
19 the Court that the distribution should be made. I still think that that  
20 ultimate question can't be answered by a jury. I just don't see how it can  
21 be answered by a jury. I think it's got to be answered by the Court.

22 The jury is there on their defenses which -- well their  
23 counter-petition, which is there was an agreement, they breached the  
24 agreement and for that reason, we're either not in -- they either -- this  
25 contract is unenforceable this -- so if the contract's -- if the contract has

1 breached or is otherwise unenforceable, then the will as a matter of law  
2 somehow is going to fail -- I just don't see how we're -- it's possible to do  
3 it with the school going first. It --

4 MR. JONES: We --

5 THE COURT: You could. You could, but then --

6 MR. JONES: We have talked about that and I've said that but  
7 I -- I said the only way I'm willing to do that, Your Honor, is that I still get  
8 a rebuttal case. So if they go first, I put on my case in chief after their  
9 case in chief, they put on a rebuttal, and then I get to put on a rebuttal to  
10 my case.

11 THE COURT: Because they're two completely separate  
12 petitions so we have two completely separate plaintiff opens, plaintiff  
13 puts on their evidence, they close, defense comes up, then the plaintiff  
14 gets to put on their rebuttal case. They're both completely separate  
15 cases and I think that that's probably --

16 MR. JONES: A case like it's analogous to --

17 THE COURT: -- procedurally the only way to make it work.

18 MR. JONES: It's analogous to a counterclaim where you --  
19 the party with the counterclaim gets --

20 THE COURT: Absolutely.

21 MR. JONES: -- to put on their case and gets --

22 THE COURT: Right.

23 MR. JONES: -- to put on a rebuttal.

24 THE COURT: Yeah.

25 MR. JONES: And so the only thing I would ask --

1 THE COURT: I think that's how it has to be treated.

2 MR. JONES: -- Your Honor, is that the parties be called  
3 petitioners because -- both parties be called petitioners because I don't  
4 think one is more properly the plaintiff than the other or to the extent that  
5 there is such a -- if there's going to be a statement as to who's the  
6 plaintiff and who's the defendant, then I would certainly say that we're  
7 the plaintiff because we brought the suit first but --

8 THE COURT: Right.

9 MR. JONES: -- I'm willing to concede the issue and have the  
10 parties --

11 THE COURT: Typically under rules of civil procedure that's  
12 correct. It's plaintiff and counterclaimant, but --

13 MR. FREER: Your Honor, we filed first. We filed the probate.

14 THE COURT: In 2007 or whatever. So I think that whichever  
15 -- whoever goes first I think has to be treated that way which is the party  
16 who goes first puts on their case, the -- then we have the defense to that  
17 case, and then they wrap up their case in chief with closing on that, and  
18 then we immediately go into the -- and some of this will -- it's going to  
19 overlap, but --

20 MR. JONES: Sure. I'm not going to be redundant.

21 THE COURT: -- that the second -- the other petitioner will  
22 then put on their case, there will be a defense to that and it may  
23 incorporate some of the stuff they've already heard so they won't hear it  
24 a second time. That will be explained to them in closing, and then they  
25 -- and then there's a rebuttal case on that one.

1 MR. JONES: The only then I again, Your Honor, I --

2 THE COURT: Two -- just two petitions tried back to back.

3 MR. JONES: -- I'm willing to allow it to proceed on that basis  
4 as long as both parties are just referred to as petitioners.

5 THE COURT: Okay.

6 MR. FREER: I'd be fine with that or if you want to call it the  
7 estate and the school or Adelson School --

8 MR. JONES: And I'm fine with that too. I'm just saying --

9 THE COURT: Right.

10 MR. JONES: -- if nobody refers to one party or the other as  
11 plaintiff or defendant or plaintiff and --

12 MR. FREER: Right.

13 MR. JONES: -- counterclaimant, it's both sides are petitioners  
14 and of course both sides have the name the estate -- one side's the  
15 estate, one side's the Adelson School or Adelson Campus, I'm fine with  
16 that.

17 THE COURT: Okay. So I think we're all in agreement neither  
18 party's going to be referred to as plaintiff or defendant. They're not  
19 technically. These are petitioners, counter-petitioners, and rather than  
20 do petitioner and respondent, we're just -- both of them are petitioners --

21 MR. JONES: That's fine, Your Honor.

22 THE COURT: -- because they both are petitioners.

23 MR. JONES: I'm fine with that.

24 THE COURT: I agree that probably the colloquial or the  
25 simplified way of referring to them in the case would be to ask, you



1 know, does the estate have anything further, does the school have  
2 anything further and tell the jury when we're pre-instructing them that  
3 you're going to hear them -- they both have filed petitions so you'll hear  
4 them referred to as the estate and the school. We'll hear the estate's  
5 petition first and the school's petition second. And there's going to be a  
6 lot of overlap. Don't worry, you won't be hearing witnesses two times.  
7 Wait until it's all over and counsel can argue to you and they'll tell you  
8 how those facts apply to which case.

9 And we're not going to have separate closings and openings.  
10 It's going to be one opening covering both cases and one closing  
11 covering both cases. Okay? All right.

12 MR. JONES: One -- I'm sorry, one opening and one closing?

13 THE COURT: You open once. In other words --

14 MR. JONES: Yes. That's fine.

15 THE COURT: -- they'll go first. They'll do their opening.  
16 You'll do your opening --

17 MR. JONES: That's fine.

18 THE COURT: -- and then we launch into the cases. In other  
19 words you're not going to wait until you start your petition to do your  
20 opening.

21 MR. JONES: I'm not -- I would not do that, Your Honor, but I  
22 do assume that parties would get rebuttal on the closings.

23 THE COURT: Yes. So that means yeah, there's -- there's  
24 always going to be a second round.

25 MR. JONES: But only on closing. Yeah, understood.

1 THE COURT: Right. So you'll both --

2 MR. FREER: At the rate we're going we'd do opening for  
3 three days if we had rebuttals.

4 THE COURT: Yes.

5 MR. JONES: Well, or it's going to take a while to pick the jury.

6 THE COURT: Okay.

7 MR. FREER: Yeah --

8 MR. JONES: One of the concerns, Your Honor, is picking the  
9 jury we've still got to get together about -- I don't know that -- unless  
10 something I'm not aware of that we've agreed on all of the jurors to be  
11 excused either for --

12 THE COURT: Yeah. We --

13 MR. JONES: -- cause or --

14 THE COURT: We've got that.

15 MR. JONES: Okay.

16 THE COURT: I think -- I don't know who did we get the little  
17 chart from?

18 MR. LEVEQUE: That was us, Your Honor.

19 THE COURT: Okay. So we do have some agreement and  
20 we can just go on ahead. Do -- anything else we need talk about with  
21 respect to the pretrial with -- and how we're going to go just for jury  
22 selection purposes -- we probably still need talk about what exactly  
23 they're going to be asked because they're not going to be instructed on  
24 all this in the end and I guess maybe that's thing tell them; that there are  
25 decisions here that you're going to be making, there are decisions here

1 the Judge is going to be making, we'll tell you what those are in our  
2 opening to the extent we can and in our closings, but we need to have  
3 an agreement on what it is. So that's kind of our last thing to decide and  
4 I don't know if you guys are ready to do that today?

5 Did you do -- did you file your order shortening time for  
6 tomorrow on your reconsideration?

7 MR. FREER: Yes.

8 MR. CARLSON: Yeah.

9 MR. JONES: The what?

10 THE COURT: So we've got one more thing to do.

11 MR. JONES: The what?

12 MR. CARLSON: The order shortening time.

13 THE COURT: Yeah.

14 MR. JONES: Oh.

15 MR. FREER: Just on the motion for reconsideration --

16 THE COURT: So we got one more thing to do tomorrow. Do  
17 you want to think about that overnight and we'll discuss that tomorrow so  
18 we can move on then to this jury selection question?

19 MR. CARLSON: Yep.

20 THE CLERK: Your Honor?

21 THE COURT: Uh-huh.

22 THE CLERK: May I suggest something? For the exhibits now  
23 for this trial --

24 THE COURT: Yeah.

25 THE CLERK: -- can you refer to Petitioner 1, Petitioner 2 --

1 THE COURT: Oh we are going to -- we are going to need to  
2 determine because they're going to -- for marking exhibits, there are  
3 rules they have mark exhibits by and they need to refer on the --  
4 because you have to mark every single, you know, exhibit with the  
5 name. What are we -- how do we want to refer to you? One and two?  
6 A and B?

7 MR. JONES: I think we've agreed to a system, Your Honor,  
8 where --

9 THE COURT: It's joint?

10 MR. JONES: -- typically the court clerks are okay with it  
11 where we have joint exhibits are 1 through whatever they are. I can't  
12 remember what they are. And then the next 100 --

13 MR. LEVEQUE: Are ours.

14 MR. FREER: Are ours.

15 THE COURT: Next 100 through 200 or?

16 MR. LEVEQUE: I think that's right.

17 MR. CARLSON: Yeah.

18 MR. JONES: Are the estate's --

19 THE COURT: Okay.

20 MR. JONES: -- and then the next group is the school's.

21 THE COURT: So we can do Petitioner J for joint.

22 THE CLERK: Right.

23 THE COURT: Is that agreeable? And Petitioner A for the  
24 estate and Petitioner B for the school?

25 MR. JONES: That's fine, Your Honor, or we could just say the

1 -- just the exhibits.

2 THE COURT: I'm just saying for their purposes when we --

3 MR. FREER: Yeah. We don't --

4 THE COURT: -- tell them how to mark one.

5 MR. FREER: I think what he's saying is that we have no  
6 overlap in numbers. So --

7 THE COURT: Right.

8 MR. FREER: -- it's all one --

9 THE CLERK: Yeah.

10 MR. FREER: -- straight run so --

11 THE CLERK: Okay.

12 THE COURT: Right, but -- yeah.

13 MR. FREER: Okay.

14 THE COURT: Okay, so just --

15 MR. JONES: Right.

16 THE COURT: -- so it's explained.

17 MR. JONES: That's right.

18 THE COURT: Okay, great. All right.

19 THE CLERK: Thank you.

20 THE COURT: Okay.

21 MR. JONES: Yeah. That's what I show so --

22 THE COURT: So we'll discuss tomorrow what we're going to  
23 tell this jury are their issues versus, you know, here's what you need to  
24 pay attention to, essentially. The whole thing but what they're going to  
25 be asked to decide.

1           So if I understand correctly, we are in agreement -- have you  
2 seen Mr. LeVeque's --

3           MR. CARLSON: I have not.

4           THE COURT: -- chart?

5           MR. CARLSON: I saw his email but that was the extent of --

6           THE COURT: Okay.

7           MR. CARLSON: I have not looked at it.

8           THE COURT: So we probably --

9           MR. CARLSON: Sorry.

10          THE COURT: -- do we need copies of this? Because they  
11 don't have one. It's the green we're in agreement we can tell the  
12 commissioner to excuse these people?

13          MR. FREER: We have extra colored copies.

14          THE COURT: Okay. Yeah.

15          MR. CARLSON: If you do, that'd be great.

16          THE COURT: So if you do, we'll just -- that's the easy part,  
17 just --

18          MR. FREER: Yeah.

19          THE COURT: -- advising Mariah tell the following people  
20 they've been excused.

21          MR. LEVEQUE: So the way we set this up, Your Honor, is  
22 that the school sent us a list of who they thought we should excuse for  
23 cause.

24          THE COURT: Right.

25          MR. LEVEQUE: The green are their suggestions and also the

1 Court's indication for jurors that the Court excused.

2 THE COURT: Okay.

3 MR. LEVEQUE: So we're fine on greens. Those are  
4 stipulated. The whites are the ones that we would like excused for  
5 cause that I don't believe the school's had an opportunity to review yet  
6 because I sent that email this morning before court.

7 THE COURT: And did you agree on all of theirs?

8 MR. FREER: Yeah. Well we agreed -- the ones we listed  
9 here are the ones we agreed on.

10 THE COURT: So did they have more?

11 MR. CARLSON: The ones in green.

12 MR. LEVEQUE: No, there's two spreadsheets. There's --

13 MR. FREER: Oh.

14 MR. LEVEQUE: -- this spreadsheet which is the ones that  
15 we've agreed on --

16 THE COURT: Let's go off the record, Kerry, so let's make  
17 sure we're all --

18 MR. LEVEQUE: Okay.

19 THE COURT: -- looking at the same thing.

20 [Recess taken at 12:52 p.m.]

21 [Proceedings resumed at 1:19 p.m.]

22 THE COURT: All right. So let's go back on the record.

23 Okay. Counsel, at this point in time we're going to move on to  
24 the discussion of challenges for cause. It's my understanding there are  
25 certain of these challenges for cause that have been agreed to.

1 MR. JONES: That's correct, Your Honor.

2 THE COURT: Okay. And those are represented in the chart  
3 prepared by Mr. LeVeque, annotated in green for the record, and  
4 additional requests by the estate are on here in just in white.

5 MR. LEVEQUE: That's correct, Your Honor. There were also  
6 additional requests that the school has that's not on the chart.

7 THE COURT: Okay. And so we'll go to those next.

8 First of all, just for the record, for the estate, the -- do you  
9 have any concerns about any of the requests for challenge for cause  
10 being based on any appropriate factor such that there is an attempt to  
11 exclude a certain segment of the population under the *Batson* case that  
12 would otherwise be entitled to be represented on this jury, and if so, is  
13 there an otherwise valid reason for doing so?

14 MR. LEVEQUE: Based on the requests to -- that the school  
15 has for excusal for cause, I don't see any.

16 THE COURT: Okay. So you have no concerns that we're  
17 excusing --

18 MR. LEVEQUE: No.

19 THE COURT: -- any particular group for a reason that would  
20 not be explained for a valid cause under the circumstances of the case?

21 MR. LEVEQUE: Not this pack, Your Honor.

22 THE COURT: Okay. All right. Okay.

23 So Mr. Jones, having reviewed your suggestions for recusal  
24 again, all of these appear to be based on a valid for cause reason  
25 related to bias or otherwise to a hardship.



1 MR. JONES: Your Honor, yes. To answer your question,  
2 there's nothing in the agreed upon challenges that I've seen that I think  
3 would rise to the level of a *Batson* challenge.

4 THE COURT: You've had a moment to review the additional  
5 suggestions that Mr. LeVeque has offered?

6 MR. JONES: We have, Your Honor.

7 THE COURT: Do you have a --

8 MR. JONES: Yes. And I -- if looking at the first page of their  
9 chart where the first white juror is mentioned is or is listed as badge  
10 number 08 dash 0049, we do not agree. We think that that -- there  
11 needs to be at least some further inquiry as to that juror's  
12 appropriateness on the jury.

13 With respect to the next page --

14 THE COURT: Okay.

15 MR. JONES: I'm sorry.

16 THE COURT: All right. So with respect to the first request for  
17 challenge for cause -- you want to wait until we've gone through all of  
18 them and we can eliminate those that we don't have to discuss? Is that  
19 your plan?

20 MR. JONES: Yes.

21 THE COURT: Okay, so 49 is noted that we need to discuss.

22 MR. JONES: The next one is next page is that we do agree  
23 with could be excluded is 080121 --

24 THE COURT: Yes.

25 MR. JONES: -- William Wilson.

1 THE CLERK: Pull him out of here if they're going to agree.

2 THE COURT: Yeah. Okay.

3 And again here, he not only has some conflicts with  
4 scheduling but is -- admires the Adelsons for their philanthropy.

5 MR. JONES: Yes, and after reading the questionnaire, I'm not  
6 going to dispute that one. I'm not going to --

7 THE COURT: Okay. All right. Then moving on to the third  
8 page.

9 MR. JONES: Third page, Your Honor, there's the next one  
10 they have listed that they would like to include is 080513. We think that  
11 after having actually read the questionnaire, there's a potential for  
12 hardship there, but it depends -- as I understood the questionnaire,  
13 depends on if the husband is in town or not so I think it be more  
14 appropriate to have that juror come in.

15 THE COURT: Okay, and -- all right, so we'll discuss that one  
16 next.

17 MR. JONES: The next one on their list is 080597.

18 THE COURT: And we've determined that should be four  
19 seven? That was a typo?

20 MR. JONES: No, it should be nine seven.

21 THE COURT: It is nine seven?

22 MR. JONES: It looks like four seven.

23 THE COURT: Okay. So it's nine seven.

24 THE CLERK: I'm sorry, which one is that?

25 THE COURT: Zero five nine seven, Eric Pena.

1 MR. JONES: Yes, Your Honor, we would agree to exclude  
2 that juror.

3 THE COURT: Okay. He has out-of-state travel plans.

4 MR. JONES: Yes.

5 THE COURT: All right. Granted.

6 MR. JONES: Just that'll be gone.

7 THE COURT: Okay.

8 MR. JONES: Next one is on their list 080677, Lori Dunn. We  
9 would agree to exclude that juror.

10 THE COURT: This juror as a child who attends the academy.

11 MR. JONES: Yes, Your Honor, that's correct.

12 THE COURT: Thank you.

13 MR. JONES: That's actually should be green?

14 MR. CARLSON: Yes. Just make it --

15 MR. JONES: Just to be clear, it's my understanding the next  
16 one at least on our list shows 080688, Angeles Robinson. It's my  
17 understanding that actually should be one that was agreed to by both  
18 sides.

19 MR. LEVEQUE: All right.

20 THE COURT: Okay.

21 MR. JONES: And then the last page of the chart -- Mr.  
22 LeVeque's chart is badge number -- well just for ease of reference, 860,  
23 Phillip Johnson.

24 THE COURT: Yeah.

25 MR. JONES: We did not agree to exclude that juror.

1 THE COURT: Okay. So on Mr. Johnson references that he  
2 likes Adelson and -- again his philanthropy he's familiar with that, but  
3 also is concerned about living paycheck to paycheck. So -- okay, so Mr.  
4 LeVeque, having heard their responses, are there any that you want to  
5 give up or do you want to argue for bringing them in or do you -- or you  
6 agree to bring them in or do you want to actually argue today to have  
7 them excused for cause?

8 MR. LEVEQUE: The ones that they don't agree with we want  
9 to argue excusal for cause.

10 THE COURT: For today. Okay.

11 MR. LEVEQUE: Yes.

12 THE COURT: So then we'll look first then at juror number 49,  
13 Alisa Tagg. She references two things which are being familiar with  
14 Review Journal and knows Adelson, so I don't know the extent to which  
15 she claims to know him?

16 MR. LEVEQUE: And I think that that -- that basis there might  
17 be a reason for more inquiry, but we also have the fact that she's got a  
18 dental procedure scheduled on August 27th which will squarely be within  
19 the middle of our trial and, you know, she's got a young son. So I think  
20 the fact that she's got a dental procedure alone warrants excusing for  
21 cause. She's got dental procedure set up, but in addition to that we  
22 have concerns --

23 THE COURT: Right. And with respect to timing, depending  
24 on the day of the week, we can work around some people's  
25 appointments. That would be a full day of trial, that would be the second

1 Monday, that would be the 27th, so that would be a full day of trial if --  
2 depending on what she's got if -- did she explain what kind of procedure  
3 it is?

4 MR. LEVEQUE: Let me see.

5 THE COURT: Because I'm -- is it something can be  
6 rescheduled or --

7 MR. LEVEQUE: It just says I'm having dental work done  
8 already scheduled for 8/27. This is question 82, Your Honor.

9 THE COURT: Uh-huh.

10 MR. LEVEQUE: And number 83 this is also hardship. I have  
11 a nine-year-old son who I care for and I would need to get to school. Oh  
12 but she said she could have family help so I mean that's not the big one.  
13 The fact she's got a dental procedure set up is probably the one that  
14 gets her excused the most easily and then of course we have questions  
15 that we would want to ask her if not excused for cause at the time.

16 THE COURT: Okay. So you're not referencing the fact that  
17 the other part of her answer on 82 is I have a conference hosting on 9/6  
18 to 9/7 if the trial goes long. The anticipation is it will not go long.

19 MR. LEVEQUE: Well right now we're only scheduled for two  
20 weeks so I guess -- who knows what's going to happen.

21 THE COURT: And with respect to knowing Mr. Adelson, she  
22 doesn't provide any additional information, simply indicates when asked  
23 do you know of them, Republican through Review Journal. So --

24 MR. LEVEQUE: And I have no idea what that means.

25 THE COURT: -- no other -- I mean that alone would not be

1 enough.

2 MR. LEVEQUE: Yeah, it's -- that warrants --

3 THE COURT: But it's --

4 MR. LEVEQUE: -- further inquiry but --

5 THE COURT: The previously scheduled dental procedure?

6 MR. LEVEQUE: I think that's sufficient for excusal for cause.

7 THE COURT: Okay. All right, thanks.

8 MR. JONES: Your Honor, in all my years of doing it, I mean I  
9 certainly am empathetic, but if we start doing that at this stage of the  
10 process, I mean there's some that I get and we try to be reasonable and  
11 let as many people go as possible but that alone -- and there's certainly  
12 no bias there. There's no evidence of bias.

13 THE COURT: No.

14 MR. JONES: And the dental procedure, like you said, I think  
15 we got to have further inquiry of her and whether or not that's a problem  
16 rescheduling it. There are three half days during the week. So I just  
17 don't think that's sufficient basis --

18 THE COURT: Yeah, it depends on the nature. I mean if she's  
19 going in for her annual x-rays, that's one thing. If she's going in for  
20 stage one of a root canal, you know, that would be another because if  
21 she needs -- it's kind of far out to say it's any kind of an emergency  
22 procedure. It may just be routine.

23 So I do think we should inquire into the nature of the dental  
24 work if it is in fact something that's possible to reschedule if it's some --  
25 the soonest she could get in for some sort of an emergency. I mean this

1 was done back at the first of July and so it's been scheduled a long time.  
2 I think we could inquire further about the nature of it.

3 She hasn't sent anything from the dentist indicating further  
4 information. The people who we have excused already are people who  
5 sent us actual -- something from an actual doctor saying here's what's  
6 going on and why I would request you excuse my patient.

7 So merely having this procedure scheduled, I think we do  
8 need to know what the nature of it is, so we will let her come in for jury  
9 selection and see -- one of the first things we always inquire about are  
10 there people who previously requested a hardship that we needed you  
11 to come in and provide more information for, so we'll certainly call on her  
12 early to see if there's a reason that we can consider it's more serious  
13 than it sounds. I mean right now it sounds like a pretty big thing.

14 I'm kind of with Mr. Jones on this one. Merely saying she  
15 knows that Mr. Adelson is a Republican and owns the Review Journal,  
16 she doesn't say that causes her bias one way or the other so --

17 MR. LEVEQUE: I agree we got to ask questions about that.

18 THE COURT: Yeah. Okay. So we'll follow up on here.

19 We are in agreement on page 2 on juror number 121, William  
20 Wilson, he will be excused.

21 On page 3, 513, Kimberly Fornal-Doran.

22 MR. LEVEQUE: This one, Your Honor, as it states in our  
23 summary, her husband is now around, he's out of state for work, and  
24 she is primary caregiver for her six-year-old. I don't know, if that was my  
25 wife, I think that would be pretty difficult for her to come to a two-week

1 trial given those circumstances.

2 THE COURT: Okay.

3 MR. LEVEQUE: And she says she's got no other family she  
4 can rely on. That's additional comments on question 83, page 14.

5 THE COURT: Okay. Okay.

6 MR. JONES: Your Honor, I'm --

7 THE COURT: Yes.

8 MR. JONES: -- usually pretty --

9 THE COURT: Yes.

10 MR. JONES: -- agreeable to those kind of hardships, but I --  
11 and I don't have it in front of me, but my recollection she said if her  
12 husband is out of town for work, then she has nobody else to have her  
13 son watched if she's -- if he's in town, then he could watch their son. So  
14 that's the question. If he's going to be out of town, I think then that  
15 makes a major difference. We just don't know as I -- and this is going  
16 from my memory what she said but --

17 THE COURT: She -- he seems to me he was at one point he  
18 worked at the Grand Lux Restaurant inside the Venetian which is I'm  
19 assuming a four-walled operation. I don't believe it's licensed. I don't  
20 think the Venetian runs it.

21 MR. CARLSON: No.

22 MR. JONES: Huh-uh.

23 THE COURT: So technically he would not have been  
24 employed. She seems to think that they're related to Nathan Adelson  
25 Hospice, totally different family.



1 MR. JONES: Yeah.

2 THE COURT: Because she's a nurse. I'm not sure I  
3 understood, and you guys might know better what this is, have you or  
4 any family member ever had a child attend a private school? If yes,  
5 please name the school. The Shenker Academy, S-h-e-n-k-e-r. Is that  
6 another Jewish school?

7 MR. LEVEQUE: Yes. My wife actually used to work there.  
8 It's actually pretty close to the Adelson School, but it's a different entity.

9 THE COURT: Is that the one that's at the other -- at the  
10 Temple Sinai?

11 MR. LEVEQUE: Yeah.

12 MR. CARLSON: Yes.

13 THE COURT: Okay. All right. So it was a good and bad --  
14 good and bad experience. It was a nice school but too expensive. I  
15 mean she doesn't seem to have an issue with the type of education. I  
16 don't know if this was -- she doesn't tell us if she sent him here for  
17 religious reasons or because it was a -- she liked the school. So I -- you  
18 know, this seems again to me to be somebody who there's some stuff in  
19 here that might -- with further development we might find out if you -- we  
20 might all be uncomfortable with her. I just -- I don't know. I mean I'm --  
21 they don't talk bad about each other at the schools. I mean they're not  
22 going to -- I can't imagine that she's going to have heard anything about  
23 the Adelson School just because her kid was at Shenker for a while. Is  
24 that the one that has a really good preschool?

25 MR. CARLSON: Yes.

1 MR. LEVEQUE: Yeah, but --

2 THE COURT: They -- I mean I know -- I know people who are  
3 LDS, I know people who sent their kids to that particular --

4 MR. LEVEQUE: Yeah.

5 THE COURT: That particular preschool is really well thought  
6 of.

7 MR. LEVEQUE: Shenker is good, but the fact that she  
8 worked there is not the concern. The real concern --

9 THE COURT: Oh no, her kid went there.

10 MR. LEVEQUE: Sorry?

11 THE COURT: Her kid went there.

12 MR. LEVEQUE: Oh yeah, but it's -- the bias that we see here  
13 is that she likes the Adelsons for what they've contributed to society. I  
14 mean that --

15 THE COURT: Oh no, where is that one?

16 MR. LEVEQUE: That's 45.

17 THE COURT: Okay.

18 MR. LEVEQUE: I mean if that's not bias, I don't know what is.

19 MR. JONES: Well there's a difference between somebody  
20 likes somebody and that they can't -- I mean I've --

21 THE COURT: Right.

22 MR. JONES: -- I've had lots of jurors sit who say yeah, I  
23 admire that person, it doesn't mean I can't follow the court's instructions  
24 and that I'm so bias that I cannot --

25 THE COURT: Right.

1 MR. JONES: -- that I'm not going to be able to put that aside  
2 in making a decision.

3 THE COURT: Yeah. I --

4 MR. JONES: That -- if that's the ground --

5 THE COURT: I think there's a lot here, but I do think I agree  
6 that this is one that we may need to get some more information on  
7 because I do -- I do have some concerns mostly about the nature -- it's  
8 not really -- I appreciate they ask these questions, but technically this  
9 really isn't about the Adelsons so I need something in addition. I mean  
10 it's not -- technically they're not parties. I mean he's only participating  
11 because he's president of the board.

12 So I think that's what we have to ask is the fact that he is the  
13 president of the board of this organization going to cause you to favor or  
14 disfavor the organization and I think that is another one that can be  
15 pretty easily dealt with early on. So I would just indicate we -- you know,  
16 we can certainly just plan early on to call on the people that we need  
17 specific answers to. She would be pretty far down she probably  
18 wouldn't be in the first group of 20, but we can certainly inquire further of  
19 the ones --

20 MR. LEVEQUE: And that's fine. I think I understand the  
21 Court's logic there, but I think it's -- the reverse situation would also  
22 warrant further inquiry where we've got questionnaires in here that say  
23 they don't like Sheldon Adelson. I think it's -- it's no different than  
24 someone saying I like Adelson, so --

25 THE COURT: Right.

1 MR. LEVEQUE: -- I think it would be --

2 THE COURT: And that's --

3 MR. LEVEQUE: -- the same logic that would apply to those  
4 as well.

5 THE COURT: Yeah, and that's what we need to follow up on.  
6 I mean I agree one -- saying once that I know who he is and he's a  
7 Republican, that's not enough for me. It's got to be coupled with  
8 something else and for her, I have some questions about her, but I don't  
9 know that she's necessarily going to have a bias. I'm just questioning  
10 she sent her kid to a Jewish school, does she favor religiously based  
11 education. I mean those are the kinds of questions I'd want some more  
12 on because I agree there's a lot of red flags about her, but nothing that I  
13 think would be entirely inappropriate just on the surface.

14 MR. LEVEQUE: So the Court agree then that with respect to  
15 her claim that she likes the Adelsons and for all they've contributed  
16 society, that would warrant further inquiry?

17 THE COURT: Yeah it does, yeah.

18 MR. LEVEQUE: Okay.

19 THE COURT: Absolutely.

20 THE CLERK: I'm sorry, that was number what, 121?

21 MR. LEVEQUE: That was 513.

22 THE COURT: 513.

23 THE CLERK: Oh I skipped. Thank you.

24 THE COURT: Yeah, so that one we're going to deny the for  
25 cause at this point certainly without any kind of prejudice to inquire

1 further and see if there is a -- if there are grounds.

2 Okay. So we've got on -- the next page we've got two that are  
3 agreed on. Oh, no they're all three agreed on, aren't they?

4 MR. LEVEQUE: Yep.

5 MR. CARLSON: Correct.

6 THE COURT: Five ninety-seven, 677 and 688 were all  
7 agreed? So the only one left is 860?

8 MR. JONES: That's my understanding, Your Honor.

9 THE COURT: Okay. So -- and this is Mr. Johnson who,  
10 again, likes Adelson and/or maybe for his charity work, but doesn't --  
11 and states he has a hardship. I'm not sure we know the extent of that  
12 hardship.

13 MR. LEVEQUE: Page 14, Your Honor, question 88, he states  
14 he will not be able to pay rent, he lives paycheck to paycheck and he  
15 has three kids in college.

16 THE COURT: Okay.

17 MR. JONES: Your Honor, if it's a hardship issue, I certainly  
18 am sympathetic to that situation. I've been doing this long enough to  
19 know that the courts typically want to inquire further of a prospective  
20 juror about those issues because sometimes it's a bit of an exaggeration  
21 on the jury form as to, you know, whether or not there's really that dire of  
22 a situation. So he may very well be a candidate that we would let go for  
23 hardship, but I would think that we need to make some further inquiry of  
24 him before we just do it right now.

25 THE COURT: And I -- do we know what he -- what the nature

1 of his work is? I mean some people they worry about paycheck to  
2 paycheck because like they're tip-dependent, but their base salary may  
3 still be covered by their employer and they just have never asked and  
4 don't know they'll do that. A lot of larger employers will. I'm not sure if  
5 they -- he's a journeyman. He's a -- I don't know which union. But if  
6 he's in a union, electrical union, I don't know if they -- if one of their  
7 benefits -- if they cover jury -- some of them do. So I would want to  
8 know. Let me see. Oh and his wife works for Bombard Electric. Okay.

9 Yeah, I would want to know if he's inquired as to whether the  
10 employer will cover him for some or all of his jury duty. Some will. I  
11 know that others absolutely don't. So that would be an area of inquiry  
12 so again, I'm going to deny that at this point for further inquiry into the  
13 nature of the hardship.

14 And again, we'll certainly call on those people who were on  
15 the list early so they don't -- aren't sitting here for a day or two waiting to  
16 be asked questions. So we'll just make a note of the ones that we need  
17 to follow up on. I don't know -- and now is that all of yours, Mr.  
18 LeVeque?

19 MR. LEVEQUE: Yes.

20 MR. JONES: Those were all the ones that were on --

21 THE COURT: Okay. So then we need to --

22 MR. JONES: -- his list that he wanted to add to our list.

23 THE COURT: Okay. And so then we need to --

24 MR. JONES: As I understood.

25 THE COURT: -- hear then from the Adelson School to the

1 extent that they have additional that aren't on the agreed list.

2 MR. LEVEQUE: And, Your Honor, this is where we're still  
3 unfinished with reviewing. We've gone through maybe 12 of them.

4 THE COURT: Okay.

5 MR. LEVEQUE: We got about another 30 to go through.

6 THE COURT: Okay.

7 MR. LEVEQUE: But if we want to go -- if want to make a  
8 record the ones that --

9 THE COURT: That you could agree on so we can let the jury  
10 commissioner know immediately to notify them?

11 MR. LEVEQUE: At least as far as we've gone so far --

12 THE COURT: Okay.

13 MR. LEVEQUE: -- 16 --

14 THE COURT: So that's juror number 0016?

15 MR. LEVEQUE: Correct, 0039, 0045 and 0054.

16 THE COURT: Okay. So you're in agreement with those four?

17 MR. LEVEQUE: Yes.

18 THE COURT: Okay, and you -- and you've got some more he  
19 -- I think they indicated maybe 30 --

20 MR. CARLSON: Give or take.

21 THE COURT: -- additional?

22 MR. CARLSON: Yes, that we have.

23 THE COURT: Okay. All right. So at this point in time since  
24 we appear to have reached the limit of what we can do with our jury lists,  
25 the question to put to counsel is it is now 1:40. We probably all need a

1 break, at least for lunch. My question is do you want to come back and  
2 complete the argument on our remaining motions in limine or if we are  
3 going to be here tomorrow, is it your preference we do that tomorrow?  
4 I'll leave it to the parties.

5 MR. JONES: What time is the hearing tomorrow again, Your  
6 Honor? I can't remember.

7 MR. FREER: One forty --

8 THE COURT: 1:30 and you're on with Rosenau. Do you  
9 know -- have you talked to Mr. Luszeck about whether they -- they come  
10 in every time and they're like give us some more time, we're working on  
11 a settlement.

12 MR. FREER: Oh tomorrow afternoon?

13 THE COURT: Yeah.

14 MR. FREER: I believe they are drafting a settlement  
15 agreement.

16 THE COURT: Yeah.

17 MR. FREER: That's the one with Tom Grover on the other  
18 side?

19 THE COURT: Yeah.

20 MR. FREER: Yeah.

21 THE COURT: Yeah, it's the -- yeah, so you're on at 1:30, they  
22 were on at 2. I don't think they need their evidentiary hearing or -- I think  
23 it was actually motions in -- motions for summary judgment they're  
24 arguing, but I -- they indicated give us two weeks, we'll have an  
25 agreement for you so I don't -- so I think you've got the afternoon.



1 MR. FREER: I will represent that I reviewed the settlement  
2 agreement this morning.

3 THE COURT: Okay. So it seems like they're working on a  
4 settlement agreement. What do you think? Would you prefer to just  
5 have lunch and come back tomorrow with these things done?

6 MR. FREER: The only concern I've got is if we can push  
7 through a little bit more, we do have a lot of stuff that we need to get  
8 done with, and I do have a closing argument tomorrow morning --

9 THE COURT: Okay.

10 MR. FREER: -- but --

11 MR. JONES: What else do we -- so we've got the motions in  
12 limine and the --

13 THE COURT: I mean we'll -- we'll give them time on these  
14 jurors, they can finish the jurors tomorrow. But we do have these  
15 motions --

16 MR. JONES: In limine? Right.

17 THE COURT: What have we got? Okay.

18 MR. JONES: I'm okay -- that's fine.

19 THE COURT: Okay, the ones we've got left are --

20 MR. FREER: Well here's my -- hang on, let me --

21 THE COURT: Okay.

22 MR. FREER: -- talk to him for a minute because --

23 THE COURT: Okay.

24 MR. FREER: -- I haven't even started my closing argument  
25 yet for my --

1 MR. JONES: Well listen I understand that. I'm going to need  
2 a little time to deal with that.

3 MR. FREER: Let's go talk --

4 MR. LEVEQUE: Could we have couple minutes --

5 [Off the record at 1:43 p.m.]

6 [Proceedings resumed at 1:45 p.m.]

7 MR. FREER: I -- based on if -- if we go tomorrow, how much  
8 time are we going to have blocked out? Are we going to be able to  
9 finish all of the motions tomorrow?

10 THE COURT: The afternoon. Yeah. You'll have the  
11 afternoon.

12 MR. FREER: Okay.

13 THE COURT: Based on hypothetical representations you  
14 may have made.

15 MR. FREER: And hopefully my hypothetical weren't  
16 misrepresentations. I'm fine pushing over those hearings tomorrow.  
17 That'll give me time to prepare for that.

18 With respect to the juror stuff, do we want to come back? Do  
19 you want to finish that up today?

20 MR. LEVEQUE: Have to break for lunch and go through it.

21 MR. FREER: Do you want to finish up the jury --

22 MR. JONES: It's up to you guys. I don't care. I mean we --  
23 what -- the plan would be then we -- if we did the jurors -- rest of the  
24 questionnaires today, we take a lunch break and then come back after  
25 lunch?

1 MR. LEVEQUE: We need the lunch break to go through all  
2 these.

3 MR. FREER: Yeah, we would be able --

4 MR. JONES: Right.

5 MR. FREER: -- to save time doing that. Yeah.

6 MR. JONES: All right, well I figured --

7 THE COURT: So we'd come back at what, like three?

8 MR. LEVEQUE: Yeah.

9 THE COURT: If you don't --

10 MR. JONES: That's fine, Your Honor, if that's -- that's all right.

11 THE COURT: -- mind? Or if you think you could just -- you  
12 just need like half an hour, we just need to know because we have to tell  
13 them they might need to get somebody to come and cover for them  
14 since it's not a full hour long break. If we can give them an hour, I'm  
15 okay, but if we can't, we'll have to ask for them to have coverage so they  
16 can have an hour.

17 MR. JONES: It's up to you guys.

18 MR. LEVEQUE: Say the hour.

19 MR. FREER: Yeah, let's do the hour.

20 THE COURT: Okay, so come back at three?

21 MR. JONES: That's fine.

22 MR. FREER: And that way we can --

23 MR. JONES: That's fine, Your Honor.

24 THE COURT: One more thing for the record, I will let you  
25 know that we do have from -- a request for excusal for Andrea Johnson,

1 who is badge number 24, which reads it's from U.S. Army Major  
2 Shamika Scott -- oh, Dr. Shamika Scott. She -- and she indicates that  
3 Ms. Johnson is the only family advocacy program coordinator and it's  
4 critical to the operation that there -- that she be available at this  
5 particular time of year, there's no one else to replace her if she has to be  
6 on leave. She has to go to Southern California and Los Angeles during  
7 the week of August 20th and a command inspection in -- I mean this  
8 woman's -- I don't know what her job is but they sure send her around  
9 the western United States.

10 I -- it appears that she does have orders to visit at least two  
11 different installations and they request that she take -- she be taken off  
12 the jury at this time.

13 MR. FREER: I'm not one to argue with the Army.

14 THE COURT: That seems appropriate to me based on the  
15 representations of her supervising officer that she's a critical position  
16 that they can't otherwise fill.

17 Okay. So we'll see you guys at three.

18 MR. JONES: Thank you, Your Honor.

19 THE COURT: And we'll finish up just the jury selection issues.

20 MR. CARLSON: Okay.

21 THE COURT: Okay, thank you.

22 [Colloquy between the Court and staff]

23 MR. JONES: We'll be back at three, Your Honor.

24 THE COURT: We'll see you guys at three, thanks.

25 [Recess taken at 1:49 p.m.]

1 [Proceedings resumed at 3:03 p.m.]

2 THE COURT: ... in order to complete the for cause  
3 challenges to potential jurors, so counsel, if you're ready to proceed?

4 MR. LEVEQUE: Yes, Your Honor. We've reviewed all the  
5 additional requests made by the school. We'll agree to excuse the  
6 following.

7 THE COURT: Okay.

8 MR. LEVEQUE: And I'm going by --

9 THE COURT: Can you give us a number and a name?

10 MR. LEVEQUE: Oh?

11 THE CLERK: Yeah, that --

12 MR. LEVEQUE: Yes.

13 MR. CARLSON: My chart won't have the name, sorry.

14 MR. LEVEQUE: Does your chart have that?

15 MR. CARLSON: It doesn't have the names.

16 MR. LEVEQUE: It doesn't? Okay.

17 MR. CARLSON: No. I just have juror and badge.

18 THE CLERK: Now these are not on the list?

19 THE COURT: Correct. These are additional.

20 MR. LEVEQUE: Okay. One twenty-six, juror 126 which is  
21 Gerard Sotelo; badge number 248 and that would be Judith Sandoval;  
22 374, that is Nina Garcia-Bautista; 393, that's Rosa Miranda; 406,  
23 Maryann Ramos; 413, Rachael Sand; 438, Antonella Medina-Carevic --

24 THE COURT: Pardon? Could you spell last name?

25 MR. LEVEQUE: Yeah, it's C-a -- well, hold on. C-a-r-e-v-i-c.

1 THE COURT: Okay.

2 MR. LEVEQUE: Six eleven (sic), Rupert Gallo; 633, Tracey  
3 Kreuzer; 720, Frances Abadia-Rivera; 780? Is that right?

4 UNIDENTIFIED SPEAKER: Yeah.

5 MR. LEVEQUE: Seven eighty, Chuntel Perreira; 782,  
6 Adrienne Grover -- I'm sorry, Adeline Grover; 869, Lisa Adams; 923,  
7 Steven Fredericksen. That will be the group that we have no objection  
8 to excusing.

9 THE COURT: Okay. Again and in reviewing these you saw  
10 no cause to be concerned that there was any effort made to exclude a  
11 group for any reason that was not justifiable under the nature of the  
12 case?

13 MR. LEVEQUE: No.

14 THE COURT: Okay. Great, thanks. All right. So were there  
15 additional person with whom you did not agree should be challenged --  
16 should be excused for cause?

17 MR. LEVEQUE: Well there are some that the school believes  
18 should be excused for cause and we disagree --

19 THE COURT: Okay. So there were some that you did not  
20 stipulate in other words to every one of them.

21 MR. LEVEQUE: Correct. Yeah.

22 THE COURT: Got it.

23 MR. LEVEQUE: There's about 23 of them.

24 THE COURT: Okay. All right. So are there additional  
25 potential jurors who the school believes should be challenged for cause?

1 MR. JONES: Yeah -- if you're asking me, Your Honor, yes.

2 THE COURT: Okay. All right. So if you can give us the  
3 numbers and we can pull the --

4 MR. JONES: Fifty -- well these are based on what I  
5 understand has not been agreed to the ones that we wanted to --

6 THE COURT: Correct.

7 MR. JONES: -- exclude for cause: 50, 54, 55, 185, 206, 315,  
8 322, 331, 392.

9 MR. CARLSON: And there's more, wait.

10 MR. JONES: Oh, I'm sorry, that's the first -- I think you said  
11 23, Alex?

12 MR. LEVEQUE: Yes. I counted 23 --

13 MR. JONES: So there's some more too.

14 THE CLERK: I'm sorry, I didn't catch that number?

15 MR. JONES: The last one I said was 392. And then also 401,  
16 410, 423, 437, 500, 699 --

17 MR. CARLSON: Oh wait, not 699. That was pulled by  
18 accident.

19 MR. JONES: I'm sorry. Should be 704?

20 MR. CARLSON: Yes.

21 MR. JONES: 704, not 699, sorry.

22 MR. LEVEQUE: I think that might be 709. I couldn't tell.

23 MR. CARLSON: Oh, you know what, that is --

24 MR. JONES: You know, it is -- just yeah, it looks like a four.

25 MR. CARLSON: Let's make sure I didn't pull 704 on accident.

1 MR. JONES: Okay, well --

2 MR. CARLSON: Let me just -- let me just make sure.

3 MR. JONES: You're going to change the whole pack.

4 MR. CARLSON: I think that's 709. They didn't sign it and  
5 that's -- I think that's 709.

6 MR. JONES: Why don't you just check back there --

7 MR. CARLSON: What's the -- do you have that name?

8 MR. LEVEQUE: It's badge number 1042 -- or juror number  
9 104235.

10 MR. FREER: Name?

11 MR. LEVEQUE: Looking for it.

12 UNIDENTIFIED SPEAKER: Donald.

13 MR. CARLSON: Donald.

14 MR. FREER: Donald.

15 MR. CARLSON: Okay. Yep. That's right.

16 MR. JONES: So be 709.

17 MR. CARLSON: Yes, 709.

18 MR. JONES: So the next one in order is 717, 749, 787, 902,  
19 904, 920 and 939 I think?

20 MR. LEVEQUE: Yeah.

21 MR. CARLSON: Yes, I believe.

22 MR. JONES: Okay. So those are the ones we wanted  
23 excused for cause but they did not agree.

24 THE COURT: Okay. And again, Mr. LeVeque is it kind of the  
25 same thing as earlier, you wish to inquire further because the grounds



1 stated, while they gave raise to questions, you just need more inquiry or  
2 were there any that you felt were being improperly excluded?

3 MR. LEVEQUE: Some of them I think require further inquiry,  
4 some I don't think raise any issues. It just depends on the --

5 THE COURT: Okay.

6 MR. LEVEQUE: -- on the ones we're talking about.

7 THE COURT: All right.

8 [Colloquy between the Court and JEA]

9 THE COURT: Ms. Denman wasn't able to find 54 in the box  
10 so with respect to Number 50, Paige Lynette Lefevre, Mr. Jones?

11 MR. JONES: Yes, Your Honor. Got a bit of a problem with  
12 this one --

13 MR. LEVEQUE: I do have 54 if you'd like to make a copy.

14 THE JUDICIAL EXECUTIVE ASSISTANT: I'm trying to figure  
15 out -- still should be on here. William Wilson, right?

16 THE COURT: Yeah. They have it so if we need --

17 MR. LEVEQUE: I have it as Andrea Smith.

18 THE JUDICIAL EXECUTIVE ASSISTANT: Fifty-four?

19 MR. CARLSON: Fifty-four is --

20 THE COURT: William Wilson.

21 THE JUDICIAL EXECUTIVE ASSISTANT: Are you going by  
22 the badge number?

23 MR. LEVEQUE: Yes.

24 MR. CARLSON: Andrea Smith is 54.

25 THE JUDICIAL EXECUTIVE ASSISTANT: Fifty-four.

1 MR. LEVEQUE: Yeah --

2 THE JUDICIAL EXECUTIVE ASSISTANT: Oh, okay, yeah.

3 THE COURT: Oh, so you're going by the -- by these numbers  
4 over here. Okay. All right. Got it.

5 THE JUDICIAL EXECUTIVE ASSISTANT: Okay, so here's  
6 50. Let me look because maybe they just did another 59, whoever  
7 threw this together.

8 THE COURT: Okay. All right. So let's look first at 50 -- let's  
9 make sure we're all looking at the same one.

10 MR. JONES: Yes, Your Honor.

11 THE COURT: So that's Joseph Rubin.

12 MR. JONES: Yes. So there's a couple of little issues I have  
13 with this prospective juror starting on question 45, I find the Review  
14 Journal to be a bias rag and Sheldon Adelson to be a despicable human  
15 due to his destructive political expenditures. And then if you go to page  
16 12 where it lists the name of the witnesses, question 80, Sheldon  
17 Adelson, disgusting political --

18 THE COURT: Bias.

19 MR. JONES: -- bias and lies. Then if you go to page 13, 81,  
20 have you ever read, seen or heard any information the media, et cetera,  
21 et cetera, if you ask which individual witness or companies do you learn  
22 about, Adelson's greed is the answer. And then what did you learn, that  
23 Adelson I guess lied to get money redirected from public school funds to  
24 the --

25 THE COURT: Raiders stadium.

1 MR. JONES: -- Raiders stadium. And then what opinions  
2 have you formed as result of learning this information, that private  
3 schools are awash in money while our public schools struggle for the  
4 better -- or for the something. And then --

5 THE COURT: Basics.

6 MR. JONES: -- 82, is there anything you believe might affect  
7 your ability to serve as a juror in this matter, yes. Yes please explain.  
8 I'm biased against the Adelson --

9 THE COURT: Brand.

10 MR. JONES: Brand, yes. So there is stated pretty  
11 unequivocally that there is a bias and she thinks he's a despicable  
12 person and I -- I note your point about this isn't about him personally, but  
13 it's about a school that's named after him and he's chairman of the  
14 board. That's about as strong of bias as I've ever heard in my almost 40  
15 years of practice by a prospective juror. I think it would be inappropriate  
16 and I certainly would not want to have that juror in voir dire saying those  
17 kind of things in front of this court to further establish admitted bias  
18 which potentially taints the entire jury pool which case I would probably,  
19 Your Honor, if forced to do that, ask for a mistrial that we get a whole  
20 new jury.

21 THE COURT: So Mr. LeVeque. On the one hand, I'm not so  
22 concerned about things like the private schools are awash in money and  
23 our public schools struggle for the basics; that, you know, he directed  
24 money away from public school funds to fund the Raiders stadium.  
25 Those kinds of things don't really bother me. but I'm biased against the

1 Adelson brand. I mean his business isn't even technically branded  
2 Adelson. I mean it's Sands. So Adelson brand?

3 MR. LEVEQUE: I think the problem, Your Honor, is that if  
4 we've already made a determination that by simply saying I like Adelson,  
5 I like the charitable work, I don't like Adelson, I don't like his political  
6 positions, what's the spectrum where the Court makes a determination --

7 THE COURT: Bias.

8 MR. LEVEQUE: -- before -- right.

9 THE COURT: Bias.

10 MR. LEVEQUE: Bias.

11 THE COURT: And so nobody else has actually said I'm  
12 biased in favor or biased against. Admitting a bias takes a lot --

13 MR. LEVEQUE: And that's -- that comes to my second --

14 THE COURT: -- for somebody.

15 MR. LEVEQUE: -- point, Your Honor. I have a feeling that  
16 they're saying this stuff to get out of the jury.

17 THE COURT: Yeah.

18 MR. LEVEQUE: I mean it's so over the top that I think they  
19 just wrote it for the specific purpose of being excused for cause. I would  
20 want the opportunity to ask them under oath, you know, about this and if  
21 it's really just an excuse to get out, because that's not a justifiable  
22 excuse to lie on a questionnaire to get excused from a jury.

23 THE COURT: Yes, Mr. Jones.

24 MR. JONES: Yes, Your Honor. That's -- first of all, I -- the  
25 point is well taken certainly from our perspective is that even people that

1 said they liked Sheldon Adelson didn't say they were bias in his favor,  
2 that they would be biased pro-Adelson, they said they like the guy. That  
3 is not a basis to challenge somebody for cause.

4 And this juror -- and like you point out, the Adelson brand  
5 that's -- this school is branded the Adelson -- Dr. Miriam and Sheldon G.  
6 Adelson Institute -- Inst- -- Educational Institute -- Institute. Can't talk.  
7 It's late in the afternoon.

8 But this issue about this person is simply over the top and that  
9 they're really just trying to get out of jury duty, if you look at this person's  
10 answers in toto, that is not what's going on here. In fact, the question  
11 right above 45 that where she calls Sheldon Adelson -- finds him to be a  
12 despicable human due to his destructive political expenditures, she says  
13 she knows about the Adelson School. I know a teacher who teaches at  
14 Adelson's Campus and likes it a whole lot there.

15 So it's not like she's going out of her way to say that  
16 everything in here is that she wants to get off of jury duty. She seems  
17 like a -- actually an honest person who sounds like probably pretty  
18 liberal and that's why we ask a lot of these questions because Mr.  
19 Adelson is a person who is in the public eye a lot more than most  
20 prospective litigants and that's why we ask about moving the embassy  
21 from Tel Aviv to Jerusalem because some people are very incensed  
22 about that and we saw that in some of these other questionnaires where  
23 people are very upset about that. So those are -- and blamed it on Mr.  
24 Adelson, so this person -- and I have to assume the Court would agree  
25 you have to presume they sign these things they're stating what they're

1 telling us under oath that it's to be true.

2 THE COURT: Right.

3 MR. JONES: So I think we would ask this juror be removed  
4 for cause.

5 THE COURT: I'll remove him for cause. He specifically  
6 stated he has a bias. All these other people have opinions, they know  
7 about things, but nobody has said specifically -- and I appreciate the fact  
8 this person may be -- he may be fairly sophisticated because, you know,  
9 he has a master's degree, he works for Teach For America, so he's  
10 probably more sophisticated than your average juror, but I don't know  
11 very many jurors who would know they need to say the word bias.

12 MR. LEVEQUE: I understand the Court's ruling.

13 THE COURT: So --

14 MR. LEVEQUE: I just want to address something that was  
15 stated by Mr. Jones. You know, political affiliation, whether you're liberal  
16 or conservative, whether you like the move of the embassy, that's  
17 irrelevant in my mind to whether someone is biased or not so I just want  
18 to be clear that -- that's perfect for a peremptory challenge if Mr. Jones  
19 wants to do that when we come to select a jury, but I just want to make  
20 sure we're all on the same page that --

21 THE COURT: Right.

22 MR. LEVEQUE: -- the Court's excluding this for stated bias  
23 and nothing else.

24 THE COURT: For stating that this person has a particular  
25 bias against the, quote, Adelson brand, and the thing that triggers that

1 for me is if you're talking about the -- a brand, his business isn't branded  
2 Adelson. His business is branded Sands. So the fact that he -- what he  
3 knows about him is about Adelson and not about a huge corporation, it's  
4 personal. And as I said, this isn't a lawsuit involving Mr. Adelson as a  
5 person. I don't think this guy could put that aside.

6 Because that would be the question. This isn't about him, he's  
7 just here as a representative of the board, school has his name, fine, but  
8 it's not a lawsuit about him, it's not about him. I -- when somebody says  
9 I have a bias against this person as a brand, to me that's something  
10 where the -- just the name itself, he's not going to be able to separate it.  
11 So I'm going to grant that peremptory challenge.

12 Andrea Smith, number 54 is our next person. Did we ever find  
13 her?

14 THE JUDICIAL EXECUTIVE ASSISTANT: No.

15 THE COURT: We don't have her, so Mr. LeVeque, if --

16 THE JUDICIAL EXECUTIVE ASSISTANT: I have three of  
17 these missing, so --

18 THE COURT: -- if you have that one, appreciate chance to  
19 see it.

20 MR. LEVEQUE: Your Honor, this one might actually save  
21 some time. I didn't review it myself because it looked like there was two  
22 55s. Somehow we found 54. This person stated she's going out of  
23 town the 26th through 29th. I've got no objection to excuse --

24 THE COURT: Okay. So I'll withdraw that objection. So we'll  
25 add her to the list of people who are excused.

1 MR. JONES: And that was our only objection to that particular  
2 juror --

3 THE COURT: Number 54.

4 MR. JONES: -- was a hardship issue.

5 THE COURT: Okay, so then that -- so that one is granted.

6 MR. LEVEQUE: Did you want a copy, Your Honor, still?

7 THE COURT: No, if that's the -- if you're --

8 MR. LEVEQUE: Okay.

9 THE COURT: -- agreeing that the only challenge on that one  
10 is she's got a scheduling conflict, great. They'll just put her right back in  
11 the pool, she'll get called in a few months.

12 Fifty-five? That's Mr. Haskell.

13 MR. JONES: Yes. Your Honor, I guess to be clear too, with  
14 respect to issues like moving the -- I just want to comment because I  
15 think it's important for the Court to understand where I'm coming from.  
16 The fact that somebody doesn't like the move of the embassy from Tel  
17 Aviv to Jerusalem isn't necessarily in and of itself the basis for challenge  
18 for cause. It gives us information that may lead to a -- evidence of bias  
19 so it's a factor. I was using that as an example of a problem.

20 This next juror, the 55, it's a similar -- this is Matthew Haskell,  
21 a similar issue. If you look again at number 45, if you checked yes to  
22 any of the companies or individuals in question 44, do you like or dislike  
23 any such company or individual and if so, please explain why for each.  
24 A love and integrity -- or I --

25 THE COURT: I have an intense delight -- dislike for Adelson?



1 MR. JONES: I can't -- my reading is not very good. Yes, I  
2 have an intense --

3 THE COURT: I have bad handwriting. I can read anything.

4 MR. JONES: -- dislike for Adelson and Las Vegas Review  
5 Journal primarily due to their political positions and negative treatment of  
6 public education. So this is a case that involves public education,  
7 obviously, and Mr. Adelson.

8 If you look at, again, the questions on page 81, which  
9 individuals do you know? Sheldon Adelson. What did you learn? That  
10 he intends to control the media promotion in Las Vegas. What opinions  
11 have you formed as result of learning this information? I have a very  
12 negative opinion of SA, Sheldon Adelson, due to his political alliances or  
13 unfavorable impact on local media.

14 And then he goes on to -- and this is the other reason that we  
15 have asked that he be excused, and this is not the first time I've seen  
16 this happen. This is somewhat of a problem when you're asking for a  
17 jury to be seated at the beginning of the school year. He's a teacher  
18 and he says that his ability to serve as a juror, yes, is something it would  
19 be -- this trial would start during the second week of the school year and  
20 missing two weeks at this time would have a significant negative impact  
21 on the continuity of instruction for 2,000 --

22 THE COURT: Two hundred.

23 MR. JONES: -- 200 plus students for the rest of the year.

24 He also goes on in great detail -- either further detail on the  
25 next page, further explanation of question 82 about how this would be

1 very problematic for him and I have often seen the courts for this very  
2 reason excuse a juror teacher for hardship.

3 He also says do you have any ethical, religious, political,  
4 philosophical or other beliefs that may prevent you from serving as a  
5 juror or may make it uncomfortable for you to be a juror sitting in  
6 judgment of others, yes, I'm an atheist would not be I guess comfortable  
7 judging elements that have a religious foundation.

8 THE COURT: Okay. All right.

9 MR. JONES: He also has -- he's a type 2 diabetic, severe  
10 neuropathy in lower limbs, so making prolonged sitting painful.

11 THE COURT: Mr. LeVeque.

12 MR. LEVEQUE: Your Honor, I guess --

13 MR. JONES: Says short-term memory issues.

14 MR. LEVEQUE: I guess I'll handle them in reverse order. His  
15 medical conditions clearly don't prevent him from working. He appears  
16 to be a high school teacher at Green Valley. Public high school  
17 teachers get excused for maternity leave and jury duty all the time. I  
18 don't think that's an issue that would warrant excusal for cause.

19 Again here we have evidence that he has a dislike for Adelson  
20 and the political positions that he's taken and the LVRJ, but first of all,  
21 what does the Review Journal have do anything do in this case? Mr.  
22 Adelson, as the Court has stated, is not a party to this and, you know, if  
23 we're talking about likes and dislikes, I mean I get the last one where we  
24 talked about expressly stated bias. This one doesn't rise to that level.

25 THE COURT: I would agree I -- I will tell you that I have a

1 couple of concerns. The two are that it may be with respect to his  
2 medical condition that he can accommodate that at work. He might be  
3 able to explain to us what he does that would be any different from  
4 sitting here. We take breaks every hour and a half, those kinds of  
5 things. Is that going to be a problem for him. And it might be.

6 MR. LEVEQUE: It's worth asking him.

7 THE COURT: It might be that he's able to stand and sit and  
8 do whatever all through the day and that helps him. May be something  
9 that we could accommodate, it may not be.

10 But the ultimate question as you've pointed is does all this add  
11 up to a bias against -- again, this concept that even just the name  
12 Adelson being attached to the school is that going to be such a bias that  
13 you couldn't listen fairly or that you would start off biased in favor of the  
14 other side just because of that.

15 But the one that Mr. Jones raised that is interesting and  
16 uncommon, we don't see it a whole lot. We usually see it more in the  
17 context of people who, because of a religious belief, do not believe that  
18 they can, just as a matter of their religious faith, sit in judgment on  
19 someone else. He's not saying that. What I understood him to be  
20 saying is that because he's an atheist, just the fact that this is a religious  
21 school, he'd be -- I don't know what it means be uncomfortable with it?

22 MR. LEVEQUE: It doesn't make sense to me because these  
23 claims are --

24 THE COURT: So --

25 MR. LEVEQUE: -- breach of contract and will construction.

1 THE COURT: And that's what I think needs to be explained to  
2 him that -- but, you know, on the other hand, one part of this, as I said, is  
3 this idea that the background for why both Melvin and Jonathan feel so  
4 strongly about this, as represented through like the rabbi and others, is  
5 this is -- and I don't know. I don't know this. This is an important thing  
6 for them as part of their religious beliefs and if that would so turn this guy  
7 off that he couldn't be fair to either side because this is about a religious  
8 school, even though the claims aren't, I mean would that so cloud his  
9 view of the case?

10 I mean so there are real problems with this guy, I agree with  
11 you. Some of them I think we could accommodate and some of them  
12 might not really be a problem. It might be, just like you said, this guy  
13 really wants off. He doesn't want to miss the first two weeks of the  
14 school year and he just really wants off, but some of this, and again it's  
15 kind of the reverse of what I usually see, really might be a problem with  
16 the whole idea of a religious school.

17 MR. LEVEQUE: We just got to ask some questions about  
18 that.

19 THE COURT: And so I will tell you upfront the -- this guy  
20 appears to have a whole lot of problems so I'm -- I'm not prejudging him,  
21 but I'm just saying that this guy is a pretty close call and just depending  
22 on what he has to say. I think we need to bring him in and find out. Like  
23 with the medical issues, some of those things, you know, we can work  
24 around. They'll get him a substitute. I'm not worried about some of  
25 those things. That religious thing is -- I just don't know how much of a

1 trigger it's going to be. So I think we need to find out. So with him we'll  
2 bring him in.

3 One eighty-five.

4 MR. JONES: Yes, Your Honor, just to be clear, with respect  
5 to people that have expressed specific directed negative opinions, in this  
6 case a very negative opinion of Sheldon Adelson, I would ask that those  
7 jurors be voir dired on issues about Mr. Adelson outside the presence of  
8 the other jurors so as not to taint the entire jury pool.

9 THE COURT: Understood.

10 MR. LEVEQUE: I have no objection as long as the people  
11 that like Adelson are also in the same sequestered questioning.

12 MR. JONES: Well, I guess we could see that if -- when it  
13 comes along. I don't know that --

14 THE COURT: Yeah.

15 MR. JONES: -- we've seen a whole lot of people that have --

16 THE COURT: And that might be like on a case-by-case basis  
17 and if you feel that you're going to need to get into things that are not  
18 appropriate, we can just ask certain jurors to wait in the hallway on a  
19 break or -- they can come in and talk to us outside the presence of the  
20 others. You can just flag them and we can do that as we need to bring  
21 them in or not and just avoid those types of questions in front of the --  
22 the problem with this, and I appreciate this in advance; I'll just tell you I  
23 don't know if we can avoid it, is the blurter outers. There's always going  
24 to be somebody who -- you know, in a typical lawsuit involving a car  
25 accident, there will be somebody up there saying my insurance

1 company settled a car accident for me. Every time, you --

2 MR. JONES: Right.

3 THE COURT: -- you know this --

4 MR. JONES: I do --

5 THE COURT: -- there is somebody who will blurt it out. We  
6 can't always anticipate who those people are, so somebody might blurt it  
7 out and I would suggest we would just accept thank -- thank you, we'll  
8 have move questions later, move on and then ask them to come back --

9 MR. JONES: I think that's -- if something like that happens,  
10 Your Honor, I think it's the best way to handle it.

11 THE COURT: It's the only way we can do it so just ahead of  
12 time, we can't guarantee somebody won't say something in front of the  
13 other jurors. There's no way to protect it. There -- somebody may think  
14 Sheldon Adelson is the most wonderful person in the world because he  
15 gives \$50 million to a school, he's just the most wonderful person. They  
16 might blurt that out. We can't avoid it and we'll just cope with it and  
17 explore it further on the next break so just so -- otherwise we'd be taking  
18 each person one at a time, we can't do it.

19 Okay, 185.

20 MR. JONES: Yes, Your Honor, 185 primarily has to do with if  
21 you look at page 13, questions 82 and 83. He's a one-man operation  
22 with no backup for his cover business, and then he also says that be  
23 hardship because he lives with his mother-in-law with dementia. Also  
24 his daughter lives with him and has three children; his wife share care  
25 and supervision of the kids.

1 THE COURT: Yeah. So just with respect to the hardship, Mr.  
2 LeVeque. Doesn't seem to be many other issues with him but --

3 MR. LEVEQUE: Is that your only issue, Randall?

4 MR. JONES: Yeah.

5 MR. LEVEQUE: Just the hardship?

6 MR. JONES: Yes, he's got an opinion of Mr. Adelson that I  
7 think is inappropriate but he doesn't say it in the terms that these other  
8 people have used.

9 THE COURT: I mean he's got some problems -- on page 7 he  
10 talks about how he's had problems with nonpayment of contractors  
11 involved with the Sands -- and he understands Sands Corporation  
12 equals Adelson. He gets it. This guy's pretty sophisticated. He doesn't  
13 say he's biased.

14 MR. JONES: Right. That's why I did not specifically raise the  
15 bias issue, Your Honor, even though that's something I certainly want to  
16 inquire of him at -- if he is allowed to proceed even though I believe  
17 there's a hardship issue with this prospective juror.

18 THE COURT: Yeah, and he's going to know -- he'll know a  
19 little bit about law, his wife worked for John Momot. Doesn't indicate if  
20 that was like up till his recent death. And that his daughter currently  
21 works for Tony Sgro. Again those guys don't do any -- anything --

22 MR. LEVEQUE: Sure.

23 THE COURT: -- related to this.

24 MR. LEVEQUE: Here are the only two questions I want to ask  
25 him -- I'm not going to be terribly difficult on this man if he has a real

1 issue, but he's got no backup to cover business. I think it's a reasonable  
2 question to ask him what does that mean in terms of dollars; is there any  
3 other way that you can, you know, bridge the gap for the next couple  
4 weeks. And then, you know, he does have his wife to help out with the  
5 mother-in-law and the kids, so I'd kind of just like to inquire further into  
6 that if there's anything else that can be done.

7 THE COURT: It's my impression he -- he says he is a real  
8 estate broker, so not knowing exactly what that entails, it seems like  
9 pretty much it's not something he can do from home; that this is -- he's  
10 out in the field and so this means he's out of the house so who takes  
11 care of mom? So I can see how there are some questions about it.

12 Again, just on the surface I don't think that we can disfavor  
13 one business person over another. I am more concerned about just the  
14 additional burden of the additional family burdens that he has. So for  
15 that reason -- I mean he actually is a pretty sophisticated guy. He was  
16 on the creditors committee for the USA Mortgage bankruptcy. I mean  
17 good businessman. Looks like he would be a really favorable guy. The  
18 concern here is caring for the family.

19 If you want to inquire further into the how significant of a  
20 problem it would be for him, I mean I kind -- the kind of problem we have  
21 is how do you say well it's okay to keep somebody on who's a teacher in  
22 the first two weeks of the school year worried about his class of --  
23 classes of 200 students, but we're going to go let some guy go because  
24 he works from home and has grandkids? I mean it's kind of hard to  
25 justify so we'll listen to what he has to say. So I'll deny that one as well.



1 So 206.

2 MR. JONES: 206, Your Honor, again relates to this issue of a  
3 dislike of Mr. Adelson, the fact that he has -- clearly has political views  
4 that are different than or not aligned as he said with Mr. Adelson.

5 THE COURT: Well, and again, I know what Mr. LeVeque's  
6 going to say is that so what?

7 MR. JONES: Just making my record, Your Honor, that I  
8 believe that anybody that has specifically stated because Mr. Adelson --  
9 this isn't just a matter of the school, it's the school with Mr. Adelson's  
10 name on it. Mr. Adelson is a controversial person with -- in many  
11 people's opinion and that that is an issue that I believe leads to a bias  
12 against my client. You can't divide the Adelson School from Mr. Adelson  
13 personally in terms of the jury's association of the two and therefore I  
14 think -- and there's other questions he answered related to the Israeli  
15 embassy and the U.S. embassy in Israel, Review Journal and the Trump  
16 administration so I understand we're going to get people that have  
17 different political viewpoints, but I -- and I -- by the way, I wouldn't feel  
18 quite so strongly about it if we weren't in this particular point in time in  
19 our country. The polarization is certainly in my lifetime more stark than I  
20 can never remember --

21 THE COURT: It is and it's -- it is a concern and I think a lot of  
22 people have very strong feelings one way or the other about political  
23 contributions and the fact that the one percent have so much influence.  
24 And the thing I saw in this particular juror was his view that you're --  
25 huge donations mean you're buying favor. And again, while we're not

1 making this about religion, those are the kinds of things where because  
2 we're going to get into the whole idea that, you know, Milton Schwartz  
3 with -- with his hopefully total of \$1 million expected to have the school  
4 named after him but the Adelsons come in and they pay 50 million. You  
5 know, I don't know if that's going to bias somebody so I think we have to  
6 keep that in mind. I'm more concerned about that really than the  
7 politics.

8 MR. JONES: Well and, Your Honor, the only reason I bring  
9 up the politics is because of the bias so you're right, in and of itself the  
10 politics is not the issue, it's whether --

11 THE COURT: Right.

12 MR. JONES: -- the politics bias the prospective juror to the  
13 point that I'm not going to get a fair juror for my client.

14 THE COURT: Right, and that is the one where that's the  
15 question is, is the fact that he's already said I view people who make big  
16 donations as basically currying favor I think -- he didn't use those terms,  
17 but, you know, buying something, buying -- I forget the term he used.

18 It's right there in the thing, Mr. LeVeque.

19 But does all this add up to the fact that we're -- it's going to --  
20 we're going to have to get into that and I appreciate that, you know,  
21 while we may not be letting the rabbi talk about that, some of that's  
22 going to come up. It comes up with Dr. Sabbath, it comes up -- it'll come  
23 up with Jonathan.

24 So that's really more my concern is somebody -- would that  
25 trigger then somebody who starts out with this view already, would he,

1 and I don't know how we get at this, favor or disfavor this whole concept  
2 that's behind this whole idea of naming rights. It's really a critical point  
3 and that's more troublesome to me than I don't like Republicans and I  
4 stopped subscribing to the Review Journal. So?

5 MR. LEVEQUE: Sure. Well, with respect to this juror, Your  
6 Honor, I guess the question you'd ask him in voir dire is, you know, the  
7 evidence that it's likely to come on in this case is both sides contributed  
8 money to a school and at some point it was named after both, does that  
9 make any difference to you whatsoever --

10 THE COURT: Right.

11 MR. LEVEQUE: -- the fact they were both --

12 THE COURT: Because that's really my -- my bigger concern  
13 is, is he --

14 MR. LEVEQUE: Yeah. He could say yes or no. And then --

15 THE COURT: Is he going to view this as some sort of like a  
16 competition or something? That is just my -- my fear is that somebody  
17 who -- people do have very strong feelings about philanthropy and they  
18 -- it's interesting. Some people say that charity should be totally  
19 anonymous or it's not really charity. So that's -- I just -- he didn't say  
20 enough about what his views really are on that to figure out if he's really  
21 -- has such deeply-seated concerns about charity that he'll have a  
22 problem with this case no matter what because it's a question of can he  
23 be fair to both sides. He may not be able to be fair to anybody.

24 MR. LEVEQUE: Could be.

25 THE COURT: So that's my worry about him. I'm just putting

1 that on the record. So we'll bring him in, we'll see if we can clarify to see  
2 if he could be otherwise fair because I agree with you his opinion about  
3 respective political parties in and of itself -- you know, a lot of people are  
4 going to have opinions. That's what Mr. Jones has pointed out. We just  
5 need to explore them.

6 So 315 is Christen Johns. And Christen has a master's  
7 degree.

8 MR. JONES: Yes, Your Honor, if you look at, again,  
9 questions 44 and 45, again, I'm familiar with Sheldon Adelson in a  
10 construction contractors lawsuit years ago where he failed to pay  
11 several subs contractors (sic) for their work at the Venetian --

12 THE COURT: And that may be what the other guys was  
13 referring to. I --

14 MR. JONES: I'm sorry?

15 THE COURT: I may -- that may be what the other guy was  
16 referring to. I don't know what that's talking about. I don't know --

17 MR. JONES: Yeah, that's -- the initial --

18 MR. FREER: The Venetian litigation I think --

19 MR. JONES: -- original Venetian tower litigation.

20 THE COURT: Oh, okay.

21 MR. JONES: My firm actually was on the other side of that  
22 case from the Sands, ironically.

23 THE COURT: Yeah.

24 MR. JONES: That resulted I think in a nine month jury trial in  
25 front of Judge Thompson or somebody.