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.

APPEAL

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

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Question 7:

Did the School breach the Contract?

Yes ____ No ____

Question 8: (Please circle one)

Do you find that in 2004, when Milton I. Schwartz wrote the following:

> 2.3 The Milton I. Schwartz Hebrew Academy. I hereby give, devise, and bequeath the sum of five hundred thousand dollars ($500,000.00) to the Milton I. Schwartz Hebrew Academy (the, "Hebrew Academy") that:

(a.) He intended that the Bequest be made only to a school known as the "Milton I. Schwartz Hebrew Academy" for the purposes set forth in the Bequest. OR

b. He intended the Bequest be made to the school presently known as the Adelson Educational Institute.

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Question 9:

Do you find that the reason Milton I. Schwartz made the Bequest was based on his belief that he had a naming rights agreement with the School which was in perpetuity?

Yes X No ____

Question 10: (ONLY IF YOU FIND YES TO QUESTION NOS. 1, 2, 5, AND 7)

What was the appropriate amount of damages that the School should pay the Estate to remedy the breach of contract?

$_____

Question 11: (ONLY IF YOU ANSWERED "NO" TO QUESTION NO. 1.)
Do you believe that the School acted in a manner in which the School should have reasonably expected to induce Milton I. Schwartz's reliance and which did induce Milton I. Schwartz's detrimental reliance?
Yes ____ No X

Question 12: (ONLY ANSWER IF YOU ANSWERED "NO" TO QUESTION NO. 1)
Do you find that Milton I. Schwartz believed that he had a naming rights contract with the School but was mistaken?
Yes ____ No X

Question 13: (ONLY ANSWER IF YOU ANSWERED "NO" TO QUESTION NO. 1 AND "YES" TO QUESTION NO. 12)
Did Milton I. Schwartz make the Bequest to the School based on his mistaken belief?
Yes ____ No ____

005502

FOREPERSON

Sept. 5, 2018
DATE

005502

EXHIBIT 6

In the Matter Of:

Jonathan A. Schwartz vs Adelson Educational Institute

VOL 2 TRANSCRIPT

August 24, 2018

005504

005504

Discovery Legal Services, LLC 702-353-3110 production@discoverylegal.net

letter. He didn't use a stamp, right?
A. Correct.
Q. So he was a really precise guy, would you say that when it came to documents of importance?
A. Yes.
Q. He wasn't going to leave l leave anything to chance, would you agree with that?
A. I would agree with that.
Q. Now, there have been some discussion here -- well, I will withdraw that.
Let's look at, if we could for a minute, Exhibit 112. I think it's in evidence. And we will put it up on the screen too Ms. Pacheco but if you have it there you are welcome to look at the binder.
A. It's easier to see here.
Q. Okay.
A. All right.
Q. So we have seen this before. This is -- these are the minutes that you signed as the secretary with your maiden name do you remember that?
A. Yes.
Q. You were there says Susan McGarrah at the bottom, attending/present?
A. Uh-huh.

005505

005505

did my best.

Q. Okay.

A. But I did produce this schedule, yes.

Q. You understood when you were under subpoena that the school was asking you to collect all of the information, all of the backup so they would have a chance to review it, right? That was part of the process, right?

A. It was part of the process. But that's not in the order it happened.

Q. Okay. So let me ask a different way.

You got a subpoena?

A. Yes.

Q. It asked you to collect all of the information?

A. To come up with the schedule to -- of donations so that's what I did.

Q. And that's information that one of the other attorneys was able to ask you about for the school. They asked you about -- it wasn't me, it was somebody else, right?

A. Correct.

Q. And at that time, 2014, you told them, as Mr. LeVeque had you testify, that it was your belief that you shredded all of that information -- orb you

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shredded -- I'm sorry. All of the information except what you were able to produce that day, it was your understanding had been shredded, right?

A. Correct. Because I was given that date to find the backup from this original schedule.

Q. And you believe that in fact your best recollection at that time or understanding at that time in 2004 was that only -- the only backup you had was what you gave a day to the lawyers for the school?

A. At that time, yes, because I -- yes, that's what I found that day, correct.

Q. So and you said in your deposition and we can look at it and I can ask you about that, but is it your understanding and recollection that you told the attorney for the school at that time when you were under oath that to the best of your understanding, all the other backup had been shredded?

A. At that time, to the best of my understanding, yes. That was not a hundred percent. Okay.

Q. Okay.

A. All right.

Q. So the fact is that we didn't get all of

vote?

A. Uh-huh.

Q. You have to say "yes."

A. Yes. I'm sorry. Yes.

Q. So based on what you understood is, for whatever reason, a majority of the board voted not to reelect Mr. Milton Schwartz at that time, right?

MR. LEVEQUE: Objection. Lacks foundation.

MR. JONES: I think that's what she just testified.

THE COURT: Overruled.

MR. JONES: Thank you.

THE WITNESS: Yes.

BY MR. JONES:

Q. And Mr. Schwartz, who clearly was -- as you have already said, he loved this school?

A. Yep.

Q. He was all about this school?

A. Yep.

Q. And he was extremely angry when the board decided that he shouldn't be on the board anymore, right? Right?

A. Yes.

Q. And he said I'm not going to stand for that, I'm going to sue and say that was not a proper

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EXHIBIT 7

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Steven D. Grierson
CLERK OF THE COURT

Alan D. Freer (#7706)
Alexander G. LeVeque (#11183)
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
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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.: 07P061300 Dept. No.: XXVI/Probate Date of Conference: August 3, 2018 Time of Conference: 9:30 a.m.

THE ESTATE'S PRETRIAL MEMORANDUM

Date of Pretrial Conference: August 3, 2018

Location of Pretrial Conference: Solomon Dwiggins & Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Counsel Present:

Estate of Milton I. Schwartz: Alexander G. LeVeque, Esq.

The Dr. Miriam & Sheldon G. Adelson Educational Institute: J. Randall Jones, Esq. & Joshua D. Carlson, Esq.

I.

BRIEF STATEMENT OF FACTS

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

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

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The School initiated this action by filing a petition in probate court to compel the Estate to pay the $500,000 gift to the School. After the School filed its probate petition, the Estate brought claims against the School seeking to enforce the alleged naming rights agreement between the late Milton I. Schwartz and the School. The Estate has denied the School's allegations and the School has denied the Estate's allegations.

A. THE ESTATE'S STATEMENT OF FACTS

Milton I. Schwartz ("Milton") was instrumental in acquiring the land and raising funds for the construction of the School at its current Hillpointe location back in the late 1980s. In August of 1989, Milton personally donated $500,000 to the School in return for which the School would guarantee that its name would change in perpetuity to the Milton I. Schwartz Hebrew Academy ("MISHA") (the "Schwartz Naming Rights Agreement"). Evidence of both the formation and performance of the Schwartz Naming Rights Agreement is abundant. Milton testified as to its formation and terms in two affidavits and did Dr. Roberta Sabbath and Dr. Lubin, both of whom negotiated the Schwartz Naming Rights Agreement on behalf of the School. In addition, other board members of the School (e.g. Leonard Schwartzer, Samuel Ventura and Neville Pokroy) have testified as to its existence. Indeed, the School changed its corporate name from "The Hebrew Academy" and amended its Bylaws to state that the name of the School shall be MISHA "in perpetuity."

Starting in or about 2004, Sheldon and Miriam Adelson began discussions with the School's board (which included Milton) about making a charitable contribution to the School to fund the construction of a high school on the School's property. The Adelson's original idea was to build a high school and a new Jewish Community Center. In 2006, the School began construction on the high school.

In August of 2007, Milton passed away. Before Milton's death, MISHA operated as grades K-8 of the School and the Adelson's school operated as the high school on the MISHA campus. However, just four months after Milton's death, the School's board passed a resolution which caused the following: (1) the acceptance of a grant from the Adelson Family Charitable Foundation subject to certain conditions; (2) the changing, in perpetuity, of the School's legal

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name from MISHA to "The Dr. Miriam and Sheldon G. Adelson Educational Institute" (the "Adelson Institute"); (3) reducing Milton's namesake from K-8 to K-4 (the elementary grades); and (4) an amendment to the School's Bylaws to reflect the School's corporate name change to the Adelson Institute in perpetuity. Presently, and notwithstanding the School's own resolution to keep the elementary grades of the School named in honor of Milton in perpetuity, the School has completely removed Milton's namesake.

This case boils down to a gamble that the School made. The Adelsons have given over $100 million to the School since they committed to build the high school. At trial, the evidence in this case will demonstrate that the School took a calculated risk in breaching the Schwartz Naming Rights Agreement in exchange for the Adelsons' gift.

The Estate seeks damages and specific performance to remedy the School's breach of the Schwartz Naming Rights Agreement. As to the former, the Estate seeks reimbursement of the initial $500,000 that Milton gave a consideration for the Schwartz Naming Rights Agreement (restitution damages) and reimbursement of the additional gifts Milton made from 1989 through his death (reliance damages). According to Milton's bookkeeper (who was also Acting Secretary of the School's Executive Board from 1988-1990), total restitution and reliance damages, excluding interest, is approximately $1,055,853.75. As to the latter, the Estate seeks an order mandating that the School restore its legal name to the Milton I. Schwartz Hebrew Academy as well as grades K-8, the original building on the Hillpointe campus, and the campus itself.

With regard to the dispute concerning the $500,000 bequest to the School in Milton's Last Will and Testament, the Estate claims that the bequest lapsed because it was made specifically to "The Milton I. Schwartz Hebrew Academy," the School bearing Milton's name, which no longer exists. The Estate contends that the bequest lapses as a matter of law because (1) there is no "Milton I. Schwartz Hebrew Academy"; (2) there is no successor clause in the Will; and (3) any failed gifts pass through to the residual beneficiary which is Milton's trust. Alternatively, if the Court determines that there is a latent ambiguity, all of the extrinsic evidence that Estate anticipates will be admitted at trial overwhelmingly demonstrates that Milton's intent was for the bequest to be given to the school bearing his name.

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II.

LIST OF ALL CLAIMS FOR RELIEF

A. THE ESTATE'S CLAIMS (PETITION FOR DECLARATORY RELIEF AND SUPPLEMENT)

1. Construction of Will (First Claim for Relief, pp. 6-7)

The Estate seeks a declaratory judgment from the Court that the $500,000 bequest to the School in the Last Will and Testament of Milton I. Schwartz lapsed because there is no existing entity named after Milton I. Schwartz on a perpetual basis.

2. Fraud in the Inducement (Second Claim for Relief, p. 7)

The elements of fraud in the inducement are as follows: (1) a false representation made by the Board of Trustees to Mr. Schwartz; (2) the Board of Trustees' knowledge or belief that the representation was false (or knowledge that it had an insufficient basis for making the representation); (3) the Board of Trustees' intention therewith to induce Mr. Schwartz to consent to the agreement; (4) Mr. Schwartz's justifiable reliance upon the Board of Trustees' misrepresentation; and (5) damages to Mr. Schwartz resulting from his reliance. *See J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290 (2004).

Based on the anticipated evidence to be admitted at trial, it is clear that the Board of Trustees represented to Mr. Schwartz that the name of the School would be changed to MISHA in perpetuity on multiple occasions. Either these representations were false or the School breached its agreement when it took affirmative steps to change the name of the school.

After the School's initial breach of their agreement in the early 1990s, Mr. Schwartz ceased providing financial support to the School. Realizing the School needed additional funding, and taking into account that Mr. Schwartz was a major donor, in 1996, the Board of Trustees again represented to Mr. Schwartz that it would rename the school to MISHA in perpetuity in order to induce Mr. Schwartz to resume his financial donations and contributions to the School.

As a result of the Board's representations and conduct, Mr. Schwartz resumed his financial contributions and solicitation. Moreover, and in reliance upon the School's representations, Mr. Schwartz devised a specific bequest within his Will to provide additional financial assistance to MISHA after his death. As such, Mr. Schwartz justifiably relied upon the

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school's representations.

The Estate seeks both declaratory relief concerning the voidability of the $500,000 bequest and damages proximately caused. The Estate also seeks punitive damages.

3. Breach of Contract (Fifth Claim for Relief, p. 9)

The Schwartz Naming Rights Agreement is a valid and enforceable contract under Nevada law. The Estate seeks damages and specific performance to remedy the School's breach of the Schwartz Naming Rights Agreement. As to the former, the Estate seeks reimbursement of the initial $500,000 that Milton gave a consideration for the Schwartz Naming Rights Agreement (restitution damages) and reimbursement of the additional gifts Milton made from 1989 through his death (reliance damages). According to Milton's bookkeeper (who was also Acting Secretary of the School's Executive Board from 1988-1990), total restitution and reliance damages, excluding interest, is approximately $1,055,853.75. As to the latter, the Estate seeks an order mandating that the School restore its legal name to the Milton I. Schwartz Hebrew Academy as well as grades K-8 and the original building on the Hillpointe campus.

4. Promissory Estoppel (Sixth Claim for Relief, pp. 9-10)

Even if the Schwartz Naming Rights Agreement is not a legally enforceable contract, Milton nevertheless relied on the School's promise to his detriment. The Estate is, therefore, entitled to restitution of all monies that Milton gave the School in reliance of the School's promise, which, excluding prejudgment interest, is approximately $1,055,853.75.

III.

LIST OF AFFIRMATIVE DEFENSES

A. <u>THE ESTATE'S AFFIRMATIVE DEFENSES</u>

1. Bequest Void for Mistake (Third Claim for Relief, p. 8)
2. Offset of Bequest Under Will (Fourth Claim for Relief, p. 8; Objection to School's Petition, at p. 7)
3. Revocation of Gift and Constructive Trust
4. Fraud in the Inducement (Objection to School's Petition, at p. 7)

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IV.

LIST OF CLAIMS OR DEFENSES TO BE ABANDONED

A. **FOR THE ESTATE**

1. Affirmative Defense - Bequest to the School is abated.

V.

LIST OF ALL EXHIBITS

Please refer to the Joint Exhibit List attached hereto at Exhibit A.

Exhibits 1 through 63 are the parties Joint (agreed upon) exhibits.

Exhibits 100 through 156 are The Estate's exhibits.

The Estate reserves the right to use certain demonstrative exhibits at time of trial which may not have been previously designated within the Parties' Exhibit List. The Estate also reserves the right to object to any exhibit being offered by any party herein which has not been previously produced during the normal course of discovery proceedings as mandated by NRCP 16.1. The Parties further reserve the right to object to any demonstrative exhibit used at the time of trial by any other Party in this matter.

VI.

EVIDENTIARY AGREEMENTS

The parties have stipulated to the admissibility of exhibits 1 through 63, on Exhibit 1, attached hereto. The Estate has stipulated to only authenticity and foundation as certain exhibits identified by the School. The following is a table setting forth each exhibit identified by the School that the Estate has stipulated to authenticity and foundation:

Exhibit No.	Description
203 **authenticity only**	Naming Rights – Legacy Gifts & Corporate Money. Author: Terry Burton
204	Attachment to Certificate of Amendment to Articles of Incorporation of the Milton I. Schwartz Hebrew Academy, Resolutions of the Board of Trustees
205	IRS form 706 - Redacted pages re: Charitable Bequests: Milton I. Schwartz Hebrew Academy Education/Religious in the amount of $500,000.
206	Trustees meeting minutes and Agenda
208	Hebrew Academy Board Meeting
211	The Dr. Miriam and Sheldon G. Adelson School The Milton I. Schwartz Hebrew Academy Board Meeting - Let from PNAIS Pacific Northwest Association

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212	The Dr. Miriam and Sheldon G. Adelson School The Milton I. Schwartz Hebrew Academy Board of Trustees Meeting.
215	Adelson Educational Campus Board of Trustee Meeting
217 **authenticity only**	From Chaos to Order. Author: Tamar Lubin Saposhnik, Ph.D.

VII.

LIST OF WITNESSES

A. THE ESTATE'S WITNESSES

1. Jonathan Schwartz
c/o Solomon Dwiggins & Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

2. Dr. Miriam Adelson
c/o Kemp Jones & Coulthard
3800 Howard Hughes Parkway
Las Vegas, Nevada 89169

3. Sheldon Adelson
c/o Kemp Jones & Coulthard
3800 Howard Hughes Parkway
Las Vegas, Nevada 89169

4. Custodian of Records for
The Dr. Miriam and Sheldon G. Adelson Educational Institute
c/o Kemp Jones & Coulthard
3800 Howard Hughes Parkway
Las Vegas, Nevada 89169

5. Susan Pacheco
c/o Solomon Dwiggins & Freer, Ltd.
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129

6. Neville Pokroy
653 Town Center Drive
Building 2, Suite 70
Las Vegas, Nevada 89144

7. Roberta Sabbath
2550 Hayesville Avenue
Henderson, Nevada 89052

8. Lenard Schwartzer
c/o Schwartzer & McPherson Law Firm
2850 S. Jones Boulevard, Suite 1
Las Vegas, Nevada 89146

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ATTORNEYS AT LAW

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9. Paul Schiffman
325 Main Street, Apt. 4B
White Plains, NY 10601

10. Samuel Ventura
4431 S. Eastern Avenue, Suite 2
Las Vegas, Nevada 89119

11. Carol Zucker
c/o Kamer Zucker Abbot
3000 West Charleston Boulevard, Suite 3
Las Vegas, Nevada 89102

12. Dan Saposhnik
1025 Sable Mist Court
Las Vegas, Nevada 89144

13. Layne T. Rushforth, Esq.
Rushforth Lee & Kiefer LLC
1707 Village Center Circle, Suite 150
Las Vegas, Nevada 89134

14. Rabbi Yitzchak Wyne
Young Israel Aish Las Veggas
9590 W. Sahara Avenue
Las Vegas, Nevada 89117

The Estate reserves the right to call any other witnesses identified in their NRCP 16.1(a)(3) disclosures for any purpose.

VIII.

BRIEF STATEMENT OF EACH PRINCIPAL ISSUE OF LAW WHICH MAY BE CONTESTED AT THE TIME OF TRIAL

A. THE ESTATE

1. The School has waived the affirmative defenses of statute of frauds and statute of limitations.

The School has never filed a responsive pleading to the Estate's pleading. Accordingly, all defenses which are required to be affirmatively pled pursuant to NRCP 8(c), including, but not limited to, statute of limitations and statute of frauds, have been waived. See *Elliot v. Resnick*, 114 Nev. 25, 30, 952 P.2d 961, 964 (1998) ("If affirmative defenses are not pleaded or tried by consent, they are waived.") (citing *Idaho Resources v. Freeport-McMoran Gold*, 110 Nev. 459, 874 P.2d 742, 743 (1994)); *Webb v. Clark Cty. Sch. Dist.*, 125 Nev. 611, 620, 218 P.3d 1239,

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1245 (2009) (holding that a party may waive a statutory affirmative defense if the party fails to timely raise it); *Hubbard v. State*, 110 Nev. 671, 877 P.2d 519 (1994) (holding that a statute of limitations defense is a non-jurisdictional defense that must be asserted by the defendant or else it is waived); and *Coray v. Hom*, 80 Nev. 39, 40, 389 P.2d 76, 77 (1964) (concluding that the affirmative defense of statute of frauds not pleaded affirmatively was waived). Moreover, the deadline for the School to present and/or amend pleadings to include an affirmative defense of statute of limitations and/or statute of frauds was years ago. See NRCP 16.1(c)(6) (deadline to amend pleadings 90 days prior to close of discovery). Accordingly, the School should be precluded from asserting said defenses prior to and during trial.

2. The School could not demand from Milton additional consideration for continued performance of the Schwartz Naming Rights Agreement.

On May 25, 2018, Sheldon Adelson was deposed. During his deposition, Mr. Adelson testified that the School removed Milton's namesake from the School because his Will did not include an approximate $2 million that Milton allegedly committed to. It is well-settled in Nevada that the "preexisting duty rule" bars a contracting party from demanding additional consideration from the other party on the threat of refusing to continue to perform preexisting contractual obligations:

> Where two parties have entered into a bilateral agreement, it will often occur that one of the parties, having become dissatisfied with the contract, will refuse to perform or to continue performance unless he is promised or paid a greater compensation than that provided in the original agreement.... [T]he question arises whether the new [agreement to pay more money] is enforceable.
> ....
> As a matter of principle, the second agreement must be held invalid, for the performance by the recalcitrant contractor is no legal detriment to him whether actually given or merely promised, since, at the time the second agreement was entered into, he was already bound to do the [performance]; nor is the performance or promise to perform under the second agreement a legal benefit to the promisor, since he was already entitled to have the [performance].
>
> This principle is commonly known as the preexisting duty rule and is recognized in Nevada.

Zhang v. Eighth Jud. Dist. Ct., 120 Nev. 1037, 1040–41, 103 P.3d 20, 23 (2004) (abrogated on unrelated grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008)); see also *County of Clark v. Bonanza No. 1*, 96 Nev. 643, 650-51, 615 P.2d 939, 944

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(1980) ("Consideration is not adequate when it is a mere promise to perform that which the promisor is already bound to do.")

Here, the School was already legally obligated to hold itself out as the Milton I. Schwartz Hebrew Academy in perpetuity pursuant to the Schwartz Naming Rights Agreement. Accordingly, Mr. Adelson's testimony is irrelevant because the School already owed Milton a preexisting duty.

X.

TRIAL TIME ESTIMATE

Two to three weeks.

XI.

OTHER MATTERS TO BE ADDRESSED BY COURT BEFORE TIRAL

None at this time.

Dated this 6th day of August, 2018.

/s/ Alexander G. LeVeque

By: _____

Alan D. Freer (#7706)
Alexander G. LeVeque (#11183)
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9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

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

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TRUST AND ESTATE ATTORNEYS

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CERTFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of August, 2018, pursuant to NRCP 5(b)(2)(B), I placed a true and correct copy of the foregoing **THE ESTATE'S PRETRIAL MEMORANDUM** in the United States Mail, with first-class postage prepaid, addressed to the following, at their last known address, and, pursuant to EDCR 8.05 (a) and 8.05 (f) and Rule 9 of N.E.F.C.R., caused an electronic copy to be served via Odyssey, to the e-mail addresses noted below:

KEMP JONES & COULTHARD, LLP
J. Randall Jones, Esq.
Joshua D. Carlson, Esq.
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169

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

/s/ -- Sherry Curtin-Keast
An Employee of Solomon Dwiggins & Freer, LTD.

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ESTATE'S EXHIBIT LIST

Case No.: 07P61300
Department: 26/Probate

Hearing/Trial Date: 08/20/2018-08/31/2018
Judge: The Honorable Gloria Sturman
Court Clerk: Lorna Shell
Recorder/Reporter: Kerry Esparza

In the Matter of the Estate of

MILTON I. SCHWARTZ, Deceased.

Counsel for the Estate of Milton I. Schwartz:
Solomon Dwiggins & Freer, Ltd.
Alan D. Freer, Esq.
Alexander G. LeVeque, Esq.

Counsel for The Dr. Miriam and Sheldon G. Adelson Educational Institute:
Kemp, Jones & Coulthard, LLP
Randall Jones, Esq.
Joshua Carlson, Esq.

Exhibit No.	Date	Exhibit Description	Date Offered	Obj.	Date Admitted
	JOINT				
1	00/00/0000	Adelson Prep Brochure			
2	02/16/1990	Assessor's Parcel Ownership History for APN: 138-19-516-001			
3	08/22/1990	Certificate of Amendment of the Articles of Incorporation of The Hebrew Academy			
4	10/18/1990	Minutes of the Board of Trustees of The Milton I. Schwartz Hebrew Academy			
5	12/19/1990	Bylaws of The Milton I. Schwartz Hebrew Academy			
6	04/09/1991	Quitclaim Deed			
7	06/18/1992	The Milton I. Schwartz Hebrew Academy Board Meeting Minutes			
8	07/27/1992	Bylaws of The Milton I. Schwartz Hebrew Academy			
9	12/21/1992	Complaint for Declaratory and Injunctive Relief, The Board of Directors of the Milton I. Schwartz Hebrew Academy v. The Second Board of Directors of The Milton I. Schwartz Hebrew Academy, et al.			
10	04/14/1994	Certificate of Amendment of Articles of Incorporation-Milton I. Schwartz Hebrew Academy			
11	08/25/1994	The Hebrew Academy Board Meeting Minutes			
12	10/19/1994	Certificate of Amendment to the Articles of Incorporation of the Milton I. Schwartz Hebrew Academy			
13	05/07/1996	Minutes of The Hebrew Academy Emergency Board Meeting			

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**R=Relevancy, H=Hearsay, A=Authenticity, P=Parol Evidence Rule

EXHIBIT 1

Estate's Exhibit List
In the Matter of the Estate of Milton I. Schwartz

Case No. 07P61300

14	05/19/1996	Minutes of the Hebrew Academy Emergency Board Meeting			
15	03/21/1997	Certificate of Amendment of Articles of Incorporation of The Hebrew Academy			
16	02/09/1999	Hebrew Academy Board Meeting minutes			
17	04/14/1999	Bylaws of The Milton I. Schwartz Hebrew Academy			
18	03/07/2000	Hebrew Academy Board Meeting minutes			
19	02/11/2003	Milton I. Schwartz Hebrew Academy Minutes of Board of Trustees			
20	05/13/2003	The Milton I. Schwartz Hebrew Academy Board Meeting minutes			
21	01/13/2004	The Milton I. Schwartz Hebrew Academy Board of Trustees Meeting minutes			
22	02/05/2004	Last Will and Testament of Milton I. Schwartz with Codicils			
23	06/06/2005	The Milton I. Schwartz Hebrew Academy Board of Trustees Meeting Minutes			
24	01/10/2006	CV of Paul Schiffman			
25	01/10/2006	The Milton I. Schwartz Hebrew Academy. Paul Schiffman accepted the position as Head of School.			
26	01/10/2016	Hebrew Academy Board Meeting and agenda			
27	02/21/2006	The Milton I. Schwartz Hebrew Academy Board of Trustees Meeting minutes			
28	04/10/2006	The Dr. Miriam and Sheldon G. Adelson Educational Campus Board of Trustees Meeting			
29	05/09/2006	The Milton I. Schwartz Hebrew Academy Board of Trustees Meeting minutes			
30	09/06/2006	The Milton I. Schwartz Hebrew Academy Executive Board of Trustees Meeting minutes			
31	10/05/2006	The Milton I. Schwartz Hebrew Academy Executive Board of Trustees Meeting Minutes			
32	11/08/2006	Executive Committee Meeting Minutes			
33	11/21/2006	Press Release, Groundbreaking Ceremony Held for The Dr. Miriam & Sheldon G. Adelson School			
34	03/14/2007	The Milton I. Schwartz Hebrew Academy, The Dr. Miriam and Sheldon G. Adelson School, Executive Board of Trustees Meeting Minutes			
35	03/16/2007	Letter from Naomi Guy to Parents			
36	03/20/2007	The Dr. Miriam and Sheldon G. Adelson School, The Milton I. Schwartz Hebrew Academy Board of Trustees Meeting minutes			

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Estate's Exhibit List
In the Matter of the Estate of Milton I. Schwartz **Case No.** 07P61300

37	05/08/2007	The Dr. Miriam and Sheldon G. Adelson High School, The Milton I. Schwartz Hebrew Academy Board of Trustees Meeting minutes			
38	08/14/2007	Certificate of Death, Milton I. Schwartz			
39	09/05/2007	The Dr. Miriam and Sheldon G. Adelson School, The Milton I. Schwartz Hebrew Academy Executive Board of Trustees Meeting minutes			
40	10/09/2007	The Dr. Miriam and Sheldon G. Adelson School, The Milton I. Schwartz Hebrew Academy Board of Trustees Meeting minutes			
41	10/11/2007	Petition for Probate of Will and Codicils and for Issuance of Letters Testamentary			
42	12/13/2007	The Dr. Miriam and Sheldon G. Adelson High School, The Milton I. Schwartz Hebrew Academy, Board of Trustees Meeting minutes			
43	12/13/2007	The Milton I. Schwartz Hebrew Academy Resolutions of the Board of Trustees			
44	12/13/2007	Letter from Adelson Family Charitable Foundation to Victor Chaltiel, Chairman of the Board of Trustees of The Milton I. Schwartz Hebrew Academy			
45	02/08/2008	The Dr. Miriam and Sheldon G. Adelson Educational Campus Comprehensive Campaign Organization Chart and charts			
46	02/12/2018	The Milton I. Schwartz Hebrew Academy Resolutions of the Board of Trustees			
47	03/05/2018	The Adelson Educational Campus Milton I. Schwartz Hebrew Academy Executive Board of Trustees Meeting			
48	03/05/2008	The Adelson Educational Campus Milton I. Schwartz Hebrew Academy Executive Board of Trustees Meeting and The Adelson Educational Campus Milton I. Schwartz Hebrew Academy February 12, 2008			
49	03/11/2008	The Milton I. Schwartz Hebrew Academy Meeting Minutes of the Board of Trustees			
50	03/11/2008	The Milton I. Schwartz Hebrew Academy Resolutions of the Board of Trustees			
51	03/21/2008	Certificate of Amendment to Articles of Incorporation for Nonprofit Corporation			
52	08/28/2008	Letter from A. Jonathan Schwartz to Paul Schiffman			
53	00/00/2009	Brochure entitled "The Adelson Educational Campus "Where your child's 2009 tuition dollar goes."			
54	02/18/2009	Adelson Educational Campus Executive Board of Trustee Meeting			

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Estate's Exhibit List
In the Matter of the Estate of Milton I. Schwartz **Case No.** 07P61300

55	05/10/2010	Letter from A. Johnathan Schwartz to Sheldon G. Adelson			
56	06/08/2010	Minutes for Adelson Educational Campus Board of Trustees Meeting minutes			
57	10/04/2010	Dr. Miriam and Sheldon G. Adelson Educational Institute Secretary's Certificate and Resolutions of the Board of Trustees			
58	10/05/2010	Adelson Education Campus Executive Board of Trustee Meeting			
59	12/31/2012	Gift Agreement from Dr. Miriam and Sheldon G. Adelson Educational Institute of $50,000 to the Adelson School			
60	01/08/2013	The Dr. Miriam and Sheldon G. Adelson Educational Campus, Board Meeting minutes			
61	05/03/2013	Petition to Compel Distribution, for Accounting and for Attorneys'			
62	05/28/2013	Petition for Declaratory Relief			
63	05/23/2018	Adelson Education Campus Website printout			
64	05/23/2018	Adelson Campus Website printout – "Education for Life"			
	THE ESTATE OF MILTON I. SCHWARTZ				
100	00/00/0000	Website Printout for Adelson Educational Campos			
101	00/00/0000	Adelson Campus Website Printout			
102	00/00/0000	Chairman's Report, Victor Chaltiel			
103	00/00/0000	Milton Schwartz Hebrew Academy, MIS Contributions/Donations (CONFIDENTIAL)			
104	00/00/0000	Bylaws of The Milton I. Schwartz Hebrew Academy			
105	00/00/0000	Las Vegas Review Journal Article, dated December 9, "Setting for Hebrew Academy inspiring			
106	01/28/1987	Bylaws of The Hebrew Academy			
107	10/23/1987	Letter from Joana Poster to Lenard E. Schwartzer			
108	08/04/1989	The Hebrew Academy, Minutes of the Board of Trustees			
109	08/14/1989	The Hebrew Academy, Minutes of the Board of Trustees, Special Meeting			
110	08/14/1989	Copies of Checks Payable to the Hebrew Academy from Milton I. Schwartz			
111	08/14/1989	Letter to Milton I. Schwartz			
112	08/21/1989	Las Vegas Sun Article, "Academy given $500,000			
113	10/02/1989	Letter from Carolyn & Oscar Goodman to Milton Schwartz			

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Estate's Exhibit List
In the Matter of the Estate of Milton I. Schwartz **Case No.** 07P61300

114	10/17/1989	Letter from Milton I. Schwartz to Carolyn Goodman (EST-00037)			
115	01/18/1990	The Hebrew Academy Board of Trustees Minutes			
116	08/30/1990	Letter from Fredric I. Berkley, Esq. to Milton I. Schwartz			
117	10/11/1990	Letter from Lenard Schwartzer to Jack Wallis, Nevada State Bank			
118	12/14/1990	Memo No. 12 to Parents from Dr. Tamar Lubin			
119	01/11/1991	Article, "Mezuzah Ceremony Highlights Milton Il Schwartz Hebrew Academy Dedication			
120	07/17/1992	Letter from Lenard Schwartzer to Milton I. Schwartz			
121	07/24/1992	Letter from Daniel Goldfarb to Milton I. Schwartz			
122	12/16/1992	The Hebrew Academy Executive Board Meeting Minutes			
123	02/19/1993	Supplemental Affidavit of Michael Novick			
124	02/22/1993	Supplemental Affidavit of Milton I. Schwartz			
125	03/11/1993	Affidavit of Tamar Lubin aka Tamar Lubin Saposhnik			
126	03/31/1993	Second Supplemental Affidavit of Milton I. Schwartz			
127	02/22/1994	Letter from Milton Schwartz to R. Epstein			
128	07/26/1994	Stipulation and Order for Dismissal with Prejudice			
129	08/10/1995	Letter from Milton I. Schwartz to Fred Berkley			
130	05/23/1996	Letter from Roberta Sabbath to Milton I. Schwartz			
131	04/14/2003	Article titled, "Adelsons announce gift at gala to build new Hebrew School"			
132	00/00/2006	Announcement of informational meeting for The Adelson School			
133	01/10/2006	Dr. Miriam & Sheldon Adelson College Preparatory School Update			
134	05/08/2006	Letter from Victor Chaltiel and Rhonda Glyman to Hebrew Academy Board Members and Campus Project Leaders			
135	05/22/2006	Letter from Meyer L. Bodoff, President/CEO, United Jewish Community/Jewish Federation of Las Vegas to Milton I. Schwartz Hebrew Academy			
136	00/00/2006	Tuition Fee Schedule for 2006-2007 School Year for The Milton I. Schwartz Hebrew Academy			
137	00/00/2007	Tribute Journal Order Form for the 2007 Gala			

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Estate's Exhibit List
In the Matter of the Estate of Milton I. Schwartz **Case No.** 07P61300

138	00/00/2007	In Pursuit of Excellence Commemorate Booklet for Gala Honoring Milton I. Schwartz			
139	05/17/2007	Article, "Schwartz receives Pursuit of Excellence Award at gala"			
140	06/21/2007	Video of Interview between Dr. Miriam Adelson and Milton I. Schwartz			
141	06/21/2007	Partial DVD Transcription of Milton I. Schwartz Interview			
142	00/00/2008	Proposed Calendar for 2008-2009 School Year of The Milton I. Schwartz Hebrew Academy/The Dr. Miriam & Sheldon G. Adelson School			
143	01/10/2008	The Dr. Miriam and Sheldon G. Adelson Educational Institute Board of Trustees Meeting minutes			
144	02/08/2008	Kay Lau & Associates, Comprehensive Campaign Brochure, The Dr. Miriam and Sheldon G. Adelson Education Campus, The Gift of Education for Life			
145	04/17/2008	Letter from Paul Schiffman to A. Jonathan Schwartz			
146	05/28/2008	Letter from the 2008 Gala Committee to A. Jonathan Schwartz			
147	00/00/2009	The Dr. Miriam and Sheldon G. Adelson Educational Campus, The Adelson Middle & Upper School, The Milton I. Schwartz Hebrew Academy School Calendar for 2009-2010			
148	03/04/2010	Letter from Davida Sims to Jonathan Schwartz			
149	06/28/2010	The Milton I. Schwartz Hebrew Academy mailing to Johnathan Schwartz			
150	12/02/2011	Letter from the 2011-2012 Gala Committee to Jonathan Schwartz			
151	04/12/2013	Secretary of State Documents)			
152	05/20/2014	Declaration of Susan Pacheco			
153	01/29/2015	Expert Report of Rabbi Yitzchak Wyne			
154		Steve Wessles DVDs: a. Milton IS 1-5-07 #1 INT 2; b. Milton Int 5/26/07 3; c. Milton Int #1 & Miriam 6/12/07; d. Milton Int. #2 & Mirian 6/12/07 5; e. *2007 – Milton & Kids Library Victor Int 1; f. School Shoot #2; g. Adelson High Ground Breaking JVC HDV Camera 11/21/06; h. Adelson High Ground Breaking; i. Milton Pigeons; j. Int. Tape #1 Paul S. & Victor;			

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Estate's Exhibit List
In the Matter of the Estate of Milton I. Schwartz **Case No.** 07P61300

		k. Milton I. Schwartz "That's My Story" 60 minutes; and l. Milton I. Schwartz: Three Movies; 1. Milton I. Schwartz: That's My Story 60 minutes			
155		08/05/2018, Image of The Milton Il Schwartz Hebrew Academy			
156		08/05/2018, Google Maps Overview of 99700 Hillpointe Road			

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EXHIBIT 8

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

May10, 2010

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

Via: Hand Delivery, Certified Mail & Facsimile

Dear Board Members:

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

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

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

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

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

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

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

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

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

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

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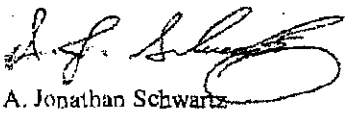
Despite the terms of the Agreements and the 2007 Gala Docs, for purposes of settlement and to do what is best for the schools, I believe (contingent upon the Settlement Agreement being executed) that the naming of the various institutions should be left as they currently are. Please refer to the attached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

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

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

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

Sincerely yours:



A. Jonathan Schwartz

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

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

A. At section 2.3 of the Last Will and Testament of Milton I. Schwartz dated February 5, 2004 (the "Will"), the Will provides, in pertinent part, a bequest to the MISHA in the amount of $500,000 in the form of securities (stocks, bonds or cash) with the largest profit so that the Estate can take advantage of the low cost basis and increased price as directed in the sole discretion of the Executor (Jonathan Schwartz) (the "Bequest"). The purpose of the Bequest is to fund scholarships for Jewish children only ("Purpose").

B. Pursuant to the Clark County Assessors Office, the MISHA is situated on the land known as (parcel number 138-19-516-001) (the "Land").

C. The term the "School" or the "Schools" herein shall refer collectively to the Milton I. Schwartz Hebrew Academy, the Adelson School, and or the Adelson Educational Campus.

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

(1) Contingent upon all signatories execution of the Agreement by May 31, 2010 and delivery of the Agreement by that date to Schwartz, the Bequest shall be made to MISHA no later than June 14, 2010.

(2) The school located on the Land (grades Pre-K through Fourth) and at any new location shall be known in perpetuity as the *Milton I. Schwartz Hebrew Academy*. Any and all by-laws, agreements, articles of incorporation, operating agreements or other documents associated with the Schools located on the Land or at any new location shall heretofore, and in perpetuity, identify grades Pre-K through Fourth as the *Milton I. Schwartz Hebrew Academy*.

(3) The MISHA shall prominently depict signage on the face of the building housing the Pre-K through Fourth grades (facing Hillpointe Ave.) (situated on the Land) and at any new location, and at all entrances therefore, exclusively identifying it (and regularly maintaining it) as the *Milton I. Schwartz Hebrew Academy* so that it is clearly evident to the public that it is known as the *Milton I. Schwartz Hebrew Academy*. The sign facing Hillpointe Ave., located on the MISHA as of March 3, 2010 is acceptable to Schwartz.

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

(5) The interior main entrance of the MISHA shall prominently house a painting and or photograph of Milton I. Schwartz ("MIS") in perpetuity, to be approved of by Schwartz, which shall include a plaque listing Milton I. Schwartz and identifying Milton I. Schwartz as the founder of the Milton I. Schwartz Hebrew Academy.

(6) The website of the Schools shall prominently (in perpetuity) list the MISHA as grades Pre-K through Fourth and shall include a description as follows:

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

(7) When the Bequest is funded, it shall act to satisfy in full any obligation, liability or duty of Milton I. Schwartz, the Estate or the Trust toward or associated with the MISHA or the Adelson School. Upon MISHA's receipt of the Bequest, a full and final release of Milton I. Schwartz, the Estate, the Trust, A. Jonathan Schwartz and their heirs, assigns and beneficiaries shall be effectuated.

(8) The MISHA shall supply the Estate of Milton I. Schwartz and the Milton I. Schwartz Revocable Family Trust (at the direction of the Trust) with a receipt for tax purposes from the MISHA listing its IRS 501 (c)(3) non-profit tax id number for the Bequest.

(9) As specified in the Will, the Bequest shall be used solely for the purpose of funding scholarships for Jewish children only at the MISHA.

(10) Once per year, the MISHA agrees to reasonably cooperate with members of the Milton I. Schwartz family, at a time when it would not interfere with school activities, for the Schwartz Family's access to the School for viewing and verification of compliance with

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

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

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

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

Milton I. Schwartz Hebrew Academy,
Victor Chaltiel, President

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

The Adelson School, Victor Chaltiel, President

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The Adelson Educational Campus, Victor Chaltiel, President

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cc Dan

THE MILTON I. SCHWARTZ HEBREW ACADEMY

THE ADELSON SCHOOL

May 28, 2008

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

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

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AGREEMENTS

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cc Fred Berkl

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

388-61FT / 10AM

Present:

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

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

The minutes were approved as read.

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

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

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

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

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

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

Susan McGarraugh
Susan McGarraugh
Acting Secretary

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

Dr. Roberta Sabbath
School Head

May 23, 1996

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

Dear Milton:

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

(1) Restore the Hebrew Academy's name to the "Milton I. Schwartz Hebrew Academy."

(2) Amend the Hebrew Academy's Articles of Incorporation to restore its former name of the "Milton I. Schwartz Hebrew Academy."

(3) Restore the marker in front of the Hebrew Academy identifying it as the "Milton I. Schwartz Hebrew Academy."

(4) Change the Hebrew Academy's formal stationary to include its full name, the "Milton I. Schwartz Hebrew Academy"; in a form consistent with this letterhead and include our full name on future brochures.

(5) Where practicable, display the full name of the Hebrew Academy. In print advertising of sufficient size, the full name of the school will be displayed in a design consistent with the letterhead. Where impractical by reason of size, utilization of voice media, informal correspondence, informal memoranda, etc., and in answering the telephone, the school will utilize the shorthand version of its name as Hebrew Academy or simply, its logo. You can rest assured it is the intention of the School Head and the school's Officers and Directors that the utilization of the school's full name will be consistent with an intent to recognize and honor your contribution and assistance.

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

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

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

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

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

Very truly yours,

Dr. Roberta Sabbath
School Head

The Milton I. Schwartz
HEBREW ACADEMY
9700 West Hillpointe Road
Las Vegas, Nevada 89134
Tel: (702) 255-4500 Fax: (702) 255-7232

Dr. Roberta Sabbath
School Head

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given to Blu 3-24-05

BY LAWS

OF

THE MILTON I. SCHWARTZ

HEBREW ACADEMY

ARTICLE I

PURPOSE AND POWERS

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

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

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

ARTICLE II

OFFICES

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

ARTICLE III

BOARD OF TRUSTEES

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

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

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March 3, 1999

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2007 GALA DOCUMENTS

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Dear Friends:

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

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

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

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

Enjoy the Evening!

Dr. Miriam and Sheldon G. Adelson

Toni and Victor Chaltiel

EST-00016

MILTON I. SCHWARTZ

War hero. Successful businessman. Philanthropist. Visionary. All these terms describe a man who has dedicated his life to bettering the lives of those around him, and who has played a significant role in Las Vegas life since he first arrived in Nevada in 1946: Milton I. Schwartz.

Born in Brooklyn, New York, Milton Schwartz attended both New York University and the Wharton School of Finance. During World War II, Mr. Schwartz enlisted in the Army and saw combat in the elite Army Signal Corps in the Far East. After his distinguished military service, Mr. Schwartz came to Nevada where - among his many achievements - he owned and operated Valley Hospital and served as Chairman of Formula 409, President of Checker Cab Company, Vice President of Yellow Cab and Star Cab companies, and on numerous philanthropic and charitable boards.

In each venture and in all aspects of life, Mr. Schwartz has made it his mission to treat his employees fairly, be at the forefront of good environmental business practices, and to work toward the Jewish commandment of *tikkun olam* (healing the world). His most treasured endeavor and most profound legacy, however, is the Milton I. Schwartz Hebrew Academy, through which he and others generously answered the need in Las Vegas for a strong secular and Judaic educational institution for elementary school-aged children. Established in Summerlin in 1988, the school has since expanded to include preschool through 8th grade. Mr. Schwartz sits on the Board of Trustees and generously supports the M.I.S. Hebrew Academy's continued growth.

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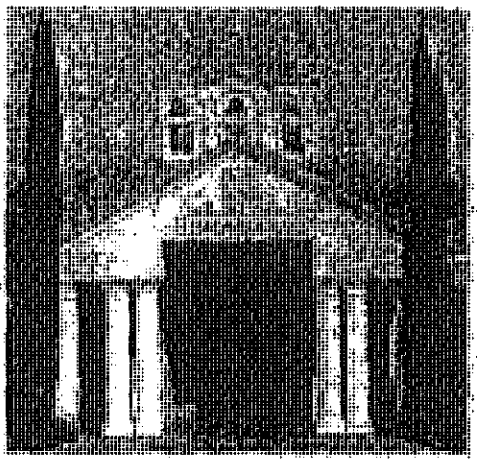

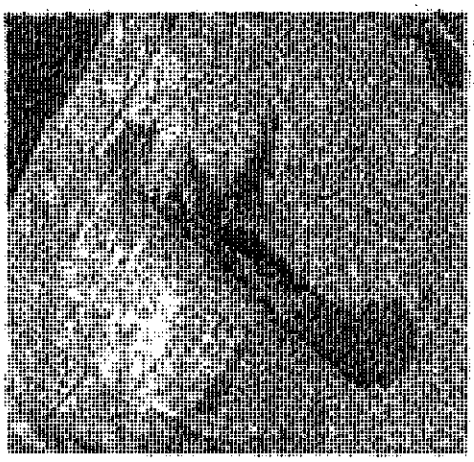

Congratulations

Paul and Sandy Schiffman

for your dedication to the Milton I. Schwartz Hebrew Academy

In honor of Milton I. Schwartz from his loving family

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

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

A. At section 2.3 of the Last Will and Testament of Milton I. Schwartz dated February 5, 2004 (the "Will"), the Will provides, in pertinent part, a bequest to the MISHA in the amount of $500,000 in the form of securities (stocks, bonds or cash) with the largest profit so that the Estate can take advantage of the low cost basis and increased price as directed in the sole discretion of the Executor (Jonathan Schwartz) (the "Bequest"). The purpose of the Bequest is to fund scholarships for Jewish children only ("Purpose").

B. Pursuant to the Clark County Assessors Office, the MISHA is situated on the land known as (parcel number 138-19-516-001) (the "Land").

C. The term the "School" or the "Schools" herein shall refer collectively to the Milton I. Schwartz Hebrew Academy, the Adelson School, and or the Adelson Educational Campus.

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

(1) Contingent upon all signatories execution of the Agreement by March 8, 2010 and delivery of the Agreement by that date to Schwartz, the Bequest shall be made to MISHA no later than March 12, 2010.

(2) The school located on the Land (grades Pre-K through Fourth) and at any new location shall be known in perpetuity as the *Milton I. Schwartz Hebrew Academy*. Any and all by-laws, agreements, articles of incorporation, operating agreements or other documents associated with the Schools located on the Land or at any new location shall heretofore, and in perpetuity, identify grades Pre-K through Fourth as the *Milton I. Schwartz Hebrew Academy*.

(3) The MISHA shall prominently depict signage on the face of the building housing the Pre-K through Fourth grades (facing Hillpointe Ave.) (situated on the Land) and at any new location, and at all entrances therefore, exclusively identifying it (and regularly maintaining it) as the *Milton I. Schwartz Hebrew Academy* so that it is clearly evident to the public that it is known as the *Milton I. Schwartz Hebrew Academy*. The sign facing Hillpointe Ave., located on the MISHA as of March 3, 2010 is acceptable to Schwartz.

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

(5) The interior main entrance of the MISHA shall prominently house a painting and or photograph of Milton I. Schwartz ("MIS") in perpetuity, to be approved of by Schwartz, which shall include a plaque listing Milton I. Schwartz and identifying Milton I. Schwartz as the founder of the Milton I. Schwartz Hebrew Academy.

(6) The website of the Schools shall prominently (in perpetuity) list the MISHA as grades Pre-K through Fourth and shall include a description as follows:

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

(7) When the Bequest is funded, it shall act to satisfy in full any obligation, liability or duty of Milton I. Schwartz, the Estate or the Trust toward or associated with the MISHA or the Adelson School. Upon MISHA's receipt of the Bequest, a full and final release of Milton I. Schwartz, the Estate, the Trust, A. Jonathan Schwartz and the heirs, assigns and beneficiaries of Milton I. Schwartz, the Estate or Trust shall be effectuated.

(8) The MISHA shall supply the Estate of Milton I. Schwartz and the Milton I. Schwartz Revocable Family Trust (at the direction of the Trust) with a receipt for tax purposes from the MISHA listing its IRS 501 (c)(3) non-profit tax id number for the Bequest.

(9) As specified in the Will, the Bequest shall be used solely for the purpose of funding scholarships for Jewish children only at the MISHA.

(10) Once per year, the MISHA agrees to reasonably cooperate with members of the Milton I. Schwartz family, at a time when it would not interfere with school activities, for the Schwartz Family's access to the School for viewing and verification of compliance with

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

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

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

Estate of Milton I. Schwartz, A. Jonathan Schwartz, Executor	Milton I. Schwartz Hebrew Academy, Victor Chaltiel, President
Milton I. Schwartz Revocable Family Trust, A. Jonathan Schwartz, Trustee	The Adelson School, Victor Chaltiel, President

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The Adelson Educational Campus, Victor Chaltiel, President

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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

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THE MILTON I. SCHWARTZ
HEBREW ACADEMY

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THE MILTON I. SCHWARTZ HEBREW ACADEMY

THE ADELSON SCHOOL

DRAFT FOR DISCUSSION PURPOSES ONLY

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Steven D. Grierson
CLERK OF THE COURT

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Alexander G. LeVeque (#11183)
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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.: 07-P061300-E Dept.: 26/Probate Hearing Date: January 10, 2019 Hearing Time: 9:30 a.m.

POST-TRIAL BRIEF REGARDING THE PARTIES' EQUITABLE CLAIMS AND FOR ENTRY OF JUDGMENT

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 submits the Executor's Post-Trial Brief Regarding the Parties' Equitable Claims and for Entry of Judgment ("Estate's Brief").

The Estate's Brief is made and based upon the pleadings and papers on file herein, the attached Memorandum of Points and Authorities, all evidence admitted during trial, and any oral argument that this Honorable Court may entertain at the time of hearing.

DATED this 16th day of November, 2018.

SOLOMON DWIGGINS & FREER, LTD.

/s/ Alexander G. LeVeque
By:_____
Alan D. Freer (#7706)
Alexander G. LeVeque (#11183)

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

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

On August 20, 2018, trial commenced on the School's *Petition to Compel Distribution, for Accounting and for Attorneys' Fees* (the "School's Petition"), and the Estate's *Petition for Declaratory Relief* (the "Estate's Petition") and concluded on September 5, 2018. As the Court is aware, the jury returned a verdict on the sole legal claim – the Estate's breach of contract claim – which has been reduced to a judgment in favor of the School. Undecided, however, are all other claims which are equitable in nature and thus are to be adjudicated by the Court. Now that all evidence to be considered by the Court has been admitted, the time is ripe for a final adjudication of the equitable claims.

The ripe equitable claims boil down to two primary issues: (1) whether the Estate is compelled to distribute the $500,000 specific bequest ("Bequest") in the Last Will and Testament of Milton I. Schwartz ("Last Will"); and (2) whether equity requires the School to refund the gifts that Milton I. Schwartz ("Milton") made during his lifetime because such gifts were made on the mistaken belief that Milton had a perpetual and legally enforceable naming rights agreement with the School.

As to the former, the jury determined – albeit in an advisory capacity – that Milton's intent with respect to the bequest found in Section 2.3 of the Last Will was that "the Bequest be made only to a school known as the 'Milton I. Schwartz Hebrew Academy' for the purposes set forth in the Bequest," and not the school presently known as the Adelson Educational Institute. The jury also determined that the reason Milton even made the Bequest in the first place was because Milton believed that he had a perpetual naming rights agreement with the School. The jury's findings are consistent with the overwhelming quantum of evidence admitted during the trial supporting them. Accordingly, the Court should declare that the Estate is not required to pay the Bequest to the School.

As to the latter, the jury determined that Milton <u>believed</u> he had a perpetual naming rights agreement. The jury also determined that there is no legally enforceable contract for naming rights

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between the School and Milton's Estate. Milton's belief, therefore, was mistaken. The testimony and documentary evidence admitted during trial weighs heavily in favor of a finding by this Court that the initial $500,000 gift that Milton made to the School in 1989, and all lifetime gifts made thereafter, were based upon the donative mistake (i.e. that Milton had a perpetual naming rights agreement). During his lifetime, Milton personally gave $1,110,606.66 to the School. After computing prejudgment interest, the present value of those gifts is $2,830,523.71. It would be manifestly unjust for the School to retain the benefit of those gifts as the same were made upon the belief [which the School's board acknowledged time and time again during trial] that the School would bear Milton's name in perpetuity. Accordingly, the Court should enter judgment on the Estate's Sixth Claim for Relief (revocation of gifts) against the School in the amount of **$2,830,523.71**.

II.

THE COURT SHOULD DENY THE SCHOOL'S PETITION AND DECLARE THAT THE BEQUEST IS VOID OR THAT IT LAPSED

The School and the Estate bring competing claims concerning the Bequest. The School's Petition seeks to compel the distribution of the Bequest.[1] The Estate's Petition seeks a declaration preventing it.[2] The uncontroverted evidence in the record of this case (which was expressly acknowledged by the jury) is that Milton drafted Section 2.3 of his Last Will with the intention to only benefit an entity bearing his name and not to any other entity.[3]

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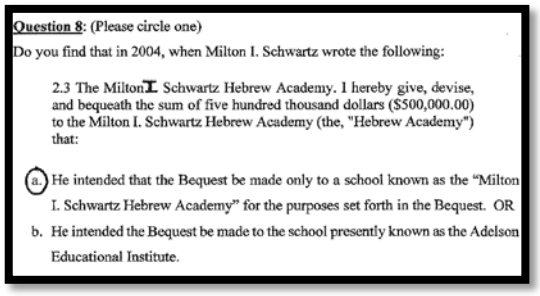
[1] *See* School's Petition, at ¶19-22.

[2] *See* Estate's Petition, First Claim for Relief, at pp. 6-7.

[3] *See* Verdict Form, Question 8, a true and correct copy being attached hereto as **Ex. 1**:



Question 8: (Please circle one)

Do you find that in 2004, when Milton I. Schwartz wrote the following:

2.3 The Milton I. Schwartz Hebrew Academy. I hereby give, devise, and bequeath the sum of five hundred thousand dollars ($500,000.00) to the Milton I. Schwartz Hebrew Academy (the, "Hebrew Academy") that:

(a.) He intended that the Bequest be made only to a school known as the "Milton I. Schwartz Hebrew Academy" for the purposes set forth in the Bequest. OR

b. He intended the Bequest be made to the school presently known as the Adelson Educational Institute.

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Judgment, therefore, should be entered in favor of the Estate on the School's Petition pursuant to NRCP 50(b) [4] or 52(c)[5] as the School failed to present any evidence whatsoever that Milton intended the Bequest go to the Adelson Educational Institute. Moreover, even if judgment cannot be entered strictly as a matter of law under NRCP 50(b) or 52(c), the trial evidence overwhelmingly proves that Milton understood and intended to provide his Bequest solely to an entity bearing the name "Milton I. Schwartz Hebrew Academy."

The polestar of the construction of a will is to divine the intent of the testator.[6] When construing a will, the interpretation of the testator's intent is governed by what the testator meant by the words used.[7]

In this case, section 2.3 of the Last Will provides:[8]

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

[4] A motion for a judgment notwithstanding the verdict presently solely a question of law to be determined by the court. *See Dudley v. Prima*, 84 Nev. 549, 551, 445 P.2d 31, 32 (1968). The Estate cites NRCP 50 in abundance of caution, but that rule does not apply in bench trials. *See Pitzel v. Software Dev. and Inv. of* Nevada, 124 Nev. 1500, 238 P.3d 846 (2008) (unpublished) ("NRCP 50(a), however, applies only to jury trials. When a case is tried before the court, NRCP 52 governs… Under NRCP 52(c), after a party has been fully heard on an issue, the court may enter judgment as a matter of law against the party on that issue."); *see also* 9B CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2523 (3d ed.).

[5] Subsection (c) of NRCP 52 was added in 2004 and it "conforms to the 1991 amendment to [FRCP 52]." *In the Matter of a Study Committee to Review the Nevada Rules of Civil Procedure*, ADKT No. 276 (Order Amending the Nevada Rules of Civil Procedure, July 26, 2004. In a nonjury trial, NRCP 52(c) allows the district court to enter judgment in partial findings against a party when it "has fully been heard on an issue" and judgment cannot be maintained "without a favorable finding on that issue."

[6] *See Adkins v. Oppio*, 105 Nev. 34, 36 (1989) (primary purpose in construing the terms of a testamentary document is to give effect, to the extent consistent with law and policy, to the intentions of the testator).

[7] *See In re Jones' Estate*, 72 Nev. 121, 123, 296 P.2d 295, 296 (1956).

[8] Trial Ex. 22, Last Will at Par. 2.3, a true and correct copy being attached hereto as **Ex. 2**.

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Initially, the bequest names an entity that no longer exists. Treating the provision as unambiguous, the bequest to a nonexistent entity fails and must be stricken. *See In re Estate of Melton*, 128 Nev. 34, 48, 272 P.3d 668, 677 (2012).

But even if the renaming of the school creates a latent ambiguity of the named devisee's existence, the undisputed evidence of Milton's testamentary intent leads to the same result. *See* Restatement (Third) of Property (Wills & Don. Trans.) § 11.2 (2003) (ambiguities to be resolved in accordance with testator's intent).

In its Petition for Declaratory Relief, the Executor has requested in his First Claim for Relief that the Court declare the Bequest to the Milton I. Schwartz Hebrew Academy set forth in Paragraph 2.3 of the Will to be void on the grounds that Milton intended his gift to go solely to an entity bearing his name in perpetuity. Specifically, the Executor asserted that because "Milton's express intent as reflected in the will … was not to benefit a charitable organization generally, but to benefit an entity bearing his name perpetually," the Court should declare the $500,000 bequest lapses "[b]ecause there is no existing entity named after Milton I. Schwartz on a perpetual basis."[9]

Here the undisputed evidence at trial was that Milton understood and believed that the Milton I. Schwartz Hebrew Academy would bear his name "in perpetuity."[10] For example, the Executor testified that Milton wanted $500,000 to go to the Milton I. Schwartz Hebrew Academy, and that he didn't want it to go anywhere else; likewise, Milton directly expressed this belief in his sworn testimony that the school would be named "the Milton I. Schwartz Hebrew Academy in

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[9] *See*, Trial Ex. 62, 05/28/2013 Petition for Declaratory Relief at 6:15—7:3, a true and correct copy being attached hereto as **Ex. 3**.

[10] *See, e.g.*, Appendix of Trial Transcripts (Rough Drafts) ("ATT") filed on 09/03/2018, at **Ex. 3**, Jonathan Schwartz Testimony ("Schwartz Testimony"), 08/27/2018 at 111:22-112:10 ("Q. Now, Jonathan, what was your understanding of what your father believed the terms of his agreement with the school were? A. That the school was going to be named the Milton I. Schwartz Hebrew Academy in perpetuity, and with that agreement there were naming rights over the entire campus on Hillpointe, that his name was going to be on the letterhead of the school, his name was going to be at the entrance to the school….And that the school was going to publicly be known as the Milton I. Schwartz Hebrew Academy forever."). Trial Ex. 134 (Second Supp. Aff. Milton I. Schwartz at par. 5, "That Affiant donated $500,000 to the Hebrew Academy with the understanding that the school would be renamed the Milton I. Schwartz Hebrew Academy in perpetuity.").

perpetuity."[11] Similarly, Rabbi Lorne Wyne, Milton's friend and religious leader, testified that in 2004 Milton wanted his name associated with a gift due to religious beliefs.[12] Further, the uncontroverted evidence shows that Milton was an intelligent and sophisticated[13] individual who understood the meaning and significance of a successor clause when preparing estate planning documents and chose to omit such clause when drafting the gift provided to the Milton I. Schwartz Hebrew Academy.[14] Indeed, he had used successor clauses when drafting a prior 1999 codicil[15]:

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[11] *See* **Ex. 3,** at Exhibit 1, Supplemental Affidavit of Milton I. Schwartz, at ¶ 4.

[12] *See* ATT Ex. 6, Testimony of Rabbi Wyne ("Wyne Testimony"), 08/30/2018 at 29:17-28:15 ("Q. In or around 2004 did there ever come a time where Milton and the synagogue had any type of donation and consideration for naming rights? A. Yes. That's when he -- that's the case I was specifically thinking of when he named the educational sanctuary. Q. Tell me how that donation and the naming came about. A. Well, it was one day after class in that room. He came over – Q. For the record do you remember when this event occurred? A. No. I don't remember the month. It was probably – it was probably around January or February. Just because that seemed to be when he would bring it up. And there was no name n that – on the outside of that room and it's the second largest room in the synagogue and there is a big board in the front of the synagogue of all of the different people that have dedicated different rooms and he said how much do you wanted for the – you know for that sanctuary and I said houw about $50,000 for that room...")

[13] *See* ATT **Ex. 2**, Testimony of Lenard Schwartzer ("Schwartzer Testimony"), 08/24/2018 at 154:19-24 ("Q. Okay. Was it your understanding that he was a knowledgeable and sophisticated businessman? A. I would have come to that – I came to that conclusion, yes."), *see also* ATT Ex. 3, Schwartz Testimony, 08/27/2018 at 205:15-25 ("Q. And in fact, you testified under oath that your father was a genius, right? A. He was. Q. In fact, if you could put it in your dad's case what we might call a certifiable genius? A. He was it's not a description. He was certified as a genius. Took a test and certified it. Q. That's the MENSA that I was referring to in my opening statement? A. Correct.").

[14] *See* ATT **Ex. 3**, Schwartz Testimony, 08/27/2018 at 132:7-13 ("Q. Did your dad use a successor clause in any other -- actually, let me do this. Pull up paragraph 2.7. Did injure father know what a secretary says sore clause was? A. He absolutely did because he used it in other documents and instructed me to use it in other documents."

[15] Trial Ex. 141A, Second Codicil at Sec. 2.5(C), attached hereto as **Ex. 4**.

C. (1) If either of the two named recipients shall have ceased to exist at the time that this bequest takes effect, the sum of $250,000 shall go to the Jewish Federation of Las Vegas or its successor organization, to be used for the express purpose of educating Jewish Children.

(2) I hereby direct that the funds distributed from the proceeds of my $500,000 gift be used only in the form of scholarships to be distributed by The Jewish Community Day School and the Milton I. Schwartz Hebrew Academy or their respective successor organizations in order to educate Jewish Children only.

(3) If both the named recipients have ceased to exist at the time that this bequest takes effect, the entire sum of $500,000 shall go to the Jewish Federation of Las Vegas or its successor organization.

(4) In the event that Provision C (1) or C (3) becomes effectuated, the Jewish Federation, or its successor organization, is hereby instructed to use the sum received in order to support Jewish education for young Jewish people within the Las Vegas Jewish Community. The Jewish Federation is authorized to carry out this purpose in any manner that it deems appropriate, including using the sum received to create an endowment fund named the Milton I. Schwartz Endowment Fund that will distribute its assets in a manner that the Jewish Federation deems appropriate to carry out my stated charitable intent.

Additionally, in section 2.7 of his Last Will, Milton expressly employs a successor clause when addressing gifts to other entities: [16]

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

Lastly, Milton intentionally chose not to use a successor clause when drafting section 2.3 of his Last Will because he understood and intended it to go only to an entity that would bear his name in perpetuity.[17] Likewise, when drafting his subsequent 2006 codicils, Milton also intentionally

[16] *See* Trial Ex. 22 at sec. 2.7, **Ex. 2**.

[17] *See* ATT **Ex. 3**, Schwartz Testimony, 08/27/2018 at 137:8-18 ("Q. So given that your father understood how to draft language with respect to gifts and what happens if those entities cease to exist and having alternate gifts, why did your dad choose -- do you have an understanding as to why your dad chose not to include similar language in the 2004 will? A. If the Milton I. Schwartz

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chose not to amend section 2.3 of his Last Will because he still believed that the Milton I. Schwartz Hebrew Academy was to be named after him in perpetuity.

In contrast, the Adelson Campus introduced no evidence to contradict the evidence of Milton's intent when drafting the provisions of Section 2.3. The only evidence that the Adelson School remotely obtained was a yes-no question concerning whether the Executor that he believes Section 2.3 of Milton's Last Will is not ambiguous.[18] However, when asked to elaborate why the Executor believes Section 2.3 of the Last Will is unambiguous, the Executor responded:

> Because of the language of the will and my conversations with my father about his intent. To me it's clear. To him it's clear. I think the language is clear. There is either Milton I. Schwartz Hebrew Academy or there isn't. In this case there isn't."[19]

Accordingly, the undisputed expressed intention by Milton is that he intended the $500,000 bequest identified in Section 2.3 of his Last Will and Testament to be made only to an entity named after him and bearing the name "Milton I. Schwartz Hebrew Academy," not to the school presently known as the Adelson Educational Institute. The Bequest, therefore, lapsed.[20] Judgment, therefore, should be entered in favor of the Estate on both the School's Petition and the Estate's First Claim for Relief (Construction of Will).

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Hebrew Academy didn't exist as the Milton I. Schwartz Hebrew Academy, he didn't want it going to any other school on that land. It was only supposed to go to a school named the Milton I. Schwartz Hebrew Academy.").

[18] *See* ATT **Ex. 3**, Schwartz Testimony, 08/27/2018 at 201:16-17 (Q. Just to be clear too, we have been talking about the will today. Some of the things we talked about was the will. But your confident, as you sit here today, that your father's will is not ambiguous, right? A. I don't believe it is.")

[19] *See* ATT **Ex. 6**, Schwartz Testimony, 08/30/2018 at 168:15-20.

[20] Note that even if the Bequest did not lapse, it was nevertheless void at the time of Milton's death because Milton mistakenly believed he had a perpetual naming rights agreement with the School at the time the Last Will was executed. *See* Estate's Petition, Third Claim for Relief (Bequest Void for Mistake), at p. 8; *citing* Restatement (Second) of Property, Donative Transfers §34.7, comment d ("A mistake may cause a donative transfer to be made that otherwise would not have been made. The general law of mistake, under which a mistake may be significant enough to justify the conclusion that the donative transfer should be set aside or reformed, is incorporated herein by reference and made applicable to both wills and other donative documents of transfer.").

III.

THE COURT SHOULD ENTER JUDGMENT IN FAVOR OF THE ESTATE FOR ALL *INTER VIVOS* GIFTS MADE TO THE SCHOOL UPON MILTON'S BELIEF THAT HE HAD A PERPETUAL NAMING RIGHTS AGREEMENT.

Nevada law expressly affords this Court the power to rescind donative transfers which are made pursuant to a mistaken belief that was fundamental to the intent of the grantor.[21] The Estate's Petition seeks a declaration that it is entitled to a revocation of all gifts made during Milton's lifetime due to such a mistake.[22]

Despite its determination that Milton did not have a legally enforceable naming rights contract with the School, the jury nevertheless concluded that Milton believed he had a perpetual naming rights agreement with the School. This finding comes a no surprise considering that (1) Milton, himself, testified that he had such an agreement; (2) Milton did not make any gifts to the School during the period of time (1993-1996) when the School temporarily removed his name; (3) Milton's son and personal assistant both testified that Milton believed he had such an agreement; (4) every single former board member called to testify at trial, including those called by the School to testify against the Estate, acknowledged in some form or fashion a mutually understood naming rights agreement; and (5) Milton conditioned his final gift to the School on it being the "Milton I. Schwartz Hebrew Academy." Indeed, the evidence admitted at trial proves that Milton left this Earth still believing that the School would be named after him in perpetuity.

For these reasons, the Court should enter a judgment against the School and in favor of the Estate for all of the gifts that Milton made to the School during the period of time when Milton believed he was contributing money to a school that would bear his name in perpetuity.

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[21] *See Matter of Estate of Kennedy*, 2018WL1036893 (Nev. Ct. App. 2018) (unpublished) (citing *In re Irrevocable Trust Agreement of 1979*, 130 Nev. 597, 607, 331 P.3d 881, 888 (2014), decision attached hereto as **Ex. 5**.

[22] *See* Estate Petition, Sixth Claim for Relief (Revocation of Gifts and Constructive Trust), at pp. 9-10, **Ex. 3**.

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A. APPLICABLE LAW

"In Nevada, a valid *inter vivos* gift or donative transfer requires a donor's intent to voluntarily make a present transfer of property to a donee without consideration, the donor's actual or constructive delivery of the gift to the donee, and the donee's acceptance of the gift."[23] However, a donor's unilateral mistake in executing a donative transfer permits the Court to rescind the gift due to the mistake. Nevada recognizes two types of unilateral mistakes that may occur in the donative transfer context: (1) invalidating mistakes and; (2) mistakes in the content of a document.[24] "An invalidating mistake occurs when 'but for the mistake the transaction in question would not have taken place.'"[25]

In this case, Milton's mistaken belief that he had a legally enforceable naming rights agreement with the School invalidates all of the lifetime donations to the School from August of 1989 (when Milton gave the initial $500,000) through his death, because Milton would not have made such donations had he known that a jury would later declare that there was no enforceable contract between the two. According to the evidence presented at trial, Milton personally gave $1,110,606.66 to the School from 1989 through 2007. After computing prejudgment interest, the present value of those gifts is $2,830,523.71.

B. TRIAL EVIDENCE SUPPORTING RESCISSION OF *INTER VIVOS* GIFTS

1. *Milton's affidavit testimony and video interview.*

In 1993, Milton submitted an affidavit in the litigation concerning the competing School boards wherein Milton testified under oath that he donated $500,000 to the School with the understanding that the School would be named after him in perpetuity:[26]

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[23] *See In re Irrevocable Trust Agreement of 1979*, 130 Nev. 597, 603, 331 P.3d 881, 885 (2014).

[24] *Id.*, at 887 (citing Restatement (Third) of Restitution & Unjust Enrichment § 5 (2011); Restatement (Third) of Prop.: Wills & Other Donative Transfers § 12.1 (2003)).

[25] *Id.* (quoting Restatement (Third) of Restitution & Unjust Enrichment § 5(2)(a) (2011)); *see also* 38A C.J.S. Gifts § 38 ("The giving of a gift is a unilateral act, so mutuality of mistake is not required to set it aside.")

[26] *See* **Ex. 3,** at Exhibit 1, Supplemental Affidavit of Milton I. Schwartz, at ¶ 4.

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

Although the jury concluded that there is no legally enforceable contract between Milton and the School for naming rights, Milton's testimony from 1993 evidences that Milton certainly believed that he did.

On June 12, 2007, less than two months before Milton passed away, the School interviewed Milton as part of a video production for the School gala honoring him. During the interview, Milton continued to distinguish the Adelson High School from the MISHA:

> I want to use this opportunity to say to the students at the Milton I. Schwartz Hebrew Academy that they should do their homework, do their work, get their parents involved because without the parents being involved it just isn't going to work, and rest assured that if you do that that you'll get – and go to the Adelson High School – you will get the best education in the world right here in Las Vegas and you should appreciate the fact that you live here and this is available to you and appreciate the fact that your parents are supporting this effort on your part and I guarantee you that when you graduate high school you will be a superstar.[27]

Indeed, the School introduced its own clip of the June 12, 2007 interview into evidence where Milton again reiterates his belief that he had a perpetual naming rights agreement with the School:

> "[Dr. Lubin] said, 'I need a million dollars, and I can get the land from John Goolsby.' She didn't know that I was working on the land at the time and that John Goolsby – I don't know the answer, whether he gave me the land for me or for her. I don't' know why he would give it to her, but he owed me. I decided to give her a half a million dollars. I didn't feel like I could afford a million dollars at the time, and I raised a half a million dollars… I raised a million doll[ars] – the half a million and I gave a half a million, **and they agreed to name the school Milton I. Schwarz Hebrew Academy in perpetuity.**"[28]

[27] *See* Closing Argument Video Clip at **Ex. 6**, to be submitted to the Court for *In Camera Review*.

[28] *See* Trial Exhibit No. 1116A at **Ex. 7**, to be submitted to the Court for *In Camera Review*.

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2. *Milton did not make any gifts to the School during years when his namesake had been removed.*

During trial, Susan Pacheco testified that Milton did not make any gifts from 1993 through 1996. Susan further testified that Milton stopped making donations because his name was taken off the School. Susan further testified that Milton was upset and furious when that happened. However, when Milton received the "Sabbath Letter" in 1996, which promised to restore the School's name to the Milton I. Schwartz Hebrew Academy, Milton was very pleased and ecstatic. Shortly thereafter, Milton began contributing again to the School. In fact, Milton continued to give money every year until his August 2007 death.[29]

3. ***The trial testimony of Jonathan Schwartz and Susan Pacheco corroborates Milton's belief.***

Susan was Milton's personal assistant and bookkeeper from 1986 through his death in August of 2007. During trial, Susan testified that it was extremely important to Milton that the School be named after him in perpetuity. Susan further testified that Milton liked his name being

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[29] *See*, ATT Ex. 2, Susan Pacheco Testimony ("Pacheco Testimony"), 8/24/2018 at 261:4-20; 263:9-264:2; 268:14-24; 271:10-16; 271:21-273 ("Q. Do you remember any period of time where Mr. Schwartz stopped donating to the school? A. Yes. Q. Do you remember when that time period was? A.'93 to '96, I believe. I believe 99 percent sure. … Q. Okay. Do you know why he stopped making donations? A. Because his name was taken off the school, and that was the main reason… Q. Did any of these things occur, to your knowledge, reducing the size of the letterhead, taking the sign off the building, did any of this stuff actually happen, to your knowledge? A. Yes. Q. What was your impression on how Mr. Schwartz felt about these things that occurred? A. He was extremely unhappy, to say it nicely. He was furious would be a better way of putting it. Q. Okay. A. He was – well he told me we were going to war is what he told me. He was very – he was extremely upset that they took his name off because he gave the money and the name of the school is Milton I. Schwartz Hebrew Academy. And he really did not like the idea of his picture coming off the wall. He likes things on walls. And the letterhead also upset him. … Q. What was Mr. Schwartz's emotion state after he received [the 1996 Sabbath Letter]?" A. His emotion state, he was excited. He was happy. He was – my description, he was ecstatic. He was very pleased. Q. Do you know why? A. Because he name was put back on the school and the letterhead was changed. … Q. All right. And from the day of this letter, which is May 23, 1996, to his passing on 2007, do you recall any other issues that Milton had with the school? A. No, not major issues. There was disputes within the school like any organization – okay. Back to what the judge said. No. … Q. Do you know if Mr. Schwartz placed any degree of importance on this document? A. Yes. Q. Do you know why? A. Because his name was put back on the school, which is what he intended originally when he gave the $500,000, his initial $500,000 for the – in exchange for the naming of the school to be the Milton I. Schwartz Hebrew Academy.).Trial Ex. 62(9)(U)(spreadsheet prepared by Susan Pacheco summarizing Milton's annual contributions to the School).

associated with his accomplishments. Susan further testified that, in her opinion, Milton would not have given the initial $500,000 to the School without getting his name on the School.[30]

Jonathan Schwartz also testified that it was clear to him his father believed he had an enforceable and perpetual naming rights agreement with the School. Specifically, Jonathan recalled Milton discussing with him on several occasions that his agreement with the School was perpetual.[31]

4. ***All of the School's 1989 Board Members testified that there was some form of an agreement between the School and Milton.***

In addition to Milton's own testimony from 1993, all five of the School's board members who testified at trial admitted to the exchange of promises for perpetual naming rights to the School.

(i) Leonard Schwartzer

Leonard Schwartzer's understanding of the agreement was that the school named itself in perpetuity in Milton's honor because the $500,000 donation was by far the largest donation the School had received and it was a "quid pro quo."[32]

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[30] *See,* ATT Ex. 2, Pacheco Testimony, 8/24/2018 at 255:3-12; 257:4-258:1 ("Q. In speaking with Mr. Schwartz over the years did you ever form an impression or understanding as to the importance of school being named after him forever? A. Yes, he was – yes. He -- It was extremely important to [Milton] that the school be named after him in perpetuity, forever. He even taught me how to say that word. I don't even know where to start on this. Okay. He liked his name, number one, and his name being on his accomplishments was important. … Q. Ms. Pacheco, I think we have already established you had known Mr. Schwartz for a long time. In your opinion, would Mr. Schwartz have ever given the school a half million dollars if it was not going to be named after him in perpetuity? A. No. Q. Why do you think that? A. I don't believe [Milton] would give that amount of money to the school without his name being on the school. He gives to a lot of charities, but they were never in that amount of money and he was a very generous man and he did give money like I said to a lot of charities but he would have never given that amount of money to any organization without his name being on it.").

[31] *See,* ATT Ex. 3, Schwartz Testimony, 8/27/18 at 139:12-140:23 ("Q. At the time Milton dictated the will to you, in 2004, do you know or do you have an understanding of whether your father believed he had an enforceable naming rights agreement with the school to be called the Milton I. Schwartz Hebrew Academy in perpetuity? A. Yes. Q. What do you base that understanding on up to the point of time in two thousand and— A. Several discussions I had with him in providing documents that memorialize or confirmed the agreement that it was supposed to be the Milton I. Schwartz Hebrew Academy in perpetuity. We discussed it numerous times.").

[32] *See* ATT Ex. 1, Leonard Schwartzer Testimony, 8/23/18, at 85:16-86:2 ("Q. What was your understanding then of what – why the school agreed to name the Milton I. Schwartz Hebrew Academy in perpetuity? A. Well, the fact that Milton I. Schwartz had donated a half a million dollars and arranged for most of the other donations for the school. And was by far the largest

(ii) Roberta Sabbath, PhD

Dr. Sabbath, who accompanied Dr. Lubin to Mr. Schwartz's house to receive the $500,000, testified that she agreed to accept the money in exchange for the naming rights. Dr. Sabbath used the phrase "gentleman's agreement" to characterize the transaction.[33]

(iii) Samuel Ventura

Samuel Ventura also testified that Milton got to have his name on the School in perpetuity in exchange for giving the school $500,000 and orchestrating additional financing to build the building.[34]

(iv) Neville Pokroy, MD (School's Witness)

Neville Pokroy was called by the School in its case in chief. Dr. Pokroy testified that he indeed signed the School's 1990 Bylaws, which acknowledged the perpetual name change. Dr. Pokroy further testified that the representations in the Bylaws were "absolutely correct" because he does not sign documents without first reading them.[35]

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supporter financially the largest supporter of the school was the reason why we decided to name the school in his honor. I mean, I think it was sort of a quid pro quo that in exchange for all he had done for the school, we were naming the school in his honor.")

[33] *See* ATT Ex. 2, Roberta Sabbath, PhD Testimony ("Sabbath Testimony"), 8/24/18, at 346:4-11 ("Q. So in your capacity as representing the board, did you agree to accept the money that Mr. Schwartz gave you in exchange for naming rights to the school? A. That was the gentleman's agreement. And we were representing the board and the intention of the board and the goodwill that generous gift engendered.")

[34] *See* ATT Ex. 7, Samuel Ventura Testimony ("Ventura Testimony"), 8/31/18, at 14:11-18 ("Q. Correct me if I'm wrong, but he gave the school a half a million dollars and then he orchestrated the financing of the $1.5 million. What did he get in return from the School? A. He got to have his name on the School. Q. Would that be for perpetuity? A. Yeah.").

[35] *See* ATT Ex. 7, Neville Pokroy, MD Testimony ("Pokroy Testimony), 8/31/18, at 156:14-157:6 ("Q. Do you remember any particular bylaws that said anything to the effect that Milton Schwartz's name would remain on the corporation in perpetuity? A. I don't recall that, as I sit here at this moment. Q. So it may or may not be true, you just don't remember. A. Subsequently, four years ago, we had a deposition and I was presented with a document that I was present and that it was discussed at that meeting. And if I signed that document, then I must have read it. Q. Understood. But at the time of your deposition, you didn't have any recollection of that document? A. No, but because of the document, I presume that was absolutely correct because I don't sign documents unless I have read them.")

(v) Tamar Lubin-Saposhnik, PhD (School's Witness)

Tamar Lubin-Saposhnik was also called by the School in its case in chief. Dr. Lubin, despite being openly hostile to Milton and the Estate, admitted that the School and Milton had an agreement for a perpetual name change but that the agreement was for $1million, not $500,000.[36]

C. IF THERE WAS NO CONTRACT TO BEGIN WITH, THE SCHOOL SHOULD NOT BENEFIT FROM MILTON'S CONDITIONAL GIFTS.

The bottom line is that if there is no contract, Milton, as a matter of law, made a mistake when he gifted money to the School starting in 1989 and continuing through 2007 – the year of his death – because he (and the School's own board for that matter) believed that there was a legally enforceable naming rights agreement with the School. The School must be held to account for what it has been unjustly enriched with.[37]

During trial, Susan Pacheco provided testimony pertaining to the monetary gifts that Milton made to the School from 1989 through 2007. The following table illustrates the gifts made for each of those years:[38]

YEAR	AMOUNT
1989	$500,900
1990	$9,000
1991	$150
1992	$69.66
1997	$2,100
1998	$22,500
1999	$26,600

[36] *See* ATT Ex. 7, Tamar Lubin-Saposhnik Testimony, 8/31/18, at 132:19-133:3; 140:5-9.

[37] *See Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 381, 283 P.3d 250, 257 (2012) ("Unjust enrichment exists when the plaintiff confers a benefit on the defendant, the defendant appreciates such benefit, and there is acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof."); *see also* 28 Williston on Contracts § 70:207 (4th ed.) ("A donor whose gift is induced by an invalidating mistake also has a claim in restitution as necessary to prevent the unintended enrichment of the recipient.").

[38] *See also* Ex. 3 at Exhibit 9(U), Pacheco Spreadsheet, to the Estate's Petition, admitted at trial as Trial Ex. 62.

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2000	$7,400
2001	$88,535
2002	$57,130
2003	$51,323
2004	$135,277
2005	$9,622
2006	$100,000
2007	$100,000
TOTAL	**$ 1,110,606.66**

In addition to the principal amounts of the gifts, the Estate is also entitled to recover from the School the time value of those gifts. In the case of most Nevada actions, this is computed in the form of (1) pre-judgment interest from the date a summons and complaint are served (or from the date of certain transactions) through the entry of judgment; and (2) post-judgment interest which accrues from the entry of judgment until the judgment is satisfied.[39] "Prejudgment interest is in the nature of compensation for the use by the defendant of money to which the plaintiff is entitled, payable from the time of loss or injury [] and serves to compensate for the loss of the use of money due as damages from the time the claim accrues until judgment is entered, thereby achieving full compensation for the injury those damages are intended to redress."[40]

In this case, the issue before the Court is to determine whether the prejudgment interest starts to accrue on the dates that Milton's gifts were mistakenly made (NRS 99.040), or on May 30, 2013 – the date the Estate's Petition was served on the School (NRS 17.130).

The Estate submits that NRS 99.040(1)(c) governs the prejudgment interest accrual date because the Estate's claim for rescission of *inter vivos* gifts arises as an equitable remedy to redress money received and retained by the School without the consent of the Estate.[41] The School has

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[39] *See* NRS 17.130, NRS 99.040.

[40] 47 C.J.S. Interest & Usury § 114.

[41] *See* NRS 99.040(1)(c) ("When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 or Jul1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due in the following cases: (c) upon money received to the use and benefit of another

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unjustly retained the benefit of the Estate's property for almost thirty years. Assuming that the statutory rate of interest, as of January 1, 2019, is the same as the current 7% rate[42], interest accrued through January 10, 2019, on all rescinded gifts is $1,719,917.05.[43] Judgment, therefore, should be entered in the collective amount of $2,830,523.71 in principal and interest, as of January 10, 2019.

Notwithstanding, if the Court nevertheless concludes that prejudgment interest should be computed from May 30, 2013 pursuant to NRS 17.130(2), total interest accrued assuming the same interest rate and date of judgment would be $436,005.65.[44] Accordingly, judgment, as of January 10, 2019, would be $1,546,612.31 in principal and interest.

IV.

THE SCHOOL SHOULD BE ESTOPPED FROM AVOIDING PERFORMANCE ON AN ADMITTED PROMISE

The only jury finding that is binding on this Court is that there is no "contract" between the School and the Estate for perpetual naming rights. What is clear from the trial evidence, however, is that there was definitely a promise made to Milton which he relied on to his detriment. There are scores of cases throughout the United States where charitable organizations sought to enforce charitable pledges made by donors which were relied upon to their detriment.[45] This is the reverse situation: here the money pledged by the donor ($500,000) was paid in full but the promise made

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and detained out his or her consent."); *and Alberding v. Brunzell*, 601 F.2d 474, 479 (9th Cir. 1979) (rejecting the contention that NRS 99.040 is mandatory only in actions at law but is discretionary in equitable proceedings)

[42] *See* Prime Interest Rate Sheet, a true and correct copy being attached hereto as **Ex. 8**.

[43] See NRS 99.040 Interest Spreadsheet, a true and correct copy being attached hereto as **Ex. 9**.

[44] $1,110,606.62 x 0.07 x (67.3 / 12) = $436,005.65.

[45] In fact, counsel for the School was on the exact opposite side of this issue just a couple of years ago in *Idaho State University Foundation vs. Rogers*, A-15-723710-C, wherein Idaho State University Foundation sought to enforce and alleged charitable pledge on a theory of promissory estoppel. *See*, ISUF v. Rogers First Amended Complaint, a true and correct copy being attached hereto as **Ex. 10**.

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by the charitable organization (to name the school after Milton I. Schwartz in perpetuity) was broken shortly after the donor died.

Under well-settled law, the equitable doctrine of promissory estoppel, permits the Court to enforce an otherwise unenforceable promise if reliance is foreseeable, reasonable and serious, and injustice cannot otherwise be avoided.[46] There is no question that Milton relied on the School's representations that it would bear Milton's name in perpetuity. Similarly, there is no question that Milton's reliance was foreseeable, reasonable and serious. Indeed, the School's own board members acknowledged the promises exchanged. The only reason why the School is not honoring its promise anymore is because its current board has a vested interest in maintaining a close relationship with the Adelson family. It cannot be ignored that at least half of the current board is comprised of Mr. Adelson's family and friends. If there is no legally enforceable contract, the only way to avoid manifest injustice is by the equitable enforcement of the School's promise.

V.

CONCLUSION

For the above and foregoing reasons, the Court should enter judgment as follows:

1. Judgment in favor of the Estate on the School's *Petition to Compel Distribution, for Accounting and for Attorneys Fees*, declaring that the School takes nothing by way of its Petition;

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[46] *See American Sav. & Loan. Ass'n v. Stanton-Cudahy Lumber Co.*, 85 Nev. 350, 354, 455 P.2d 39, 41 (1969); *Lear v. Bishop*, 86 Nev. 709, 476 P.2d 18 (1970) (affirming order for specific performance on a claim for promissory estoppel).

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2. Judgment in favor of the Estate on its equitable claim for rescission of *inter vivos* gifts in the amount of $2,830,523.71, including prejudgment interest; or alternatively, an order requiring the School to perform its promise to maintain the Milton I. Schwartz Hebrew Academy name in perpetuity under the doctrine of promissory estoppel.

DATED this 16th day of November, 2018.

SOLOMON DWIGGINS & FREER, LTD.

/s/ Alexander G. LeVeque

By:_____

Alan D. Freer (#7706)
Alexander G. LeVeque (#11183)
SOLOMON DWIGGINS & FREER, LTD.
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Telephone: (702) 853-5483
Facsimile: (702) 853-5485
afreer@sdfnvlaw.com
aleveque@sdfnvlaw.com

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

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November, 2018, service of the foregoing POST-TRIAL BRIEF REGARDING THE PARTIES' EQUITABLE CLAIMS AND FOR ENTRY OF JUDGMENT 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.

SOLOMON DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS
9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
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EXHIBIT 1

DISTRICT COURT

CLARK COUNTY, NEVADA

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

VERDICT FORM

In the Matter of the Estate of MILTON I. SCHWARTZ, we the jury find as follows:

Question 1:

Do you find that Milton I. Schwartz had a naming rights contract?

Yes ____ No X

If you answered YES to Question 1, please proceed to answer Questions 2, 3, 4, 5, 6 and 7. If you answered NO, skip to Question 8.

Question 2:

Was the contract oral or founded upon a writing or writings?

Oral ____ Written ____

Question 3:

If you answered YES to Question 1, was the contract in perpetuity?

Yes ____ No ____

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Question 4:

What was the consideration (amount of money) that Milton I. Schwartz was required to pay in exchange for a naming rights contract?

_____

_____

Question 5:

Did Milton I. Schwartz perform all of his obligations under the terms of the contract?

Yes ____ No ____

If you answered NO, please skip to Question 8. If you answered YES to Question 5, please proceed to answer Question 6.

Question 6:

In addition to the consideration (amount of money Milton I. Schwartz agreed to pay), what were the other specific terms of the contract?

Corporation	Yes ___	No___
Campus	Yes ___	No___
Elementary School Building	Yes ___	No___
Elementary School	Yes ___	No___
Middle School	Yes ___	No___
Entrance Monument	Yes ___	No___
Letterhead	Yes ___	No___
None of the Above	_____	
All of the Above	_____	

In Question 2, if you found that the contract was a written agreement, please answer Question 7. If you found the contract was an oral agreement, please skip to Question 8.

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Question 7:

Did the School breach the Contract?

Yes ____ No ____

Question 8: (Please circle one)

Do you find that in 2004, when Milton I. Schwartz wrote the following:

> 2.3 The Milton I Schwartz Hebrew Academy. I hereby give, devise, and bequeath the sum of five hundred thousand dollars ($500,000.00) to the Milton I. Schwartz Hebrew Academy (the, "Hebrew Academy") that:

(a.) He intended that the Bequest be made only to a school known as the "Milton I. Schwartz Hebrew Academy" for the purposes set forth in the Bequest. OR

b. He intended the Bequest be made to the school presently known as the Adelson Educational Institute.

Question 9:

Do you find that the reason Milton I. Schwartz made the Bequest was based on his belief that he had a naming rights agreement with the School which was in perpetuity?

Yes X No ____

Question 10: (ONLY IF YOU FIND YES TO QUESTION NOS. 1, 2, 5, AND 7)

What was the appropriate amount of damages that the School should pay the Estate to remedy the breach of contract?

$_____

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Question 11: (ONLY IF YOU ANSWERED "NO" TO QUESTION NO. 1.)
Do you believe that the School acted in a manner in which the School should have reasonably expected to induce Milton I. Schwartz's reliance and which did induce Milton I. Schwartz's detrimental reliance?
Yes ____ No X

Question 12: (ONLY ANSWER IF YOU ANSWERED "NO" TO QUESTION NO. 1)
Do you find that Milton I. Schwartz believed that he had a naming rights contract with the School but was mistaken?
Yes ____ No X

Question 13: (ONLY ANSWER IF YOU ANSWERED "NO" TO QUESTION NO. 1 AND "YES" TO QUESTION NO. 12)
Did Milton I. Schwartz make the Bequest to the School based on his mistaken belief?
Yes ____ No ____

Chef
FOREPERSON

Sept. 5, 2018
DATE

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EXHIBIT 2

LAST WILL AND TESTAMENT

OF

MILTON L SCHWARTZ

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

FIRST: MARITAL AND FAMILY STATUS

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

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

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

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SECOND: BEQUESTS

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

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

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

Testator's Initials MLS

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EXHIBIT 25
WIT: J. HANSON
DATE: 6-22-16
Wendy Sara Honable CCR, RPR

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

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

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

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

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

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

THIRD: RESIDUARY BEQUESTS

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

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

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FOURTH: EXECUTOR

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

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

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

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

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

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

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

(a) Elect any valuation date for purposes of federal estate tax permitted by law which my Executor deems to be to the best advantage of the family considered as a whole rather than the advantage of those interested only in my estate, even to the extent of making the election in such a way that the federal estate tax is greater rather than less a result of such election, provided that in my Executor's discretion such is likely to be for the best advantage, present and future, of the family taken as a whole.

(b) Choose the methods of payment of federal estate taxes or state estate or inheritance taxes.

(c) Determine whether any or all of the expenses of administration of my estate shall be used as federal estate tax deductions or as federal income tax deductions. No beneficiary under this Will shall have any right to recoupment or restoration of any loss the beneficiary suffers as a result of the use of such deduction for one or the other of these purposes.

(d) Join with my spouse or the estate of my spouse in filing a joint income or gift tax return or returns for any arrears for which I have not filed returns prior to my death.

(e) Consent that any gifts made by me or my spouse have been made one-half by me and one-half by my spouse for gift tax purposes even though these actions may subject my estate to additional tax liabilities.

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(f) Allocate in my Executor's sole discretion, any portion of my exemption under Sec. 2631(a) of the Internal Revenue Code, as amended, to any property as to which I am the transferor, including any property transferred by me during life as to which I did not make an allocation prior to my death.

(g) Exercise any other options or elections afforded by the tax law of the United States or of any other jurisdiction. My Executor may exercise this authority in my Executor's sole discretion; regardless of any other provisions in this Will or the effect on any other provisions of this Will or the effect on any person interested in my estate. No beneficiary under this Will shall be entitled to a compensating adjustment even though the exercise of these tax powers affects the size or composition of my estate or of any disposition under this Will. The determination of my Executor with respect to the exercise of the election shall be conclusive upon all affected persons.

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

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

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

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

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

Testator's Initials _____

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

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

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

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

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

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

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

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

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

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

FIFTH: TESTAMENTARY DECLARATIONS

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

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

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

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

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

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

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

SIXTH: MISCELLANEOUS

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

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

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

Testator's Initials AJS

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

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

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

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

MILTON I. SCHWARTZ

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

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

Residing At:
1511 Surf Drive
Henderson, NV 89015

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

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

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

SUBSCRIBED and SWORN to before me

This 5th day of February, 2004.

Notary Public

NOTARY PUBLIC
JEANNE T. MEITZ
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. JAN. 10, 2008
No: 02-72568-1

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EXHIBIT 3

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CLERK OF THE COURT

PET
MARK A. SOLOMON, ESQ.
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Attorneys for Respondent, A. Jonathan Schwartz

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of MILTON I. SCHWARTZ, Deceased.	Case No. P061300 Department No. 26/Probate **Date of Hearing:** **05/31/2013** Time of Hearing: 9:30 a.m.

PETITION FOR DECLARATORY RELIEF

A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz, by and through his attorneys, Mark A. Solomon, Alan D. Freer, and Steven E. Hollingworth of the law firm of Solomon Dwiggins & Freer, Ltd., does hereby respectfully petition this Court pursuant to NRS 30.030, 30.040, 30.060, and 30.100 for declaratory and supplemental relief. Pursuant to NRS 30.110, Mr. Schwartz hereby demands the issues set forth herein to be tried and determined by a jury. Petitioners allege as follows:

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I. GENERAL ALLEGATIONS

A. FACTUAL BACKGROUND

The Adelson School seeks the Executor's removal and other personal penalties as leverage in a dispute over whether the School can avoid its obligations to the decedent and his estate. The Adelson School attempts to characterize this dispute as if it arose only after the decedent's death. In fact, this dispute has a long history going back for decades.

The history of the Hebrew Academy (the "Academy") is crucial to this matter. Milton Schwartz was instrumental in the Howard Hughes Corporation's gift of land where the Academy and Adelson School now stand. In addition, Milton provided key funding during its formative years, through both personal donations and fundraising. Without his efforts and contributions, there would be no Hebrew Academy or Adelson School today. There would have been nothing for later philanthropists like the Adelsons to build on.

In August 1989, Milton Schwartz donated $500,000 to the Academy in return for which the Academy would guarantee that its name would change in perpetuity to the "Milton I. Schwartz Hebrew Academy."[1] The Board of Directors of the Hebrew Academy memorialized this agreement in its minutes from its August 14, 1989 special meeting[2] and in Bylaws for the Academy, adopted on December 18, 1990.[3] Amended articles of incorporation were filed on August 22, 1990, changing the name of the school to the "Milton I. Schwartz Hebrew Academy." In addition, by deed executed April 9, 1991, the Hebrew Academy conveyed the underlying property of the

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[1] Ex. 1, Supplemental Affidavit of Milton I. Schwartz dated February 22, 1993 at ¶4.

[2] *See* Ex. 2, Minutes of the Board of Trustees, Special Meeting, August 14, 1989 ("A letter should be written to Milton Schwartz stating the Academy will be named after him"); Ex. 3, Certificate of Amendment of the Articles of Incorporation of the Hebrew Academy.

[3] Ex. 4, Bylaws (12/18/1990), Article I(1) ("The name of the corporation is The Milton I. Schwartz Hebrew Academy (hereinafter referred to as The Academy) and schall [*sic*] remain so in perpetuity"); *see also* Ex. 5, Bylaws (April 13, 1999), Section 1.01 ("The name of the Corporation is the Milton I. Schwartz Hebrew Academy and will remain so in perpetuity.")

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Academy to the "Milton I. Schwartz Hebrew Academy, a Nevada non-profit corporation."[4]

The Academy's perpetual obligations and promises were recognized by its board members at various times over the years. For example, on July 17, 1992, board member Lenard E. Schwartzer, Esq. acknowledged to Milton, "It's your school, it has your name on it forever."[5] Likewise, when the Academy became embroiled in a dispute with Milton in 1992, board member Tamar Lubin offered to return Milton's $500,000 donation made in 1989.[6] Such offer further evidences an acknowledgment by the Academy that Milton's gifts were conditional, not simply gratuitous in nature.

In addition to cash gifts, Milton Schwartz guaranteed the debts of the Academy until the debts were paid in full after his death. Milton made all of his contributions and guarantees in reliance on the Academy's agreement and the representations. However, the Academy failed to keep its end of the bargain and on October 19, 1994, filed amended articles of incorporation removing his name from the school. During this period when the school no longer bore his name, Milton ceased making donations to the Academy.[7]

On May 23, 1996, the Academy agreed to restore its name to the "Milton I. Schwartz Hebrew Academy" and amend its articles of incorporation accordingly.[8] Amended articles were filed on March 21, 1997. In addition to restoring its former name, the Academy agreed to implement the following actions to prominently display the full name of the "Milton I. Schwartz Hebrew Academy" on signage, stationery, letterhead, and brochures:

> Restore the marker in front of the Hebrew Academy identifying it as the "Milton I. Schwartz Hebrew Academy."
>
> Change the Hebrew Academy's formal stationary [sic] to include its

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[4] Ex. 6, Quitclaim Deed.

[5] *See* Ex. 7, Letter from Lenard E. Schwartzer dated July 17, 1992.

[6] *See* Ex. 8, Affidavit of Michael Novick, Feb. 19, 1993 at ¶11-12.

[7] *See* Ex. 9, Spreadsheet of Contributions.

[8] Ex. 10, Letter from Dr. Roberta Sabbath, School Head, dated May 23, 1996.

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> full name, the "Milton I. Schwartz Hebrew Academy," in a form consistent with this letterhead and include our full name on future brochures.
>
> Where practicable, display the full name of the Hebrew Academy. In print advertising of sufficient size, the full name of the school will be displayed in a design consistent with the letterhead. Where impractical by reason of size, utilization of voice media, informal correspondence, informal memoranda, etc., and in answering the telephone, the school will utilize the shorthand version of its name as Hebrew Academy or simply, its logo.[9]

The Academy further informed Milton that "you can rest assured it is the intention of the School Head and the School's Officers and Directors that the utilization of the school's full name will consistent with an intent to recognize and honor your contribution and assistance."[10]

In reliance on this agreement and these representations from the Academy, Milton I. Schwartz resumed making monetary contributions to the Academy up until his death, in the additional amount of approximately $500,487.[11] His total lifetime contributions were approximately $1,010,656.66.[12] Also in reliance on the Academy's agreement and promise, on February 5, 2004, the decedent executed a will providing a bequest of $500,000 to the Milton I. Schwartz Hebrew Academy.

On or around 2006 and 2007, and before Milton's death, Mr. Adelson pledged $25 million to build a high school on the site of the Academy. Milton, the Academy, and Mr. Adelson agreed that the high school would be called the "Adelson School," while grades K-8 would continue to be known as the "Milton I. Schwartz Hebrew Academy." This understanding and agreement is evidenced by a letter signed by Mr. Adelson and Victor Chaltiel of the Board of Directors.[13]

At the time of Milton's death on August 9, 2007, the name of grades K-8 was the "Milton

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[9] *Id.*

[10] *Id.*

[11] *See* Ex. 9, Spreadsheet of Contributions.

[12] *Id.*

[13] Ex. 11, Gala Announcement.

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I. Schwartz Hebrew Academy," consistent with the parties' agreement. However, unbeknownst to the Executor, and without even allowing Milton's family seven months to grieve his passing, the Academy violated its contractual obligations and promise by filing amended articles of incorporation changing the corporate name to the "Dr. Miriam and Sheldon G. Adelson Educational Institute." From the timing of events, it appears clear that the Academy was waiting for an opportune moment to jettison its obligations, in the hopes that the Executor of Milton's estate would be unwilling to raise a challenge.

The Academy took other, more gradual actions in violation of its agreement with the Decedent. For example, the name of the middle school (grades 5-8) was changed from the "Milton I. Schwartz Hebrew Academy" to the "Adelson Middle School." The Executor became aware of the Academy's breach on or about March, 2010.

The Executor has patiently reviewed this history with the Academy Board of Directors and has attempted to resolve this dispute without resorting to litigation. The Executor has repeatedly acknowledged the generosity of Dr. Miriam and Sheldon G. Adelson, raising no objection to the naming of the high school (grades 9-12) located on the campus after the Adelsons.

Along with many others in the community, the Executor is supportive of the Academy's purposes and goals. In his capacity as Trustee of the Milton I. Schwartz Revocable Family Trust, he has the means to satisfy the bequest to the Academy, if appropriate. However, in light of the Academy's breach, the Executor has requested written assurances from the Academy that it will comply with its obligations with respect to the naming of grades K-8 after Milton I. Schwartz.

Instead of acknowledging its wrongful conduct and reaffirming its prior assurances, the Academy's Petition now seeks to punish the Executor for his painstaking efforts to negotiate an amicable settlement that protects the intent of the decedent and the rights of the Estate. The Petition adds insult to injury by willfully ignoring the past and feigning outrage at what it calls the Executor's "personal demands." These so-called "personal demands" are, in fact, nothing more a request that the Academy honor the terms of its agreement as memorialized in its May 23, 1996

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letter to Milton.[14]

FIRST CLAIM FOR RELIEF

(Construction of Will)

The will of Milton Schwartz provides for a bequest of $500,000 to the "Milton I. Schwartz Hebrew Academy." However, there is no legal entity currently bearing that name.

It is axiomatic that the terms of a will must be construed in accordance with the testator's intent. *See, e.g., Adkins v. Oppio*, 105 Nev. 34, 36 (1989) ("[I]t is the long accepted position of this court that the primary aim in construing the terms of a testamentary document must be to give effect, to the extent consistent with law and policy, to the intentions of the testator"). Based on the Academy's agreement and representations to Milton at the time of the execution of the will and until his death, Milton understood and expected that the Hebrew Academy was obligated to bear his name in perpetuity.[15] This understanding was reflected in Milton's own sworn testimony: "Affiant donated $500,000 to the Hebrew Academy in return for which it would guaranty that its name would change in perpetuity to the Milton I. Schwartz Hebrew Academy."[16]

Milton's express intent as reflected in the will, therefore, was not to benefit a charitable organization generally, but to benefit an entity *bearing his name perpetually*. Had Milton known that the Academy would remove his name almost immediately following his death, he would not have made the bequest. This is evident by the fact that he took vigorous action against the Academy during his lifetime to remedy breaches by the Academy, and he ceased making donations until it changed its name back to the Milton I. Schwartz Hebrew Academy.

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[14] Note the close correspondence between the supposedly "outrageous" request by the Executor that all "letter-head, stationery, correspondence, promotional material" and other media associated with the Schools "shall clearly and prominently identify the 'Milton I. Schwartz Hebrew Academy'" with the Academy's *express agreement* to "change the Hebrew Academy's formal stationary [sic] to include its full name, the 'Milton I. Schwartz Hebrew Academy,' in a form consistent with this letterhead and include our full name on future brochures."

[15] *See* Ex. 1, Supplemental Affidavit of Milton I. Schwartz at paragraph 4.

[16] *Id.*

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Because there is no existing entity named after Milton I. Schwartz on a perpetual basis, the Estate seeks a declaration that the $500,000 bequest lapses and is distributable as part of the residue of the Estate.

SECOND CLAIM FOR RELIEF

(Fraud in the Inducement)

Because the Academy removed Milton's name from the corporate documents almost immediately after his death, it is obvious that the Board of Directors was waiting for the moment when Milton would be unable personally to defend his legacy. The plan to breach was hidden from Milton, in hopes that he would continue to provide generous gifts, fundraising, and ultimately a bequest in his will.

After remedying its prior breach in 1996, the Board maintained its assurances to Milton that the school would perpetually bear his name.[17] Yet the Academy had no intent to honor its agreement, as evidenced by the prompt change after Milton's death. Milton's donations and the bequest were thus induced by fraudulent misrepresentations. Had Milton known that the Academy had no intention of honoring its obligations and representations, he would not have made any gifts or bequests to the Academy. On the contrary, if he were living today he would likely have sued for restitution and damages.

A gift or bequest that is induced by fraud is void. Restatement (Third) of Property: Wills and Other Donative Transfers § 8.3(a). Accordingly, the Estate seeks a declaration by this Court that the bequest to the Academy is void, and that the Estate has no obligation to distribute any amount to the Petitioner. The Estate further seeks supplemental relief in the form of an award for damages caused by the Academy's fraudulent inducement of Milton's lifetime and testamentary gifts.

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[17] *See, e.g.*, Ex. 5, Bylaws (April 13, 1999), Section 1.01 ("The name of the Corporation is the Milton I. Schwartz Hebrew Academy and will remain so in perpetuity").

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THIRD CLAIM FOR RELIEF

(Bequest Void For Mistake)

The bequest made by Milton Schwartz to the Academy was based on, and motivated by, Milton's understanding and belief that the Academy had agreed to bear his name in perpetuity and would fulfil its promises as memorialized in its May 23, 1996 letter.[18] Contrary to the evidence, the Academy now appears to deny that it ever made these promises or representations. However, regardless of such denials, it is clear that Milton would not have made the bequest but for his belief that such an agreement existed.

The general law of mistake is applicable to both wills and other donative documents of transfer.[19] Milton's bequest to the Academy was induced by his belief that the Academy was bound to be named after him in perpetuity. Accordingly, the Estate seeks a declaration that the $500,000 bequest is void by reason of mistake.

FOURTH CLAIM FOR RELIEF

(Offset of Bequest Under Will)

Even if the bequest to the Academy is valid, the Estate has no obligation to distribute any amount to the Academy. Because the Academy has breached the obligations and promises that induced Milton's lifetime and testamentary gifts, the Academy is liable to the Estate for rescission of these gifts, plus damages.[20] The Estate believes the amount thus owed from the Academy exceeds $1,000,000.[21]

The Estate seeks a declaration from the Court that the Estate has the right to offset the $500,000 bequest to the Academy in the amount of the damages due from the Academy. *See, e.g.,*

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[18] *See,* Ex. 1, Supplemental Affidavit of Milton I. Schwartz at ¶ 4.

[19] Restatement (Second) of Property, Donative Transfers §34.7, Comment d.

[20] Restatement (Third) of Restitution And Unjust Enrichment, §11(2) ("A donor whose gift is induced by invalidating mistake has a claim in restitution as necessary to prevent the unintended enrichment of the recipient.")

[21] *See* Ex. 9, Spreadsheet of Contributions.

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Matter of Estate of Morrell, 428 S.E.2d 697, 699 (N.C. Ct. App. 1993) ("[T]he right and duty of an executor to deduct from a legacy the amount of any indebtedness of the legatee to the estate of his testator, is well settled, and is in full accord with elementary principles of justice").

FIFTH CLAIM FOR RELIEF

(Breach of Contract)

The gifts and bequests made by Milton Schwartz were conditioned on the Academy bearing his name perpetually and fulfilling its promises as memorialized in its May 23, 1996 letter. The Academy has failed to comply with the agreement and conditions on which these gifts and bequests were based. Members of the Board of Directors have acknowledged the conditional nature of these gifts, as reflected by board member Tamar Lubin's offer in 1992 to return Milton's $500,000 donation made in 1989.[22]

The Estate seeks a declaration that the Academy has breached its agreement and promises, and as a direct result of the Academy's breach, the Estate is not required to distribute the bequest to the Academy. Further, as to the inter vivos gifts made by Milton, the Estate has suffered damages in excess of $1,000,000.[23] The Estate further seeks supplemental relief in the form of an award for such damages.

SIXTH CLAIM FOR RELIEF

(Revocation of Gift and Constructive Trust)

The gifts and bequests made by Milton Schwartz were conditioned on the Academy bearing his name perpetually and fulfilling its promises as memorialized in its May 23, 1996 letter. The Academy has failed to comply with the conditions on which these gifts and bequests were based. Members of the Board of Directors have acknowledged the conditional nature of these gifts, as reflected by board member Tamar Lubin's offer in 1992 to return Milton's $500,000 donation

[22] *See* Ex. 8, Affidavit of Michael Novick, Feb. 19, 1993 at ¶11-12.

[23] *See* Ex. 9, Spreadsheet of Contributions.

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made in 1989.[24]

Milton understood and believed that the Academy had agreed to bear his name in perpetuity.[25] Even if the Academy denies that it made such promises or contends that such promises are not enforceable, the Estate is still entitled to recover all funds Milton contributed in reliance on his belief that an agreement existed. *See Earl v. Saks & Co.*, 226 P.2d 340, 344-45 (Cal. 1951) ("A gift can be rescinded if it was induced by fraud or material misrepresentation (whether of the donee or a third person) or by mistake as to a basic fact. A failure by the donee to reveal material facts when he knows that the donor is mistaken as to them is fraudulent nondisclosure. A mistake which entails the substantial frustration of the donor's purpose entitles him to restitution." (Citations omitted); *see also* Restatement (First) of Restitution §15, Comment e ("[W]here one makes a payment to another in the mistaken belief that the other has promised to assume a duty in return for or with reference to the payment ... the payor is entitled to a return of his money upon disclaimer or refusal of the other to perform").

Accordingly, the Estate seeks a declaration that it is entitled to a revocation of the bequest and all gifts made during Milton's lifetime. Further, the Estate seeks supplemental relief in the form of a ruling that the Adelson School holds such funds in constructive trust in favor of the Estate.

WHEREFORE, the Executor requests that the Court enter an Order granting the relief set forth in the instant Petition and specifically grant the following relief:

1. That this matter be set over and scheduled for a jury trial;

2. That this Court declare that the bequest to the Milton I. Schwartz Hebrew Academy is void;

3. That this Court declare that the Executor of the Estate of Milton I. Schwartz was and is authorized to abstain from distributing the bequest to the Milton I. Schwartz Academy on

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[24] *See* Ex. 8, Affidavit of Michael Novick, Feb. 19, 1993 at ¶11-12.

[25] *See,* Ex. 1, Supplemental Affidavit of Milton I. Schwartz at ¶ 4.

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account of the Academy's breach of agreement and/or promise made by and between the Academy and Decedent;

4. That this Court declare that the Executor of the Estate of Milton I. Schwartz is directed to abstain from distributing the bequest to the Milton I. Schwartz Hebrew Academy on account of the Academy's breach of agreement and/or promise made by and between the Academy and Decedent;

5. That this Court declare that the Academy fraudulently induced Decedent to leave a bequest to the Milton I. Schwartz Hebrew Academy;

6. That this Court declare that the Academy fraudulently induced Decedent to make lifetime gifts to the Milton I. Schwartz Hebrew Academy;

7. That the Executor of the Estate of Milton I. Schwartz is authorized and directed to offset the bequest to the Milton I. Schwartz Hebrew Academy against the lifetime gifts Decedent made the Decedent and that were fraudulently induced by the Academy;

8. That the Estate of Milton I. Schwartz is entitled to a revocation of the bequest to the Milton I. Schwartz Hebrew Academy and all gifts made to the Academy by Milton during his lifetime;

9. That the Estate of Milton I. Schwartz be granted supplemental relief in the form of a constructive trust over funds in the hands of the Adelson School which were contributed to the by Milton during his lifetime, to preserve them until the outcome of this action is finally determined;

10. That the Estate of Milton I. Schwartz be granted supplemental relief in the form of an award of damages against the Academy caused by the Academy's breach of contract and fraudulent inducement of lifetime gifts and testamentary bequest from Decedent;

11. That the Estate of Milton I. Schwartz be granted supplemental relief in the form of an award of punitive damages against the Academy caused by the Academy's fraudulent inducement of lifetime gifts and testamentary bequest from Decedent;

12. That the Estate of Milton I. Schwartz be granted fees and costs as the Court deems

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equitable and just; and

13. That the Court grant such other and further relief as it deems just and appropriate.

DATED this ___ day of May, 2013.

SOLOMON DWIGGINS & FREER

By: _____

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VERIFICATION

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

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

DATED this 28 day of May, 2013.

A. Jonathan Schwartz, Petitioner

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EXHIBIT "1"

SUPPLEMENTAL AFFIDAVIT OF MILTON I. SCHWARTZ

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FURTHER AFFIANT SAYETH NAUGHT.

MILTON I. SCHWARTZ

SUBSCRIBED AND SWORN to before me this 22 day of February, 1993

NOTARY PUBLIC

DIANNE SANDERS

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

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EXHIBIT "2"

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

388-GIFT / 10AM

Present:

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

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

The minutes were approved as read.

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

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

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

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

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

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

Susan McGarraugh
Susan McGarraugh
Acting Secretary

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A. Jonathan Schwartz, Esq.
MILTSON CONSULTING, INC.
2293Duneville Street
Las Vegas, NV 89146
(702)383-6767 - Phone
(702)387-8770- Fax

TO: _____

FROM _____

DATE: _____

RE: _____

FAX NUMBER: _____

PAGES (INCLUDING COVER): 4 of

Fred should have "staff" on this issue

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

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August 14, 1989

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

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

Dear Mr. Schwartz:

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

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

Sincerely yours,

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EXHIBIT "3"

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FILED

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

AUG 29 2 49 PM '90

CLERK

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

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

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

> RESOLVED: That it is advisable and in the best interests of this Corporation that its Articles of Incorporation be amended by changing the language of Article I of said Articles to read as follows:
>
> ARTICLE I
>
> This corporation shall be known as:
>
> THE MILTON I. SCHWARTZ HEBREW ACADEMY

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

///

///

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

MILTON I. SCHWARTZ, President

LENARD E. SCHWARTZER, Secretary

STATE OF NEVADA)
ss:
COUNTY OF CLARK)

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

WITNESS MY HAND AND OFFICIAL SEAL.

KATHRYN D. HARDESTY
Notary Public - State of Nevada
Appointment Recorded in Clark County
My Appointment Expires July 30, 1992

Kathryn D. Hardesty
NOTARY PUBLIC

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STATE OF NEVADA)
ss:
COUNTY OF CLARK)

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

WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

LINDA DAUGHERTY
Notary Public - Nevada
Clark County
My appt. exp. Apr. 2, 1994

TOTAL P.05

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EXHIBIT "4"

Exhibit A

BYLAWS OF

THE MILTON I. SCHWARTZ HEBREW ACADEMY

ARTICLE I

NAME AND OFFICE

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

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

ARTICLE II

TRUSTEES

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

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

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

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

BYLAWS OF

THE MILTON I. SCHWARTZ HEBREW ACADEMY

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

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

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

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

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

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

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

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

ARTICLE III

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

ARTICLE IV

COMMITTEES

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

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

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

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

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

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

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

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

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

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

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

a. Fund-raising

b. Nominating

c. Student

d. Building Fund

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

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

ARTICLE V

DESCRIPTION AND DUTIES OF OFFICERS OF THE BOARD

1. Chairman of the Board: The Chairman shall preside at all meetings of the Board of Trustees. One person may hold the position of Chairman and President.

2. President: The president shall preside at all meetings of the Board of Trustees. He/she is authorized to exercise general charge and supervision of the affairs of the corporation and shall be deemed invested with adequate authority to perform such other duties as may be assigned to him/her by the Board of Trustees. He/she shall serve two consecutive terms.

3. Vice President: At the request of the president or in the event of his absence or disability, the vice president shall perform the duties and possess and exercise the correlative powers of the president. To the extent authorized by law, the vice president may be invested with such other powers as the Board of Trustees may determine, and perform such other duties as may be assigned to him/her by the Board of Trustees.

4. Secretary: The secretary shall attend and keep the minutes of all meetings of the Board of Trustees. He/she shall keep an alphabetically arranged record containing names of all members of the corporation, showing their places of residence; such record shall be open for public and member inspection as prescribed by law. He/she shall perform all duties generally incidental to

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

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

ARTICLE VI

MEETINGS OF THE BOARD OF TRUSTEES

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

ARTICLE VII

ELECTIONS

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

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

ARTICLE VIII

AMENDMENTS

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

ARTICLE IX

RULES

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

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

KNOW ALL MEN BY THESE PRESENT:

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

IN WITNESS WHEREOF, we have hereunto set our hands this 19 day of December, 1990.

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EXHIBIT "5"

Given to Bl-c
3-24-05

Exhibit F

BY LAWS

OF

THE MILTON I. SCHWARTZ

HEBREW ACADEMY

ARTICLE I

PURPOSE AND POWERS

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

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

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

ARTICLE II

OFFICES

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

ARTICLE III

BOARD OF TRUSTEES

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

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

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

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

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

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

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

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

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

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

Section 3.10 Manner Of Acting.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV

STANDING AND SPECIAL COMMITTEES

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

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

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

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

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

ARTICLE V

OFFICERS

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VI

INDEMNIFICATION OF TRUSTEES, OFFICERS, EMPLOYEES AND AGENTS; INSURANCE

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

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

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

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

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

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

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

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

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

Section 6.06 The indemnification provided by this section:

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

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

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

ARTICLE VII

CONTRACTS, LOANS, CHECKS, DEPOSITS AND GIFTS

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

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

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

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

ARTICLE VIII

MISCELLANEOUS

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

Section 8.02. Intentionally Deleted.

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

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

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

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

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[illegible] shall be jointly and severally liable to the Corporation for the [illegible] of such loan until the repayment thereof.

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

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

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

ARTICLE IX

AMENDMENTS TO BYLAWS

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

By _____
President

Adopted this 13th day of April, 19 99

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

13th April, 19 99

By _____
Secretary

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EXHIBIT "6"

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Exhibit G

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That The Hebrew Academy, a Nevada non-profit corporation

in consideration of $ 10.00, the receipt of which is hereby acknowledged, do hereby remise, release and forever quitclaim to The Milton I. Schwartz Hebrew Academy, a Nevada non-profit corporation

all that real property situate in the County of Clark State of Nevada, bounded and described as follows:

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

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

Witness hand this 6th day of April 19 97

The Hebrew Academy

By Milton I. Schwartz, President

STATE OF Nevada
County of Clark } ss.

On this 6th day of April 19 97

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

Milton I. Schwartz,
President

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

Notary Public in and for said County and State.

SUSAN McGARRAUGH
Notary Public - State of Nevada
Appointment Recorded in Clark County
My Appointment Expires Nov. 10, 1998

ESCROW NO. _____

WHEN RECORDED MAIL TO: _____

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EXHIBIT "7"

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Hale, [illegible] Peek, Dennison and Howard

A Professional Corporation
Attorneys and Counsellors at Law

REPLY TO LAS VEGAS
2300 West Sahara Avenue
Suite 800, Box 8
Las Vegas, Nevada 89102
Telephone (702) 362-5118
Fax (702) 365-6940

Reno Office
50 West Liberty Street, Suite 650
Reno, Nevada 89501
Post Office Box 3237
Reno, Nevada 89505
Telephone (702) 786-7900
Fax (702) 786-6179

Exhibit N

July 17, 1992

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

Dear Milton:

I am writing this letter requesting that whatever you do you consider what is best for the Milton I. Schwartz Hebrew Academy. From my point of view, as a parent of children in the school and a former board member, it would be best for the Academy and you, if you throw your support behind the Board of Trustees and Ira Sternberg, as its president. That way everyone will be able to concentrate on building the school up -- raising funds, recruiting students, etc.

It's your school, it has your name on it forever, I know you will do the right thing.

Very truly yours,

Lenard E. Schwartzer

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EXHIBIT "8"

SUPPLEMENTAL AFFIDAVIT OF MICHAEL NOVICK

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

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

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

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

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

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

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

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

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

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302 East Carson, Suite 702
Las Vegas, Nevada 89101 (702) 386-0536

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

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

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

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

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

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

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

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

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

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

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

FURTHER AFFIANT SAYETH NAUGHT.

MICHAEL NOVICK

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

NOTARY PUBLIC

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302 East Carson, Suite 702
Las Vegas, Nevada 89101 (702) 386-0536

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EXHIBIT "9"

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Exhibit U

Milton I Schwartz Hebrew Academy
MIS Contributions/donations

		Per HA	ycs	VGC	loans	return of loans
1988	$ 50.00				$ -	$ -
1989	$ 500,900.00		$ 1,200.00	$ 600.00	$ -	$ -
1990	$ 9,000.00				$ -	$ -
1991	$ 150.00			$ 1,300.00	$ -	$ -
1992	$ 69.66				$ -	$ -
1993	$ -				$ -	$ -
1994	$ -				$ -	$ -
1995	$ -				$ -	$ -
1996	$ -				$ -	$ -
1997	$ 2,100.00				$ -	$ -
.998	$ 22,500.00				$ -	$ -
.999	$ 26,600.00				$ -	$ -
2000	$ 7,400.00				$ -	$ -
2001	$ 88,535.00	$ 88,535.00	$ 1,200.00		$ -	$ -
2002	$ 57,130.00				$ 150,000.00	$ -
2003	$ 51,323.00				$ 83,000.00	$ (40,000.00)
2004	$ 135,277.00				$ -	
2005	$ 9,622.00					
2006	$ 100,000.00					
2007						
Total	$ 1,010,656.66	$ 88,535.00	$ 2,400.00	$ 1,900.00	$ 233,000.00	$ (40,000.00)
CLT	$ 45,247.09					
Grand Total	$ 1,055,903.75					

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Milton I Schwartz Hebrew Academy
CLT #45 Contributions/donations (12/90 - 2005)

1991	$ -
1992	$ 8,052.09
1993	$ -
1994	$ -
1995	$ -
1996	$ -
1997	$ -
1998	$ -
1999	$ -
2000	$ 7,000.00
2001	$ -
2002	$ 30,000.00
2003	$ -
2004	$ -
2005	$ 195.00
Total	$ 45,247.09

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EXHIBIT "10"

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

Exhibit AK

Dr. Roberta Gabbath
School Head

May 23, 1996

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

Dear Milton:

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

(1) Restore the Hebrew Academy's name to the "Milton I. Schwartz Hebrew Academy."

(2) Amend the Hebrew Academy's Articles of Incorporation to restore its former name of the "Milton I. Schwartz Hebrew Academy."

(3) Restore the marker in front of the Hebrew Academy identifying it as the "Milton I. Schwartz Hebrew Academy."

(4) Change the Hebrew Academy's formal stationary to include its full name, the "Milton I. Schwartz Hebrew Academy", in a form consistent with this letterhead and include our full name on future brochures.

(5) Where practicable, display the full name of the Hebrew Academy. In print advertising of sufficient size, the full name of the school will be displayed in a design consistent with the letterhead. Where impractical by reason of size, utilization of voice media, informal correspondence, informal memoranda, etc., and in answering the telephone, the school will utilize the shorthand version of its name as Hebrew Academy or simply, its logo. You can rest assured it is the intention of the School Head and the school's Officers and Directors that the utilization of the school's full name will be consistent with an intent to recognize and honor your contribution and assistance.

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

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

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

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

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

Very truly yours,

Dr. Roberta Sabbath
School Head

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The Milton I. Schwartz
HEBREW ACADEMY
9700 West Hillpointe Road
Las Vegas, Nevada 89134
Tel: (702) 255-4500 Fax: (702) 255-7232

Dr. Roberta Sabbath
School Head

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EXHIBIT "11"

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Dear Friends:

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

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

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

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

Enjoy the Evening!

Dr. Miriam and Sheldon G. Adelson

Toni and Victor Chaltiel

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EXHIBIT 4

SECOND CODICIL

TO

LAST WILL & TESTAMENT

AND

FIRST CODICIL

OF

MILTON I. SCHWARTZ
(Will dated November 19, 1993)
(First Codicil dated April 5, 1996)

I, **MILTON I. SCHWARTZ**, declare that I am a resident of Las Vegas, County of Clark, State of Nevada, and that this is the Second Codicil to my Last Will and Testament dated November 19, 1993 and my First Codicil dated April 5, 1996.

DECLARATIONS & RECITALS:

WHEREAS, my currently effective Last Will & Testament was executed on November 19, 1993, in Las Vegas, Nevada (herein "Will").

WHEREAS, my currently effective First Codicil was executed on April 5, 1996, in Las Vegas, Nevada (herein "First Codicil").

WHEREAS, I hereby ratify, confirm and republish my Will dated November 19, 1993, in every respect. If any part of the Will is inconsistent with this Second Codicil, this Second Codicil shall govern.

WHEREAS, I hereby ratify, confirm and republish my First Codicil dated April 5, 1996, in every respect. If any part of the First Codicil is inconsistent with this Second Codicil, this Second Codicil shall govern.

NOW, THEREFORE, I, MILTON I. SCHWARTZ, being of sound and disposing mind and memory and having heretofore executed my Last Will & Testament, bearing the date of November 19, 1993 as well as my First Codicil dated April 5, 1996, and not acting under duress, menace, fraud or undue influence of any person, do hereby make, publish and declare the following as a Codicil to my Will and First Codicil:

I.

I hereby cancel and revoke the gift to the Jewish Federation of Las Vegas described in my First Codicil and that certain letter of August 11, 1995 addressed to Ronni Epstein. In the place of the gift described in that certain letter of August 11, 1995 and my First Codicil, I hereby add the following Section 2.5 to Article "Second" of my Will entitled "Bequests".

2.5. **Jewish Community Day School and Milton I. Schwartz Hebrew Academy**

I hereby give, devise and bequeath the sum of $500,000.00 to the Jewish Community Day School and the Milton I. Schwartz Hebrew Academy to be split equally among the two schools ($250,000.00 to each), subject to the following provisions:

A. This gift is to be in the form of securities (stocks, bonds or cash) with the largest profit so that my estate can take advantage of the low cost basis and increased price. The sum is to be divided between the two named Jewish educational institutions according to a rational formula that takes into consideration the factors relevant at the time that this bequest takes effect. The division shall be made by A. Jonathan Schwartz or his nominee, whose decision shall be binding and not subject to appeal. A Jonathan Schwartz shall be a member of whichever committee or committees is responsible for investment and distribution of these funds.

B. If the two named recipients have merged at the time that this bequest takes effect, the entire sum of $500,000 shall go to the merged entity.

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C. (1) If either of the two named recipients shall have ceased to exist at the time that this bequest takes effect, the sum of $250,000 shall go to the Jewish Federation of Las Vegas or its successor organization, to be used for the express purpose of educating Jewish Children.

(2) I hereby direct that the funds distributed from the proceeds of my $500,000 gift be used only in the form of scholarships to be distributed by The Jewish Community Day School and the Milton I. Schwartz Hebrew Academy or their respective successor organizations in order to educate Jewish Children only.

(3) If both the named recipients have ceased to exist at the time that this bequest takes effect, the entire sum of $500,000 shall go to the Jewish Federation of Las Vegas or its successor organization.

(4) In the event that Provision C (1) or C (3) becomes effectuated, the Jewish Federation, or its successor organization, is hereby instructed to use the sum received in order to support Jewish education for young Jewish people within the Las Vegas Jewish Community. The Jewish Federation is authorized to carry out this purpose in any manner that it deems appropriate, including using the sum received to create an endowment fund named the Milton I. Schwartz Endowment Fund that will distribute its assets in a manner that the Jewish Federation deems appropriate to carry out my stated charitable intent.

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I subscribe my name to this Second Codicil this 19 day of August, 1999.

MILTON I. SCHWARTZ

On the date last above written, **MILTON I. SCHWARTZ** declared to us, the undersigned, that this instrument, consisting of six pages, including the page signed by us as witnesses, was his Second Codicil to Last Will and Testament, and requested that we act as witnesses to it. He thereupon signed this Second Codicil in our presence, all of us being present at the same time. We now, at his request, in his presence and in the presence of each other, subscribe our names as witnesses.

MARC C. CURDIN
1870 Jasmine Trg Ct., residing at Las Vegas, NV. 89117
Las Vegas, Nevada

Peggy Fromhold, residing at 2700 W. Sahara, 5th Flr LV NV 89102
Las Vegas, Nevada

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

That they witnessed the execution of the within Second Codicil to Last Will and Testament, dated November 19, 1993, and First Codicil dated April 5, 1996 of the within named Testator, **MILTON I. SCHWARTZ**, that the Testator subscribed the Second Codicil and declared the same to be the Second Codicil to his Last Will and Testament, dated November 19, 1993, in their presence; that they thereafter subscribed the same as witnesses in the presence of the Testator and in the presence of each other and at the request of the Testator; that the Testator at the time of the execution of the First Codicil appeared to them to be of full age and of sound mind and memory; and that they make this Affidavit at the request of the Testator.

SUBSCRIBED and SWORN to before me
this 19th day of August, 1999.

KATHRYN D. HARDESTY
Notary Public - Nevada
My appt. exp. July 30, 2000
No. 92-0360-1

NOTARY PUBLIC in and for said County and State.

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EXHIBIT 5

2018 WL 1036893
Only the Westlaw citation is currently available.

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

Court of Appeals of Nevada.

In the MATTER OF the ESTATE
OF Grace E. KENNEDY, Deceased.
Ellen Muttitt, f/k/a Ellen Childers, as Court Appointed Personal Representive of the Estate of Grace E. Kennedy, Appellant,
v.
Joseph Rosa, Respondent.

No. 72435
|
FEBRUARY 08, 2018

Attorneys and Law Firms

Kehoe & Associates

Goodsell & Olsen

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ORDER OF AFFIRMANCE

***1** Appellant Ellen Muttitt, F/K/A Ellen Childers as court-appointed personal representative of the Estate of Grace E. Kennedy appeals the district court's Order Concerning Counterpetition to Declare Assets and for Approval of Funeral Expenses and Order Denying Motion Pursuant to EDCR 2.24, NRCP 52, and 59 Regarding Order Concerning Counterpetition to Declare Assets and for Approval of Funeral Expenses. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

Grace E. Kennedy and Respondent Joseph Rosa started dating in 1975.[1] They never married. In 1994, Rosa bought a home in Las Vegas with his own money. He put title to the home in his and Kennedy's names as joint tenants with the right of survivorship. Rosa thought Kennedy would outlive him and he wanted to make sure she had a place to stay. In 2012, he was worried that if Kennedy outlived him, Kennedy's nieces and nephews would inherit his home. With the belief he was protecting his estate, Rosa executed a deed conveying his one-half interest in the home to his living trust. In 2013, Kennedy passed away. Rosa filed an Affidavit of Death of Joint Tenant to claim his right of survivorship. The Clark County Assessor's Office rejected the claim because it said the 2012 deed severed the joint tenancy and created a tenancy in common. Rosa petitioned to be the administrator of what he thought was Kennedy's intestate estate. One of her nephews came forward with a will[2] and Kennedy's niece filed an action in court on behalf of Kennedy's estate to account for the estate's half of the has Vegas home. Rosa opposed the motion arguing, in part, that he never intended to give up his right of survivorship. He also requested that the estate reimburse him for Kennedy's funeral and wake expenses.

In response to the estate's claim for half the home, the district court held an evidentiary hearing and subsequently ordered the 2012 deed rescinded based on Rosa's unilateral mistake when he executed it. The court also ordered the estate to reimburse Rosa for Kennedy's funeral and wake expenses. Appellant filed a Motion Pursuant to EDCR 2.24, NRCP 52, and 59 Regarding the Order Concerning Counterpetition to Declare Assets and for Approval of Funeral Expenses. The district court held a motion hearing on the second motion and then summarily denied it.

The evidence supports the district court's finding that Rosa did not intend to give up his right of survivorship

"A district court's findings [of fact] will not be disturbed unless they are clearly erroneous and are not based on substantial evidence." *Hannam v. Brown,* 114 Nev. 350, 357, 956 P.2d 794, 799 (1998). "Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion." *Mason-McDuffie Real Estate, Inc. v. Villa Fiore Dev., LLC,* 130 Nev. ——, ——, 335 P.3d 211, 214 (2014) (internal citation and quotation marks omitted). The *Hannam* court applied an abuse of discretion standard of review to the district court's conclusions of law based on its findings of fact. *Hannam,* 114 Nev. at 358, 956 P.2d at 799.

***2** At issue is whether the district court properly concluded that Rosa made a unilateral **mistake** based on the district court's findings of fact. "[A] donor's unilateral **mistake** in executing a **donative** transfer may allow a donor to obtain relief from that transfer if the **mistake** and

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the donor's intent are proven by clear and convincing evidence." *Monzo v. Eighth Judicial Dist. Court (In re Irrevocable Trust Agreement of 1979)*, 130 Nev. 597, 607, 331 P.3d 881, 888 (2014).[3] The emphasis is on determining the donor's intent and whether a **mistake** was made at the time of the **donative** transfer, which is a job for the fact-finder. *Id.* at 607-608, 331 P.3d at 888.

The district court made findings of fact that Rosa intended to provide a place for Kennedy given her "failing health and mental capacity," and when he transferred his interest into his trust, he thought his interest in the home would be held for Kennedy's benefit if she survived Rosa, but Rosa did not intend "to give up his right of survivorship to the [r]esidence in the event that Decedent did not survive him." Rosa was the sole witness to testify at the evidentiary hearing and was 100 years old at the time. He testified consistently that he did not want his home to go to Kennedy's niece and nephews. He changed his deed because he was afraid that if Kennedy survived him, that her heirs would inherit his home. He also testified that he did not know what a joint tenancy with the right of survivorship meant and if his attorney explained it, he did not remember. Rosa's testimony is evidence that he intended to maintain control of his estate because he wanted to ensure he could exclude Kennedy's heirs from inheriting the home. His testimony that he did not understand a joint tenancy and right of survivorship or remember if he was explained their legal effect adds further support that he did not intend to give up a right that gave him control of the home. The focus of the *Monzo* analysis is on the donor's intent at the time of the transfer, which is a job for the fact-finder. *Monzo*, 130 Nev. at 607-608, 331 P.3d at 888. Under the applicable law and standard of review, we conclude that there was substantial evidence to support the district court's finding that Rosa did not intend to give up his right of survivorship. Based on the evidence supporting this finding, the district court did not err in concluding that Rosa made a unilateral mistake when he executed the 2012 deed.

The district court did not err by ordering the estate to reimburse Rosa for Kennedy's funeral and wake expenses

The district court's conclusions of law, including statutory interpretation, are reviewed de novo. *In re Guardianship of Hailu*, 131 Nev. ——, ——, 361 P.3d 524, 528 (2015). NRS 147.195(2) provides: "The debts and charges of the estate must be paid in the following order: ... 2. Funeral expenses." "It is well settled in Nevada that words in a statute should be given their plain meaning unless this violates the spirit of the act." *In re Estate of Thomas*, 116 Nev. 492, 495, 998 P.2d 560, 562 (2000) (quoting *McKay v. Bd. of Supervisors,* 102 Nev. 644, 648, 730 P.2d 438, 441 (1986)). The term "funeral expenses" is defined as a "necessary[y] and reasonabl[e]" expense for burial, "including the funeral ... and a visitation (or wake)." *Funeral Expense,* Black's Law Dictionary (10th ed. 2014). When reviewing funeral expenses, the Nevada Supreme Court has analyzed whether it was necessary or reasonable. *See In re Taylor's Estate*, 61 Nev. 68, 76-77, 114 P.2d 1086, 1090 (1941) (reviewing the totality of the circumstances to conclude that the executor did not act in bad faith and instead acted as a reasonable person under similar circumstances); *In re Millenovich's Estate*, 5 Nev. 161, 182 (1869) ("With respect to funeral expenses, the Courts generally take into consideration all the circumstances of each case, and when executors have acted with ordinary prudence, they are not held personally liable.").

***3** Accordingly, the focus is on whether Rosa acted reasonably and in good faith based on the circumstances. The evidence supports the district court's finding that Rosa held a wake to honor Kennedy's wishes that he throw a party in celebration of her life. Additionally, Rosa testified that he never initially asked Kennedy's niece or nephews for money for the funeral or wake because he thought it was his duty as Kennedy's significant other and he did not know that the family was supposed to pay for those expenses. Thus, the evidence supports that the funeral expenses, including those for the wake, were reasonable and in good faith based on the circumstances and the district court did not err by ordering the estate to reimburse Rosa. Accordingly, we

AFFIRM the judgment of the district court.[4]

GIBBONS, J., concurring:

I agree with the outcome reached by the majority as this court is constrained by the factual findings announced by the district court. If the appellant had effectively challenged Rosa's evidence regarding his claim of unilateral mistake below, the outcome of this case may have been different.

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Rosa was the sole witness to testify at the evidentiary hearing. While he testified consistently that he did not want his home to go to Kennedy's niece and nephews, this testimony primarily evidences his intent to prevent Kennedy's heirs from inheriting the home, and not a unilateral mistake. Viewed with the benefit of hindsight, it appears that the real mistake was made in 1994 when Rosa put the title to the home in his and Kennedy's names as joint tenants with right of survivorship, instead of creating a life estate tenancy for Kennedy. Rosa's actions in 2012 to convey his 50 percent interest in the home as a tenant in common to his trust may have been an attempt to partially undo the 1994 mistake.

Rosa apparently made the 2012 change with the assistance of legal counsel, which could cast doubt on the conclusion that he made a unilateral mistake. *See* RPC 1.4(b) ("A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."); *cf. Monzo*, 130 Nev. at 608-09, 331 P.3d at 889 (concluding there were genuine issues of material fact to preclude partial summary judgment when the attorney *testified* as to his review with client of the condo transfer to trust and his belief as to what client understood and intended when the transfer was made into trust for another).

Rosa's counsel, however, did not testify. Rosa argues on appeal that he did not have to call his counsel as a witness to meet his evidentiary burden. I agree. The appellant should have countered Rosa's testimony with evidence.

We review the record as it is. We are required to grant deference to the district court's findings of fact that Rosa did not intend to abandon his right of survivorship. This is a fact-based conclusion that Rosa did not intend to give up his joint tenancy rights, and, as a result, made a unilateral mistake. Therefore, the district court's order must be affirmed.

All Citations

Slip Copy, 2018 WL 1036893

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Footnotes

1 We do not recount the facts except as necessary to our disposition.

2 Kennedy's will names her niece, who is the appellant, and the two nephews at issue here as her beneficiaries. She left nothing to Rosa in her will. One of the nephews at issue here was named administrator of the will.

3 Appellant contends that *Monzo* "does not apply as interpreted" by the district court, in part, because there was no gift from Rosa to Kennedy. Appellant's interpretation of *Monzo* is inapposite. *Monzo* provides an analysis for courts to determine the donor's intent at the time of transfer, and "[w]hether a donee knew of or caused a mistake is likely irrelevant." *Monzo*, 130 Nev. at 603, 331 P.3d at 885.

4 We have considered appellant's remaining arguments and conclude they are unpersuasive.

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TO BE SUBMITTED TO THE COURT FOR
IN CAMERA REVIEW

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EXHIBIT 6

TO BE SUBMITTED TO THE COURT FOR

IN CAMERA REVIEW

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EXHIBIT 7

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EXHIBIT 8

PRIME INTEREST RATE

NRS 99.040(1) requires:
*"When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1, or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due, . . . "**
Following is the prime rate as ascertained by the Commissioner of Financial Institutions:

January 1, 2018	4.50%	July 1, 2018	5.00%
January 1, 2017	3.75%	July 1, 2017	4.25%
January 1, 2016	3.50%	July 1, 2016	3.50%
January 1, 2015	3.25%	July 1, 2015	3.25%
January 1, 2014	3.25%	July 1, 2014	3.25%
January 1, 2013	3.25%	July 1, 2013	3.25%
January 1, 2012	3.25%	July 1, 2012	3.25%
January 1, 2011	3.25%	July 1, 2011	3.25%
January 1, 2010	3.25%	July 1, 2010	3.25%
January 1, 2009	3.25%	July 1, 2009	3.25%
January 1, 2008	7.25%	July 1, 2008	5.00%
January 1, 2007	8.25%	July 1, 2007	8.25%
January 1, 2006	7.25%	July 1, 2006	8.25%
January 1, 2005	5.25%	July 1, 2005	6.25%
January 1, 2004	4.00%	July 1, 2004	4.25%
January 1, 2003	4.25%	July 1, 2003	4.00%
January 1, 2002	4.75%	July 1, 2002	4.75%
January 1, 2001	9.50%	July 1, 2001	6.75%
January 1, 2000	8.25%	July 1, 2000	9.50%
January 1, 1999	7.75%	July 1, 1999	7.75%
January 1, 1998	8.50%	July 1, 1998	8.50%
January 1, 1997	8.25%	July 1, 1997	8.50%
January 1, 1996	8.50%	July 1, 1996	8.25%
January 1, 1995	8.50%	July 1, 1995	9.00%
January 1, 1994	6.00%	July 1, 1994	7.25%
January 1, 1993	6.00%	July 1, 1993	6.00%
January 1, 1992	6.50%	July 1, 1992	6.50%
January 1, 1991	10.00%	July 1, 1991	8.50%
January 1, 1990	10.50%	July 1, 1990	10.00%
January 1, 1989	10.50%	July 1, 1989	11.00%
January 1, 1988	8.75%	July 1, 1988	9.00%
January 1, 1987	Not Available	July 1, 1987	8.25%

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*** Attorney General Opinion No. 98-20:**

If clearly authorized by the creditor, a collection agency may collect whatever interest on a debt its creditor would be authorized to impose. A collection agency may not impose interest on any account or debt where the creditor has agreed not to impose interest or has otherwise indicated an intent not to collect interest. Simple interest may be imposed at the rate established in NRS 99.040 from the date the debt becomes due on any debt where there is no written contract fixing a different rate of interest, unless the account is an open or store accounts as discussed herein. In the case of open or store accounts, interest may be imposed or awarded only by a court of competent jurisdiction in an action over the debt.

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EXHIBIT 9

Total Amount, with Interest		Month	Year	Interest Rates	Adjusted Rates		Principal	Interest Amount through June 30, 2018	Total Amount through June 30, 2018	Total Interest	Total Amount
$ 2,830,523.71	Days since July 1st	July	2018	5	7.00%						
	194	January	2018	5	7.00%	7.00%		$ -	$ -	$ -	$ -
		July	2017	5	7.00%	14.00%		$ -	$ -	$ -	$ -
	Days in a Year	January	2017	5	7.00%	21.00%		$ -	$ -	$ -	$ -
	365	July	2016	5	7.00%	28.00%		$ -	$ -	$ -	$ -
		January	2016	5	7.00%	35.00%		$ -	$ -	$ -	$ -
	Days in Half Year	July	2015	5	7.00%	42.00%		$ -	$ -	$ -	$ -
	182.5	January	2015	5	7.00%	49.00%		$ -	$ -	$ -	$ -
		July	2014	5	7.00%	56.00%		$ -	$ -	$ -	$ -
		January	2014	5	7.00%	63.00%		$ -	$ -	$ -	$ -
		July	2013	5	7.00%	70.00%		$ -	$ -	$ -	$ -
		January	2013	5	7.00%	77.00%		$ -	$ -	$ -	$ -
		July	2012	5	7.00%	84.00%		$ -	$ -	$ -	$ -
		January	2012	5	7.00%	91.00%		$ -	$ -	$ -	$ -
		July	2011	5	7.00%	98.00%		$ -	$ -	$ -	$ -
		January	2011	5	7.00%	105.00%		$ -	$ -	$ -	$ -
		July	2010	5	7.00%	112.00%		$ -	$ -	$ -	$ -
		January	2010	5	7.00%	119.00%		$ -	$ -	$ -	$ -
		July	2009	5	7.00%	126.00%		$ -	$ -	$ -	$ -
		January	2009	5	7.00%	133.00%		$ -	$ -	$ -	$ -
		July	2008	5	7.00%	140.00%		$ -	$ -	$ -	$ -
		January	2008	5	7.00%	147.00%		$ -	$ -	$ -	$ -
		July	2007	5	7.00%	154.00%		$ -	$ -	$ -	$ -
		January	2007	5	7.00%	161.00%	$ 100,000.00	$ 80,500.00	$ 180,500.00	$ 84,220.55	$ 184,220.55
		July	2006	5	7.00%	168.00%		$ -	$ -	$ -	$ -
		January	2006	5	7.00%	175.00%	$ 100,000.00	$ 87,500.00	$ 187,500.00	$ 91,220.55	$ 191,220.55
		July	2005	5	7.00%	182.00%		$ -	$ -	$ -	$ -
		January	2005	5	7.00%	189.00%	$ 9,622.00	$ 9,092.79	$ 18,714.79	$ 9,450.78	$ 19,072.78
		July	2004	5	7.00%	196.00%		$ -	$ -	$ -	$ -
		January	2004	5	7.00%	203.00%	$ 135,277.00	$ 137,306.16	$ 272,583.16	$ 142,339.20	$ 277,616.20
		July	2003	5	7.00%	210.00%		$ -	$ -	$ -	$ -
		January	2003	5	7.00%	217.00%	$ 51,323.00	$ 55,685.46	$ 107,008.46	$ 57,594.95	$ 108,917.95
		July	2002	5	7.00%	224.00%		$ -	$ -	$ -	$ -
		January	2002	5	7.00%	231.00%	$ 57,130.00	$ 65,985.15	$ 123,115.15	$ 68,110.70	$ 125,240.70
		July	2001	5	7.00%	238.00%		$ -	$ -	$ -	$ -
		January	2001	5	7.00%	245.00%	$ 88,535.00	$ 108,455.38	$ 196,990.38	$ 111,749.36	$ 200,284.36
		July	2000	5	7.00%	252.00%		$ -	$ -	$ -	$ -
		January	2000	5	7.00%	259.00%	$ 7,400.00	$ 9,583.00	$ 16,983.00	$ 9,858.32	$ 17,258.32
		July	1999	5	7.00%	266.00%		$ -	$ -	$ -	$ -
		January	1999	5	7.00%	273.00%	$ 26,600.00	$ 36,309.00	$ 62,909.00	$ 37,298.67	$ 63,898.67
		July	1998	5	7.00%	280.00%		$ -	$ -	$ -	$ -
		January	1998	5	7.00%	287.00%	$ 22,500.00	$ 32,287.50	$ 54,787.50	$ 33,124.62	$ 55,624.62
		July	1997	5	7.00%	294.00%		$ -	$ -	$ -	$ -
		January	1997	5	7.00%	301.00%	$ 2,100.00	$ 3,160.50	$ 5,260.50	$ 3,238.63	$ 5,338.63
		July	1996	5	7.00%	308.00%		$ -	$ -	$ -	$ -
		January	1996	5	7.00%	315.00%		$ -	$ -	$ -	$ -
		July	1995	5	7.00%	322.00%		$ -	$ -	$ -	$ -
		January	1995	5	7.00%	329.00%		$ -	$ -	$ -	$ -
		July	1994	5	7.00%	336.00%		$ -	$ -	$ -	$ -
		January	1994	5	7.00%	343.00%		$ -	$ -	$ -	$ -
		July	1993	5	7.00%	350.00%		$ -	$ -	$ -	$ -
		January	1993	5	7.00%	357.00%		$ -	$ -	$ -	$ -
		July	1992	5	7.00%	364.00%		$ -	$ -	$ -	$ -
		January	1992	5	7.00%	371.00%	$ 69.66	$ 129.22	$ 198.88	$ 131.81	$ 201.47
		July	1991	5	7.00%	378.00%		$ -	$ -	$ -	$ -
		January	1991	5	7.00%	385.00%	$ 150.00	$ 288.75	$ 438.75	$ 294.33	$ 444.33
		July	1990	5	7.00%	392.00%		$ -	$ -	$ -	$ -
		January	1990	5	7.00%	399.00%	$ 9,000.00	$ 17,955.00	$ 26,955.00	$ 18,289.85	$ 27,289.85
		July	1989	5	7.00%	406.00%		$ -	$ -	$ -	$ -
		January	1989	5	7.00%	413.00%	$ 500,900.00	$ 1,034,358.50	$ 1,535,258.50	$ 1,052,994.72	$ 1,553,894.72
		July	1988	5	7.00%	420.00%		$ -	$ -	$ -	$ -
		January	1988	5	7.00%	427.00%		$ -	$ -	$ -	$ -
					Totals		$ 1,110,606.66			$ 1,719,917.05	$ 2,830,523.71
							Principal			Interest	Amount

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EXHIBIT 10

WILLIAM L. COULTHARD, ESQ.
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Telephone: (702) 385-6000
Facsimile: (702) 385-6001
Counsel for Plaintiff
IDAHO STATE UNIVERSITY FOUNDATION, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

IDAHO STATE UNIVERSITY FOUNDATION, INC., an Idaho non-profit corporation, Plaintiff, vs. BEVERLY ROGERS, both individually and as Successor Co-Trustee of the JAMES E. ROGERS TRUST dated October 9, 1997 as last amended and restated on May 28, 2014.; RORY REID, as Successor Co-Trustee of the JAMES E. ROGERS TRUST dated October 9, 1997 as last amended and restated on May 28, 2014; TIMOTHY YOCK, as Successor Co-Trustee of the JAMES E. ROGERS TRUST dated October 9, 1997 as last amended and restated on May 28, 2014; INTERMOUNTAIN WEST COMMUNICATIONS, LLC, and DOES I-X, inclusive, Defendants.	Case No.: A-15-723710-C Dept. No.: XX **FIRST AMENDED COMPLAINT FOR DAMAGES** (***Arbitration Exempt: Damages in Excess of $50,000.00***)

COMES NOW, Plaintiff IDAHO STATE UNIVERSITY FOUNDATION, INC., an Idaho non-profit corporation, by and through its attorneys of record, KEMP, JONES & COULTHARD, LLP, and complains and alleges against the above-named Defendants as

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Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

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follows:

PARTIES AND JURISDICTION

1. At all relevant times herein, Plaintiff IDAHO STATE UNIVERSITY FOUNDATION, INC. (hereinafter, "ISU Foundation") was and is a non-profit corporation formed and governed under the laws of Idaho.

2. Upon information and belief, the James E. Rogers Trust dated October 9, 1997 as last amended and restated on May 28, 2014, (hereinafter, "the Rogers Trust") is a trust formed and governed under the laws of the State of Nevada.

3. At all relevant times herein, Defendant BEVERLY ROGERS, both individually and as Successor Co-Trustee to the Rogers Trust, was a resident of Nevada and was married to James E. Rogers (hereinafter "Jim Rogers"), deceased, during the relevant events. She also presently serves as Successor Co-Trustee of the James E. Rogers Trust dated October 9, 1997 as last amended and restated on May 28, 2014.

4. At all relevant times herein, Defendant RORY REID, in his capacity as Successor Co-Trustee of the James E. Rogers Trust dated October 9, 1997 as last amended and restated on May 28, 2014, is and was a resident of Clark County, Nevada.

5. The ISU Foundation is informed and believes that at all relevant times herein, Defendant TIMOTHY YOCK, in his capacity as Successor Co-Trustee of the James E. Rogers Trust dated October 9, 1997 as last amended and restated on May 28, 2014, is and was a resident of Clark County, Nevada.

6. At all relevant times herein, Defendant INTERMOUNTAIN WEST COMMUNICATIONS, LLC, ("Intermountain West") is a limited liability company organized and operating pursuant to the laws of this state, and doing business within and subject to the jurisdiction of Clark County, Nevada.

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7. That the true names or capacities, whether individual, corporate, associate, or otherwise of Defendants DOES I through X, inclusive, are unknown to Plaintiff, who therefore sue said Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the Defendants designated herein as a DOE is responsible in some manner for the events and happenings herein referred to and thereby proximately caused damages to the Plaintiff as herein alleged; that Plaintiff will ask leave of this Court to amend this Complaint to insert the true names and capacities of said Defendants DOES I through X, inclusive, when same have been ascertained by Plaintiff, and to join such Defendants in this action.

8. Venue in this matter is appropriate as the ISU Foundation is informed and believes that the Rogers Trust is administered in in Clark County, Nevada and this Amended Complaint arises from Defendants' actions and business operations in Clark County, Nevada.

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GENERAL ALLEGATIONS

9. Jim and Beverly Rogers, as active supporters of education, were well known for making substantial financial contributions to various colleges and universities throughout the West.

10. Jim and Beverly Rogers extended their generosity and support of higher education through a gift of $25,000,000.00 to Idaho State University. At that time, it was the largest gift ever to the Idaho State University System.

11. Jim Rogers was a former member and President of the ISU Foundation Board of Directors, and Chairman of Idaho State University's first ever, and at the time the State of Idaho's largest ever, capital campaign which raised $150,000,000 for the benefit of the University.

12. The ISU Foundation was established in 1967 for the purpose of soliciting and receiving contributions, gifts, grants, devises or bequests of real or personal property from individuals, partnerships, associations, governmental bodies or public or private corporations for

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the benefit of the University. The ISU Foundation is governed by an independent Board of Directors, whose members and officers bring a wide range of experience, from business and industry and professional competence which serve the Institution.

13. The Mission of the ISU Foundation is to inspire voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of the Idaho State University System.

14. This action arises from the failure of the Rogers Trust, through its trustees, and Beverly Rogers, in an individual capacity, and/or Intermountain West, (collectively, "Defendants") to honor binding irrevocable commitments made by Jim and Beverly Rogers to the ISU Foundation in the total amount of $2,020,000.00 made for the construction of the Stephens Performing Arts Center and as partial consideration for the naming rights on the Center's black box theater (hereinafter, the "Stephens Performing Arts Center Binding Commitments").

15. The first of two $1,000,000.00 irrevocable pledges for the construction of the Stephens Performing Arts Center was confirmed in a May 12, 1999 correspondence from Jim Rogers stating in pertinent part:

> This letter is written for the purpose of confirming certain gifts and pledges already made by me and my family in writing and to further confirm certain pledges which have heretofore been made but have not yet been put in writing. These gifts and pledges are as follows:
> ...
>
> Performing Arts Center 1,000,000

A true and correct copy of Jim Rogers' correspondence dated May 12, 1999, is attached hereto as Exhibit "1."

16. The second $1,000,000.00 irrevocable pledge for the construction of the Stephens Performing Arts Center and naming rights on the black box theater was made and confirmed in correspondence dated March 20, 2000, wherein Jim Rogers stated that:

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> In as much as Beverly and I are very interested in seeing this project [the Performing Arts Center] completed, in addition to the one million we have already irrevocably pledged, Beverly and I would be willing to irrevocably pledge another one million to the project under the following terms and conditions.
>
> 1. That you obtain six additional one million dollar pledges from six individuals or business entities. It will not be acceptable to us that each million dollar pledge be made by more than one individual or business entity as Beverly and I are not willing to put up more than any other individual or business entity and it should take more than one person or entity to put up each one million, then there is no adequate support for the project and too many sources will have been used up to raise the additional six million.

A true and correct copy of Jim Rogers' correspondence dated March 20, 2000, is attached hereto as Exhibit "2."

17. The Stephens Performing Arts Center Binding Commitments were made by Jim and Beverly Rogers with the expectation that the ISU Foundation would rely on these Commitments to secure and help repay ISU Foundation procured institutional financing to construct the Stephens Performing Arts Center on the campus of Idaho State University.

18. In reliance on the Stephens Performing Arts Center Binding Commitments, the ISU Foundation secured financing to construct the Stephens Performing Arts Center on or about May 1, 2001.

19. On January 2, 2003, Jim Rogers reaffirmed and again irrevocably committed in writing to pay in total $2,020,000.00 for both the May 12, 1999 pledge and March 20, 2000 pledge for the construction of the Stephens Performing Arts Center. As part of the reaffirmation, Jim Rogers wrote that the $2,020,000.00 would be "[p]ayable over 10 years when the performing arts center is opened." A true and correct copy of the performing arts center pledge reaffirmation dated January 2, 2003, is attached hereto as Exhibit "3."

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20. Prior to making any payments on the Stephens Performing Arts Center Binding Commitments, and while remaining as the personal obligors to the ISU Foundation, Jim and Beverly Rogers assigned to Sunbelt Communications Company the duty and obligation to pay $2,020,000.00 over 10 years to the ISU Foundation under the Stephens Performing Arts Center Binding Commitments.

21. The ISU Foundation is informed and believes that on or about September 2010 Sunbelt Communications Company was renamed Intermountain West Communications Company.

22. The ISU Foundation is informed and believes that on or about October 30, 2014, Intermountain West Communications Company was converted from a corporation to a limited liability company and renamed Intermountain West Communications, LLC.

23. ISU Foundation asserts and alleges that Intermountain West is owned, influenced, and managed by the Rogers Trust and/or Jim and Beverly Rogers. ISU Foundation further asserts and alleges that the Rogers Trust and/or Jim and Beverly Rogers used as their own Intermountain West's financial resources. The ISU Foundation asserts and alleges that the Rogers Trust and/or Jim and Beverly Rogers exerted such control over Intermountain West that Intermountain West was the alter-ego of the Rogers Trust and Jim and Beverly Rogers.

24. Beginning on or about August 2004, Jim and Beverly Rogers and the Rogers Trust through Sunbelt Communications Company and then later Intermountain West sent regular monthly installment payments in the amount of $16,830.00 to the ISU Foundation in partial satisfaction of the Stephens Performing Arts Center Binding Commitments.

25. The ISU Foundation relied on these monthly installment payments to service the institutional lender bond taken out by the ISU Foundation in order to finance the construction of the Stephens Performing Arts Center.

26. The Stephens Performing Arts Center opened on or around April 1, 2004.

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27. In exchange for the Stephens Performing Arts Center Binding Commitments, among other consideration, the Stephens Performing Arts Center was constructed and the Center's black box theater was named the *James E. and Beverly Rogers Black Box Theatre*.

28. Regretfully, Jim Rogers died on or around June 14, 2014.

29. Monthly installment payments on the Stephens Performing Arts Center Binding Commitments were paid through December 2014. No monthly installment payments from Defendants have been received by the ISU Foundation in 2015.

30. As result of not receiving monthly installment payments on the Stephens Performing Arts Center Binding Commitments in 2015, the ISU Foundation sent a Creditor Claim to counsel for the Rogers Trust on February 17, 2015, for the balance remaining due on the irrevocable Stephens Performing Arts Center Binding Commitments, which as of the date of the Claim was $1,062,450.00.

31. On July 1, 2015, counsel for the Rogers Trust sent notice to the ISU Foundation acknowledging its receipt and review of the ISU Foundation's Creditor Claim and denying the Creditor Claim.

32. The ISU Foundation is informed and believes and thereupon alleges that Jim and Beverly Rogers, the Rogers Trust, and/or Intermountain West have an obligation to honor the Stephens Performing Arts Center Binding Commitments.

33. The ISU Foundation is now required to pursue this action in an effort to collect the unpaid outstanding balance of the Defendants' Stephens Performing Arts Center Binding Commitments.

///

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FIRST CLAIM FOR RELIEF

(Breach of Contract)

34. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as though fully set forth herein.

35. Jim and Beverly Rogers and/or the Rogers Trust entered into a valid and binding agreement on May 12, 1999 to pay the ISU Foundation $1,000,000.00 for the construction of the Stephens Performing Arts Center and naming rights on the Center's black box theater.

36. Jim and Beverly Rogers and/or the Rogers Trust entered into a second valid and binding agreement on March 20, 2000 to pay the ISU Foundation an additional $1,000,000.00 for the construction of the Stephens Performing Arts Center and naming rights on the Center's black box theater. Jim and Beverly Rogers and/or the Rogers Trust's total irrevocable commitments to the ISU Foundation for the construction of the Stephens Performing Arts Center and naming rights on the Center's black box theater was in the amount of $2,020,000.00.

37. In exchange for the Stephens Performing Arts Center Binding Commitments, among other consideration, the ISU Foundation commenced and completed the construction of the Stephens Performing Arts Center and the Center's black box theater was named the *James E. and Beverly Rogers Black Box Theatre*.

38. Prior to making any payments, Jim and Beverly Rogers and/or the Rogers Trust, and while remaining primarily responsible for the obligation, assigned to Sunbelt Communications Company the duty and obligation to pay $2,020,000.00 over 10 years to the ISU Foundation under the Stephens Performing Arts Center Binding Commitments.

39. The ISU Foundation is informed and believes that on or about September 2010 Sunbelt Communications Company was renamed Intermountain West Communications Company.

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40. The ISU Foundation is informed and believes that on or about October 30, 2014, Intermountain West Communications Company was converted from a corporation to a limited liability company and renamed Intermountain West Communications, LLC.

41. Beginning on or about August 2004, Sunbelt Communications Company and subsequently Intermountain West sent regular monthly installment payments in the amount of $16,830.00 to the ISU Foundation in partial satisfaction of the Stephens Performing Arts Center Binding Commitments.

42. Following the passing of Jim Rogers, Intermountain West continued to make these monthly payments on the Stephens Performing Arts Center Binding Commitments thereby acknowledging the continuing validity and obligation of the Defendants to fulfill the Stephens Performing Arts Center Binding Commitments.

43. Defendants breached these agreements by failing to make the remaining $1,062,450.00 in payments.

44. The ISU Foundation fully performed, or performance was excused, and all conditions precedent were satisfied under both the May 12, 1999 and March 20, 2000 valid and binding agreements.

45. As a direct, proximate, and foreseeable cause thereof, the ISU Foundation sustained damages in excess of $10,000.00 as a result of the Defendants' breach of the Stephens Performing Arts Center Binding Commitments.

46. As a direct and proximate result of the Defendants' breach of contract, the ISU Foundation has been required to retain the service of an attorney to commence this action and is entitled to its attorney's fees and costs of suit in this matter.

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SECOND CLAIM FOR RELIEF

(Promissory Estoppel)

47. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as though fully set forth herein.

48. Jim and Beverly Rogers irrevocably promised to pay the ISU Foundation a total of $2,020,000.00 for the construction of the Stephens Performing Arts Center and naming rights on the Center's black box theater.

49. In reasonable reliance on Jim and Beverly Rogers irrevocable promises to pay the ISU Foundation a total of $2,020,000.00 for the construction of the Stephens Performing Arts Center and naming rights on the Center's black box theater, the ISU Foundation secured institutional financing to its detriment to construct the Stephens Performing Arts Center on the campus of Idaho State University.

50. Sunbelt Communications Company and/or Intermountain West sent regular monthly installment payments in the amount of $16,830.00 to the ISU Foundation in partial satisfaction of the Stephens Performing Arts Center Binding Commitments.

51. Following the passing of Jim Rogers, Defendants continued to make these monthly payments on the Stephens Performing Arts Center Binding Commitments thereby acknowledging the continuing validity and obligation of the Rogers Trust to fulfill the Stephens Performing Arts Center Binding Commitments.

52. The ISU Foundation reasonably relied on the monthly installment payments sent by Defendants to service the bond taken out in order to finance the construction of the Stephens Performing Arts Center.

53. Defendants breached these agreements by failing to make the remaining $1,062,450.00 in payments.

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54. As a direct, proximate, and foreseeable cause thereof, the ISU Foundation sustained damages in excess of $10,000.00 as a result of the Defendants' breach of the Stephens Performing Arts Center Binding Commitments.

55. As a direct and proximate result of the Defendants' breach of contract, the ISU Foundation has been required to retain the service of an attorney to commence this action and is entitled to its attorney's fees and costs of suit in this matter.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as follows:

1. For compensatory damages in excess of $10,000 and according to proof;
2. For any and all pre- and post-judgment interest allowed under the law;
3. For its reasonable attorney's fees and costs of suit associated herein; and
4. For such other and further relief as the Court deems just and proper.

DATED this 25th day of May, 2017.

KEMP, JONES & COULTHARD, LLP

By _____
WILLIAM L. COULTHARD, ESQ. (#3927)
JOSHUA D. CARLSON, ESQ. (#11781)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on the 5 day of May, 2017, the foregoing **FIRST AMENDED COMPLAINT FOR DAMAGES** was served on the following person(s) via District Court's CM/ECF electronic filing system.

An employee of Kemp, Jones & Coulthard, LLP

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EXHIBIT 1

NBC CHANNEL 3, KVBC
Valley Broadcasting Company
1500 Foremaster Lane
Las Vegas, Nevada 89101
(702) 642-3333

NBC CHANNEL 4, KRNV
Sierra Broadcasting Company
1790 Vassar Street
Reno, Nevada 89502
(775) 322-4444

NBC CHANNEL 6, KPVI
Oregon Trail Broadcasting Company
902 East Sherman Street
Pocatello, Idaho 83201
(208) 232-6666

NBC CHANNEL 11, KYMA
Yuma Broadcasting Company
1385 South Pacific Avenue
Yuma, Arizona 85365
(520) 782-1111

NBC CHANNEL 12, KTVH
Beartooth Communications Company
100 West Lyndale Avenue, Suite A
Helena, Montana 59601
(406) 457-1212

NBC CHANNEL 10, KENV
Ruby Mountain Broadcasting Company
1025 Chilton Circle
Elko, Nevada 89801
(775) 777-8500

NBC CHANNEL 2, KJWY
Two Ocean Broadcasting Company
Post Office Box 7454
Jackson, Wyoming 83001
(307) 733-2066

NBC CHANNEL 7, KWNV
Winnemucca, Nevada - Operated By
Sierra Broadcasting Company
1790 Vassar Street
Reno, Nevada 89502
(775) 322-4444

FOX CHANNEL 35, KXTF
Falls Broadcasting Company
1051 Blue Lakes Boulevard North
Twin Falls, Idaho 83301
(208) 733-0035

May 12, 1999

Mr. Richard Garvin, President
Idaho State University Foundation
919 South Eighth Street
Administration Building
Campus Box 8050
Pocatello, Idaho 83209

Dear Mr. Garvin:

This letter is written for the purpose of confirming certain gifts and pledges already made by me and my family in writing and to further confirm certain pledges which have heretofore been made but have not yet been put in writing.

These gifts and pledges are as follows:

Mass Communications	$ 110,000
Mass Communications	500,000
Scholarships for the Kathryn Grayson Music Program	750,000
Faculty for the Kathryn Grayson Music Program	900,000
Performing Arts Center	1,000,000
Testamentary Gift*	20,000,000
Total	$23,260,000

*This testamentary gift will be subject to certain conditions that are still being developed by my family and estate planners. When those documents are completed, they

will be forwarded to you for filing with the Foundation.

Very truly yours,

James E. Rogers
President

JER:bc

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EXHIBIT 2

UNBELT
MUNICATIONS COMPANY

HANNEL 3, KVBC
Y BROADCASTING COMPANY
FIREMASTER LANE
EGAS, NEVADA 89101

HANNEL 4, KRNV
A BROADCASTING COMPANY
VARSAW
, NEVADA 89502

CHANNEL 11, KYMA
A BROADCASTING COMPANY
SOUTH PACIFIC AVENUE
A, ARIZONA 85365

CHANNEL 6, KPVI
ION TRAIL BROADCASTING COMPANY
EAST SHERIDAN
ATELLO, IDAHO 83201

CHANNEL 2, KJWY
OCEAN BROADCASTING COMPANY
T OFFICE BOX 7454
KSON, WYOMING 83001

CHANNEL 10, KFBW
Y MOUNTAIN BROADCASTING COMPANY
S CENTRE CIRCLE
D, OREGON 97601

CHANNEL 15, KXTF
LE... ...ADCASTING COMPANY
11 GLEN LAKES BOULEVARD NORTH
W FALLS, IDAHO 83301

March 20, 2000

Mike Mooney, President
Idaho State Foundation
Idaho State University
Performing Arts Center
Pocatello, Idaho

Dear Mike,

At our meeting in Boise on March 15, 2000, Ted Crumley reported that the Foundation had irrevocable pledges in addition to cash on hand which together totaled approximately $15,000,000. It was also agreed that for the project involving construction of the Performing Arts Center to go forward the total of both cash and irrevocable pledges would need to be in excess of $21,000,000

In as much as Beverly and I are very interested in seeing this project completed, in addition to the one million we have already irrevocably pledged, Beverly and I would be willing to irrevocably pledge another one million to the project under the following terms and conditions.

1. That you obtain six additional one million dollar pledges from six individuals or business entities. It will not be acceptable to us that each million dollar pledge be made by more than one individual or business entity as Beverly and I are not willing to put up more than any other individual or business entity and should it take more than one person or entity to put up each one million, then there is not adequate support for the project and too many sources will have been used up to raise the additional six million.

We have examined the financial capacities of what we believe to be seven or eight individuals who can fund this seven million along with us, and believe that if each and everyone of these people or business entities is not willing to participate, then Beverly and I see no reason we should participate.

This offer will remain open for 60 days and must be accepted in full by June 1. Any failure on the Foundation's part to raise the entire six million in addition to Beverly's and my pledge will release us from this pledge.

I will help you in anyway you desire to see to see this seven million dollars is raised.

Very Truly Yours,

James E. Rogers

James E. Rogers

JR/mbh

EXHIBIT 3

Idaho State University

James E. Rogers

Pledge	$2,020,000
Pledge balance at June 30, 2002	$2,020,000

Payable over 10 years when the performing arts center is opened

* The information is correct as presented.

* I/We have noted changes above.

James E. Rogers
Signature

1-2-2003
Date

Thank you!
Please return in the enclosed envelope no later than January 15, 2003.

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Joshua D. Carlson, Esq. (#11781)
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Telephone: (702) 385-6000
Facsimile: (702) 385-6001
Attorneys for The Dr. Miriam and Sheldon G. Adelson Educational Institute

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of MILTON I. SCHWARTZ, Deceased.	Case No.: 07-P-061300 Dept. No.: 26/Probate **THE DR. MIRIAM AND SHELDON G. ADELSON EDUCATIONAL INSTITUTE'S OPPOSITION TO THE ESTATE'S MOTION FOR POST-TRIAL RELIEF FROM JUDGMENT ON JURY VERDICT ENTERED OCTOBER 4, 2018.**

COMES NOW The Dr. Miriam and Sheldon G. Adelson Educational Institute (the "Adelson Campus" or the "School") by and through their undersigned counsel of record, J. Randall Jones, Esq. and Joshua D. Carlson Esq., of the law firm of KEMP, JONES & COULTHARD, LLP, hereby submits its Opposition to the Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered October 4, 2018.

This Opposition is made pursuant to and is based on the following points and authorities, supporting documentation, the papers and pleadings on file in this action, and any oral argument the Court may allow.

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I.

INTRODUCTION

The Estate contends the judgment should be amended, or alternatively, be granted a new trial for three primary reasons: 1) the Court improperly refused to give certain proposed jury instructions; 2) the jury disregarded certain jury instructions on contract formation; and 3) the Court's granting of summary judgment against the Estate on its breach of oral contract was in error. All of the Estate's arguments fail to demonstrate any error by the Court or manifest disregard by the jury of the instructions of the Court sufficient to meet the very high burden of proof necessary to amend the Judgment or grant a new trial.

The Estate's allegations regarding the Court's errors in refusing certain jury instructions are wholly without merit as the proposed instructions were not appropriate to give under the law. Even to the extent the Estate can make the argument that the requested jury instructions should have been admitted, which the Adelson Campus refutes, the Estate is not entitled to a new trial as any alleged errors are harmless in light of the jury verdict and the Estate cannot demonstrate that the failure to include these instructions would have changed the outcome.

While the Estate does not agree with the jury verdict, it was not impossible for the jury to conclude that the Estate had not sufficiently proven the essential elements of offer, acceptance, meeting of the minds, and consideration for there to be a valid and enforceable naming rights contract. At trial, the Adelson Campus vigorously contested the Estate's assertions regarding the existence of an enforceable naming rights contract, and presented evidence controverting each and every one of those allegations. Thus, under the evidence, and under the Court's instructions, the jury was fully empowered to conclude that the Estate had not proven the elements required to demonstrate the existence of a naming rights contract.

Lastly, the Court did not err when it granted summary judgment in the Adelson Campus' favor on the estate's breach of oral contract claim. The Estate's remaining contentions about its trial strategy being prejudiced by the Court's decision is not only unmeritorious, but ignores the Estate's own arguments and testimony of its witnesses at trial. Moreover, any alleged error by the Court as to the

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Estate's breach of oral contract claim is harmless based on the jury's finding that Milton Schwartz did not have a naming rights contract with the School.

For these reasons, the jury verdict must be upheld and the Estate's request to amend the Judgment or receive a new trial must be denied in its entirety.

II.

LEGAL STANDARD

With respect to the grounds for a new trial, NRCP 59 provides, in pertinent part:

> A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes or grounds materially affecting the substantial rights of an aggrieved party; (1) Irregularity in the proceedings of the court, jury, master, or adverse party, or any order of the court, or master, or abuse of discretion by which either party was prevented from having a fair trial; (2) Misconduct of the jury or prevailing party; (3) Accident or surprise which ordinary prudence could not have guarded against; (4) Newly discovered evidence material for the party making the motion which the party could not, with reasonable diligence, have discovered and produced at trial; (5) Manifest disregard by the jury of the instructions of the court; (6) Excessive damages appearing to have been given under the influence of passion or prejudice; or (7) Error in law occurring at the trial and objected to by the party making the motion.

NRCP 59(a). The Nevada Supreme Court has stated that the purpose of NRCP 59 is to preclude a trial court from substituting its view of the evidence for that of a jury in a case where the losing party is not entitled to judgment as a matter of law. *See Fox v. Cusick*, 91 Nev. 218, 219-220, 533 P.2d 466, 467 (1975).

Here, the Court must not substitute its own opinion into the facts of this case in place of the jury's, which had the opportunity to weigh the credibility of witnesses. It is the "jury's function is to be the final arbiter of truth based upon the evidence submitted." *Krause Inc. v. Little*, 117 Nev. 929, 936, 34 P.3d 566, 570 (2001). "**Where conflicting evidence exists, all favorable inferences must be drawn towards the prevailing party**". *Frost v. Tab Contractors, Inc.*, 126 Nev. 711, 367 P.3d 770 (2010) (emphasis added). In *Brascia v. Johnson*, 105 Nev. 592, 781 P.2d 765 (1989), the Nevada Supreme Court specifically held that a trial Court is precluded from substituting its own judgment

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unless the jury erred as a matter of law, and should refrain from granting a new trial if the question concerns only the weight of the evidence.

Where there is simply a conflict in the evidence, the verdict or decision will not be disturbed. Exception will only lie where there is plain error in the record, or if there is a showing of manifest injustice. *See Frances v. Plaza Pac Equities*, 109 Nev. 91, 847 P.2d 722 (1993) (citing *Price v. Sinnott*, 85 Nev. 600, 460 P.2d 837 (1969)). "Moreover, a jury's verdict supported by substantial evidence will not be overturned unless the verdict is clearly erroneous when viewed in light of all the evidence presented." *Frances*, 109 Nev. at 94, 847 P.2d at 722 (emphasis in original); *see also Price v. Sinnott*, 85 Nev. 600, 460 P.2d 837 (1969).

Equally as significant, even in situations where some error has occurred, NRCP 61, the "harmless error" rule, prevents the granting of a new trial unless the error has affected a "substantial right" of the parties:

> No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

NRCP 61.

In other words, errors not affecting substantial rights are disregarded. Under this rule, "which prohibits the disturbance of a judgment for sundry errors of the trial court" unless such errors appear to be inconsistent with substantial justice, **the Court must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties**. *United Tungsten Corp. v. Corporation Serv., Inc.*, 76 Nev. 329, 332, 353 P.2d 452, 454 (1960). For a jury instruction to be considered as harmful, the jury instructions must have substantially prejudiced the proceedings. *See Phenix v. State*, 114 Nev. 116, 119, 954 P.2d 739, 740 (1998). Additionally, it must affirmatively appear that the error resulted in the miscarriage of justice or actually prejudiced the appellant. *Id.* (holding that instructing the jury on an aggravating circumstance of torture was harmless in a first-degree murder prosecution, where the defendant was not sentenced to death).

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The Adelson Campus respectfully submits that, despite the Estate's contentions, the Estate failed to show any error by the Court or manifest disregard by the jury of the instructions of the Court sufficient to support a new trial.

III.

ARGUMENT

A. A Rule 50(b) Motion Cannot Raise Issues that Were Not in the Rule 50(a) Motion – The Estate is Precluded from Now Arguing Any of the Arguments Contained in its Post-Trial Motion for the First Time.

The Estate cannot raise issues in the Motion for Post-Trial Relief under Rule 50(b) motion that were not first raised in the Rule 50(a) motion filed at the close of evidence. *Nelson v. Heer*, 123 Nev. 217, 163 P.2d 420, 424 n. 9 (Nev. 2007) ("*See* NRCP 50 (indicating within the drafter's note to the 2004 amendment that a motion filed under subdivision (b) is the renewal of a motion filed under subdivision (a) and **must have been preceded** by a motion filed at the appropriate time under subdivision (a) (2)).") (emphasis added).

The Nevada Supreme Court recently emphasized that a "district court should have denied the NRCP 50(b) motion for its procedural defect instead of addressing it on the merits" where arguments were not preserved in a 50(a) motion:

> Under NRCP 50(b), a party "may renew its request for judgment as a matter of law by filing a motion no later than 10 days after service of written notice of entry of judgment." **A party must make the same arguments in its pre-verdict NRCP 50(a) motion as it does in its post-verdict NRCP 50(b) motion.** *See Price v. Sinnott*, 85 Nev. 600, 607, 460 P.2d 837, 841 (1969) (It is solidly established that when there is no request for a directed verdict, the question of the sufficiency of the evidence to sustain the verdict is not reviewable. A party may not gamble on the jury's verdict and then later, when displeased with the verdict, challenge the sufficiency of the evidence to support it." (citations omitted). A pretrial motion for summary judgment is not a substitute for the NRCP 50(a) motion needed to preserve issues for review in a NRCP 50(b) renewed motion for judgment as a matter of law.

Zhang v. Barnes, 382 P.2d 878, at *2 (Nev 2016) (unpublished)(emphasis added).

While the Estate cites to NRCP 50(b) legal standard in its Post-Trial Motion, none of the proffered arguments were contained in the Estate's narrowly focused Motion for Judgment as a Matter of Law Regarding Construction of Will ("Estate's Rule 50(a) Motion") brought pursuant to NRCP 50(a). In its Rule 50(a) Motion, the Estate only requested a directed verdict be entered on its first claim

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for relief, Construction of Will, that Milton Schwartz's intended that the $500,000 bequest in his Will only go to an entity named after him and bearing the name "Milton I. Schwartz Hebrew Academy." *See* Estate's Rule 50(a) Motion at p. 7. The Estate should not be allowed to ambush the Court or the School with any new Rule 50 arguments. Because the arguments presented in the Estate's Post-Trial Motion were not made in the Estate's Rule 50(a) Motion, they have not been preserved and should be summarily denied as procedurally improper.

B. The Court Should Deny the Estate's Request to Amend/Modify the Verdict and for a New Trial Because the Court Correctly Rejected Certain of the Estate's Proposed Jury Instructions.

The Court did not err by refusing to give the Estate's proposed jury instructions for "Alteration Modification" of a contract and "Performance/Breach: Implied Covenant of Good Faith and Fair Dealing." The Estate fails to show that its argument over the instructions actually impacted any of its substantial rights. When it comes to jury instructions, the Estate must not only prove error but also that "a different result would probably" be obtained in a new trial free of the claimed error. *Supera v. Hindley*, 93 Nev. 471, 472, 567 P.2d 964 (1997); *Truckee-Carson Irr. Dist. v. Wyatt*, 84 Nev. 662, 667, 448 P.2d 46, 50 (1968) (burden is upon complaining party "to show the probability of a different result" with corrected instructions). Although "a party is entitled to jury instructions on every theory of [its] case that is supported by the evidence," *Johnson v. Egtedar*, 112 Nev. 428, 432, 915 P.2d 271, 273 (1996), the offering party must demonstrate that the proffered jury instruction is warranted by Nevada law. NRCP 51(a)(1); *D&D Tire v. Ouellette*, 131 Nev. Adv. Op. 47, 352 P.3d 32, 38 (2015). Further, under the harmless error rule, the trial court's alleged error, if any, should be disregarded. *See* NRCP 61.

As explained herein, the allegations regarding the Court's errors in refusing certain jury instructions are wholly without merit. Moreover, any error in refusing to permit the jury instructions to be read to the jury is harmless and would not have changed the outcome because it was found that the Milton Schwartz did not have a naming rights contract with the School.

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1. The Court did not err in excluding the proposed "Alteration: Modification" jury instruction.

The "Alteration: Modification" instruction was properly excluded as irrelevant because the Estate failed to present evidence at trial of the existence of a written naming rights contract. The Nevada Supreme Court has noted that parties to a **written contract** who agree to new terms may orally modify the contract. *See Jensen v. Jensen*, 104 Nev. 95, 98, 753 P.2d 342, 344 (1988) (citing *Joseph F. Sanson Inv. Co. v. Cleland*, 97 Nev. 141, 142, 625 P.2d 566, 567 (1981). The Estate's proposed instruction and argument presupposes the existence of a written contract, which is then later modified. However, the Estate's counsel admitted in his opening that "if we had naming rights agreement, we wouldn't be here today." Trial Testimony August 23, 2018, Vol. 1 at 14:18-19, **Exhibit A**. Moreover, the Executor of the Estate, Jonathan Schwartz, testified that the alleged naming rights agreement was an **oral agreement**, not the required written agreement necessary under Nevada law to provide the requested "Alteration: Modification" instruction. *See* Trial Testimony August 27, 2018, Vol. 3 at 234:17, **Exhibit B**; *Jensen v. Jensen*, 104 Nev. 95, 98, 753 P.2d 342, 344 (1988). This inability to demonstrate the existence of an initial written naming rights contract is fatal to the Estate's request to include this instruction. Thus, the Court did not err when it denied the Estate's request to provide the "Alteration: Modification" jury instruction.

Not only has the Estate failed to establish that the omission of this instruction was in error, the Estate falls woefully short in demonstrating that a different outcome was probable even if the Court had given the requested jury instruction. The Court's refusal to provide the proposed jury instruction on modification of a contract is moot in light of the jury verdict. After hearing all of the competing accounts on the alleged existence of a naming rights contract and viewing the evidence admitted a trial, the jury found that Milton Schwartz **did not have a naming rights contract**. *See* **Exhibit C**, Verdict at Question No. 1. The proposed instruction requires that a contract exist for the jury instruction to even been relevant.[1] Without the existence of a naming rights contract, a different result could not be

[1] The proposed jury instruction for "Alteration: Modification" states: "Parties to a **contract** may modify the **contract**, but all the parties to the **contract** must agree to the new terms.." *See* the Estate's Post-Trial Motion at pp. 8

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obtained because the instruction would not be applicable under Nevada law and would only serve to confuse the jury.

2. The Court did not err by refusing to provide the jury instruction for Breach of the Implied Covenant of Good Faith and Fair Dealing.

Contrary to the Estate's contention, it was appropriate for the Court to refuse to give the requested "Performance/Breach: Implied Covenant of Good Faith and Fair Dealing" jury instruction because this claim for relief was not contained in the Estate's operative pleadings. The Estate's Petition for Declaratory Relief does not state a claim for Breach of the Implied Covenant of Good Faith and Fair Dealing. *See generally* Estate's Petition for Declaratory Relief. The Estate's Pre-Trial Memorandum also fails to mention or include the Breach of the Implied Covenant of Good Faith and Fair Dealing as a claim to be decided by the jury at trial. *See* Estate's Pre-Trial Memorandum (without attachments) at pp. 4-5, **Exhibit D**. The Estate never sought leave at any point to amend its Petition to assert a claim for Breach of the Implied Covenant of Good Faith and Fair Dealing. Judgment must be entered only on those causes of action that were properly before the jury. It would have been error for the Court to permit a jury instruction for a claim not plead in the matter to be read to the jury for consideration and deliberation.

Even to the extent the Estate can make the argument that the requested jury instruction should have been admitted, which the Adelson Campus refutes, the Estate is not entitled to a new trial as any alleged error is harmless and the Estate cannot demonstrate that the failure to include this instructions would have changed the outcome. A claim for breach of the implied covenant of good faith and fair dealing "relates only to the performance of obligations under an extant contract...." *Wensley v. First Nat'l Bank of Nev.*, 874 F. Supp. 2d 957, 964 (D. Nev. 2012). "The 'implied covenant of good faith and fair dealing is limited to assuring **compliance with the express terms of the contract**, and cannot be extended to create obligations not contemplated by the **contract**.'" *Chavez v. California Reconveyance Co.*, 2:10-CV-00325-RLHLRL, 2010 WL 2545006, at *3 (D. Nev. June 18, 2010) (emphasis added)

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(internal cite omitted); *see also* the Estate's Post-Trial Motion at p. 10[2]. As stated previously, the jury ultimately found that Milton Schwartz did not have a naming rights contract of any kind whatsoever. *See* Ex. C, Verdict at Question No. 1. As no naming rights contract was found to exist, there can be no claim for Breach of the Implied Covenant of Good Faith and Fair Dealing. Thus, the proffered jury instruction is not warranted or appropriate under Nevada law and the Estate cannot meet its burden to demonstrate a different result would probably be obtained if the instruction was permitted.

C. The Jury's Verdict that Milton Schwartz Did Not Have a Valid and Enforceable Naming Rights Contract is Supported by the Evidence.

The Estate's argument relies on a presumption that the jury could not have reached its conclusion that Milton Schwartz did not have an enforceable naming rights contract based on the conflicting testimony presented at trial had the jury properly followed the jury instructions. However, in Nevada there is a presumption that juries follow the instructions they are given. *See McConnell v. State*, 120 Nev. 1043, 1062, 102 P.3d 606, 619 (2004). "[D]ecent respect for the collective wisdom of the jury, and for the function entrusted to it in our system, certainly suggests that in most cases the judge should accept the findings of the jury, regardless of his own doubts in the matter." *Landes Const. Co., Inc. v. Royal Bank of Canada*, 833 F.2d 1365, 1371 (9th Cir. 1987). Even if the Court would have arrived at a different verdict, granting a new trial is improper. *See Silver Sage Partners, Ltd. v. City of Desert Hot Springs*, 251 F.3d 814, 819-21 (9th Cir. 2001). In light of the presumption that juries follow the instructions, taking all the evidence presented to the jury in a light most favorable to the Adelson Campus, the Estate cannot prove that it was impossible for the jury to have found that Milton Schwartz did not have a naming rights contract with the Adelson Campus. *See M & R Investment v. Anzalotti*, 105 Nev. 224, 226, 773 P.2d 729, 730 (1989).

In Nevada, "basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration." *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1256 (2005). A valid contract cannot exist when material terms are lacking or are insufficiently certain and definite. The terms must be definite enough for the court to ascertain what is required of

[2]The proposed jury instruction for "Performance/Breach: Implied Covenant of Good Faith and Fair Dealing" states: "In every **contract** there is an implied covenant of good faith and fair dealing, obligating the parties to pursue **their contractual rights** in good faith..." *Id.* at p. 10.

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the respective parties and to compel compliance. *See id.* If the Estate failed to prove even a single essential element for contract formation or the terms were not sufficiently definite enough to ascertain what is required of the respective parties, then it is possible for the jury to have found that no enforceable naming rights contract exists. Here, the Estate's presumptuous arguments of the existence of "overwhelming evidence" are not enough under the stringent standard set forth under Nevada law to demonstrate that the jury disregarded any of the jury instructions. As analyzed below, the reasonable jury could have determined that based on the conflicting trial testimony that no valid and enforceable naming rights contract existed between Milton Schwartz and the Adelson Campus.

1. The evidence in this case did not mandate that the jury conclude that Milton Schwartz and the Adelson Campus had a meeting of the minds as to an alleged naming rights contract or that the Adelson Campus accepted any offer by Milton Schwartz for perpetual naming rights.

The Estate contends that the jury manifestly disregarded Jury Instruction No. 25, because the Estate presented evidence that the parties intended to enter into a binding naming rights contract. This contention, however, is without merit. As summarized below in Table "A", significant testimony was presented at trial demonstrating that there was never a meeting of the minds between Milton Schwartz and the Adelson Campus about what Milton Schwartz was obligated to pay.

TABLE A

Testimony	Witness	Cite
Q. Tell this jury exactly the specific details of this contract that you believe the school had with Mr. Schwartz. The exact details. A. A half million dollars for the name of the school. Q. That's it? A. At that point in time, the only thing we had for sure was his half a million dollars.	Lenard Schwartzer	Aug. 24, 2018 Trial Transcript, Vol. 2, at 163:18-22, **Exhibit E.**
Q. In your testimony yesterday, you told the jury that you believed it was **$500,000 that he gave, and $500, 000 that he raised**. Do you recall that? A. That's my recollection, that he – he at this point in time, that he gave 500,000 and that **he raised approximately another 500,000**.		*Id.* at 161:24-162:4
"5. That Affiant **donated $500,000** to the Hebrew Academy with the understanding that the school would be renamed the	Milton I. Schwartz	March 31, 1993 Second

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TABLE A

Testimony	Witness	Cite
MILTON I. SCHWARTZ HEBREW ACADEMY in perpetuity."		Supp. Aff. of Milton I. Schwartz (Trial Exhibit 134) at ¶ 5, **Exhibit F.**
Milton Schwartz told Dr. Adelson in an interview "that he **gave $500,000** and **raised $500,000** from others in exchange for naming the school the Milton I. Schwartz Hebrew Academy.	Milton I. Schwartz	June 12, 2007 Video Interview of Milton Schwartz (Trial Exhibit 1116A)
Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz stated "In August 1989, Milton Schwartz donated $500,000 to the Academy in return for which the Academy would guarantee that its name would change in perpetuity to the "Milton I. Schwartz Hebrew Academy."	Jonathan Schwartz	The Estate's Petition for Declaratory Relief
Q. Okay. And it was your – was it your understanding that the agreement was that there would be 500,000 given to the school, or that there would be 500,000 given to the school, or that there was a million, ….. A. No. Here's –here's what the agreement was: **The agreement was that my father give 500,000 and raise 500,000**. That's how the million was arrived at, and that's what he did. (Deposition testimony)	Jonathan Schwartz	July 28, 2016 Depo. of Jonathan Schwartz, at 14:17-25, **Exhibit G.**
Q. So my question to you, again, Mr. Schwartz, is tell me the dollar amount that your father paid in 1989 in order to secure all of the naming rights that you contend on behalf of the estate he got? THE WITNESS: That my father paid $500,000. Q. Not a penny more not a penny less, right? A. That my father **paid $500,000**. Q. In total, right? A. Correct. Q. **And he didn't have to do anything else, raise any money from anyone else** or give anymore money or anything else in exchange for those naming rights is that your testimony? A. **No.** Q. I just want to be clear A. No.	Jonathan Schwartz	Ex. B, Aug. 27, 2018 Trial Transcript, Vol. 3, at 212:6-24

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TABLE A

Testimony	Witness	Cite
Q. And that recollection, as I understand it was very clear. A. Yes. Q. That whether he gave a million dollars at that time specifically or not, **he certainly promised to give a million dollars, right.** A. **That was my – that was my best recollection.**	Dr. Roberta Sabbath	Ex. B, Aug. 27, 2018 Trial Transcript, Vol. 3, at 43:13-18
Q. One of the representations that Mr. Schwartz made in that lawsuit in this declaration under oath was that he donated a half million dollars to the Hebrew Academy with the understanding that it would be renamed the Milton I. Schwartz Hebrew Academy in perpetuity. Do you agree or disagree with that statement under oath? … A. **I disagree.** Q. Okay. How so? A. **I remember the million dollar commitment.**	Dr. Roberta Sabbath	Ex. B, Aug. 27, 2018 Trial Transcript, Vol. 3, at 11:16-22; 12:9-11.
Q. Your memory is **he gave a million dollars** himself and **then he raised 500,000** from others? A. My recollection.	Dr. Neville Pokroy	Aug. 31, 2018 Trial Transcript, Vol. 7, at 156:11-13, **Exhibit H.**
Q. Doctor, I'm going to show you -- well, let me go back for a minute. Do you recall a time when Mr. Schwartz gave the 500,000 **and pledged a million** and gave half of it? A. Yes.	Dr. Tamar Lubin	Ex. H, Aug. 31, 2018 Trial Transcript, Vol. 7, at 103:11-15
THE WITNESS: You mean removing Milton Schwartz's name from the school? Q. Yes. A. **Because he didn't pay the other $500,000**. I thought you meant Mr. Sternberg. Q. Thank you. I'm sorry, my question probably wasn't clear. I meant why they were removing Milton Schwartz's name. A. Okay. Q. All right. So that's why they removed it is -- A. Yes. Q. **-- because he didn't pay the rest of the money?** A. **Correct.**	Dr. Tamar Lubin	Ex. H, Aug. 31, 2018 Trial Transcript, Vol. 7, at 113:6-114:3

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TABLE A		
Testimony	**Witness**	**Cite**
Q. And you obtained – you were instrumental in getting Milton's donation, correct? A. Yes. Q. And you went to his house with Roberta Sabbath to get that? A. Yes, I went to his house. Q. And as a result of that, Milton donated? A. **He promised a million dollars**, yes, and we were very happy with that promise of his and ultimately **we got $500,000 and never got the other five.**	Dr. Tamar Lubin	Ex. H, Aug. 31, 2018 Trial Transcript, Vol. 7 120:13-23

It seems axiomatic that if the very people involved provided materially inconsistent testimony about the amount Milton Schwartz promised to pay (the contract consideration) then there can be no meeting of the minds between the parties as a matter of fact and law, a clear basis for the jury to find that no naming rights contract existed.

In addition to the evidence regarding the lack of meeting of minds of the parties about what Milton Schwartz was obligated to pay, considerable testimony and evidence was presented at trial that no meeting of the minds existed on what exactly the scope of any naming rights would be under the alleged agreement and whether any naming opportunity would be perpetual. For example, the Board of Trustees Meeting Minutes dated August 14, 1989 stated that the "**Academy** will be named after him [Milton]" and makes no mention of any naming right being perpetual. *See* Trial Exhibit 112 (emphasis added), **Exhibit I**. In contrast, the August 22, 1989 Certificate of Amendment of Articles of Incorporation in Article I stated that "This **corporation** shall be known as: The Milton I. Schwartz Hebrew Academy." *See* Trial Exhibit 3 (emphasis added), **Exhibit J**. Moreover, the November 29, 1990 Board of Trustees Meeting Minutes, a meeting which Milton Schwartz attended, reflects that the Board agreed that the elementary school should be named the "Tamar Lubin-Saposhnik Elementary School." *See* Trial Exhibit 384, **Exhibit K**. Further, Lenard Schwartzer testified that if Dr. Lubin's name was on the elementary school from 1990 to 1996 this would be directly contrary to what he thought the terms of the agreement was with Milton Schwartz. *See* Ex. E, August 24, 2018 Trial Transcript, Vol. 2 at 190:20-25.

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Many years later, at the May 19, 1996 Board Meeting the Minutes state that the Board resolved to return "the name of the **school** to the Milton I. Schwartz Hebrew Academy", but says nothing about perpetual naming rights, nor do they describe exactly what the "school" entails. *See* Trial Exhibit 14 (emphasis added), **Exhibit L**. The March 21, 1997 Certificate of Amendment of Articles of Incorporation amends Article I to state "This **corporation** shall be known as the Milton I. Schwartz Hebrew Academy." *See* Trial Exhibit 15 (emphasis added), **Exhibit M**. Again, there is no reference to Milton's name remaining on the corporation, or any building, in perpetuity. If the school wanted to include the words "in perpetuity" in the above-referenced documents it certainly could have as evidenced by the March 21, 2008 Certificate of Amendment to Articles of Incorporation that specifically amended Article I of the Corporate Articles to state "This corporation shall be known **in perpetuity** as 'The Dr. Miriam and Sheldon G. Adelson Educational Institute'". *See* Trial Exhibit 51, **Exhibit N**.

Finally, there was no consideration exchanged as would be necessary to create an enforceable contract if the terms had been sufficiently definite. Whether Milton's name being gratuitously put on the corporation, the Academy, or the elementary school is unclear from the evidence presented at trial. The temporal scope of any naming opportunity is likewise unclear as there is no mention of any perpetual naming rights in any of the above-referenced documents. Thus, the Estate clearly failed at trial to adduce consistent and uncontroverted evidence of the exact scope and duration of the naming rights agreement it alleged existed, or demonstrate that consideration was paid.

Additionally, the Estate's reliance on the December 19, 1990 Bylaws as evidence of a perpetual naming rights agreement, is misplaced. The Estate's own witness and former board member in 1990, Lenard Schwartzer, testified at trial that corporate bylaws can be changed and are not a contract. *See* Ex. E, Aug. 24, 2018, Trial Transcript, Vol. 2. at 146:2-20. Thus, the Estate's reliance on the December 19, 1990 Bylaws as proof of any meeting of the minds and disregard of the jury instructions is unpersuasive.

Lastly, because there is no meeting of the minds about the amount Milton would pay, the scope of any alleged naming rights, and whether any naming rights would be in perpetuity, there can be no valid acceptance of any alleged offer by Milton Schwartz. *See Certified Fire Prot., Inc. v. Precision Constr., Inc.*, 283 P.3d 250, 255 (Nev. 2012) ("A meeting of the minds exists when the parties have

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agreed upon the contract's essential terms."). Because there is no written contract[3], the varying testimony of the individual board members as to their understanding of the alleged terms of the oral agreement is paramount. What is clear from the testimony is that the school board and Milton Schwartz never had a mutual understanding of the material terms. *See* Table A. To the extent the Estate wants to rely on corporate records in an effort to demonstrate some sort of acceptance of Milton Schwartz's alleged offer, the documents evidence a lack of intent to be bound in perpetuity. *See* Trial Exhibits 112, 3, 14, and 15. The reasonable jury could have determined that based on the conflicting trial testimony and admitted evidence the school board never accepted any alleged offer by Milton Schwartz for perpetual naming rights.

The consideration paid, scope, and duration of the alleged naming right obligation are material terms that must be sufficiently specific for a contract to be enforceable. *See May*, 121 Nev. at 672, 119 P.3d at 1257. The conflicting evidence presented at trial demonstrates that it was possible for the jury to have determined that Milton Schwartz and the Adelson Campus never had a meeting of the minds as to the amount Milton would donate, the specific scope of any alleged naming rights agreement (what would be allegedly named after him) and the duration of the alleged naming rights agreement. The Estate, therefore, cannot meet its rigorous burden of showing manifest disregard by the jury of the jury instructions.

2. The evidence in the case does not demonstrate any manifest disregard for the jury instruction regarding consideration.

The Estate has also failed to establish any basis upon which this Court can conclude that, under the Court's instructions, the jury had no choice other than to find that bargained for consideration existed. As summarized above in Table A, the conflicting testimony of various board members concerning the amount Milton Schwartz promised to pay and/or raise in an effort to get naming rights varied from promising to pay $500,000 only, promising to pay $500,000 and to raise another $500,000, promising to pay $1 Million, to promising to pay $1 Million and raise another $500,000. *See supra* Table A. Additionally, Dr. Lubin testified that while Milton Schwartz promised to pay $1 Million, he actually only ever paid $500,000. *See* Ex. H, Aug. 31, 2018 Trial Transcript, Vol. 7, at 113:6-114:3.

[3] Lenard Schwartzer unequivocally testified that "[t]here is no contract signed by both sides in this case…" Ex. E, Aug. 24, 2018 Trial Transcript, Vol. 2 at 178:12-13 and "[t]here is no formal written contract." *Id.* at 214:21-23.

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Clearly it was not impossible for the jury to conclude that the Estate had not sufficiently proven the exact consideration agreed to be exchanged.

Like the exact amount of money to be exchanged, there was never an agreement from the school about whether any alleged naming rights to Milton Schwartz would be perpetual. For example, the Board of Trustees Meeting Minutes dated August 14, 1989; the August 22, 1989 Certificate of Amendment of the Articles of Incorporation; the May 19, 1996 Board Meeting Minutes; and the March 21, 1997 Certificate of Amendment of Articles of Incorporation make no mention of any alleged naming right being perpetual. *See* Trial Exhibits 112, 3, 14, and 15, respectively. These documents reflect that the alleged benefit the school was to confer never included perpetual naming rights.

The Estate also argues that the doctrine of promissory estoppel would render the Sabbath Letter enforceable. The issue of promissory estoppel was expressly presented to the jury and the jury received specific instructions on the concept of promissory estoppel. *See* Jury Instruction Nos. 34-35.[4] After hearing all of the evidence, the jury found that the Adelson Campus did not act in a manner in which it should have reasonably expected to induce Milton Schwartz's reliance. *See* Ex. C, Verdict at Question No. 11. Thus, the Estate's argument concerning promissory estoppel is without merit and should be disregarded as being contrary to the jury's specific findings.

In summary, the Estate failed to prove at trial the amount of consideration Milton Schwartz allegedly agreed to pay and whether the alleged benefit the School was to confer included perpetual naming rights. Therefore, the reasonable jury could have determined that, based on the conflicting trial testimony and evidence, the Estate failed to prove the bargained for consideration exchanged and thus, there never was a valid and enforceable naming rights contract.

3. The evidence in the case does not demonstrate any manifest disregard for the jury instruction regarding offer.

The Estate's contention that it presented overwhelming evidence that Milton Schwartz offered $500,000 in 1989 in exchange for perpetual naming right ignores the substantial conflicting testimony adduced at trial demonstrating a complete lack of understanding by the people involved regarding what precisely Milton Schwartz's alleged offer entailed (*i.e.* the gift amount, the scope of any alleged naming

[4] The Estate does not contend that the jury manifestly disregarded Jury Instruction No. 35 concerning the doctrine of promissory estoppel.

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right, and the duration). As discussed above at great length regarding the lack of a meeting of the minds, witness testimony at trial about Milton's alleged offer ranged from promising to pay $500,000 only, promising to pay $500,000 and to raise another $500,000, promising to pay $1 Million, promising to pay $1 Million and raise another $500,000. *See supra* at Section III(C)(1) and Table A. Even Milton Schwartz presented conflicted statements concerning his alleged offer. *Compare* Ex. F, March 31, 1993 Second Supp. Aff. of Milton I. Schwartz (Trial Exhibit 134) at ¶ 5 and June 12, 2007 Video Interview of Milton Schwartz (Trial Exhibit 1116A). The amount of the promised payment in any contract is a material term. *See Matter of Estate of Kern*, 107 Nev. 988, 823 P.2d 274, 277 (1991) (price is a material term for a valid contract). Therefore, a failure to definitively demonstrate the exact amount Milton Schwartz promised to pay could support the jury's finding that Milton Schwartz did not have a valid and enforceable naming rights contract with the Adelson Campus.

Conflicting testimony and evidence was also adduced at trial concerning whether or not the alleged naming rights were perpetual. *See supra* at Section III(C)(1). The applicable corporate resolutions and articles of incorporation reflect that perpetual naming rights were not a part of the bargain. *See id.* The Estate's reliance on the 1996 Sabbath Letter is also unpersuasive because it has absolutely nothing to do with the alleged contract that the Estate alleges was formed in 1989 and sought to enforce in this action. *See* The Estate's Mot. at 13:13-14 and May 23, 1996 letter (Trial Exhibit 139), **Exhibit O**. The 1996 Sabbath Letter, besides being nothing more than a gratuitous offer, cannot form the basis of an enforceable contract because Milton Schwartz never had to pay any additional consideration. *See* Ex. O, Trial Exhibit 139.

As demonstrated above, based on the conflicting testimony and evidence admitted at trial about the exact terms of the alleged offer, *i.e.* the amount of money Milton would pay and whether Milton's name would remain in perpetuity, the jury could have easily concluded that the Estate failed to prove by a preponderance of the evidence the terms of Milton's offer.

D. The Court Correctly Granted the Adelson Campus' Motion for Partial Summary Judgment on Oral Contract, and Even it was an Error, it was Harmless Error in Light of the Jury Verdict that Milton Schwartz Did Not Have a Naming Rights Contract.

The Estate asserts it is entitled to a new trial because it was allegedly prejudiced and had to alter its trial strategy as result of the Court improperly granting the Adelson Campus' motion for partial summary judgment as to the Estate's claim for breach of oral contract. The Estate has not cited to a

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single case supporting the proposition that an alleged erroneous granting of summary judgment is grounds to vacate a Judgment post-trial or request a new trial. *See* Motion at pp. 5-8. Just prior to trial, the Estate brought a motion for reconsideration before the Court regarding the Court granting summary judgment on the Estate's breach of oral contract claim, which was denied. *See* Notice of Entry of Order Denying the Estate's Motion for Reconsideration, filed October 5, 2018. The Estate once again raises this issue before the Court in a second attempt to get the Court to reconsider its decision on the Estate's breach of oral contract claim. In an effort to avoid rehashing all of the Adelson Campus' arguments in opposition to the Estate's motion for reconsideration, the Adelson Campus merely incorporates by reference its opposition to the Estate's motion for reconsideration. *See* Adelson Campus' Opposition to the Estate's Motion for Reconsideration, filed on August 16, 2018. Ultimately, if its breach of oral contract claim was so important to the Estate's trial strategy, it should have filed a writ petition prior to trial.

As with the other alleged errors, the Court's granting of the Adelson Campus' Motion for Partial Summary Judgment on Oral Contract was harmless in light of the verdict. *See* Ex. C, Verdict at Question No. 1. As explained at length above, the jury's verdict nullifies any alleged error in granting partial summary judgment on the Estate's breach of oral contract claim. There could be no breach of an oral contract if no contract existed. In fact, the Verdict form permitted the jury to find the existence of an enforceable oral naming rights contract. *See id* at Question No. 2. Nevertheless, after the jury was properly instructed on the elements[5] and the burden of proof to prove the existence of a valid and enforceable contract, and the jury found that the Estate could not carry its burden to prove the existence of a valid and enforceable naming rights contract, either written or oral. Therefore, the Estate's request for the Court to vacate the jury verdict and grant a new trial should be denied.

The Estate also inappropriately claims that, as result of the Court's error in granting the Adelson Campus' motion for summary judgment, it would have spent more time during trial focused on the creation and existence of an oral contract. This argument, like all of the Estate's arguments in its wandering post-trial motion, is unpersuasive. The time dedicated to certain topics in its closing

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[5] The essential elements for a valid and enforceable contract are the same for both oral and written contracts.

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presentation is a strategy choice that counsel for the Estate now appears to regret. Jonathan Schwartz testified that the alleged naming rights agreement was an oral agreement. *See* Ex. B, August 27, 2018 Trial Testimony, Vol. 3 at 234:17. If the Estate wanted to, it could have highlighted Jonathan Schwartz's testimony in its closing argument. And, as stated above, the Verdict form included a question permitting the jury to find the existence of an oral contract. *See* Ex. C, Verdict at Question No. 2. Clearly, the Estate was not deprived of the opportunity to argue about the existence of an oral contract. The Estate's counsel's current regret concerning its strategic decision to not spend more time arguing about the existence of an oral contract is not a proper legal basis to vacate the Judgment and/or grant a new trial. Thus, the Estate's Motion should be denied.

IV.

CONCLUSION

The rulings alleged as error in the Estate's Motion for Post-Trial Relief were all correct rulings. The Court properly precluded the Estate's request to include jury instruction regarding alteration or modification of contract and breach of the implied covenant of good faith and fair dealing. The parties asked the jury to return a verdict on whether Milton Schwartz had valid and enforceable naming rights contract, and the jury did so by finding that Milton Schwartz did not have a valid and enforceable naming rights contract. To the extent the Court agrees that errors occurred, which the Adelson Campus disputes, the Court should not disturb the jury's verdict because the purported errors were harmless in light of the verdict. For the reasons set forth above, the Estate's Motion for Post-Trial Relief should be denied in its entirety.

DATED this 21st day of November, 2018.

KEMP, JONES & COULTHARD, LLP

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

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CERTIFICATE OF SERVICE

I hereby certify that on 21ST day of November, 2018, a true and correct copy of the foregoing **THE DR. MIRIAM AND SHELDON G. ADELSON EDUCATIONAL INSTITUTE'S OPPOSITION TO THE ESTATE'S MOTION FOR POST-TRIAL RELIEF FROM JUDGMENT ON JURY VERDICT ENTERED OCTOBER 4, 2018** was served on all parties through the Court's e-filing system.

Erica Bennett

An employee of Kemp, Jones & Coulthard, LLP

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EXHIBIT A

D R A F T

T R A N S C R I P T

In The Matter of the Estate of Milton I. Schwartz,

Deceased

Thursday, August 23, 2018

By: Carre Lewis, NV CCR 497, CA CSR 13337

carre@discoverylegal.net

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the Hebrew Academy to the Milton I. Schwartz Hebrew Academy.

In addition you are likely to hear testimony from several people involved in the transaction that Milton himself understood these documents reflected the agreement and belief that the school would be named after him in perpetuity. Now, let's talk a little bit about one of the weaknesses in our case. I will be right up front we have a weakness. If neither side had weaknesses in their case we wouldn't be here at trial. And I think Mr. Jones and I would both readily admit that we are following ourselves if neither side had any weaknesses. But, you may ask yourself, well why aren't you just showing me a naming rights agreement? Where why isn't it there it wasn't the way these people operated they had terms that they wrote on various documents if we had naming rights agreement, we wouldn't be here today. You also may hear conflicting testimony 20 years after this deal happened about how much Milton actually had to pay the school for the naming rights. You may hear some testimony that differs as to whether he had to pay 500,000, a million or 500,000 plus agree to fundraise 500,000 but you are also going to see

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EXHIBIT B

In the Matter Of:

Schwartz vs Adelson Educational Institute

TRANSCRIPT TRIAL

August 27, 2018

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Discovery Legal Services, LLC 702-353-3110 production@discoverylegal.net

Schwartz and Dr. Lubin Saposhnik?

A. I don't remember.

Q. I'm going to show you, Dr. Sabbath, an affidavit that was filed in connection with the lawsuit that I just showed you.

MR. JONES: Counsel, I'm sorry is that in evidence.

MR. LEVEQUE: Yes. Exhibit 134.

MR. JONES: Thank you.

BY MR. LEVEQUE:

Q. One of the representations made by Mr. Schwartz in that laud under oath was that he donated a half million dollars to the Hebrew Academy with the understanding --

A. I'm sorry could you repeat that?

Q. One of the representations that Mr. Schwartz made in that lawsuit in this declaration under oath was that he donated a half million dollars to the Hebrew Academy with the understanding that it would be renamed the Milton I. Schwartz Hebrew Academy in perpetuity. Do you agree or disagree with that statement under oath?

MR. JONES: Object to the form of the question. Your Honor. Calls for -- well I will withdraw the objection.

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THE WITNESS: Say that question again.
BY MR. LEVEQUE:
Q. Sure. The representation Mr. Schwartz made in Paragraph 5 in this declaration --
A. Could I read this?
Q. Of course. I will make an easier question.
Do you agree or disagree with that statement?
A. I disagree.
Q. Okay. How so?
A. I remember the million dollar commitment.
Q. Again, I think you testified on Friday that that was based on what Dr. Lubin Saposhnik told you?
MR. JONES: Objection. Your Honor, that misstates her full testimony.
THE WITNESS: Yeah, so maybe if you could reask the question.
MR. LEVEQUE: Sure.
BY MR. LEVEQUE:
Q. How did you come up with the understanding that it was going to be a million dollar donation?
A. It's in my mind, that number. There was a lot of zeros.
Q. Okay.
A. And as to exact -- the details of how that

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Q. The reason I ask that because what I understand in your deposition, you were very clear in your deposition, and I have got it here, but where you said your recollection is that he actually -- you met in his home, which you said before?

A. Uh-huh.

Q. And that he gave a million dollars. Is that what your recollection is?

A. That was my recollection.

Q. And that recollection, as I understand it, was very clear?

A. Yes.

Q. That whether he gave a million dollars at that time specifically or not, he certainly promised to give a million dollars, right?

A. That was my -- that was my best recollection.

Q. And that's not something somebody just told you like Dr. Lubin, that's your own personal recollection, isn't that true?

A. That is correct.

Q. And by the way, if Dr. Lubin testified that that was what the agreement was, that Mr. Schwartz was going to give a million dollars, would you think

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Hebrew Academy in perpetuity. I have received a lot of education just like you have just like the jury has and hearing from these witnesses over the past couple years.

BY MR. JONES:

Q. So my question to you, again, Mr. Schwartz, is tell me the dollar amount that your father paid in 1989 in order to secure all of the naming rights that you contend on behalf of the estate he got?

MR. FREER: Same objections Your Honor.

THE COURT: Overruled.

THE WITNESS: That my father paid $500,000.

BY MR. JONES:

Q. Not a penny more not a penny less, right?

A. That my father paid $500,000.

Q. In total, right?

A. Correct.

Q. And he didn't have to do anything else, raise any money from anyone else or give anymore money or anything else in exchange for those naming rights, is that your testimony?

A. No.

Q. I just want to be clear.

A. No.

MR. FREER: Objection. Lack of foundation.

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A. I'm trying.

Q. Yes. The school would have to get your consent or your dad's consent to build another school in another location if they weren't going to put your dad's name on that location, right?

A. If it was associated with the Milton I. Schwartz Hebrew Academy, yes.

Q. And so, by the way, the -- at the time your dad gave the gift in -- the $500,000, 1989, there is nothing in writing anywhere that says his name should go on the monument, right?

A. In 1989?

Q. Yes, sir.

A. No.

Q. There is nothing in 1989 that says his name should go on the letterhead, right?

A. Mr. Jones, it was an oral contract.

Q. Okay. And I -- again, I need to do my job and I don't want to argue with you, but I'm going to go through my list because I need --

A. You want a yes or no to each one?

Q. I do. I hate to belabor it but I want to tick off the things because I want to make sure I don't miss anything. I want to do my job, and it's important to me that I tick off these things because

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EXHIBIT C

DISTRICT COURT

CLARK COUNTY, NEVADA

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

VERDICT FORM

In the Matter of the Estate of MILTON I. SCHWARTZ, we the jury find as follows:

Question 1:

Do you find that Milton I. Schwartz had a naming rights contract?

Yes ____ No X

If you answered YES to Question 1, please proceed to answer Questions 2, 3, 4, 5, 6 and 7. If you answered NO, skip to Question 8.

Question 2:

Was the contract oral or founded upon a writing or writings?

Oral ____ Written ____

Question 3:

If you answered YES to Question 1, was the contract in perpetuity?

Yes ____ No ____

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Question 4:

What was the consideration (amount of money) that Milton I. Schwartz was required to pay in exchange for a naming rights contract?

_____

_____

Question 5:

Did Milton I. Schwartz perform all of his obligations under the terms of the contract?

Yes ____ No ____

If you answered NO, please skip to Question 8. If you answered YES to Question 5, please proceed to answer Question 6.

Question 6:

In addition to the consideration (amount of money Milton I. Schwartz agreed to pay), what were the other specific terms of the contract?

Corporation	Yes ___	No___
Campus	Yes ___	No___
Elementary School Building	Yes ___	No___
Elementary School	Yes ___	No___
Middle School	Yes ___	No___
Entrance Monument	Yes ___	No___
Letterhead	Yes ___	No___
None of the Above	_____	
All of the Above	_____	

In Question 2, if you found that the contract was a written agreement, please answer Question 7. If you found the contract was an oral agreement, please skip to Question 8.

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Question 7:

Did the School breach the Contract?

Yes ____ No ____

Question 8: (Please circle one)

Do you find that in 2004, when Milton I. Schwartz wrote the following:

> 2.3 The Milton I. Schwartz Hebrew Academy. I hereby give, devise, and bequeath the sum of five hundred thousand dollars ($500,000.00) to the Milton I. Schwartz Hebrew Academy (the, "Hebrew Academy") that:

(a.) He intended that the Bequest be made only to a school known as the "Milton I. Schwartz Hebrew Academy" for the purposes set forth in the Bequest. OR

b. He intended the Bequest be made to the school presently known as the Adelson Educational Institute.

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Question 9:

Do you find that the reason Milton I. Schwartz made the Bequest was based on his belief that he had a naming rights agreement with the School which was in perpetuity?

Yes X No ____

Question 10: (ONLY IF YOU FIND YES TO QUESTION NOS. 1, 2, 5, AND 7)

What was the appropriate amount of damages that the School should pay the Estate to remedy the breach of contract?

$_____

Question 11: (ONLY IF YOU ANSWERED "NO" TO QUESTION NO. 1.)
Do you believe that the School acted in a manner in which the School should have reasonably expected to induce Milton I. Schwartz's reliance and which did induce Milton I. Schwartz's detrimental reliance?
Yes ____ No X

Question 12: (ONLY ANSWER IF YOU ANSWERED "NO" TO QUESTION NO. 1)
Do you find that Milton I. Schwartz believed that he had a naming rights contract with the School but was mistaken?
Yes ____ No X

Question 13: (ONLY ANSWER IF YOU ANSWERED "NO" TO QUESTION NO. 1 AND "YES" TO QUESTION NO. 12)
Did Milton I. Schwartz make the Bequest to the School based on his mistaken belief?
Yes ____ No ____

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FOREPERSON

Sept. 5, 2018

DATE

EXHIBIT D

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8/7/2018 1:29 PM
Steven D. Grierson
CLERK OF THE COURT

Alan D. Freer (#7706)
Alexander G. LeVeque (#11183)
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9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
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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.: 07P061300 Dept. No.: XXVI/Probate Date of Conference: August 3, 2018 Time of Conference: 9:30 a.m.

THE ESTATE'S PRETRIAL MEMORANDUM

Date of Pretrial Conference: August 3, 2018

Location of Pretrial Conference: Solomon Dwiggins & Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Counsel Present:

Estate of Milton I. Schwartz: Alexander G. LeVeque, Esq.

The Dr. Miriam & Sheldon G. Adelson Educational Institute: J. Randall Jones, Esq. & Joshua D. Carlson, Esq.

I.

BRIEF STATEMENT OF FACTS

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

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

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The School initiated this action by filing a petition in probate court to compel the Estate to pay the $500,000 gift to the School. After the School filed its probate petition, the Estate brought claims against the School seeking to enforce the alleged naming rights agreement between the late Milton I. Schwartz and the School. The Estate has denied the School's allegations and the School has denied the Estate's allegations.

A. THE ESTATE'S STATEMENT OF FACTS

Milton I. Schwartz ("Milton") was instrumental in acquiring the land and raising funds for the construction of the School at its current Hillpointe location back in the late 1980s. In August of 1989, Milton personally donated $500,000 to the School in return for which the School would guarantee that its name would change in perpetuity to the Milton I. Schwartz Hebrew Academy ("MISHA") (the "Schwartz Naming Rights Agreement"). Evidence of both the formation and performance of the Schwartz Naming Rights Agreement is abundant. Milton testified as to its formation and terms in two affidavits and did Dr. Roberta Sabbath and Dr. Lubin, both of whom negotiated the Schwartz Naming Rights Agreement on behalf of the School. In addition, other board members of the School (e.g. Leonard Schwartzer, Samuel Ventura and Neville Pokroy) have testified as to its existence. Indeed, the School changed its corporate name from "The Hebrew Academy" and amended its Bylaws to state that the name of the School shall be MISHA "in perpetuity."

Starting in or about 2004, Sheldon and Miriam Adelson began discussions with the School's board (which included Milton) about making a charitable contribution to the School to fund the construction of a high school on the School's property. The Adelson's original idea was to build a high school and a new Jewish Community Center. In 2006, the School began construction on the high school.

In August of 2007, Milton passed away. Before Milton's death, MISHA operated as grades K-8 of the School and the Adelson's school operated as the high school on the MISHA campus. However, just four months after Milton's death, the School's board passed a resolution which caused the following: (1) the acceptance of a grant from the Adelson Family Charitable Foundation subject to certain conditions; (2) the changing, in perpetuity, of the School's legal

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name from MISHA to "The Dr. Miriam and Sheldon G. Adelson Educational Institute" (the "Adelson Institute"); (3) reducing Milton's namesake from K-8 to K-4 (the elementary grades); and (4) an amendment to the School's Bylaws to reflect the School's corporate name change to the Adelson Institute in perpetuity. Presently, and notwithstanding the School's own resolution to keep the elementary grades of the School named in honor of Milton in perpetuity, the School has completely removed Milton's namesake.

This case boils down to a gamble that the School made. The Adelsons have given over $100 million to the School since they committed to build the high school. At trial, the evidence in this case will demonstrate that the School took a calculated risk in breaching the Schwartz Naming Rights Agreement in exchange for the Adelsons' gift.

The Estate seeks damages and specific performance to remedy the School's breach of the Schwartz Naming Rights Agreement. As to the former, the Estate seeks reimbursement of the initial $500,000 that Milton gave a consideration for the Schwartz Naming Rights Agreement (restitution damages) and reimbursement of the additional gifts Milton made from 1989 through his death (reliance damages). According to Milton's bookkeeper (who was also Acting Secretary of the School's Executive Board from 1988-1990), total restitution and reliance damages, excluding interest, is approximately $1,055,853.75. As to the latter, the Estate seeks an order mandating that the School restore its legal name to the Milton I. Schwartz Hebrew Academy as well as grades K-8, the original building on the Hillpointe campus, and the campus itself.

With regard to the dispute concerning the $500,000 bequest to the School in Milton's Last Will and Testament, the Estate claims that the bequest lapsed because it was made specifically to "The Milton I. Schwartz Hebrew Academy," the School bearing Milton's name, which no longer exists. The Estate contends that the bequest lapses as a matter of law because (1) there is no "Milton I. Schwartz Hebrew Academy"; (2) there is no successor clause in the Will; and (3) any failed gifts pass through to the residual beneficiary which is Milton's trust. Alternatively, if the Court determines that there is a latent ambiguity, all of the extrinsic evidence that Estate anticipates will be admitted at trial overwhelmingly demonstrates that Milton's intent was for the bequest to be given to the school bearing his name.

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II.

LIST OF ALL CLAIMS FOR RELIEF

A. THE ESTATE'S CLAIMS (PETITION FOR DECLARATORY RELIEF AND SUPPLEMENT)

1. Construction of Will (First Claim for Relief, pp. 6-7)

The Estate seeks a declaratory judgment from the Court that the $500,000 bequest to the School in the Last Will and Testament of Milton I. Schwartz lapsed because there is no existing entity named after Milton I. Schwartz on a perpetual basis.

2. Fraud in the Inducement (Second Claim for Relief, p. 7)

The elements of fraud in the inducement are as follows: (1) a false representation made by the Board of Trustees to Mr. Schwartz; (2) the Board of Trustees' knowledge or belief that the representation was false (or knowledge that it had an insufficient basis for making the representation); (3) the Board of Trustees' intention therewith to induce Mr. Schwartz to consent to the agreement; (4) Mr. Schwartz's justifiable reliance upon the Board of Trustees' misrepresentation; and (5) damages to Mr. Schwartz resulting from his reliance. *See J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290 (2004).

Based on the anticipated evidence to be admitted at trial, it is clear that the Board of Trustees represented to Mr. Schwartz that the name of the School would be changed to MISHA in perpetuity on multiple occasions. Either these representations were false or the School breached its agreement when it took affirmative steps to change the name of the school.

After the School's initial breach of their agreement in the early 1990s, Mr. Schwartz ceased providing financial support to the School. Realizing the School needed additional funding, and taking into account that Mr. Schwartz was a major donor, in 1996, the Board of Trustees again represented to Mr. Schwartz that it would rename the school to MISHA in perpetuity in order to induce Mr. Schwartz to resume his financial donations and contributions to the School.

As a result of the Board's representations and conduct, Mr. Schwartz resumed his financial contributions and solicitation. Moreover, and in reliance upon the School's representations, Mr. Schwartz devised a specific bequest within his Will to provide additional financial assistance to MISHA after his death. As such, Mr. Schwartz justifiably relied upon the

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school's representations.

The Estate seeks both declaratory relief concerning the voidability of the $500,000 bequest and damages proximately caused. The Estate also seeks punitive damages.

3. Breach of Contract (Fifth Claim for Relief, p. 9)

The Schwartz Naming Rights Agreement is a valid and enforceable contract under Nevada law. The Estate seeks damages and specific performance to remedy the School's breach of the Schwartz Naming Rights Agreement. As to the former, the Estate seeks reimbursement of the initial $500,000 that Milton gave a consideration for the Schwartz Naming Rights Agreement (restitution damages) and reimbursement of the additional gifts Milton made from 1989 through his death (reliance damages). According to Milton's bookkeeper (who was also Acting Secretary of the School's Executive Board from 1988-1990), total restitution and reliance damages, excluding interest, is approximately $1,055,853.75. As to the latter, the Estate seeks an order mandating that the School restore its legal name to the Milton I. Schwartz Hebrew Academy as well as grades K-8 and the original building on the Hillpointe campus.

4. Promissory Estoppel (Sixth Claim for Relief, pp. 9-10)

Even if the Schwartz Naming Rights Agreement is not a legally enforceable contract, Milton nevertheless relied on the School's promise to his detriment. The Estate is, therefore, entitled to restitution of all monies that Milton gave the School in reliance of the School's promise, which, excluding prejudgment interest, is approximately $1,055,853.75.

III.

LIST OF AFFIRMATIVE DEFENSES

A. THE ESTATE'S AFFIRMATIVE DEFENSES

1. Bequest Void for Mistake (Third Claim for Relief, p. 8)
2. Offset of Bequest Under Will (Fourth Claim for Relief, p. 8; Objection to School's Petition, at p. 7)
3. Revocation of Gift and Constructive Trust
4. Fraud in the Inducement (Objection to School's Petition, at p. 7)

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IV.

LIST OF CLAIMS OR DEFENSES TO BE ABANDONED

A. FOR THE ESTATE

1. Affirmative Defense - Bequest to the School is abated.

V.

LIST OF ALL EXHIBITS

Please refer to the Joint Exhibit List attached hereto at Exhibit A.

Exhibits 1 through 63 are the parties Joint (agreed upon) exhibits.

Exhibits 100 through 156 are The Estate's exhibits.

The Estate reserves the right to use certain demonstrative exhibits at time of trial which may not have been previously designated within the Parties' Exhibit List. The Estate also reserves the right to object to any exhibit being offered by any party herein which has not been previously produced during the normal course of discovery proceedings as mandated by NRCP 16.1. The Parties further reserve the right to object to any demonstrative exhibit used at the time of trial by any other Party in this matter.

VI.

EVIDENTIARY AGREEMENTS

The parties have stipulated to the admissibility of exhibits 1 through 63, on Exhibit 1, attached hereto. The Estate has stipulated to only authenticity and foundation as certain exhibits identified by the School. The following is a table setting forth each exhibit identified by the School that the Estate has stipulated to authenticity and foundation:

Exhibit No.	Description
203 **authenticity only**	Naming Rights – Legacy Gifts & Corporate Money. Author: Terry Burton
204	Attachment to Certificate of Amendment to Articles of Incorporation of the Milton I. Schwartz Hebrew Academy, Resolutions of the Board of Trustees
205	IRS form 706 - Redacted pages re: Charitable Bequests: Milton I. Schwartz Hebrew Academy Education/Religious in the amount of $500,000.
206	Trustees meeting minutes and Agenda
208	Hebrew Academy Board Meeting
211	The Dr. Miriam and Sheldon G. Adelson School The Milton I. Schwartz Hebrew Academy Board Meeting - Let from PNAIS Pacific Northwest Association

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212	The Dr. Miriam and Sheldon G. Adelson School The Milton I. Schwartz Hebrew Academy Board of Trustees Meeting.
215	Adelson Educational Campus Board of Trustee Meeting
217 **authenticity only**	From Chaos to Order. Author: Tamar Lubin Saposhnik, Ph.D.

VII.

LIST OF WITNESSES

A. THE ESTATE'S WITNESSES

1. Jonathan Schwartz
c/o Solomon Dwiggins & Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

2. Dr. Miriam Adelson
c/o Kemp Jones & Coulthard
3800 Howard Hughes Parkway
Las Vegas, Nevada 89169

3. Sheldon Adelson
c/o Kemp Jones & Coulthard
3800 Howard Hughes Parkway
Las Vegas, Nevada 89169

4. Custodian of Records for
The Dr. Miriam and Sheldon G. Adelson Educational Institute
c/o Kemp Jones & Coulthard
3800 Howard Hughes Parkway
Las Vegas, Nevada 89169

5. Susan Pacheco
c/o Solomon Dwiggins & Freer, Ltd.
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129

6. Neville Pokroy
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Las Vegas, Nevada 89144

7. Roberta Sabbath
2550 Hayesville Avenue
Henderson, Nevada 89052

8. Lenard Schwartzer
c/o Schwartzer & McPherson Law Firm
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9. Paul Schiffman
325 Main Street, Apt. 4B
White Plains, NY 10601

10. Samuel Ventura
4431 S. Eastern Avenue, Suite 2
Las Vegas, Nevada 89119

11. Carol Zucker
c/o Kamer Zucker Abbot
3000 West Charleston Boulevard, Suite 3
Las Vegas, Nevada 89102

12. Dan Saposhnik
1025 Sable Mist Court
Las Vegas, Nevada 89144

13. Layne T. Rushforth, Esq.
Rushforth Lee & Kiefer LLC
1707 Village Center Circle, Suite 150
Las Vegas, Nevada 89134

14. Rabbi Yitzchak Wyne
Young Israel Aish Las Veggas
9590 W. Sahara Avenue
Las Vegas, Nevada 89117

The Estate reserves the right to call any other witnesses identified in their NRCP 16.1(a)(3) disclosures for any purpose.

VIII.

BRIEF STATEMENT OF EACH PRINCIPAL ISSUE OF LAW WHICH MAY BE CONTESTED AT THE TIME OF TRIAL

A. THE ESTATE

1. The School has waived the affirmative defenses of statute of frauds and statute of limitations.

The School has never filed a responsive pleading to the Estate's pleading. Accordingly, all defenses which are required to be affirmatively pled pursuant to NRCP 8(c), including, but not limited to, statute of limitations and statute of frauds, have been waived. See *Elliot v. Resnick*, 114 Nev. 25, 30, 952 P.2d 961, 964 (1998) ("If affirmative defenses are not pleaded or tried by consent, they are waived.") (citing *Idaho Resources v. Freeport-McMoran Gold*, 110 Nev. 459, 874 P.2d 742, 743 (1994)); *Webb v. Clark Cty. Sch. Dist.*, 125 Nev. 611, 620, 218 P.3d 1239,

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1245 (2009) (holding that a party may waive a statutory affirmative defense if the party fails to timely raise it); *Hubbard v. State*, 110 Nev. 671, 877 P.2d 519 (1994) (holding that a statute of limitations defense is a non-jurisdictional defense that must be asserted by the defendant or else it is waived); and *Coray v. Hom*, 80 Nev. 39, 40, 389 P.2d 76, 77 (1964) (concluding that the affirmative defense of statute of frauds not pleaded affirmatively was waived). Moreover, the deadline for the School to present and/or amend pleadings to include an affirmative defense of statute of limitations and/or statute of frauds was years ago. See NRCP 16.1(c)(6) (deadline to amend pleadings 90 days prior to close of discovery). Accordingly, the School should be precluded from asserting said defenses prior to and during trial.

2. The School could not demand from Milton additional consideration for continued performance of the Schwartz Naming Rights Agreement.

On May 25, 2018, Sheldon Adelson was deposed. During his deposition, Mr. Adelson testified that the School removed Milton's namesake from the School because his Will did not include an approximate $2 million that Milton allegedly committed to. It is well-settled in Nevada that the "preexisting duty rule" bars a contracting party from demanding additional consideration from the other party on the threat of refusing to continue to perform preexisting contractual obligations:

> Where two parties have entered into a bilateral agreement, it will often occur that one of the parties, having become dissatisfied with the contract, will refuse to perform or to continue performance unless he is promised or paid a greater compensation than that provided in the original agreement.... [T]he question arises whether the new [agreement to pay more money] is enforceable.
> ....
> As a matter of principle, the second agreement must be held invalid, for the performance by the recalcitrant contractor is no legal detriment to him whether actually given or merely promised, since, at the time the second agreement was entered into, he was already bound to do the [performance]; nor is the performance or promise to perform under the second agreement a legal benefit to the promisor, since he was already entitled to have the [performance].
>
> This principle is commonly known as the preexisting duty rule and is recognized in Nevada.

Zhang v. Eighth Jud. Dist. Ct., 120 Nev. 1037, 1040–41, 103 P.3d 20, 23 (2004) (abrogated on unrelated grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008)); see also *County of Clark v. Bonanza No. 1*, 96 Nev. 643, 650-51, 615 P.2d 939, 944

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(1980) ("Consideration is not adequate when it is a mere promise to perform that which the promisor is already bound to do.")

Here, the School was already legally obligated to hold itself out as the Milton I. Schwartz Hebrew Academy in perpetuity pursuant to the Schwartz Naming Rights Agreement. Accordingly, Mr. Adelson's testimony is irrelevant because the School already owed Milton a preexisting duty.

X.

TRIAL TIME ESTIMATE

Two to three weeks.

XI.

OTHER MATTERS TO BE ADDRESSED BY COURT BEFORE TIRAL

None at this time.

Dated this 6th day of August, 2018.

/s/ Alexander G. LeVeque

By:_____

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CERTFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of August, 2018, pursuant to NRCP 5(b)(2)(B), I placed a true and correct copy of the foregoing **THE ESTATE'S PRETRIAL MEMORANDUM** in the United States Mail, with first-class postage prepaid, addressed to the following, at their last known address, and, pursuant to EDCR 8.05 (a) and 8.05 (f) and Rule 9 of N.E.F.C.R., caused an electronic copy to be served via Odyssey, to the e-mail addresses noted below:

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EXHIBIT E

In the Matter Of:

Jonathan A. Schwartz vs Adelson Educational Institute

VOL 2 TRANSCRIPT

August 24, 2018

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Discovery Legal Services, LLC 702-353-3110 production@discoverylegal.net

A. That's true.

Q. And in your experience as a board member, who it also be true to say that you never understood bylaws that you were enacting on behalf of the corporation to be legally enforceable contracts with third parties?

MR. LEVEQUE: Object to the form. Overbroad and vague.

THE COURT: I will allow that.

THE WITNESS: I never would think that bylaws were -- yeah, I agree with you, bylaws can be changed.

BY MR. JONES:

Q. So as your understanding as a board member, when you were passing bylaws regardless of what they said, you never considered those bylaws to be a contract with somebody else, did you?

A. No, I didn't. I agree with you. Bylaws are not a contract unless there is a separate agreement to the to change the bylaws.

Q. Fair enough.

Now let's go to Exhibit 111. There was a document right before this that Mr. LeVeque showed you. And Shane if you could just pop up the top part who shows who is present there.

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it does that?

A. It should be careful about doing that, yes.

Q. Because, for instance, if the Hebrew Academy gave away all of its naming rights for $500,000 and a Ben factor came along 20 years later and said I will give you $50 million, you don't want to be in a position to preclude that future Ben factor from giving away the money, unless you feel confident that that's the best thing to do for the corporation, right?

MR. LEVEQUE: Objection. Calls for speculation.

THE COURT: Overruled.

THE WITNESS: I think the answer to the question has to be yes, looking at things in retrospect. You know, I know of situations where that has occurred.

BY MR. JONES:

Q. Now I read your deposition. In your deposition, you said you believed that Mr. Schwartz gave a lot of money but you didn't say the amount of money?

A. Correct.

Q. In your testimony yesterday, you told the jury that you believed it was $500,000 that he gave,

and $500,000 that he raised. Do you recall that?

A. That's my recollection, that he -- he at this point in time, that he gave 500,000 and that he raised approximately another 500,000.

Q. Approximately. Well, that brings up an interesting question. Was it 500,000? Was it 400,000, was it 600,000? What was it?

A. The answer is I can't give you -- other than the 500,000 that he personally gave and my understanding that Paul Sogg gave another 300,000, and that there was another donor that was related to solicited by Mr. Schwartz that gave a hundred thousand dollars. I can't tell you that the number was more than that.

Q. So what was the agreement? Tell this jury exactly what the agreement was. How much money to the dollar was he going to pay in exchange for perpetual naming rights?

MR. LEVEQUE: Objection. Asked and answered.

THE COURT: Overruled.

THE WITNESS: My understanding of the agreement -- my understanding, is that Mr. Schwartz gave a half a million dollars.

BY MR. JONES:

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Q. Okay.

A. And was aiming at raising another half -- that he gave a half million dollars and that in exchange for that and his offices in soliciting additional monies, that he was going to have the school named after him forever.

Q. How much?

A. Half a million dollars.

Q. Half a million and a half million?

A. I'm not -- that's not what I said.

Q. Wait a minute.

A. I understood that he gave a half a million dollars cash, his money. I understood that he was seeking to raise another half -- that the school was seeking to raise another half a million and that the balance would be for building the school would come from loans.

Q. Tell this jury exactly the specific details of this contract that you believe the school had with Mr. Schwartz. The exact details.

A. A half million dollars for the name of the school.

Q. That's it?

A. At that point in time, the only thing we had for sure was his half a million dollars.

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who Mr. Schwartz had been motivating force to get them to donate six figure donations.

Q. So fair enough. So let me rephrase it, then.

In your mind, what you believe the agreement was, is that Mr. -- if Mr. Schwartz was not able to get up to a half a million dollars, it would not be a breach of the contract?

A. Yes, that's correct.

Q. All right. But that's not in writing anywhere, right?

A. There is no contract signed by both sides in this case, is my understanding, because otherwise we wouldn't be here.

Q. I think you are probably right about that.

So let me ask a related question. So that's what your mind was, that he had been responsible already at the time he gave the half million for getting other people to put up substantial sums of money but even if it didn't reach a half million, it was still -- that was still a deal with him?

A. Yes.

Q. As you sit here today, do you know, can you say with assurance under oath that the other

A. It doesn't say it would be put a sign on -- her name on the building.

Q. I'm sorry?

A. It didn't say put a sign on the building. It said it would name the elementary school.

Q. There was only a an elementary school at the time, right?

A. The intention was at the time to also put in a high school. That's why you needed 17 acres.

Q. But the only actual building that was on there until the Adelsons came along essentially was the elementary school, right?

A. Yes, that's correct.

Q. So the only building that her name could go on at that time was the elementary school which is the same building you saw later had Milton Schwartz's name on?

A. My understanding the building always had the name Milton I. Schwartz on it.

Q. If your understanding is incorrect and the building had from 1990 to 1996 Dr. Lubin's name on it, would you agree with me that would be a directly contrary to what you think the terms of this contract was with Milton Schwartz?

A. Yeah, that would be true.

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to change the name of the school to the Milton I. Schwartz Hebrew Academy in perpetuity?

A. No, I don't recall that.

Q. Are there any writings that we have seen today or that you are otherwise aware of that memorialize the agreement that the school had with Milton Schwartz concerning naming rights?

A. I think whatever writings were in the board minutes and the articles and the bylaws. I don't recall a -- and possibly there was a letter written to Mr. Schwartz, but -- draft of, but other than that I don't see anything that you would call a contract where both sides signed it.

Q. Sure not a pretty contract that we are all used to seeing where it's signed by both people, right?

MR. JONES: Objection. Your Honor not a pretty contract object to the form of the question.

THE COURT: Beg pardon.

BY MR. LEVEQUE:

Q. Not a formal contract that you would typically see?

A. No. There is no formal written contract.

Q. But is there a writing showing how much money Milton Schwartz promised to pay?

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EXHIBIT F