

Case No. 78341

**In the Supreme Court of Nevada**

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

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

Appellant,

*vs.*

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

Respondent.

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Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

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

**APPELLANT'S  
APPENDIX VOLUME 27  
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97	Reply in Support of Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	01/04/19	24	5924–5941
35	Reporter's Transcript of Proceedings	10/08/14	6	1334–1376
98	Reporter's Transcription of Proceedings	01/10/19	24	5942–5993
114	Stipulation and Order Regarding Trial Transcripts	08/05/19	27	6596–6597
31	Supplement to Opposition to Motion for Partial Summary Judgment	07/02/14	6	1274–1280
61	Supplement to Opposition to Motion for Summary Judgment Regarding Breach of Contract and Countermotion for Advisory Jury	08/08/18	10	2387–2416
28	Supplement to Petition for Declaratory Relief to Include Remedies of Specific Performance and Mandatory Injunction	05/28/17	5	1159–1165
64	Supplement to the Estate's Motion for Reconsideration of: The Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Oral Contract	08/14/18	11	2624–2646
60	Supplement to the Estate's Opposition to Motion for Partial Summary Judgment Regarding Fraud	08/08/18	10	2353–2386
105	The Adelson Campus' Motion to Re- Tax and Settle Costs	03/06/19	26	6479–6489

53	The Adelson Campus' Opposition to the Estate's Countermotion for Advisory Jury	07/23/18	9	2156–2161
66	The Adelson Campus' Opposition to the Estate's Motion for Reconsideration of the Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Contract and Countermotion to Strike the 8/14/18 Declaration of Jonathan Schwartz and All Attached Exhibits in Support	08/16/18	12	2765–2792
93	The Adelson Campus' Opposition to the Estate's Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	11/21/18	24	5789–5803
59	The Adelson Campus' Pre-Trial Memorandum	08/07/18	10	2275–2352
54	The Adelson Campus' Reply in Support of Motion for Partial Summary Judgment Regarding Fraud	08/02/18	9	2162–2177
55	The Adelson Campus' Reply in Support of Motion for Partial Summary Judgment Regarding Statute of Limitations	08/02/18	9	2178–2209
111	The Adelson Campus' Reply in Support of Motion to Re-Tax and Settle Costs	04/04/19	27	6547–6553
92	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Opposition to the Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered October 4, 2018	11/21/18	23 24	5694–5750 5751–5788
95	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Opposition to the Estate's Post-Trial	12/21/18	24	5817–5857



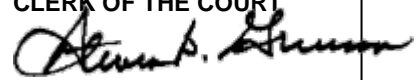
	Brief Regarding the Parties' Equitable Claims and for Entry of Judgment			
85	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Verified Memorandum of Costs	10/11/18	19	4576–4579
71	The Estate's Motion for Judgment as a Matter of Law Regarding Construction of Will	09/03/18	18	4334–4341
89	The Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered October 4, 2018	10/22/18	21 22	5168–5250 5251–5455
63	The Estate's Motion for Reconsideration of: The Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Oral Contract and Ex Parte Application for an Order Shortening Time	08/14/18	11	2539–2623
110	The Estate's Opposition to the Adelson Campus' Motion to Re-Tax and Settle Costs	03/25/19	27	6522–6546
57	The Estate's Pretrial Memorandum	08/06/18	9 10	2246–2250 2251–2263
58	The Estate's Pretrial Memorandum	08/06/18	10	2264–2274
94	The Estate's Reply to Adelson Campus's Opposition to Motion for Post-Trial Relief from Judgment on Jury Verdict Entered on October 4, 2018	12/21/18	24	5804–5816
96	The Estate's Response to the Adelson Campus' Post-Trial Brief on Outstanding Claims	12/21/18	24	5858–5923
32	Transcript for Motion for Summary Judgment	07/09/14	6	1281–1322
21	Transcript of Proceeding: Motion for Reconsideration	12/10/13	3	639–669
42	Transcript of Proceedings: Motion for Protective Order on Order Shortening Time	04/19/17	6	1465–1482

22	Transcription of Discovery Commissioner Hearing Held on January 29, 2014	01/29/14	3	670–680
136	Trial Exhibit 111		28	6868–6869
152	Trial Exhibit 1116A		29	7008
137	Trial Exhibit 112		28	6870
138	Trial Exhibit 113		28	6871
139	Trial Exhibit 114		28	6872
140	Trial Exhibit 115		28	6873
141	Trial Exhibit 118		28	6874–6876
142	Trial Exhibit 128		28	6877
143	Trial Exhibit 130		28	6878–6879
144	Trial Exhibit 134		28	6880–6882
145	Trial Exhibit 139		28	6683–6884
123	Trial Exhibit 14		27	6626–6628
146	Trial Exhibit 149		28	6885–6998
147	Trial Exhibit 158		28	6999
148	Trial Exhibit 159		28	7000
149	Trial Exhibit 162		28	7001
150	Trial Exhibit 165		29	7002
124	Trial Exhibit 17		27	6629–6638
125	Trial Exhibit 22		27	6639–6645
126	Trial Exhibit 28		27	6646–6647
118	Trial Exhibit 3		27	6607–6609
127	Trial Exhibit 38		27	6648–6649
151	Trial Exhibit 384		29	7003–7007
119	Trial Exhibit 4		27	6610–6611
128	Trial Exhibit 41		27	6650–6675
129	Trial Exhibit 43		27	6676–6679
130	Trial Exhibit 44		27	6680–6682
120	Trial Exhibit 5		27	6612–6620
131	Trial Exhibit 51		27	6683–6684
132	Trial Exhibit 52		27	6685–6686
133	Trial Exhibit 55		27	6687–6713
121	Trial Exhibit 6		27	6621
134	Trial Exhibit 61		27 28	6714–6750 6751–6799

135	Trial Exhibit 62		28	6800–6867
122	Trial Exhibit 9		27	6622–6625
69	Trial Transcripts (Rough Drafts)	09/03/18	12 13 14 15 16 17 18	2903–3000 3001–3250 3251–3500 3501–3750 3751–4000 4001–4250 4251–4304
76	Verdict Form	09/05/18	19	4513–4516
103	Verified Memorandum of Costs of A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz	02/27/19	25	6111–6015

# EXHIBIT C

# EXHIBIT C



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Joshua D. Carlson, Esq. (#11781)  
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*Attorneys for The Dr. Miriam and  
Sheldon G. Adelson Educational Institute*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Case No.: 07-P-061300  
Dept. No.: 26/Probate

**NOTICE OF ENTRY OF JUDGMENT ON A.  
JONATHAN SCHWARTZ'S, EXECUTOR OF  
THE ESTATE OF MILTON I. SCHWARTZ,  
CLAIMS FOR PROMISSORY ESTOPPEL  
AND REVOCATION OF GIFT AND  
CONSTRUCTIVE TRUST**

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a JUDGMENT ON A.  
JONATHAN SCHWARTZ'S, EXECUTOR OF THE ESTATE OF MILTON I. SCHWARTZ,  
CLAIMS FOR PROMISSORY ESTOPPEL AND REVOCATION OF GIFT AND CONSTRUCTIVE  
TRUST was entered in the above-captioned case on February 20, 2019. A copy of said Judgment is  
attached hereto.

DATED this 21<sup>st</sup> day of February, 2019.

KEMP, JONES & COULTHARD, LLP

/s/ Joshua D. Carlson

J. Randall Jones, Esq., Bar No. 3927  
Joshua D. Carlson, Esq. Bar No. 11781  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169  
*Attorneys for The Dr. Miriam and Sheldon G. Adelson  
Educational Institute*

**CERTIFICATE OF SERVICE**

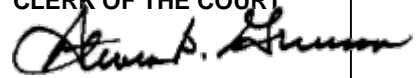
I hereby certify that on the 21<sup>st</sup> day of February, 2019, the foregoing **NOTICE OF ENTRY OF JUDGMENT ON A. JONATHAN SCHWARTZ'S, EXECUTOR OF THE ESTATE OF MILTON I. SCHWARTZ, CLAIMS FOR PROMISSORY ESTOPPEL AND REVOCATION OF GIFT AND CONSTRUCTIVE TRUST** was served on the person(s) listed on the E-Service list via the court's Electronic Service.

/s/ Pamela Montgomery  
An employee of Kemp, Jones & Coulthard, LLP

005900  
**KEMP, JONES & COULTHARD, LLP**

3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169  
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*Attorneys for The Dr. Miriam and  
Sheldon G. Adelson Educational Institute*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Case No.: 07-P-061300  
Dept. No.: 26/Probate

**JUDGMENT ON A. JONATHAN  
SCHWARTZ'S, EXECUTOR OF THE  
ESTATE OF MILTON I. SCHWARTZ,  
CLAIMS FOR PROMISSORY ESTOPPEL  
AND REVOCATION OF GIFT AND  
CONSTRUCTIVE TRUST**

This action came on for trial before the Court and a jury, Honorable Gloria Sturman, District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict, as attached hereto as Exhibit "1".

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After considering all evidence admitted at trial and the jury's verdict:

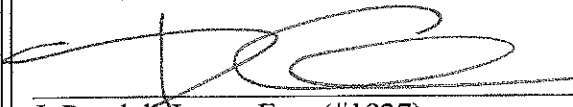
**IT IS HEREBY ORDERED and ADJUDGED** that, A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz (the "Estate"), take nothing by way of its remaining claims for Promissory Estoppel and Revocation of Gift and Constructive Trust as plead in the Estate's Petition for Declaratory Relief and Supplement to Petition for Declaratory Relief to Include Remedies of Specific Performance and Mandatory Injunction, and that these claims by the Estate only be, and hereby are, dismissed on the merits with prejudice.

DATED this 18 day of February, 2019.

  
DISTRICT JUDGE

Submitted by:

KEMP, JONES & COULTHARD, LLP

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



# EXHIBIT 1

STEVEN D. GRIERSON  
CLERK OF THE COURT

SEP 05 2018

BY Lorna Shell  
LORNA SHELL, DEPUTY

COPY

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 \_\_\_\_\_

///

///

1 **Question 4:**

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

6 **Question 5:**

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

8 Yes \_\_\_\_\_ No \_\_\_\_\_  
9

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

12 **Question 6:**

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

15 Corporation Yes \_\_\_\_\_ No \_\_\_\_\_

16 Campus Yes \_\_\_\_\_ No \_\_\_\_\_

17 Elementary School Building Yes \_\_\_\_\_ No \_\_\_\_\_

18 Elementary School Yes \_\_\_\_\_ No \_\_\_\_\_

19 Middle School Yes \_\_\_\_\_ No \_\_\_\_\_

20 Entrance Monument Yes \_\_\_\_\_ No \_\_\_\_\_

21 Letterhead Yes \_\_\_\_\_ No \_\_\_\_\_

22 None of the Above \_\_\_\_\_

23 All of the Above \_\_\_\_\_  
24

25 In Question 2, if you found that the contract was a written agreement, please answer  
26 Question 7. If you found the contract was an oral agreement, please skip to Question  
27 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 ☒ 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 \_\_\_\_\_

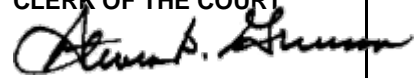
  
FOREPERSON

DATE

Sept. 5, 2018

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1 **ASTA**  
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13 [ASmith@LRRC.com](mailto:ASmith@LRRC.com)

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

16 DISTRICT COURT  
CLARK COUNTY, NEVADA

17 In the Matter of the Estate of:	Case No. 07-P061300-E
18 MILTON I. SCHWARTZ,	Dep't No. 26/Probate
19 Deceased.	

20  
21 **CASE APPEAL STATEMENT**

- 22 1. Name of appellant filing this case appeal statement:
- 23 A. Jonathan Schwartz, Executor of the Estate of Milton I.
- 24 Schwartz.
- 25 2. Identify the judge issuing the decision, judgment, or order appealed from:
- 26 THE HONORABLE GLORIA J. STURMAN
- 27
- 28

3. Identify each appellant and the name and address of counsel for each appellant:

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

Alan. D. Freer  
Alexander G. LeVeque  
SOLOMON DWIGGINS & FREER, LTD.  
9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129

Daniel F. Polsenberg  
Joel D. Henriod  
Abraham G. Smith  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

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

J. Randall Jones  
Joshua D. Carlson  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway, 17th Floor  
Las Vegas, Nevada 89169  
702-385-6000

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained counsel

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained counsel



- 1 8. Indicate whether appellant was granted leave to proceed in forma  
 2 pauperis, and the date of entry of the district court order granting such  
 leave:

3 N/A

- 4 9. Indicate the date the proceedings commenced in the district court, *e.g.*,  
 5 date complaint, indictment, information, or petition was filed:

6 "Petition for Probate of Will" filed on October 15, 2007.  
 7 "Petition for Declaratory Relief" filed on May 28, 2013.

- 8 10. Provide a brief description of the nature of the action and result in the  
 9 district court, including the type of judgment or order being appealed and  
 10 the relief granted by the district court:

11 The estate of Milton I. Schwartz asked for a determination  
 12 that Mr. Schwartz had a perpetual enforceable naming-rights  
 13 agreement with the school formerly known as the Milton I.  
 14 Schwartz Hebrew Academy and now known as the Adelson  
 Educational Institute. The court granted summary judgment on  
 the Estate's claim for breach of oral contract based on alleged  
 inquiry notice of a breach in 2010, three years before the 2013  
 petition. The jury did not find an enforceable written naming-  
 rights contract but did find that Mr. Schwartz had intended a  
 bequest in his will to go only to a school known as the "Milton I.  
 Schwartz Hebrew Academy" based on his belief that he had a  
 perpetual naming-rights agreement.

15 The Court entered judgment denying the Estate's contract  
 16 claims and claims for rescission of certain lifetime gifts but found  
 that the will bequest had lapsed.

- 17 11. Indicate whether the case has previously been the subject of an appeal or  
 18 an original writ proceeding in the Supreme Court and, if so, the caption  
 and Supreme Court docket number of the prior proceeding.

19 *Schwartz v. Eighth Judicial District Court*, Case No. 73066

- 20 12. Indicate whether this appeal involves child custody or visitation:

21 This case does not involve child custody or visitation.

- 22 13. If this is a civil case, indicate whether this appeal involves the possibility  
 23 of settlement:

24 Undersigned counsel is not aware of any circumstances that  
 25 make settlement impossible.

1 Dated this 8th day of March, 2019.

2 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3  
4 By: /s/Abraham G. Smith

5 DANIEL F. POLSENBERG (SBN 2376)  
6 JOEL D. HENRIOD (SBN 8492)  
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11 Las Vegas, Nevada 89129  
(702) 853-5483

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

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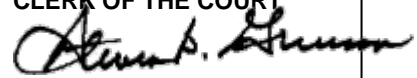
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*Attorneys for The Dr. Miriam and  
Sheldon G. Adelson Educational Institute*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Case No.: 07-P-061300  
Dept. No.: 26/Probate

**NOTICE OF APPEAL**

Please take note that The Dr. Miriam and Sheldon G. Adelson Educational Institute, hereby  
appeals to the Supreme Court of Nevada from:

1. All judgments and orders in this case, including the February 20, 2019 Judgment on the Dr.  
Miriam and Sheldon G. Adelson Educational Institute's Petition to Compel Distribution, for  
Accounting, and for Attorneys' Fees and the February 20, 2019 Judgment on Jonathan A.  
Schwartz's Petition for Declaratory Relief.
2. All rulings and interlocutory orders made appealable by any of the foregoing.

DATED this 22nd day of March, 2019.

KEMP, JONES & COULTHARD, LLP

/s/ Joshua D. Carlson

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22th day of March, 2019, the foregoing **NOTICE OF APPEAL** was served on all parties on the service list through the Court's electronic filing system.

/s/ Patty Pierson

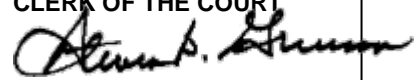
An employee of Kemp, Jones & Coulthard, LLP

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

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Case No.: 07-P-061300  
Dept. No.: 26/Probate

**CASE APPEAL STATEMENT**

**1. Name of appellants filing this Case Appeal Statement:**

The Dr. Miriam and Sheldon G. Adelson Educational Institute (the “Adelson Campus” or the “School”)

**2. Identify the judge issuing the decision, judgment or order appealed from:**

Honorable Gloria J. Sturman.

**3. Identify each appellant and the name and address of counsel for each appellant:**

The Dr. Miriam and Sheldon G. Adelson Educational Institute (the “Adelson Campus” or the “School”)

J. Randall Jones, Esq.  
Joshua D. Carlson, Esq.  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169

**4. Identify each respondent and the name and address of appellate counsel if known, for each respondent (if the name of a respondent’s appellate counsel is unknown, indicate as much and provide the name and address of that respondent’s trial counsel):**

Alan. D. Freer  
Alexander G. LeVeque



SOLOMON DWIGGINS & FREER, LTD.  
9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129

Daniel F. Polsenberg  
Joel D. Henriod  
Abraham G. Smith  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169

**5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada, and if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):**

All counsel are licensed to practice law in Nevada.

**6. Indicate whether appellant was represented by appointed counsel in the district court or on appeal:**

Appellants were and are not represented by appointed counsel.

**7. Indicate whether appellant is represented by appointed or retained counsel on this appeal:**

Appellants are represented by retained counsel on appeal.

**8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:**

Appellants did not request leave to proceed in forma pauperis.

**9. Indicate the date of proceedings commenced in the district court:**

May 3, 2013.

**10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:**

At issue is the enforceability of a purported naming rights agreement and a \$500,000 Bequest from Milton I. Schwartz to "the Hebrew Academy for the purpose of funding scholarships to educate Jewish children only." On May 3, 2013, after Mr. Schwartz's son and the executor of his estate, Jonathan Schwartz, refused to make the Bequest to the School, the School filed a Petition to Compel Distribution of the Bequest, in addition to seeking other relief. On May 28, 2013, the Estate filed its

own petition for declaratory relief, raising claims for breach of contract, fraud in the inducement, Bequest void for mistake, offset of the Bequest, revocation of gift and constructive trust, and construction of the Will. On May 28, 2014, the Estate filed a supplemental petition for declaratory relief adding causes of action for specific performance and injunctive relief.

A jury trial commenced in August 2018. The jury found that Milton Schwartz did not have an enforceable naming rights contract with the school. The jury also found that Mr. Schwartz had intended a bequest in his will to go only to a school known as the “Milton I. Schwartz Hebrew Academy” based on his belief that he had a perpetual naming rights agreement.

The parties then conducted post-trial briefing on the remaining equitable issues. The Court denied the School’s Petition and granted the Estate’s competing claims for construction of will and bequest void for mistake. The Court further denied the Estate’s claims for promissory estoppel and revocation and constructive trust regarding Milton I. Schwartz’s lifetime gifts to the School. Judgments were entered accordingly.

**11. Indicate whether the case has been the subject of an appeal or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:**

*Schwartz v. Eighth Judicial District Court*, Case No. 73066

**12. Indicate whether this appeal involves child custody or visitation:**

This appeal does not involve child custody or visitation.

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13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

The case involves the possibility of settlement.

DATED this 22th day of March, 2019.

KEMP, JONES & COULTHARD, LLP

/s/ Joshua D. Carlson

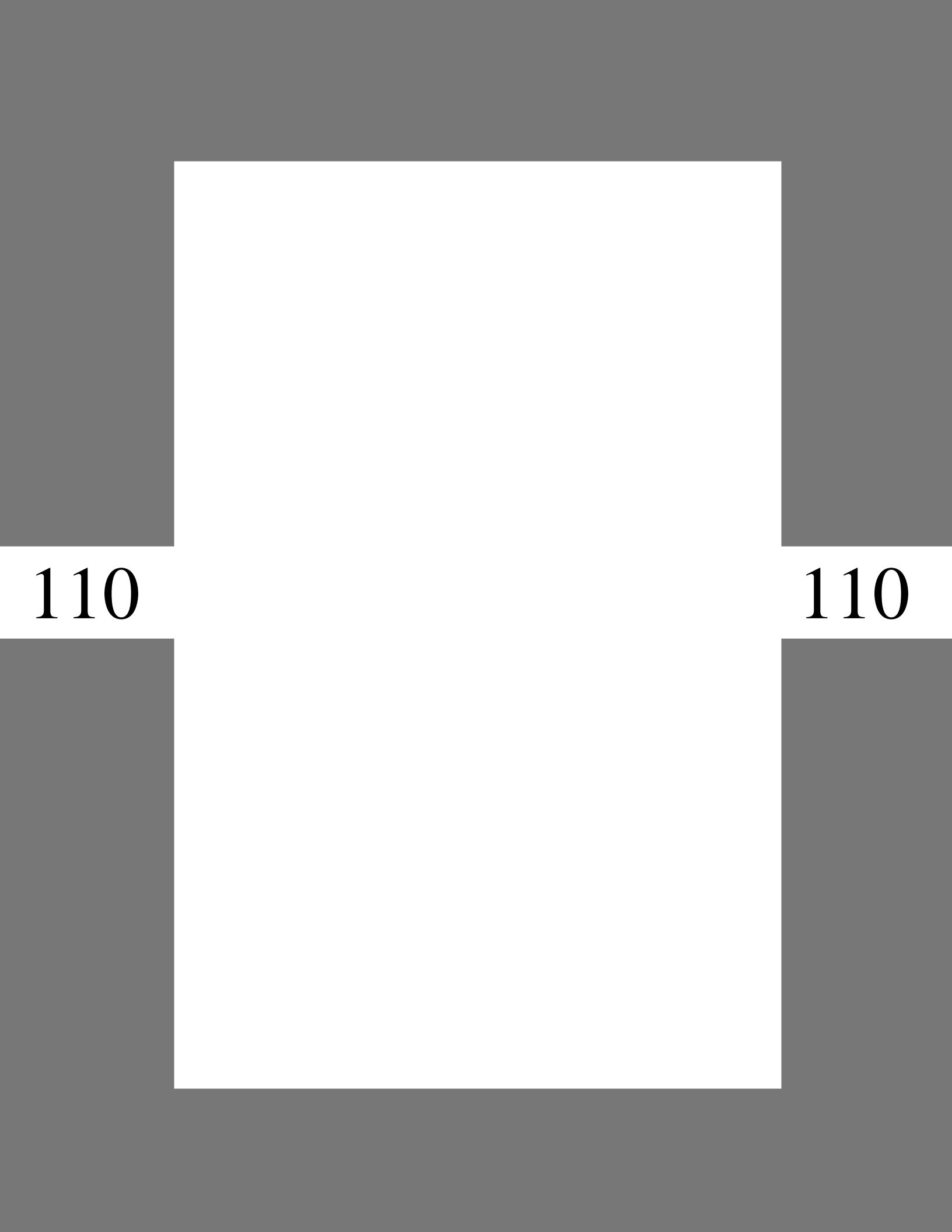
J. Randall Jones, Esq. (#1927)  
 Joshua D. Carlson, Esq. (#11781)  
 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
 Las Vegas, Nevada 89169  
 Attorneys for The Dr. Miriam and  
 Sheldon G. Adelson Educational Institute

### CERTIFICATE OF SERVICE

I hereby certify that on the 22th day of March, 2019, the foregoing **CASE APPEAL STATEMENT** was served on all parties on the service list through the Court's electronic filing system.

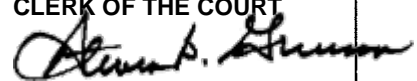
/s/ Patty Pierson

An employee of Kemp, Jones & Coulthard, LLP



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

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 In the Matter of the Estate of:

16 MILTON I. SCHWARTZ,

17 Deceased.

Case No.: P-07-061300-E  
Dept.: 26/Probate

Hearing Date: April 11, 2019  
Hearing Time: 10:00 a.m.

18  
19 **THE ESTATE'S OPPOSITION TO**  
**THE ADELSON CAMPUS' MOTION TO RE-TAX AND SETTLE COSTS**

20 A. Jonathan Schwartz ("Executor" or "Jonathan"), Executor of the Estate of Milton I.  
21 Schwartz (the "Estate"), by and through his counsel, hereby submits his Opposition to The Dr.  
22 Miriam & Sheldon G. Adelson Educational Institute's (the "Adelson Campus") Motion to Re-tax  
23 Costs. (the "Opposition").

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

27 ///

28

# MEMORANDUM OF POINTS AND AUTHORITIES

## I.

### STATEMENT OF FACTS

This probate matter was comprised of two separate petitions which were tried at the same time in August of 2018.

The first petition was brought by the Adelson Campus against the Estate which sought an order compelling the Estate to distribute the \$500,000 bequest pursuant to the Last Will and Testament of Milton I. Schwartz, and for attorneys' fees and costs. That action was initiated by the Adelson Campus on May 3, 2013, when it filed its *Petition to Compel Distribution, for Accounting, and for Attorneys' Fees* (the "Adelson Campus' Petition"). Judgment was entered on the Adelson Campus' Petition in favor of the Estate as it was "**DENIED** in its entirety" and the Adelson Campus took "nothing by way of its Petition."<sup>1</sup> The Estate, therefore, is unquestionably the prevailing party on the Adelson Campus' Petition.

The second action was a compulsory counter-petition filed by the Estate against the Adelson Campus which brought several claims for relief, including, (1) construction of will; (2) fraud in the inducement; (3) bequest void for mistake; (4) offset of bequest under will; (5) breach of contract; (6) and revocation of gift and constructive trust (the "Estate's Petition"). The Estate's Petition was filed on May 28, 2013, approximately three weeks after the Adelson Campus filed its Petition.<sup>2</sup> Judgment was entered on the Estate's Petition in its favor as it was "**GRANTED** in part and **DENIED** in part."<sup>3</sup> Although the Court did not grant all of the relief sought in the Estate's Petition,

<sup>1</sup> See Judgment on the Dr. Miriam and Sheldon G. Adelson Educational Institute's Petition to Compel Distribution, for Accounting, and for Attorneys' Fees, a true and correct copy being attached hereto as **Exhibit A**.

<sup>2</sup> The Estate filed a supplement to its Petition shortly thereafter which added requests for additional forms of relief, including specific performance.

<sup>3</sup> See Judgment on A. Jonathan Schwartz's Petition for Declaratory Relief, a true and correct copy being attached hereto as **Exhibit B**. It should be noted that notwithstanding the judgment being mutually drafted by the Estate and the Adelson Campus, the Adelson Campus surreptitiously submitted its own judgment, without ever providing the same to counsel for the Estate. The Estate

1 it granted some relief, including the granting of the Estate's First Claim for Relief (construction of  
2 will) and the Third Claim for Relief (bequest void for mistake). The Estate, therefore, is  
3 unquestionably the prevailing party on its own Petition.

4 Restating the above in the simplest terms, the Adelson Campus completely lost on its  
5 Petition and the Estate had a partial victory on its Petition. There is no grey area as advanced by the  
6 Adelson Campus. This is a black and white issue: The Estate is the prevailing party and is therefore  
7 entitled to the recovery of its costs and the Adelson Campus is not entitled to recover any.

## 8 II.

### 9 THE ESTATE IS ENTITLED TO RECOVERY OF ALL 10 COSTS BECAUSE IT WAS THE PREVAILING PARTY

11 Costs must be awarded to a prevailing party in an action for payment of money or in a  
12 "special proceeding." NRS 18.020(3), (4). A "special proceeding" is one created by statute rather  
13 than "the panoply of remedies traditionally available in actions at law or suits in equity." *Foley v.*  
14 *Kennedy*, 110 Nev. 1295, 1305, 885 P.2d 583, 589 (1994). "A prevailing party is one that succeeds  
15 on *any significant issue* in litigation which *achieves some of the benefit it sought* in bringing  
16 suit." *LVMPD v. Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) (emphasis  
17 in original; internal quotation marks omitted). It is not necessary that the prevailing party "succeed  
18 on every issue." *Id.* (citing *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). Success on one of  
19 two alternative claims entitles a party to costs. *E.g., Bonner v. Bd. of Directors of St. Francis Levee*  
20 *Dist.*, 92 S.W. 1124 (1906).

21 Here, the Estate is the prevailing party because the Court denied the school's petition to  
22 compel the Estate to distribute a bequest, which was an action for the recovery of money under or  
23 a special proceeding under NRS chapter 151. *See* NRS 18.020(3), (4). This was a significant issue:  
24 although the estate had also pursued claims under a breach-of-contract theory, it achieved the  
25 principal benefit of the claim on the alternative theory that the bequest lapsed. *See e.g. Close v.*

26 \_\_\_\_\_  
27 submits that the Adelson Campus did this to concoct an argument that they were the prevailing  
28 party on the Estate's Petition.

1 *Isbell Constr. Co.*, 86 Nev. 525, 531, 471 P.2d 258, 262 (1970) (holding that a party prevailed when  
 2 it won on its mechanic's lien claim but had its damages reduced significantly by the adverse party's  
 3 counterclaim); and *Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608 ("To be a prevailing  
 4 party, a party need not succeed on every issue.") (citing *Hensley v. Eckhart*, 461 424, 434 (1983)  
 5 (observing that "a plaintiff [can be] deemed 'prevailing' even though he succeeded on only some  
 6 of his claims for relief.")). The bottom line is that the Estate need only prevail on one of its claims  
 7 to be the "prevailing party." The fact that it did not prevail on some of its claims irrelevant if it  
 8 ultimately prevailed on others.

9 In its Motion, the Adelson Campus attempts to avoid application of this clear precedent by  
 10 self-servingly weighing the subjective import of each of the Estate's claims for relief. While it is  
 11 true that a verdict in favor of the Estate on its contract or promissory estoppel would have likely  
 12 caused more of a detriment for the Adelson Campus than the Estate's other successful claims, it is  
 13 irrelevant for purposes of determining the prevailing party. Indeed, the Adelson Campus cites no  
 14 law supporting its argument. In its Motion, the Adelson Campus cites three cases, none of which  
 15 provide it any support.

16 *Bentley v. State, Office of State Engineer*, 2016 WL 3856572 (2016), is an unpublished  
 17 decision which affirmed the State Engineer's final order of determination concerning water use  
 18 rotation schedules for several interested stakeholders. Appellants (the Bentleys) challenged the  
 19 rotation schedule by asserting that they had the right to continuously divert water pursuant to a  
 20 diversion agreement and, thus, could not be subjected to a rotation schedule. Several other  
 21 landowners with water rights intervened in the lawsuit to support the rotation schedule  
 22 determination. Ultimately, the intervening parties prevailed as the district court affirmed the  
 23 rotation schedule. On appeal, the Bentleys challenged, inter alia, the district court's award of  
 24 attorneys' fees pursuant to NRS 18.010(2)(b), which allows a district court to award attorney fees  
 25 to a prevailing party when the court finds that the claim of the opposing party "was brought...  
 26 without reasonable ground or to harass the prevailing party." The Supreme Court of Nevada  
 27 affirmed the award and held that just because the intervening parties "abandoned half of the claims  
 28



1 before proceeding to trial does not negate the fact that the prevailed on the remaining claims.” If  
 2 anything, *Bentley* supports the Estate’s claim for taxable costs because it prevailed on some of its  
 3 claim though not all of them.

4 *Valley Electric Ass’n v. Overfield*, 121 Nev. 7, 106 P.3d 1198 (2005) is a case that concerned  
 5 recovery of attorneys’ fees, not costs, under NRS 18.010(2)(a), which gives district courts discretion  
 6 to award attorney’s fees to a prevailing party when it recovers less than \$20,000. In *Valley Electric*,  
 7 the issue was whether a party in a condemnation action recovers less than \$20,000 can apply for  
 8 recovery of fees under NRS 18.010(2)(a). *Valley Electric*, therefore, has no relevance.

9 *McMillen v. Clark County*, 2016 WL 8735673 (D.Nev. Sept. 23, 2016), is an unpublished  
 10 decision from the United States District Court of the District of Nevada where the issue was a claim  
 11 for attorneys’ fees under 42 U.S.C. §§ 1983 and 1988 for alleged civil rights violations, not for  
 12 costs under NRS 18.020. The Adelson Campus cites the inapposite *McMillen* for the proposition  
 13 that the Estate’s victory is required to modify the Adelson Campus in a way that significantly  
 14 benefits the Estate.<sup>4</sup> This is simply not the law in Nevada with respect to determining the prevailing  
 15 party for purposes of awarding costs under NRS 18.020.

16 Indeed, the law in Nevada is that a prevailing party is one that succeeds on *any significant*  
 17 *issue* in litigation which *achieves some of the benefit it sought* in bringing suit.” *Blackjack Bonding,*  
 18 *Inc.*, at 131 Nev. 90, 343 P.3d 615. Here, the Adelson Campus did not succeed on any of its claims  
 19 whereas the Estate achieved “some of the benefit it sought,” which was the Court granting the  
 20 Estate’s First Claim for Relief (construction of will) and the Third Claim for Relief (bequest void  
 21 for mistake). As the prevailing party, the Estate is entitled to its costs. NRS 18.020(3), (4).

22 ///

23 ///

24 ///

25 ///

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27

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28 <sup>4</sup> See Motion at 4-5.

1 **III.**

2 **THE ESTATE'S COSTS ARE SUPPORTED, REASONABLE, AND WERE**  
 3 **NECESSARILY INCURRED**

4 **A. MEDIATION FEES**

5 The Adelson Campus cannot have it both ways. Either the mediation fees are recoverable,  
 6 or they are not. In this case, the Estate in its own Motion to Re-Tax Costs argued that the Adelson  
 7 Campus' request for recovery of mediation fees should be denied because those fees were split by  
 8 the parties pursuant to an agreement. The Estate submits that such fees are not subject to NRS  
 9 18.020 due to the parties' prior agreement but included them in its memorandum of costs so that  
 10 the same would not be waived.

11 **B. DEPOSITION COSTS**

12 The Adelson Campus takes issue with costs directly related to the depositions of Sheldon  
 13 Adelson, Layne Rushforth, Esq. and Rabbi Wyne.

14 **1. Sheldon Adelson**

15 The Adelson Campus asserts that the Estate cannot recover the cost of videotaping Mr.  
 16 Adelson's deposition because NRS.005(2) does not permit it and because the Estate did not play  
 17 the video deposition at trial. As to the former, the Estate *did* play the video during closing argument.  
 18 Moreover, there are strategic reasons for videotaping a deposition during discovery which may  
 19 never be used during the trial for other strategic reasons. As to the former, NRS 18.005(2) expressly  
 20 provides for "reporter's fees for depositions." Included in that category are fees for videotaped  
 21 depositions as NRCP 30(b)(3)(A) expressly permits recording of testimony "by audio, **audiovisual**,  
 22 or stenographic means." *See also Garonzik v. Whitman Diner*, 910 F.Supp. 167, 170-71 (D.N.J.  
 23 1995) (holding that under FRCP 30(b)2) [the federal counterpart of NRCP 30(b)(3)(A)], videotaped  
 24 depositions are taxable costs so long as it was reasonably necessary to the litigation). Two of the  
 25 main reasons why the Estate wanted to videotape Mr. Adelson's deposition were to document the  
 26 amount of time it would take Mr. Adelson to answer a question and record his demeanor during  
 27 certain subjects of examination.  
 28

1 Accordingly, the Court should tax costs for Mr. Adelson's deposition against the Adelson  
2 Campus.

3 **2. Layne Rushforth, Esq.**

4 It should be noted that it was the Adelson Campus, not the Estate, that deposed Mr.  
5 Rushforth. It should further be noted that the Adelson Campus filed a motion to exclude Mr.  
6 Rushforth's opinions at trial, which necessitated the Estate having a full transcript of the deposition.  
7 It was, therefore, reasonable and necessary to purchase a copy of Mr. Rushforth's depositions  
8 transcript.

9 **3. Rabbi Wyne**

10 Contrary to the Adelson Campus' assertion, Rabbi Wyne *did* testify at trial. While it is true  
11 that Rabbi Wyne did not proffer any "expert" opinions, he did testify at length during trial as a  
12 percipient witness. Many of the subject areas covered in Rabbi Wyne's deposition were also  
13 covered during trial. Again, it should be noted that the Adelson Campus took the deposition of  
14 Rabbi Wyne. It was both reasonable and necessary for the Estate to purchase a copy of Rabbi  
15 Wyne's deposition transcript for trial preparation.

16 **C. SERVICE OF PROCESS COSTS**

17 **1. Expedited Process Fees.**

18 The Adelson Campus takes issue with \$1,920 in costs resulting from expedited service  
19 charges because it believes such service of process did not need to be expedited. It is simply not  
20 cost-effective to explain the need for expedited services every time it was ordered. Suffice it to say,  
21 the nature of litigation is time-sensitive and there is a plethora of reasons for why service of process  
22 should be expedited. There is nothing in the statute that excludes recovery of expedited service of  
23 process. Accordingly, all costs related to service of process are taxable against the Adelson Campus.

24 **2. Witness not ultimately called to testify at trial.**

25 The Estate does not dispute that Carol Zucker, Mike Novick, Layne Rushforth and Dorit  
26 Schwartz were not called to testify at trial. Dr. Pokroy, however, did. As the Adelson Campus  
27 should recall, the Estate kept Dr. Pokroy under subpoena as a courtesy to the Adelson Campus as  
28

1 it intended on calling Dr. Pokroy in its case and chief. Accordingly, the Estate does not object to a  
2 reduction in the amount of \$540.00 (less Dr. Pokroy), for the witnesses that did not testify at trial.

### 3 **3. Paul Schiffman**

4 According to the Adelson Campus' own NRCP 16.1(a)(3) pretrial disclosure, Mr.  
5 Schiffman resided in Las Vegas.<sup>5</sup> The Estate is entitled to rely on the Adelson Campus'  
6 representations. Given the importance of Mr. Schiffman's testimony, the Estate covered all bases  
7 and served Mr. Schiffman at his New York residence. Costs associated with efforts to serve him,  
8 therefore, were reasonable, necessary, and are taxable against the Adelson Campus.

### 9 **4. Miriam Adelson, M.D.**

10 The Adelson Campus also argues that the Estate cannot recover costs related to serving Dr.  
11 Adelson a deposition subpoena because she was not deposed. As it should recall, the Court issued  
12 a protective order preventing Dr. Adelson's deposition, which was unsuccessfully challenged in an  
13 original writ proceeding before the Supreme Court of Nevada. The Estate certainly would have  
14 taken Dr. Adelson's deposition if it was permitted to do so. Moreover, the motion practice  
15 concerning her deposition would not have occurred had the Estate not successfully served her  
16 (which the Adelson Campus unsuccessfully challenged).

### 17 **D. WESTLAW LEGAL RESEARCH**

18 The Adelson Campus is not entitled to know how Solomon Dwiggins & Freer, Ltd. ("SDF")  
19 is charged by Westlaw and the terms of its agreement with Westlaw. All that is relevant is whether  
20 the Estate incurred "reasonable and necessary expenses for computerized services for legal  
21 research." NRS 18.005(17). The Estate submits that it incurred \$8,730.93 in expenses related to  
22 Westlaw legal research. As reflected in its Memorandum of Costs at APPX 000459-460, the Estate  
23 incurred charges for legal research beginning in May of 2013, through January of 2019 (over five  
24 years). Each entry in the ledger represents the Estate's pro-rata share of the total monthly Westlaw  
25 charge incurred by SDF, which is based on the total number of search transactions per month. In  
26

27 <sup>5</sup> See, The Adelson Campus' NRCP 16.1(a)(3) Disclosures, at p. 2, a true and correct copy  
28 being attached hereto as **Exhibit C**.

1 addition, any research costs which were outside of SDF's Westlaw plan were separately charged to  
2 the Estate.

3 The Estate's total legal research costs are approximately one-third of the Adelson Campus'  
4 \$25,531.92 in alleged legal research costs. Considering the complexity of this matter, the number  
5 of claims and defenses asserted, and all of the various briefing (including several pretrial motions,  
6 dispositive motions, a writ to the Supreme Court), \$8,730.93 is more than reasonable for the legal  
7 research performed in this matter.

#### 8 **E. COURIER FEES**

9 The Adelson Campus also complains about the Estate's courier fees not having any backup  
10 documentation. As explained in the Verified Memorandum of Costs, SDF utilizes an in-house  
11 courier and charges a flat fee of \$8.00. Courier fees are documented in an electronic ledger that is  
12 part of SDF's Tabs 3 billing software. Courier fees are entered into the billing software as they are  
13 incurred. The Estate agrees that there are two erroneous billings on August 8, 2018, and August 27,  
14 2018, and therefore agrees to reduce its courier fees by \$16.00.

#### 15 **F. LONG DISTANCE CHARGES**

16 Considering that it would cost more in attorneys' fees to substantively respond to the  
17 Adelson Campus' objection, the Estate will waive its \$41.45 claim for telephone long distance  
18 charges.

### 19 **IV.**

### 20 **CONCLUSION**

21 Based upon the foregoing, the Executor respectfully requests that this Court enter its Orders  
22 and Decrees as follows:

- 23 1. That this Court find that the Estate is the "prevailing party" for purposes of assessing  
24 and taxing costs pursuant to NRS 18.020;
- 25 2. That the Court enter judgment in the amount of \$62,519.89 in favor of the Estate  
26 and Against the Adelson Campus for taxable costs; and

27 ///

3. For such other and further relief as it deems just and appropriate.

Dated this 25<sup>th</sup> day of March, 2019.

SOLOMON DWIGGINS & FREER, LTD.



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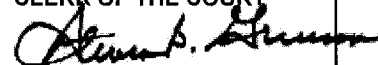
*Percey L. J.*  
An employee of Solomon Duggins & Freer, Ltd.

An employee of Solomon Dwiggin & Freer, Ltd.

# EXHIBIT “A”



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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.: P-07-061300-E  
Dept.: 26/Probate

**JUDGMENT ON THE DR. MIRIAM AND SHELDON G. ADELSON EDUCATIONAL  
INSTITUTE'S PETITION TO COMPEL DISTRIBUTION, FOR ACCOUNTING, AND  
FOR ATTORNEYS' FEES**

The Dr. Miriam and Sheldon G. Adelson Educational Institute's Petition to Compel Distribution, for Accounting, and for Attorneys' Fees (the "Petition") came on for trial before the Court, Honorable Gloria Sturman, District Judge, presiding.

After considering all evidence admitted at trial and the jury's verdict, it is hereby

**ORDERED, ADJUDGED AND DECREED** that The Dr. Miriam and Sheldon G. Adelson Educational Institute's Petition is **DENIED** in its entirety; it is further


**ORDERED, ADJUDGED AND DECREED** that The Dr. Miriam and Sheldon G. Adelson Educational Institute takes nothing by way of its Petition; it is further

1 **ORDERED, ADJUDGED AND DECREED** that the Petition, and the claims made  
 2 therein, are **DISMISSED** on the merits with prejudice.

3 Dated this 18<sup>th</sup> day of February, 2019.

4  
 5   
 6 DISTRICT COURT JUDGE

7 Submitted by:

8   
 9 Alan D. Freer (#7706)  
 10 Alexander G. LeVeque (#11183)  
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 28 *Executor of the Estate of Milton I. Schwartz*

# EXHIBIT “B”

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12 Executor of the Estate of Milton I. Schwartz*

# DISTRICT COURT

## CLARK COUNTY, NEVADA

14 In the Matter of the Estate of:

15 MILTON I. SCHWARTZ,

16 Deceased.

Case No.: P-07-061300-E  
Dept.: 26/Probate


### **JUDGMENT ON A. JONATHAN SCHWARTZ'S PETITION FOR DECLARATORY RELIEF**

19 A. Jonathan Schwartz's Petition for Declaratory Relief (the "Petition"), brought on behalf  
20 of the Estate of Milton I. Schwartz, came on for trial before the Court, Honorable Gloria Sturman,  
21 District Judge, presiding. After considering all evidence admitted at trial and the jury's verdict, the  
22 Court hereby

23 **FINDS AND DECLARES** that Milton I. Schwartz would have never made the \$500,000  
24 bequest to the Milton I. Schwartz Hebrew Academy pursuant to Section 2.3 of his Last Will and  
25 Testament had Milton I. Schwartz known that he did not have a legally enforceable naming rights  
26 agreement with the school; the Court further  
27  
28

1 **FINDS AND DECLARES** that Milton I. Schwartz intended that the bequest go to a school  
2 that bore his name in perpetuity; the Court further

3 **FINDS AND DECLARES** that absent an enforceable naming rights agreement that applies  
4 to each of the inter vivos gifts, this Court cannot rescind Milton I. Schwartz's lifetime gifts; it is  
5 therefore

6 **ORDERED, ADJUDGED AND DECREED** that A. Jonathan Schwartz's Petition is  
7 **GRANTED** in part and **DENIED** in part. The Petition is granted with respect the First Claim for  
8 Relief (construction of will) and the Third Claim for Relief (bequest void for mistake). ~~The Petition~~  
9 ~~is denied with respect to the Fourth Claim for Relief (offset of bequest under will) as moot and with~~  
10 ~~respect to the Sixth Claim for Relief (revocation of gift and constructive trust) and this denied claim~~  
11 ~~is dismissed on the merits with prejudice; it is further~~ 

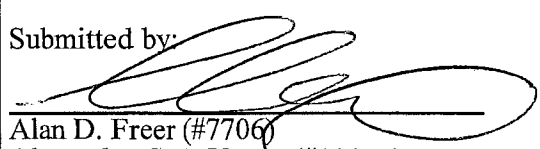
12 **ORDERED, ADJUDGED AND DECREED** that the FIVE HUNDRED THOUSAND  
13 DOLLARS (\$500,000.00) deposited with the Court, and all interest accrued thereon if any, shall be  
14 distributed to A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz; it is further

15 **ORDERED, ADJUDGED AND DECREED** that the Executor shall hold the FIVE  
16 HUNDRED THOUSAND DOLLARS (\$500,000.00) until further order of this Court.

17 Dated this 18<sup>th</sup> day of February 2019.

  
DISTRICT COURT JUDGE

18 Submitted by:

19   
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21 Alexander G. LeVeque (#11183)  
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# EXHIBIT “C”

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5 *Sheldon G. Adelson Educational Institute*

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

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

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

12 **THE ADELSON CAMPUS' PRETRIAL**  
13 **DISCLOSURES PURSUANT TO NRCP**  
14 **16.1(a)(3)(C)**

15 The Dr. Miriam Adelson and Sheldon G. Adelson Educational Institute (the "Adelson  
16 Campus") by and through its counsel, hereby submits its Pretrial Disclosures. In addition to the  
17 information below, Adelson Campus reserves the right to reply upon any and all Pre-trial Disclosures  
18 and Supplements.

19 **I.**

20 **ADELSON CAMPUS' WITNESSES**

21 **i. The Adelson Campus Expects to Present the Following Witnesses at Trial:**

- 22 1. Sheldon G. Adelson  
23 c/o Kemp, Jones and Coulthard  
24 3800 Howard Hughes Parkway  
25 17<sup>th</sup> Floor  
26 Las Vegas, NV 89169  
27 2. Dr. Tamar Lubin-Saposhnick  
28 10401 W. Charleston Blvd.  
Las Vegas, NV 89135

1           3.     Paul Schiffman  
2                 2012 Summer Cove Court, #101  
3                 Las Vegas, NV 89134

4           4.     Sam Ventura  
5                 3820 Topaz  
6                 Las Vegas, NV 89121

7           5.     Phillip Kantor  
8                 9408 Provence Garden Lane  
9                 Las Vegas, NV 89145

10           Adelson Campus reserves the right to call as a witness any person listed by any other party to  
11           this litigation, including experts, and to cross-examine each witness called by the other party. Adelson  
12           Campus further reserves the right to call any impeachment or rebuttal witnesses as necessary.

13           Adelson Campus reserves the right to use any testimony given in the depositions of the above-  
14           named witnesses (if deposed) during trial of this matter. Adelson Campus further reserves the right to  
15           use any testimony given in the depositions of any witness that were disclosed (if deposed) during trial  
16           of this matter. By disclosing witnesses, Adelson Campus does not waive its right to challenge and  
17           exclude testimony or portions thereof on any basis.

18           **ii.     The Adelson Campus May Call the Following Witnesses if the Need Arises:**

19           1.     Dr. Elliott Klain  
20                 c/o Summit Anesthesia Consultants  
21                 2931 N. Tenaya Way, Suite 102  
22                 Las Vegas, NV 89128

23           2.     Susan Pacheco  
24                 c/o Solomon Duggins & Freer, Ltd.  
25                 9060 West Cheyenne Ave.  
26                 Las Vegas, Nevada 89129

27           3.     Jill Hanlon  
28                 2620 Regatta Drive, #102  
                Las Vegas, NV 89128

            4.     Steve Wessels  
                    c/o HL Filmworks  
                    Gail Valinoti, Registered Agent  
                    8824 Strom Cloud Avenue  
                    Las Vegas, NV 89129



- 1           5. Haydon Lane  
2           c/o HL Filmworks  
3           Gail Valinoti, Registered Agent  
4           8824 Strom Cloud Avenue  
5           Las Vegas, NV 89129
- 6           6. Jonathan Schwartz, Esq.  
7           c/o Solomon Dwiggins & Freer, Ltd.  
8           9060 W. Cheyenne Avenue  
9           Las Vegas, NV 89129
- 10          7. Benjamin Yerushalmi  
11          508 Lob Wedge Court  
12          Las Vegas, NV 89144
- 13          8. Irv Steinberg  
14          7913 Bridge Gate Drive  
15          Las Vegas, NV 89128
- 16          9. Mike Novick  
17          9032 Players Club Drive  
18          Las Vegas, NV 89134

19           Adelson Campus reserves the right to call any witness or expert witness whom may be listed  
20           by any other party to this action, as well any witness or expert witness listed in the NRCP 16.1  
21           Supplements, Answers to Interrogatories and Responses to Requests for Production of Documents,  
22           Responses to Admissions, deposition exhibits and deposition testimony.

23           Adelson Campus further reserves the right to call any witnesses or expert witnesses necessary  
24           for rebuttal at the time of trial.

25           **iii.     Adelson Campus' Witnesses Who Have Been Subpoenaed for Trial:**

26           None at this time.

27           **II.**

28           **THE ADELSON CAMPUS WILL PRESENT THE FOLLOWING DEPOSITIONS AT TRIAL**  
**PURSUANT TO NRCP 16.1(a)(3)(b)**

          The Adelson Campus reserves the right to use any depositions designated by the Estate related  
to this case. The Adelson Campus further reserves the right to designate the deposition testimony of  
any witness(es) that may become unavailable at the time of trial. Adelson Campus further reserves the  
right to use any testimony given in a depositions during the trial of this matter, regardless of the subject

1 matter, including for cross-examination and rebuttal purposes. Adelson Campus further reserves the  
 2 right to use any testimony given in the depositions of any of the Estate's witnesses that were disclosed  
 3 (if deposed) during the trial of this matter, regardless of the subject matter.

4 By disclosing deposition testimony, Adelson Campus does not waive the right challenge and  
 5 exclude such deposition testimony (including exhibits attached thereto) or portions thereof on any basis.

### 6 III.

#### 7 ADELSON CAMPUS' EXHIBITS PURSUANT TO NRCP 16.1(a)(3)(C):

##### 8 i. Exhibits Which the Adelson Campus Expects or May Use at Time of Trial.

9 See the Adelson Campus' Proposed List of Exhibits attached as **Exhibit 1**.

10 Adelson Campus reserves the right to use any documents disclosed by The Estate in the instant  
 11 matter. By disclosing documents, The Adelson Campus does not waive the right to challenge and  
 12 exclude documents or portions thereof on any basis.

##### 13 ii. Adelson Campus' Exhibits which May be Offered at the Time of Trial, If the 14 Need Arises:

- 15 1. All discovery responses to Interrogatories, Requests for Production of Documents  
 16 and Request for Admissions from Adelson Campus propounded by the Adelson  
 17 Campus in this instant action.
- 18 2. All exhibits attached to the Adelson Campus' Motion for Summary Judgments and  
 19 the Adelson Campus' Replies in Support of said motions filed in the instant action.
- 20 3. All exhibits attached to the Adelson Campus' Oppositions to the Estate's Motions  
 21 for Summary Judgment filed in this instant action.
- 22 4. All exhibits attached to the Adelson Campus' Motions in Limine and the Adelson  
 23 Campus' Replies in support of said motions filed in the instant action.
- 24 5. All exhibits attached to the Adelson Campus' Oppositions to the Estate's Motions  
 25 in Limine filed in the instant action.
- 26 6. All exhibits attached/marked in the depositions taken in the instant action.
- 27 7. All exhibits attached and/or produced with the Adelson Campus' 16.1 productions.

1 8. All documents produced by the Estate in the instant action.

2 The Adelson Campus reserves the right to use any documents disclosed by The Estate in the  
3 instant action. By disclosing documents, Adelson Campus do not waive the right to challenge and  
4 exclude documents or portions thereof on any basis.

5 IV.

6 ADELSON CAMPUS' DEMONSTRATIVE EXHIBITS

7 i. Adelson Campus May Offer, at Trial, Certain Exhibits for Demonstrative  
8 Purposes, including, but not Limited to the Following:

- 9 1. Videos (including videos of the incident, an enhanced version of same, and surveillance  
10 videos), photographs, transparencies, memoranda, timelines, demonstrative and actual  
11 photographs, actual diagnostic studies, computerized studies, diagrams, drawings, images, story  
12 boards, charts, transparencies, DVDs, video tapes, reports, analysis and audio recordings.  
13 2. Enlargement of Diagrams from Depositions and Reports Produced.  
14 3. Timeline of Events.  
15 4. Charts, tables, graphs, descriptions from materials used as reference by experts and/or  
16 written expert files produced.  
17 5. Enlargement of any photographs disclosed during the discovery period.  
18 6. Any materials relied upon by experts in forming their expert opinion.

19 Adelson Campus reserves the right to utilize any evidence or call any witness as designated by  
20 any other party to this litigation, and any documents or witnesses produced via NRCP Rule 16.1 via  
21 discovery responses or via an Order of the Court by any party.

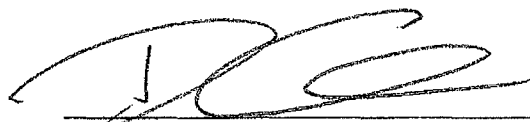
22 Adelson Campus reserves the right to supplement this list prior to trial. Adelson Campus does  
23 not represent that it *will* use any of said exhibits at trial, only that it may. In addition, Adelson Campus  
24 reserves the right to use any document identified in the exhibit list of any other party. Exhibits included  
25 on the list may become admissible if a proper foundation is laid for admissibility at trial. The presence  
26 of a document on this exhibit list does not constitute an admission that a document is admissible.  
27  
28

1 The Adelson Campus reserves the right to use any appropriate exhibits from its proposed  
 2 exhibit list for demonstrative purposes. It further reserves the right to use any demonstrative exhibits  
 3 disclosed by The Estate in this matter. Adelson Campus reserves the right to introduce such other  
 4 demonstrative exhibits into evidence as may be necessary for purposes of rebuttal, impeachment, or  
 5 both.

6 Adelson Campus reserves the right to object to the introduction of exhibits and witnesses not  
 7 previously disclosed, and further reserves its objections to any exhibits offered based on foundation  
 8 and relevancy. Adelson Campus further reserves the right to supplement their pretrial disclosure  
 9 statement.

10 DATED this 21<sup>st</sup> day of July, 2018.

11 KEMP, JONES & COULTHARD, LLP

12 

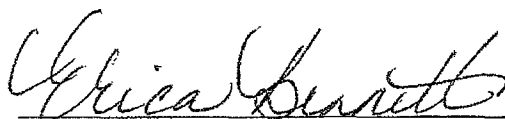
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**CERTIFICATE OF SERVICE**

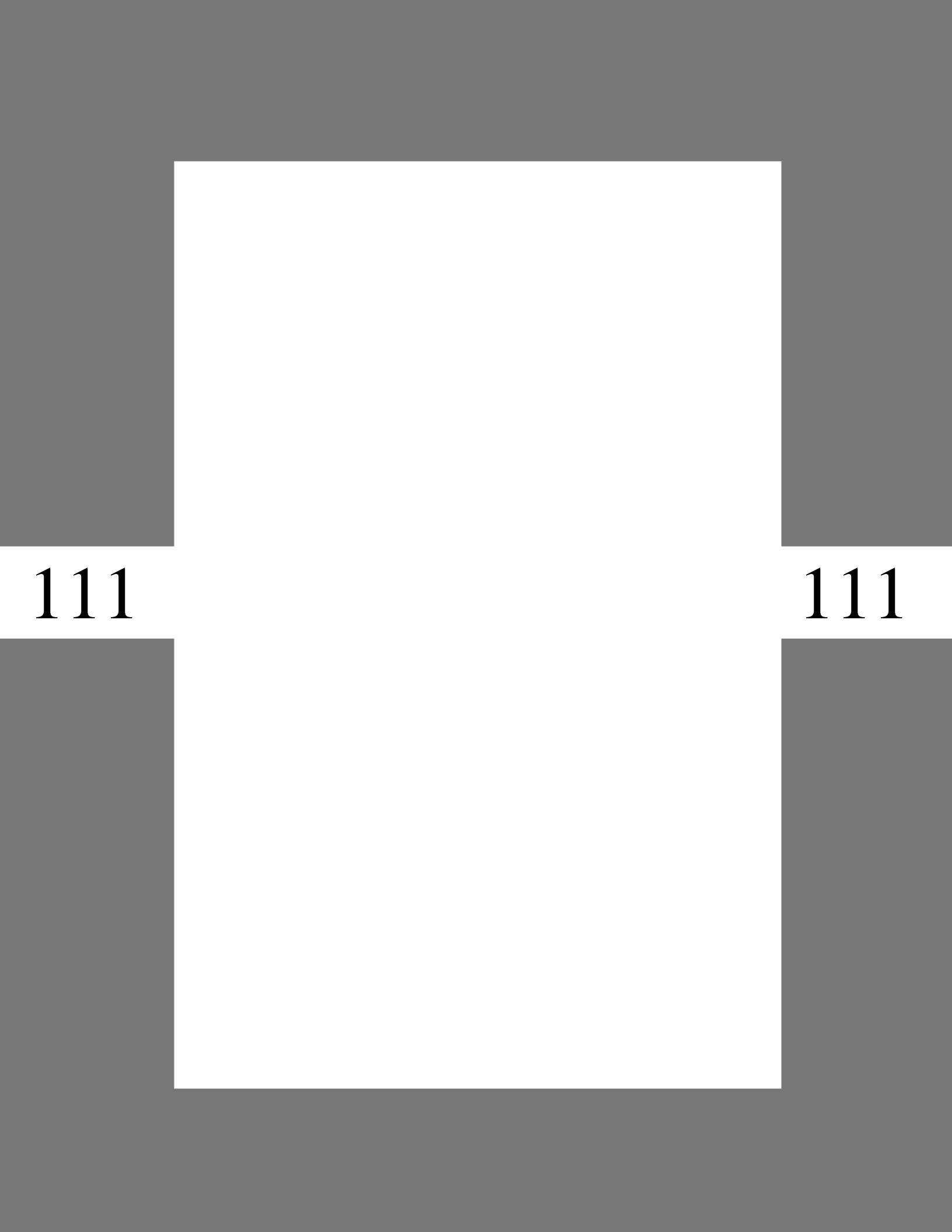
I hereby certify that on the 23<sup>rd</sup> day of July, 2018, I served a true and correct copy of **THE ADELSON CAMPUS' PRETRIAL DISCLOSURES PURSUANT TO NRCP 16.1(a)(3)(C)** via the Eighth Judicial District Court's CM/ECF electronic filing system, addressed to all parties on the e-service list.



An employee of Kemp, Jones & Coulthard, LLP

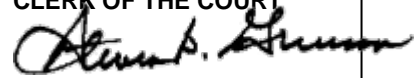
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*Attorneys for The Dr. Miriam and  
Sheldon G. Adelson Educational Institute*

**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 ADELSON CAMPUS' REPLY IN  
SUPPORT OF MOTION TO RE-TAX AND  
SETTLE COSTS**

Hearing Date: April 11, 2019

Hearing Time: 10:00 a.m.

The Dr. Miriam and Sheldon G. Adelson Educational Institute (the "Adelson Campus" or the "School") by and through its counsel, hereby submits its Reply in Support of Motion to Re-Tax and Settle Costs.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

The prevailing party analysis requires the Court to look at the case as a whole to determine which party prevailed. Two central issues existed in this case: 1) whether the School was entitled to the Bequest (the "Bequest Issue"); and 2) whether a naming rights agreement existed (the "Contract Issues"). There can be no question that the Contract Issue dominated the litigation and the trial. The Estate sought \$2.8 million in damages, and the consequences of the Estate obtaining alternative relief such as specific performance would have been even more detrimental to the School had the Estate

1 prevailed on the Contract Issues. The Estate lost both of those affirmative claims with the School  
2 prevailing both at trial and post-trial in defeating all of the Estate’s requests for damages or equitable  
3 relief related to the Contract Issues. Conversely, had the Estate lost the Bequest Issue it would have  
4 simply paid money to a scholarship fund – that did not even go directly to the School – that it had  
5 already set aside and written off on its taxes years before. In short, the Bequest Issue was of minor  
6 consequence to both parties as compared to the Contract Issues. Accordingly, the School is clearly the  
7 “prevailing party” in this litigation and the party entitled to recover its costs under NRS 18.020, the  
8 Estate’s request to recover its costs should be denied in its entirety.

9 Comparing the claims and relief requested and/or economic consequences arising from or  
10 connected with each claim illustrates this point.

11 **Bequest Issue**

12 The School seeks enforcement of a bequest for  
13 a scholarship fund. The Estate seeks  
14 declaratory relief that it is not required to pay  
15 the Bequest. In either case, the maximum  
16 amount at issue is \$500,000.

17 Amount in controversy: **\$500,000**

11 **Contract Issues**

12 The Estate seeks to change the name of the entire  
13 School which would result in the breach of a  
14 written naming rights contract with the Adelsons  
15 giving rise to a claim by the Adelsons for the  
16 refund of over \$100,000,000 in gifts to the  
17 School. The Estate also sought return of  
\$2,800,000 in gifts allegedly paid by Milton  
Schwartz during his life time.

17 Amount in controversy: **\$102,800,000 +**

18 In short, the Estate’s position is not just absurd, it’s patently absurd as illustrated above.

19 Even if the Court is somehow persuaded that the Estate is the prevailing party, which it cannot  
20 be under the relevant case law and factual considerations, the Estate’s Opposition fails to demonstrate  
21 that the costs addressed in the Motion were reasonably, necessarily, and actually incurred for any of  
22 the legal claims it prevailed on. The Estate failed again to provide back-up for many of its purported  
23 costs and failed to establish that other costs were reasonable or necessary. Consequently, even if the  
24 Court determines the Estate is the prevailing party the Estate has not and cannot demonstrate that it is  
25 entitled to recover a significant portion of its costs and the Court must reduce them accordingly.  
26  
27  
28



1 II.

2 LEGAL ARGUMENT

3 A. The Estate is not entitled to costs as the School is the prevailing party and thus the only  
4 party entitled to its costs under NRS 18.110.

5 The Estate's Opposition unsuccessfully argues that the Estate is somehow the prevailing party  
6 in spite of the fact that the School prevailed on what was unquestionably the most important,  
7 consequential and significant of the two issues presented in this case. The Estate erroneously contends  
8 that it is the prevailing party because it succeeded on some of the claims in its Petition while the School  
9 did not prevail on its single claim to compel the Bequest. If claims and counterclaims are asserted, as  
10 was the case here, then the determination of the prevailing party is based on an analysis of the case as  
11 a whole, not a claim-by-claim analysis. C.J.S. Costs § 139.

12 As stated above, there were two issues in the litigation – the Bequest Issue and Contract Issues.  
13 The Estate's attempt to double dip by claiming it prevailed on its counter-claim in addition to  
14 defending the School's affirmative claim for the bequest monies is disingenuous at the least, and  
15 certainly does not mean the Estate prevailed on two separate claims. As the Estate expressly recognizes,  
16 its Petition was a "compulsory counter-petition" (Opp. at 2:14-15). The claims in the Estate's Petition  
17 regarding the Will/Bequest are counter-claims because relief sought by the parties is the flip side of the  
18 same coin. As such, only one party could prevail on claims regarding the Bequest.

19 Instead, as set forth in detail in the Motion, viewing the litigation as a whole, the School is the  
20 prevailing party because it prevailed on what were unquestionably the most significant issues in the  
21 litigation, naming rights and the economic consequences related to the naming rights issues. There can  
22 be no legitimate dispute that the issue of the existence of a naming rights agreement was the primary  
23 issue litigated both before and during trial. The vast majority of the parties' opening and closing  
24 statements, the testimony and evidence introduced at trial, and the jury instructions related to the alleged  
25 naming rights agreement were the primary focus of the parties and the Court. Therefore, because the  
26 School prevailed on the Contract Issues, it is the prevailing party and the only party entitled to its costs  
27 under NRS 18.110. Accordingly, the Estate's requests for costs must be denied in its entirety.  
28

**B. The Estate's Opposition fails to remedy a significant portion of the Estate's alleged costs.**

In the event the Court awards costs to the Estate in spite of the fact that it is not the prevailing party, the Court must substantially reduce the costs sought by the Estate. The Estate's Opposition failed to provide sufficient support for the majority of the costs addressed in the School's Motion.

First and foremost, the Estate's Opposition again does not even attempt to differentiate its costs for litigating the Bequest issue as opposed to its costs for litigating its contract claims. Equity dictates that the Estate should not recover costs for claims and defenses for which the Estate did not prevail. Therefore, the Estate's request for costs must be denied in its entirety.

Further, the Estate's Opposition fails to establish that all of the costs it seeks are recoverable under NRS 18.005 and NRS 18.020. As set forth below, the Estate has not and apparently cannot provide the requisite backup to demonstrate that the costs flagged by the School's Motion were reasonably, necessarily and/or actually incurred. *See* NRS 18.020; NRS 18.005; *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049, 1054 (2015); *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385-86 (1998) (citing *Gibellini v. Klindt*, 110 Nev. 1201, 1206, 885 P.2d 540, 543 (1994)). Without sufficient evidence before this Court justifying such costs as reasonable and necessarily and actually incurred in connection with its claims and defenses, the Estate cannot recover these costs.

**1. Mediation Fees**

With regards to the recovery of mediation costs, *neither* party can have it both ways. As the Estate objected to the School's recovery of the mediation costs, the School asserted a similar objection to the Estate's assertion of these cost. Ultimately, while the School contends these costs are recoverable, the School submits that the decision of whether these costs are recoverable must be uniformly applied to both parties.

**2. Deposition Costs**

***a. Videotaped Deposition of Sheldon Adelson.***

The Estate contends it can recover the extra costs for the videotaped deposition of Sheldon Adelson because it wanted to videotape Mr. Adelson's deposition to "document the amount of time it would take Mr. Adelson to answer a question and to record his demeanor during certain subject of

1 examination.” However, the Estate’s personal decision to incur additional costs during the litigation  
2 above and beyond what is necessary for its own alleged purposes does not render such costs reasonable  
3 and necessary under NRS 18.005. Thus, the Estate’s costs must be reduced by \$1,857.89.

4 ***b. The Estate’s precluded experts.***

5 The Estate contends it can recover the costs associated with the depositions of its experts Layne  
6 Rushforth, Esq. and Rabi Wyne, both of which were precluded from testifying as expert witnesses at  
7 trial. The Estate’s initial reasons for purchasing a copy of Mr. Rushforth’s deposition transcript are  
8 irrelevant. The fact remains that Mr. Rushforth was precluded from testifying at trial and the Estate  
9 cannot recover its costs related to his transcript. Similarly, the fact that Rabi Wyne testified at trial as a  
10 percipient witness does not entitle the Estate to recover costs related to his transcript. Rabi Wyne was  
11 deposed as an expert witness but then he was precluded from testifying as an expert witness. NRS  
12 permits a party to recover only reporter’s fees for depositions and the Estate otherwise failed to  
13 demonstrate that these costs were reasonable and necessary.

14 **3. Service of Process Costs**

15 The Estate does not even attempt to proffer any reasonable explanation for why expedited  
16 process fees were reasonable and necessary. Instead, the Estate self-servingly concludes that expedited  
17 service was necessary based on a vague reference to litigation in general. However, litigants are able  
18 to regularly effectuate service of process without the use of the significantly more costly expedited  
19 services. The Estate’s delay or failure to plan accordingly or to account for time to effectuate service  
20 without the need to resort does not render these costs necessary or reasonable. Therefore, the Estate’s  
21 costs must be reduced by \$1,920.

22 The Estate agrees that it cannot recover service costs for witness fees for witnesses that did not  
23 testify, but nonetheless contends it should be able to recover the costs to serve Dr. Pokroy because he  
24 testified at trial. However, the School – not the Estate – called Dr. Pokroy and, therefore, the Estate  
25 cannot recover service costs for Dr. Pokroy. Thus, the Estate’s costs must be reduced by \$775.

26 The Estate’s Opposition fails to demonstrate that the Estate can recover its costs for the  
27 ineffective service of process on Paul Schiffman in contravention of Nevada law. The Estate’s belief  
28 in the importance of Paul Schiffman’s testimony or the information in the School’s disclosures does

1 not change the fact that the Estate failed to properly effectuate service on Paul Schiffman in New York.  
2 As such, Estate unquestionably cannot recover the \$310 it spent to ineffectively effectuate service on  
3 Paul Schiffman.

4 Finally, the Estate cannot recover costs for service of deposition notices on Dr. Miriam Adelson.  
5 Regardless of why Dr. Adelson was not deposed, there is no dispute that he deposition did not occur  
6 and the Estate is not permitted to recover these costs.

#### 7 **4. Westlaw Legal Research**

8 The Estate contends that the School is “not entitled” to know how Solomon, Dwiggins & Freer  
9 (“SDF”) is charged by Westlaw. The School takes no personal interest in SDF’s billing agreement with  
10 Westlaw. However, the Estate must demonstrate that the electronic research costs it seeks to recover  
11 are reasonable and necessary. The manner in which SDF is billed and in turn bills its clients for  
12 electronic research costs directly effects whether the costs were reasonably, necessarily and *actually*  
13 incurred. *See* NRS 18.020; NRS 18.005. For instance, if SDF is billed a flat monthly rate for electronic  
14 research, but bills its clients on a per-document basis, then SDF could potential create a windfall for  
15 itself and cannot establish that the electronic research costs were *actually* incurred. The Estate’s  
16 Opposition indicates that the Estate was billed its “pro-rata share of the total monthly Westlaw charge  
17 incurred by SDF, which is based on the total number of search transactions per month.” Opp. at 8:24-  
18 25. Unfortunately for SDF, the Estate failed to include any mathematical or data demonstrating how  
19 the pro-rata share was determined.

#### 20 **5. Courier Fees.**

21 The Estate contends that no backup documentation exists because SDF uses an in-house courier  
22 service. The Estate’s electronic ledger does not provide sufficient information for the Court to  
23 determine whether these fees were reasonable and necessarily incurred. *See Cadle Co.*, 131 Nev. Adv.  
24 Op. 15, 345 P.3d at 1055 (finding that district court abused its discretion in awarding runner service  
25 fees where there was not sufficient documentation for the court to determine whether the costs were  
26 reasonable and necessary). As in *Cadlo Co.*, the Estate cannot recover these costs under NRS 18.005  
27 because the threadbare information provided cannot demonstrate that these costs were necessary or  
28 reasonable. *See id.*

1 **III.**

2 **CONCLUSION**

3 As the School is the prevailing party its costs are recoverable under NRS 18.020. For all the  
4 reasons stated herein and in the Motion, the School respectfully requests that this Court deny the  
5 Estate's application for costs and award the School its costs as set forth in the School's verified  
6 memorandum of costs previously submitted to this Court.

7 In the alternative, should the Court find the Estate to be the prevailing party, the School  
8 requests the Estate's costs be reduced by \$10,209.07 to account for the Estate's failure to sufficiently  
9 support the costs as required by the Nevada Supreme Court or for costs that are otherwise not  
10 recoverable per statute.

11 DATED this 4<sup>th</sup> day of April, 2019.

12 Respectfully Submitted,

13 KEMP, JONES & COULTHARD, LLP

14 /s/ Joshua D. Carlson

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

21 **CERTIFICATE OF SERVICE**

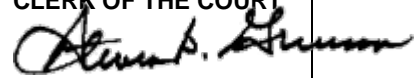
22 I hereby certify that on the 4<sup>th</sup> day of April, 2019, I served a true and correct copy of **THE**  
23 **ADELSON CAMPUS' REPLY IN SUPPORT OF MOTION TO RE-TAX AND SETTLE**  
24 **COSTS** via the Eighth Judicial District Court's CM/ECF electronic filing system, addressed to all  
25 parties on the e-service list.

26 /s/ Pamela Montgomery

27 An employee of Kemp, Jones & Coulthard, LLP

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1 RTRAN

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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IN THE MATTER OF

CASE#: 07P061300

8

THE ESTATE OF MILTON  
SCHWARTZ

DEPT. XXVI

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BEFORE THE HONORABLE GLORIA STURMAN  
DISTRICT COURT JUDGE  
THURSDAY, APRIL 11, 2019

12

13

**RECORDER'S TRANSCRIPT OF PENDING MOTIONS**

14

15

**APPEARANCES:**

16

For the Estate:

ALEX G. LEVEQUE, ESQ.  
ALAN D. FREER, ESQ.

17

18

For The Dr. Miriam and  
Sheldon G. Adelson  
Educational Institute:

JON RANDALL JONES, ESQ.  
JOSHUA D. CARLSON, ESQ.

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RECORDED BY: KERRY ESPARZA, COURT RECORDER

25

1 Las Vegas, Nevada, Thursday, April 11, 2019

2

3 [Case called at 10:11 a.m.]

4 MR. JONES: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. LEVEQUE: Good morning, Your Honor.

7 MR. FREER: Good morning, Your Honor.

8 THE COURT: So we'll take appearances.

9 MR. JONES: Randall Jones and Josh Carlson on behalf of  
10 the School.

11 MR. LEVEQUE: And Alex Leveque and Allen Freer on behalf  
12 of the Estate.

13 THE COURT: Counsel, this motion to retax as the previous  
14 motion to re-tax raised interesting questions, as specifically with the  
15 wind, since both sides came out with something that they wanted, but  
16 not everything that they wanted. So that's the question presented. This  
17 is -- I believe, we're on here today, technically, Mr. Jones is your motion  
18 to retax their memorandum of costs.

19 So I guess the question is, while we can deal with the  
20 memorandums of cost, the next question then is, you know, how -- who  
21 actually gets a judgment. If there is a judgment to be gotten. And who  
22 actually receives those costs. So that would be the next question.

23 All we're dealing with now, is just the motion to retax. We'll  
24 deal with the other question in just a minute. So let's just talk retaxing  
25 costs, first.



1 MR. JONES: Wonderful.

2 MR. LEVEQUE: One suggestion, Your Honor, because we do  
3 still have our pending motion to retax, and theirs is still pending.  
4 They're both pending.

5 THE COURT: Right.

6 MR. LEVEQUE: It would seem to me that deciding the  
7 prevailing party issue first would make more sense, but that's just my  
8 opinion.

9 THE COURT: Well, now that's kind of -- that's kind of an  
10 interesting question. So Mr. Jones?

11 MR. JONES: Well, Your Honor, the other thing I would say  
12 about the costs is, that's a more -- at least from my perspective,  
13 obviously you're the one making that decision, but that's a more  
14 objective analysis than maybe deciding who's the prevailing party under  
15 Chapter 18. I don't know that there's a whole lot more that I could add. I  
16 know you actually read briefs.

17 So you can look at the rule and you can look at what we say  
18 the costs are, and you can read the rule and you can see what the Estate  
19 says the costs are. And I don't know that I'm -- other than being  
20 redundant of what's already in the briefs --

21 THE COURT: Right.

22 MR. JONES: -- if it's worthwhile to take your time and make  
23 other people wait about something that's a pretty objective analysis in  
24 my opinion. And so in that respect, I tend to agree with Mr. LeVeque  
25 that the ultimate, I guess, issue is who prevailed, because then you can

1 decide what -- what costs are available, and attorney's fees, if any, are  
2 available to the prevailing party.

3 THE COURT: And that's my question. Is does Nevada law  
4 anticipate there is a prevailing party, or is it possible, given the nature of  
5 the competing petitions, that each party may have prevailed on a claim?  
6 And therefore, be entitled to costs related to that claim. But as I said, the  
7 way I look at it, each side got something, but they didn't get everything  
8 that they wanted, and they lost some of the big things they wanted. So I  
9 guess that's the question is what is a prevailing party?

10 And so I guess that's what has to be answered. Is there only  
11 a prevailing party, and if so, which entity would that be, or is it -- because  
12 I don't know. I don't know if there's any case law out there that can  
13 answers that question.

14 MR. LEVEQUE: There is. It has been decided, and that's the  
15 *Parrity* [phonetic] case --

16 THE COURT: Okay.

17 MR. LEVEQUE: -- that we cited from 1999.

18 THE COURT: Uh-huh.

19 MR. LEVEQUE: Because that -- that case involved a situation  
20 at the trial court level, where there was a determination that there were  
21 two prevailing parties in a consolidated action. That went on appeal and  
22 the Court -- the Supreme Court said, I'll quote it. "We see no reason to  
23 treat multiple lawsuits which have been consolidated in one action,  
24 differently from multiple claims filed in a single action. Thus, in cases  
25 where separate and distinct suits have been consolidated into one

1 action, the trial court must offset all awards in monetary damages to  
2 determine which side is the prevailing party, and the trial court would  
3 then award costs to the prevailing party under NRS 18.020."

4 I do agree with Mr. Jones, though, that this is somewhat of a  
5 unique case --

6 THE COURT: Yeah.

7 MR. LEVEQUE: -- right, because it's not the typical breach of  
8 contract case where you've got a claim for money damages,  
9 counterclaim for money damages, and then you do an offset. This is a  
10 very weird case. But what I can say is that the case law that is here in  
11 Nevada from our Supreme Court does do an analysis to determine who  
12 the prevailing party is. And you look at affirmative claims. At least that's  
13 what I've seen from the case law. And here's it's undisputed, Your  
14 Honor, that we had a petition filed by the school. We had a counter-  
15 petition, if you will, filed three weeks later by the Estate. It's undisputed  
16 the school obtained no relief on their claims in their petition. Their  
17 petition was denied in its entirety.

18 It's also undisputed that in the Estate's petition we did obtain  
19 relief on two claims, the construction at will, and bequest void from  
20 mistake. So if you look at it from a simple claims analysis, where what  
21 party actually prevailed on some or all of its claims, it's undisputed that  
22 the Estate prevailed on some of its claims, and the school did not prevail  
23 on any of its affirmative claims.

24 The school takes a position, and I think it's -- I think they're  
25 trying to create some new law here, where they're saying, well, you've

1 got to look subjectively at how much of a heartburn these claims would  
2 have, if -- if they were -- you know, if the Estate prevailed on them and go  
3 through this --

4 MR. JONES: Your Honor, I've let this go, but it's my motion.

5 THE COURT: Right.

6 MR. JONES: Counsel's now arguing a substantive motion.

7 THE COURT: Uh-huh.

8 MR. JONES: If I get the last word, that's fine, because that's  
9 the way it works. So if Mr. LeVeque wants to take my time as the -- as  
10 the moving party, then I certainly want to make on the record that I'm  
11 objecting to that, and I'm going to reserve the right, and ask the Court for  
12 the opportunity to be -- to have both my argument made, and then also  
13 to have the last word.

14 THE COURT: Okay.

15 MR. JONES: So this is improper, and I want to note it for the  
16 record.

17 THE COURT: Noted.

18 MR. LEVEQUE: Well, for the record, I disagree with Mr.  
19 Jones because our motion was filed at the end of last year, and has not  
20 been decided, so there are two motions pending today, Mr. Jones.

21 MR. JONES: This is the motion that's on for calendar this  
22 morning, Your Honor. I think --

23 THE COURT: Yeah, there really is -- the only one that  
24 particularly is on --

25 MR. JONES: -- that's what the calendar says.

1 THE COURT: -- is Mr. Jones' motion.

2 MR. JONES: Thank you, Your Honor.

3 THE COURT: Technically.

4 MR. LEVEQUE: Okay.

5 MR. JONES: Thank you, counsel. Do I get to go now, or are  
6 you going to go some more?

7 MR. LEVEQUE: Do you have an issue, Mr. Jones?

8 MR. JONES: I do.

9 THE COURT: Yeah, that -- that's the point.

10 MR. JONES: I did. I just said what my issue was. Did you  
11 not hear me?

12 THE COURT: The point -- counsel, please, no arguing. The  
13 point being, technically, what is on calendar is the -- because we had  
14 continued -- had like taken off calendar, the Estate's motion. So  
15 technically, it was not put on for hearing today. I've got them both. I've  
16 got both memorandums of costs. I've got both motions. I have it. And  
17 that's why I said in looking at both of them, my question was is there  
18 such a thing as a prevailing party or can there be prevailing parties on  
19 different types of claims, for which you would be entitled to really -- to  
20 receive some benefit as a prevailing party. So that was my question.  
21 Mr. Jones, technically, it's his motion, he would like to address that now,  
22 so --

23 MR. LEVEQUE: Of course. I was just trying to answer the  
24 Court's question.

25 THE COURT: Okay.

1 MR. LEVEQUE: I know Mr. Jones likes to talk a lot, so he  
2 can --

3 THE COURT: Thank you.

4 MR. LEVEQUE: -- he can certainly speak --

5 THE COURT: And you can sit down, Mr. LeVeque, you can  
6 appreciate Mr. Jones' point. So, Mr. Jones.

7 MR. JONES: Thank you, Your Honor. And --

8 THE COURT: It is your motion.

9 MR. JONES: And, you know, comments by counsel that I like  
10 to talk a lot --

11 THE COURT: Yeah, we're not going to talk about -- we're  
12 going to move on.

13 MR. JONES: Thank you, Your Honor. I would hope he would  
14 be above that.

15 THE COURT: We're moving on. We are moving on.

16 MR. JONES: Thank you. So with respect to the argument,  
17 you raised, at least from my perspective, an interesting question. Can  
18 you have two prevailing parties.

19 THE COURT: Uh-huh.

20 MR. JONES: I do agree that ironically, in light of the last  
21 exchange, but I do agree that -- with Mr. LeVeque on this point. I do  
22 think the Court -- the Supreme Court has given us some direction on this  
23 issue. I disagree with how he interprets it, and we've provided the Court  
24 with the authority that we think is relevant to this analysis, which is on  
25 page 4 of our motion, where the Court defined in the *Valley Electric Case*,

1 that the term, "prevailing party," is broadly construed so as to  
2 encompass Plaintiff's counterclaims and Defendants. So the Supreme  
3 Court has told us that the prevailing party means both claims and  
4 counterclaims. And then they go on to say, a prevailing party under NRS  
5 Chapter 18, if they succeed on any substantial aspect of the case, the  
6 prevailing party is "when actually -- when actual relief on the merits of  
7 his claim materially alters the legal relationship between the parties, by  
8 modifying the Defendant's behavior, in a way that directly benefits the  
9 Plaintiff." Or Defendant, because again *Valley Electric* talks about both  
10 claims and counterclaims.

11 So Your Honor, the best way -- again and I understand what  
12 you're saying is that well, maybe there are two prevailing parties here.  
13 So that's a call that I guess you'll ultimately make is whether or not the  
14 case law allows you to do that.

15 And I can't disagree with that proposition, by the way. It's  
16 unquestionable that both sides won something. So what was the most  
17 substantial relief that was granted? Fortunately, you were here for the  
18 trial. The bequest claim which started this case -- remember we filed --  
19 my client filed a declaratory relief action, or petition, actually in the  
20 Probate Court, saying we want that bequest. And then you were then  
21 tasked with the job of interpreting what that bequest meant.

22 Now -- and the language of the bequest. As a counterclaim,  
23 or as a claim -- in other words, they didn't start that process. Remember,  
24 Mr. Schwartz -- Jonathan Schwartz threatened to sue three years before  
25 -- I think it was at least three years before we actually filed suit. And

1 there was testimony from their own witnesses to that effect. And yet he  
2 didn't do it. To say that my dad had an enforceable naming rights  
3 agreement. But he never did it. He only did it in retaliation for the  
4 school seeking recovery from the bequest, right. So what ended up  
5 happening? What was this case really about? What was the most  
6 substantial claim in the case? That's why we put that little comparison, if  
7 you will, in our brief.

8           So we were seeking a half a million dollars in a scholarship  
9 fund. It wouldn't even go to the school, it would go to a scholarship fund  
10 in trust for students. So it didn't directly benefit the school. It directly  
11 benefited children that were students at the school. Now what did they  
12 file? What did Mr. Schwartz file in the Estate's file? They filed a claim  
13 saying we want to recover over a million dollars in money that Milton  
14 Schwartz gave the school over a 20 year period. Plus we want to impose  
15 on the school that Mr. Schwartz's name appear on every building, every  
16 building, appear on the website, appear on the letterhead, with equal  
17 heading, if you will, or equal billing, if you'll excuse the expression, as  
18 the Adelsons.

19           Now we know from the evidence that you heard, that the  
20 Adelsons did it right. They had a written contract that was approved by  
21 the Board of Trustees for a naming rights agreement. And there was no  
22 dispute that that was an enforceable agreement, in writing, in perpetuity.  
23 Mr. Adelson testified that had the Estate won their argument, the school  
24 would have been in breach of its naming rights agreement with the  
25 Adelsons, which would have put in jeopardy over \$100,000,000 in



1 bequests, which would have in fact bankrupted the school, and put it out  
2 of business.

3 Now, when Mr. -- and Dr. Adelson had followed through with  
4 that threat, we don't know, but we have the evidence that Mr. Adelson  
5 who was pretty adamant about how he felt about that issue, had  
6 indicated that that's what his position was, had that happened. So am I  
7 missing something here, Judge? You were here at that trial. The jury  
8 heard the evidence.

9 So the naming rights issue that Mr. Schwartz was promoting,  
10 had he prevailed on that claim, his name would have been all over the  
11 school and put the school out of business. And that's not the most  
12 substantial relief that was granted? That's why we said that in the brief.  
13 Their proposition that that is not the most substantial claim is an  
14 absurdity. They lost a claim for over \$1,000,000 in rescission of the gifts  
15 that they claimed that were tied to that naming rights agreement, they  
16 lost that. Period. End of discussion.

17 They lost the naming rights claim they brought. That's the  
18 affirmative claim they brought that would have changed the relationship  
19 and the dynamic, and the -- even the actual existence, potentially, of the  
20 school. My client didn't get a half a million dollars in a scholarship fund.  
21 Now, I would say that it's patently obvious, and I believe it will be  
22 patently obvious to the Supreme Court, that their claim is a more  
23 substantial win, than my client's claim, both if you look at the affirmative  
24 relief requested by either party, or the defenses raised by either party. I  
25 think their proposition is patently absurd, on the unequivocal objective

1 facts.

2 So if there's only one way to go, and I'm not saying -- that's  
3 your call. I think the case law does say -- it does spell out, the party that  
4 wins -- the terminology is substantial -- succeeds on any substantial  
5 aspect of the case. I would submit that it's patently obvious who did.

6 THE COURT: Well, another question that's kind of corollary  
7 is hypothetically, I mean assuming the Court says no, there really can  
8 only be one winner.

9 MR. JONES: Uh-huh.

10 THE COURT: The winner here is they don't have to pay the  
11 money to the school, so therefore the Estate wins. But they did all  
12 this -- they had all these other claims they didn't win on. So is it possible  
13 to apportion costs and say well, you shouldn't get that cost, because that  
14 cost really went to the whole issue of the naming rights issue and that's  
15 the one you lost on, so you don't get that cost. Then over here, the  
16 question is the trial -- the jury trial issue, so the cost of the jury. You  
17 know, you clearly you should recover on the jury, because the jury is the  
18 one who made -- said this is the mistakes. So that's a jury -- that's really  
19 to your jury trial. All the cost of the jury, definitely you do recover in  
20 there. That kind of thing. So that -- I guess that's my other question.

21 MR. JONES: I think that is a very interesting, philosophical  
22 question, Judge. I -- candidly I can't tell you the answer to that. I see the  
23 case law. Obviously both parties in these motions are arguing a winner  
24 take all proposition.

25 THE COURT: Right.

1 MR. JONES: That doesn't mean we're correct. I think we  
2 both interpreted the law saying that there is one winner, and one winner  
3 only, and that winner takes it all. We disagree, obviously on who that is,  
4 and even the case law that supports that proposition. I would suggest to  
5 you, Your Honor, an analogy, which sort of supports your argument,  
6 where I have multiple claims, as a Plaintiff. And I win on only one of  
7 those multiple claims. And the Court only allows -- and I have a right for  
8 whatever reason, under either statutory law or the contract that's  
9 involved to recover attorney's fees, and the Court only awards my client  
10 attorney's fees for the claims they prevailed on. And my task is then by  
11 the Court -- the Court says to me, and I've had this happen many times.  
12 Okay, you've got to tell me which claims you think -- or which monies --  
13 attorney's fees relate to that particular claim you've won on, and I'll look  
14 and see if I agree with you or not, and I'll give you attorney's fees, based  
15 upon my analysis and review of your attorney's fees.

16 THE COURT: Yeah, you see that all the time, but I don't know  
17 about costs. I'm just -- like if there's case law out there that says, you  
18 need to look at costs the same way.

19 MR. JONES: I don't -- I don't see that. But again -- and I  
20 think you raise a very interesting, philosophical question. So, you know,  
21 whether we make some new law here today on that -- in that regard, I  
22 understand why you're troubled by this issue, and your point makes  
23 some logical sense to me. With that said, I interpret the case law --  
24 again, ironically, the same way the Estate does in this one limited issue  
25 that effectively there is one prevailing party under Chapter 18 for costs --

1 recovery of costs. And that party is the one that wins -- succeeds on any  
2 substantial aspect of the case, which I -- as I said, I don't want to belabor  
3 the point, I think on its face, is my client.

4 But I understand your point. And because you are the Judge,  
5 you get to make that call ultimately. And then if -- depending on if  
6 somebody appeals that, then the Supreme Court might give us all some  
7 more direction on that issue down the road. But I get your point. For  
8 purposes of my argument today, our position is that we're the party who  
9 succeeded on the substantial -- most substantial aspect of the case, for  
10 the reasons I've mentioned. And I would just add this, Judge. If you're  
11 inclined to say, okay, I'm going to -- I'm going to interpret it as  
12 essentially both were prevailing on some issue, because again,  
13 objectively, both parties were prevailing on some issues, that if you do  
14 ultimately come to that conclusion, that that is the most appropriate  
15 approach to this, then I would submit that as you kind of paired these  
16 out, is the jury trial portion versus the bench trial portion, the majority of  
17 those costs were incurred in connection with the jury trial portion of the  
18 case, and that's the portion that we won. And that certainly was the vast  
19 majority of the costs that were incurred in connection with this case.

20 THE COURT: Thank you. And then I just -- specifically, we  
21 could just discuss if -- because [indiscernible] about some of these like  
22 more specific issues about just what's in the actual objection to the  
23 costs. So we can talk about that, because you will like another chance to  
24 have the final word.

25 MR. JONES: Thank you, Your Honor.

1 THE COURT: Mr. LeVeque?

2 MR. LEVEQUE: Yes, Your Honor. Your Honor, I want to  
3 apologize to the Court and Mr. Jones.

4 MR. JONES: I appreciate it.

5 MR. LEVEQUE: I get --

6 MR. JONES: Thank you.

7 MR. LEVEQUE: -- I usually don't get heated, Your Honor, and  
8 I don't know, but I felt like I was being accused.

9 THE COURT: No.

10 MR. LEVEQUE: I should never have made that comment, so I  
11 apologize.

12 THE COURT: Not a problem. It's -- well, there's three issues.  
13 The first one is, is there only one party who can be a "prevailing party in  
14 any given case."

15 MR. LEVEQUE: Yes.

16 THE COURT: Secondarily, do we -- is there any authority out  
17 there that says, yes, you should apportion costs the way you apportion  
18 attorney's fees, when there's a larger case, and they only recover only on  
19 a portion of it. We frequently see attorney's fees. Well, you only get  
20 your attorney's fees on the portion that you won. None about costs. It's  
21 kind of like -- it just was like that's odd. I don't think I've ever seen that.  
22 And then the third one is just like the actual merits of the motion to retax.  
23 We'll address those.

24 MR. LEVEQUE: Sure.

25 THE COURT: Okay.

1 MR. LEVEQUE: Okay. I'll go with the beginning question.

2 We do have, Your Honor, and I cited as the *Parrity* case --

3 THE COURT: Uh-huh.

4 MR. LEVEQUE: -- where there is this fairly clear law in  
5 Nevada that the Supreme Court looks for one prevailing party when  
6 you're ascertaining the issue of costs. I disagree, though, with respect to  
7 the apportionment argument. And there's case law that was cited by  
8 both myself and counsel for the School on that issue. And it's -- we cited  
9 in the *Blackjack Bonding* case --

10 THE COURT: Uh-huh.

11 MR. LEVEQUE: -- which is a case in 2015, where it states that  
12 to be a prevailing party, a party need not succeed on every issue. And  
13 that was cited in the *Hensley v. Eckerhart* case from 1983. Where I'm  
14 quoting, "A Plaintiff can be deemed prevailing, even though he  
15 succeeded on only some of his claims for relief." This is also cited in  
16 their briefing as well. In an unpublished opinion -- the Court's  
17 indulgence. I can't seem to find it now, but they also cited *Blackjack*  
18 *Bonding*.

19 I understand, Your Honor, and I made this point when I spoke  
20 first, is that this is not your run of the mill case where you're just dealing  
21 with monetary damages. And I think all we can really focus on because  
22 of that is you look at the affirmative claims. And you look at who won  
23 affirmative claims, and who didn't. We can't forget the fact that this  
24 lawsuit was initially brought by the school. I don't have the petition in  
25 front of me, but their petition sought to compel a distribution to the

1 school. And as sort of a compulsory counterclaim in probate  
2 proceedings, we filed our petition three weeks later for all of the  
3 affirmative claims of relief that the Court granted in part, denied in part.

4 I don't really see any grey area here, when it's undisputed  
5 that the school got some of its affirmative relief. Excuse me, the Estate  
6 got some of its affirmative relief, and the school didn't. Mr. Jones was  
7 using the word substantial benefit in litigation. And in the *Blackjack*  
8 *Bonding* case from 2015, that held that a prevailing party is 160 on any  
9 significant issue in litigation, which achieves some of the benefit it  
10 brought in bringing suit.

11 So Mr. Jones is asking the Court to focus on the fact that  
12 they prevailed on a defense with respect -- or a breach of contract by  
13 quoting from the *Blackjack* case. When you look at significant issues,  
14 you look at the issues where a benefit would have been achieved in  
15 bringing the suit in the first place. And it's undisputed here that the  
16 Estate did not achieve any benefit of what it sought in bringing the suit.  
17 It did not get the distribution, it did not get attorney's fees, and it did not  
18 get an accounting.

19 So I think it's pretty clear that we don't need to go outside  
20 the scope of what's already a legal precedent here in Nevada. We have  
21 *Blackjack Bonding* and all of its progeny, standing for the proposition  
22 that you don't have to win anything, but you have to win something.  
23 Here the Estate won something, and the school won nothing.

24 I can now talk about the actual memo costs, if that's where  
25 we'd like to go, Your Honor, or if Mr. Jones want to reply on that -- on

1 the preliminary issue --

2 THE COURT: Well --

3 MR. LEVEQUE: -- before that.

4 THE COURT: No, I think -- as I said the two issues with  
5 respect to the actual memorandum of costs are would it even be  
6 possible to apportion. As I said, if it were like jury fees, then, you know,  
7 yeah there were --

8 MR. LEVEQUE: Yeah. That's hard, Your Honor, because --

9 THE COURT: -- versus -- because it was kind of one --

10 MR. LEVEQUE: It was Milton's intent, right.

11 THE COURT: -- one trial.

12 MR. LEVEQUE: Milton's intent went to the issue of  
13 construction of will and when the bequest was going to be paid, but it  
14 also went to his intent to form a contract with the school. It's so  
15 inextricably intertwined, that even though, you know, the Estate's focus  
16 at trial was certainly proving its breach of contract claim, it still had to  
17 present evidence to defend on the claim to compel the distribution and  
18 the bequest. So I see that this is the type of case where, you know, all of  
19 the witnesses -- well, I can't say all, but probably substantially the  
20 majority of the witnesses were called for both cases.

21 I mean you had all the former board members that would --  
22 that discussed the contract issue, but also discussed the initial \$500,000.  
23 We had Mr. Schwartz testifying about Mr. Schwartz's intent. We had his  
24 bookkeeper talking about both issues. We had Rabbi Wein talking about  
25 both issues. So it's just one of those cases where I think it's an all or



1 nothing quite frankly. I think you either assess who the prevailing party  
2 is and award costs to that party, or you say this is just a case under NRS  
3 18.050, where the Court has discretion to apportion, and y'all get  
4 nothing, and you just bear your own costs given the complexity of the  
5 case. I think that's kind of the analysis.

6 Because the Court has the statutory discretion to do that.  
7 And I mean that would be our fallback position that if it's just too  
8 complicated with all the various claims and evidence in this case that,  
9 you know, the alternative equitable position would be, you know, you  
10 guys -- you advanced your claims, you're going to bear your own costs.

11 Would Your Honor like me to address the merits of the  
12 memo?

13 THE COURT: Yeah

14 MR. LEVEQUE: Okay.

15 THE COURT: Yes. Thank

16 MR. LEVEQUE: Thank you. So should I address just the  
17 merits of their memo, or mine, too, because I guess it depends on where  
18 we go with the prevailing party, because they've attacked our costs, too.

19 THE COURT: Right. We didn't have yours on for today. As I  
20 said, I have it. I don't know if Mr. Jones has it --

21 MR. JONES: I don't.

22 THE COURT: -- and would we prefer to discuss it. I guess he  
23 said no. So because technically yours is not on today, so we'll just talk  
24 about --

25 MR. LEVEQUE: Okay.

1 THE COURT: -- the Estate's memorandum of costs. Your  
2 motion to retax. Theirs was technically not on.

3 MR. LEVEQUE: Okay, so our memorandum of costs.

4 THE COURT: Yes.

5 MR. LEVEQUE: Okay. Your Honor, I didn't address every  
6 single challenge for our costs, because it just wasn't cost efficient to do  
7 it, based on time, but I did address the most salient ones. And the first is  
8 the mediation fees. And both sides have claimed mediation fees and  
9 there was an agreement before trial to split the costs for the private  
10 mediation. And the bottom line is I think neither side should get those  
11 mediation fees. I mean that -- you know, that --

12 THE COURT: Is that in your --

13 MR. LEVEQUE: -- it would be disingenuous for me to argue  
14 that.

15 THE COURT: Is that in the category that is outside  
16 professional fees? Is that included in that category? Or where -- in fact,  
17 where --

18 MR. LEVEQUE: Mediation fees would be a catchall, right?

19 THE COURT: Yeah.

20 MR. LEVEQUE: It would be under 17. But the bottom line is,  
21 Your Honor, is there's an agreement amongst the parties to split that  
22 cost. So I would be willing to forego my claim for mediation fees, if  
23 the -- if the school is willing to forego its claim as well, because we  
24 believe that there's an agreement to split it. The only reason why we  
25 brought it in our memorandum of costs is to not waive it because the

1 school asked for those fees as well.

2 With respect to deposition costs, Your Honor, the school  
3 objects to the cost of videotaping Mr. Edelson's deposition.

4 THE COURT: Uh-huh.

5 MR. LEVEQUE: They advance two arguments in support of  
6 that position. One is that it wasn't used at trial, it was. It was used in the  
7 closing argument. But number two, we wanted his videotaped  
8 deposition for strategic reasons. We've seen depositions of Mr. Edelson  
9 before. We know -- we were able to ascertain and determine how he  
10 responds to questions. And we determined that video of that might have  
11 been helpful during the trial, based on his demeanor, sometimes taking a  
12 long time to answer questions. So we determined that it was a  
13 reasonable and necessary expense.

14 And it's also supported by our own Rule of Civil Procedure,  
15 Rule 30(b)(3)(A), which provides that a deposition can be by audio,  
16 audio-visual, or stenographic means. And we also cited -- unfortunately,  
17 we don't have any case law here in Nevada, but I cited a case from the  
18 District of New Jersey holding that videotaped depositions are taxable  
19 costs provided they're reasonably necessary to litigation, and we submit  
20 they were.

21 With respect to Mr. Rushforth's [phonetic] deposition  
22 transcript, although Mr. Rushforth wasn't called to testify at trial, he was  
23 designated as a witness by our side, and he was deposed by the school.  
24 So we hired -- excuse me, we obtained a copy of the deposition  
25 transcript, because that was before the Court decided any motions in

1 limine, and it was reasonably necessary to defend the inevitable motion  
2 in limine that was going to be filed by the school, which the school  
3 prevailed on. But nevertheless, it was at the time the expense was  
4 incurred, it was reasonable and necessary.

5           The same is true with Rabbi Wein, except that one we have  
6 more support because Rabbi Wein did testify at trial. And that  
7 deposition transcript, even though he wasn't designated as an expert, he  
8 was a percipient witness. A lot of the same subject matter was covered  
9 in that deposition, that ultimately he testified to at trial. Particularly with  
10 respect to his relationship with Mr. Schwartz before he passed away, and  
11 his history of giving and discussions involving what he wanted to do,  
12 which led to the intent. So we think that was always reasonably  
13 incurred.

14           The school also complains about expedited process fees --  
15 service of process fees. I didn't have time to go through every single  
16 time we used a process server on an expedited basis. But I submit to  
17 Your Honor, under Rule 11, that when we did expedite something, it was  
18 for a good purpose. So we submit that those are also reasonably  
19 necessary and are covered within the statute.

20           I agree with the school with respect to Carol Zucker, and  
21 Mike Novick, Layne Rushforth, and George Schwartz, that they did not  
22 testify. So those subpoena fees -- subpoena fees of \$540, we would  
23 deduct from our memorandum of costs. With respect to Dr. Pokroy,  
24 though, although we did not cause Dr. Pokroy in our case-in-chief, the  
25 school did. And we had Dr. Pokroy under subpoena, because at the time

1 we thought we'd have him in our case-in-chief, and I agreed with counsel  
2 to keep him under subpoena, because he informed me that he was going  
3 to call Dr. Pokroy in his case. So is think that is also a recoverable cost.  
4 Notwithstanding the fact that we didn't call him as a witness.

5 Paul Schiffman, there was costs associated with serving him  
6 a trial subpoena in New York. I put this, I think, in our reply to the  
7 motion that the 16.183 trial disclosures, identified Mr. Schiffman as a  
8 Nevada resident. So we attempted to serve him both in Nevada and also  
9 in New York. The school's taking a position that that was unnecessary,  
10 because he was a resident in New York. Well, I think it's fair for us to  
11 rely on the school's 16.183 trial disclosures. So I believe that should also  
12 be recoverable.

13 With respect to costs associated with trying to depose Dr.  
14 Adelson, all I can say is we tried real hard to depose Dr. Adelson, and the  
15 Court protected her from that, and it was affirmed later by the Supreme  
16 Court. Just because we didn't ultimately depose Dr. Adelson, it's not  
17 because we didn't try. We tried in good faith and that cost should be  
18 recoverable as well.

19 With respect to the Westlaw real research of \$8,730, we  
20 submit that those are reasonable and necessary. They're expressly  
21 covered under subsection 17 of NRS 18.005, and the school, in its own  
22 briefing conceded that attorneys do not have to detail which issues or  
23 concepts of research on each occasion, nor do they have to detail why  
24 each individual issue was necessary. And that was in the school's  
25 opposition to motion to retax at page 10, lines 14 to 16.

1           So we believe that the way that we explained how legal  
2 research was billed, is sufficient for purposes of NRS 18.005. What we  
3 do is at the end of each month we get a bill from Westlaw. We prorate  
4 that expense to clients based on number of transactions. And that has  
5 been documented in our memorandum costs.

6           The courier fees, Your Honor, our courier is in house. He  
7 charges a flat \$8.00 fee for runs. The way those are documented in our  
8 system is through our billing software. Each time a courier does a run  
9 we make an entry and that's how we do it. The school is right, I guess  
10 there were two double billings of \$16.00. So, you know, we'll waive the  
11 \$16.00 on the courier fees. But everything else is reasonable and  
12 necessary, and expressly can be included under the statute.

13           There was also long distant charges, and an objection to that  
14 for 41.45. In the interest of economy we'll waive the \$41.45.

15           And I believe those are all the objections, Your Honor.

16           THE COURT: Thank you.

17           MR. LEVEQUE: Thank you.

18           THE COURT: Mr. Jones?

19           MR. JONES: Thank you, Your Honor. Again, I don't want to  
20 belabor the issue about who's the prevailing party too much, but I would  
21 just point out the case that Mr. Leveque has stated, relying upon. The  
22 *Blackjack* case, that's 2015.

23           THE COURT: Yeah.

24           MR. JONES: The state -- the case that we believe is -- really  
25 applies in this case is *McMillan*, which is a 2016 Nevada Supreme Court

1 case, so we think that precedent is more appropriate. It is more recent,  
2 and it is -- we believe that it is more specific as to the issues in this case,  
3 as to a party prevailing on any substantial claim or counterclaim. So that  
4 would be my response to that.

5 And I would just also note that most of their -- if you  
6 remember how this whole thing played out, most of their so-called  
7 affirmative claims, were really affirmative defenses that were set forth in  
8 their response to the petition. So for them to say they had all of these  
9 affirmative claims they prevailed on, I would certainly disagree that that  
10 was the actual form that those took.

11 With respect to the board members testifying, and what they  
12 testified about, the case was -- and again, you know, you talk about  
13 revisionist history, but you sat through the trial. The case was about  
14 whether -- 90 percent of this case was about whether or not there was a  
15 naming rights contract. That was the real issue everybody was focused  
16 on, and for good reason. That was what was most at stake for both  
17 sides. As opposed -- and the numbers tell that story better than any.  
18 They were asking for two -- almost \$2.8 million of money back. Under  
19 that -- under their theory of the case that he had a naming rights  
20 agreement that had been breached. And if they didn't prevail on that,  
21 their counterclaim -- or their defense was, hey, then we get our money  
22 back that had been given over 20 years. The Estate gets Milton  
23 Schwartz's money back, \$2.8 million, not to mention a hundred plus  
24 million dollars, that the school would have lost had -- or been in  
25 jeopardy, really an existential threat had the Estate prevailed on its

1 naming rights claim.

2 Just with respect to a couple of his points on the costs, and  
3 unless the Court has any questions about that, then let me just go back  
4 to the issues about the videotaped deposition. The fact that they might  
5 have used a clip in closing argument, or opening, I can't even remember  
6 which, but let's just say that's true, and I'm not disbelieving Mr. LeVeque,  
7 I'm sure he did, that's not a part of the evidence of the trial, as we all  
8 know. So they did that, so what. So they didn't use any videotaped  
9 depositions during the course of the trial.

10 With respect to the so-called expert fees, I believe that this  
11 argument that Mr. Rushforth, when they tried to use him, well, they --  
12 but they lost that argument. And with respect to, well, we wanted to be  
13 prepared for a motion in limine, so we had to have those depositions, or  
14 we had to have that testimony, okay, so what, but you lost the issue. So  
15 now you lost the issue with the Court, but you're still entitled to recover  
16 the fees, that is counter intuitive, if nothing else.

17 You lose an issue, the Court says you're not entitled to that,  
18 but you get to recover the costs related to it? That's, again from my  
19 perspective, an absurd proposition, and it turns the law on its head, that I  
20 could do something that the says is not appropriate, and I don't mean  
21 that in a pejorative sense, but legally, from an evidentiary standpoint is  
22 not appropriate, but later on, I can ask the Court to give me money for  
23 that. That just makes no sense whatsoever. And that goes to the Rabbi  
24 as well. The same point. He showed up as a fact witness, agreed, but  
25 his deposition was taken as an expert witness, which he was not allowed



1 to be at the trial. So those costs clearly should not be recoverable.

2 THE COURT: So are we talking about -- when you say  
3 deposition costs, are you talking about the --

4 MR. JONES: The video deposition.

5 THE COURT: -- court reporter fees, or are you saying they  
6 were being paid expert fees? Because, technically, I don't see on their  
7 memorandum of costs, where they ever identified anybody technically  
8 as an expert. They have this outside professional fees category, which --

9 MR. JONES: And I guess that's what I'm talking about is  
10 what they're calling that. As you said, "outside professional fees." How  
11 could they get those, when the Court said they weren't entitled to have  
12 witnesses -- those two witnesses testify in that capacity? I could have  
13 hired -- I mean I just think -- I wouldn't have even made such a claim to  
14 the Court. If I was in a situation where I -- and I don't think I ever have,  
15 and I would be interested to see somebody find a case where I've done  
16 such a thing, where my expert was rejected by the Court, and later on I  
17 said I want those fees -- those expert fees. Again, it's just sort of  
18 counterintuitive to me. But again, you make that call, not me.

19 Processor fees. The issue is that they talked about the  
20 expedited service fees. So in almost every case their position is they had  
21 to have expedited process server fees. I think the total cost of the  
22 expedited process server fees was \$1900. And yet they haven't justified  
23 that to the Court as to what -- other than Mr. LeVeque, in argument today  
24 saying, well, we had to do that in every one of those cases, so, you  
25 know, trust my client, when I tell you that was necessary. I don't think

1 that's what the standard is. It's their obligation to demonstrate that in  
2 each and every one of those cases, expedited process server fees were  
3 necessary.

4 Now, one of the things I could argue, Your Honor, when you  
5 think about in connection with this issue is, if I'm doing my job, I  
6 shouldn't have to expedite those process server fees. I should be  
7 thinking far enough ahead, so that I get a process server -- the paperwork  
8 soon enough, so I don't have to expedite the process server fees. That's  
9 1900 bucks. And it's their obligation to justify that to this Court, as to  
10 why those were necessary, as opposed to simply counsel saying, hey,  
11 we really had to do it in each one of those cases, trust me.

12 The amount of the trial witness fees, again, we went through  
13 some of those. Mr. LeVeque graciously said we aren't asking -- we'll get  
14 rid of some of those, but he's talked about Dr. Pokroy. Well, he said,  
15 well, we kept Dr. Pokroy under subpoena just in case the school didn't  
16 call Dr. Pokroy, but the fact is we did. And so they didn't have to have  
17 that subpoena out there. So I leave that to your discretion.

18 At the end of the day, we did live up to our obligation. Now, I  
19 certainly agree with Mr. LeVeque, you can't trust opposing counsel, their  
20 strategy may change. We may not have ended up called Dr. Pokroy. But  
21 if that happened, then I wouldn't probably be arguing about they should  
22 not get the subpoena fees for Dr. Pokroy.

23 Then there's a whole bunch of their claims that are lacking  
24 documentary support. And again this is the *Cadle Company v. Woods &*  
25 *Erickson* case, 2015 Nevada Supreme Court case. Quoting, "Without

1 evidence to determine whether a cost was reasonable and necessary, a  
2 District Court may not award costs." May not award costs. So let's look  
3 at Westlaw. We -- and I understand the difficulty sometimes with asking  
4 for Westlaw research in costs. So we went -- because we've had this  
5 issue, Judge, in other trials we've had, where the Court says, well, wait a  
6 minute, you can't just say you've got sort of this block billing thing, and  
7 you're going to take a portion or a part of it, and try to figure out what  
8 part of that is attributable to this case.

9           So we do a different system, where we actually go through  
10 and actually try to determine what is specifically related in the Westlaw  
11 costs to a particular case. And they -- as I understand what Mr. LeVeque  
12 was saying, that's not how they do it. So they didn't break it down, so  
13 we can't tell exactly what it's being attributed to.

14           I should also mention, by the way, Paul Schiffman, the New  
15 York subpoena, that's an illegal subpoena. Why are we paying costs --  
16 reimbursing costs for an illegal subpoena? That subpoena is void, as a  
17 matter of law. And that was an issue we talked about with the Court  
18 ahead of time. It was actually improper, and arguably, an abuse of  
19 process, to serve a Nevada subpoena on a New York resident. And even  
20 if we told him Mr. Schiffman lived here in Las Vegas, which I presume at  
21 the time we told him that -- well, in fact, I believe at the time we told him  
22 that, he was still the Headmaster of the school, but he moved. And then  
23 they serve a subpoena that's illegal on him in New York, and they're  
24 going to get the costs back for that? I think that's a pretty outrageous  
25 proposition. You're getting costs back for an illegal subpoena.

1 Dr. Adelson, again, same kind of an issue. The Supreme  
2 Court agreed with you, that Dr. Adelson did not need to testify. Now,  
3 they allowed written interrogatories, but that's not the subpoena. So  
4 they get costs back for a -- for a subpoena that the Supreme Court said  
5 was not enforceable? I don't see how they get that back either.

6 Parking, that's a pretty straightforward one. That's under the  
7 *Cadle* case. They missed -- they haven't provided us with the backup  
8 documentation. Therefore, we don't believe they should be entitled to  
9 recover that. The courier costs, we cited where there were certain  
10 courier costs that were missing backup. And this kind of is reminiscent  
11 of the Estate's alleged contributions, where they had been allegedly  
12 destroyed, and then during the middle of the trial, they said, oh, we  
13 found them again. Well, in this case, they've never produced them as far  
14 as I know. And so they shouldn't be allowed to get those.

15 And again finally, long distance costs, there's no supporting  
16 documentation for that. And we cited the *Bobby Berosini* case as to why  
17 that should be rejected.

18 And unless you have any other questions, Your Honor, that's  
19 all.

20 THE COURT: No, I do want to take a look at the cases, and  
21 see for myself, if I can come to a conclusion as to what I believe the law  
22 of Nevada means by prevailing party. Is there a prevailing party or is  
23 prevailing party a bigger concept than that? It's not entirely clear. We  
24 don't have really good -- really clear case law on that, and some of these  
25 other issues we've talked to about, you know, what do you apportion.

1 So I do want to take a look at that, and I'll get something to you, with  
2 respect to -- it will apply to both of the memorandums, as well as just the  
3 specific issues alleged.

4 MR. JONES: Thank you, Your Honor. I agree it is an  
5 interesting question, and I look forward to seeing how you sort it out.

6 THE COURT: Yeah, as do I because right now, as I said, it's a  
7 puzzle.

8 MR. JONES: Thank you, Your Honor.


9 THE COURT: Thank you, gentlemen.

10 MR. LEVEQUE: Thank you, Your Honor.

11 THE COURT: Thanks for coming in.

12 [Proceedings concluded at 10:57 a.m.]  
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio-visual recording of the proceeding in the above entitled case to the  
23 best of my ability.

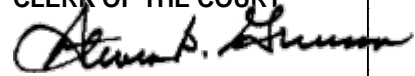
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16 *Attorneys for A. Jonathan Schwartz, Executor*  
17 *of the Estate of MILTON I. SCHWARTZ*

18 **DISTRICT COURT**

19 **COUNTY OF CLARK, NEVADA**

20 In the Matter of the Estate of  
21  
22 MILTON I. SCHWARTZ,  
23  
24 Deceased.

Case No. 07-P-061300

Dept. No.: 26/Probate

25 **NOTICE OF ENTRY OF ORDER**

26 PLEASE TAKE NOTICE that a *DECISION AND ORDER* was entered in the above-  
27 captioned case on the 19<sup>th</sup> day of July, 2019, a copy of which is attached hereto as Exhibit 1.

28 DATED this 25<sup>th</sup> day of July, 2019.

SOLOMON DWIGGINS & FREER, LTD.

By 

MARK A. SOLOMON, ESQ.  
ALAN D. FREER, ESQ.  
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*Estate of MILTON I. SCHWARTZ*

**CERTIFICATE OF SERVICE**


PURSUANT to NRCP 5(b)(E), I HEREBY CERTIFY that on July 25, 2019, I caused a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER to be served to the following in the manner set forth below:

**Via:**

- ☐ Hand Delivery
- ☐ U.S. Mail, Postage Prepaid
- ☐ Certified Mail, Receipt No.: \_\_\_\_\_
- ☐ Return Receipt Request
- ☒ E-Service through Odyssey eFileNV as follows:

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# EXHIBIT 1

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1 **ORDR**

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

8  
9  
10 *In the Matter of the Estate of:*

11  
12 **MILTON I. SCHWARTZ,**  
13 **Deceased.**

CASE NO.: 07-P-061300

14  
15 DEPARTMENT XXVI

16 **DECISION AND ORDER**

17  
18 This matter was tried to a jury on the Petition to Compel Distribution pursuant to the  
19 provisions of a will (will contest) brought by the Adelson Educational Institute (hereinafter the  
20 School) against the Estate of Milton I. Schwartz seeking to enforce the provisions of the decedents'  
21 will with respect to funds left to the Milton I. Schwartz Hebrew Academy. The Estate counter  
22 petitioned for declaratory relief on its equitable claims for either enforcement of a "naming rights  
23 agreement" or in the alternative for return of all contributions made to the school during Mr.  
24 Schwartz's lifetime.<sup>1</sup>

25  
26 After hearing the evidence the jury answered several questions of fact: that Milton I

27  
28 <sup>1</sup> As the decedent's son Jonathan Schwartz is the Executor of the Estate, he will be referred to herein as the Executor,  
while "Mr. Schwartz" refers to Milton I. Schwartz.

1 Schwartz did not have an agreement for naming rights to the school “in perpetuity;” that when he  
2 drafted his will he intended the bequest to only go to a school known as the Milton I. Schwartz  
3 Hebrew Academy; and that the bequest was premised on his mistaken belief that he had such  
4 naming rights. With respect to the Estate’s claims the jury found that the School did nothing to  
5 induce Mr. Schwartz to detrimentally rely on the purported naming rights contract, and finally, that  
6 Mr. Schwartz believed he had such an agreement but was mistaken.

7 Based on these factual findings, the Petition filed by the Adelson School for enforcement of  
8 the provisions of the will was denied. In post trial motions on the declaratory relief claim, the Court  
9 ruled on the equitable issues raised by the Estate, and holding that by the jury’s Verdict, ruled out  
10 recovery on the claim to enforce the purported naming rights agreement. Further, the Estate  
11 acknowledged it was required to distribute the \$500,000 bequest to “scholarships” for Jewish  
12 children; however, the Estate had no right to repayment of the amounts donated to the school during  
13 Mr. Schwartz’ lifetime on the grounds that there was no evidence any of the inter vivos gifts were  
14 made contingent on the school bearing his name.<sup>2</sup>

15 Subsequently both parties petitioned for an award of costs. The School’s theory is that  
16 although its petition to enforce the \$500,000 bequest failed, they nevertheless prevailed in their  
17 defense to the Estate’s claims to either rename the school after Mr. Schwartz at the risk of losing the  
18 millions of dollars donated by the Adelson family subject to a written contract for naming rights or  
19 to return the more than \$2 million in donations made during Mr. Schwartz’ life on the mistaken  
20 belief he had naming rights. The Estate claimed it was the prevailing party as it was successful in its  
21 defense of the will contest even though it did not recover on its declaratory relief claims.

### 22 CROSS-MOTIONS FOR AN AWARD OF COSTS

23  
24 The cross-motions present the question of what is a prevailing party for purposes of recovery  
25 of costs pursuant to NRS 18.020:

26  
27 <sup>2</sup> Mr. Schwartz made various donations starting with the initial \$500,000 to start the school in 1989, and allegedly  
28 totaling approximately \$2.8 million dollars by time Mr. Schwartz passed away in 2007.

1 This decision turns on the definition of prevailing party as used in NRS  
2 18.020(3) and NRS 18.050. A prevailing party must win on at least one of its claims.  
3 See, Golightly & Vannah v TJ Allen, LLC, 132 Nev. Av. Op. 41, 373 P.3d 103, 107 (2016). In  
4 Golightly a law firm interplead funds to which it claimed priority, although the district court  
5 awarded the firm some money, the medical provider was entitled its full pro-rata share, so the law  
6 firm was not a prevailing party. See NRS 18.020:

7 Costs must be allowed of course to the prevailing party against any adverse party  
8 against whom judgment is rendered, in the following cases:

9 ....

3. In an action for the recovery of money or damages, where the plaintiff seeks to  
recover more than \$2,500.

10 Further, NRS 18.050 provides that costs may also be awarded at the discretion of the Court;  
11 however, both statutes require a finding that the party seeking recovery is a prevailing party:

12 Except as limited by this section, in other actions in the district court, part or all of the  
13 prevailing party's costs may be allowed and may be apportioned between the parties,  
14 or on the same or adverse sides. If, in the judgment of the court, the plaintiff believes  
15 he or she was justified in bringing the action in the district court, and the plaintiff  
recovers at least \$700 in money or damages, or personal property of that value, the  
court may allow the plaintiff part or all of his or her costs.

16 It is not necessary that the party seeking the award of fees initiated the lawsuit. Further, the  
17 Supreme Court has held that recovery on a crossclaim or counterclaim may also provide a basis for  
18 recovery. See, Valley Electric Assoc. v Overfield, 121 Nev. 7, 10, 108 P.3e 1198, 1200 (2005),  
19 holding in the context of an award of attorneys fees in a condemnation action that "the term  
20 "prevailing party" is broadly construed so as to encompass plaintiffs, counterclaimants, and  
21 defendants." It is not necessary for an award of costs that the recovery be monetary, as the Supreme  
22 Court found that a party who was granted access to records requested from the police department  
23 was a prevailing party entitled to an award of costs:

24 A party prevails "if it succeeds on *any significant issue* in litigation which achieves  
25 some of the benefit it sought in bringing suit."... To be a prevailing party,  
26 a party need not succeed on every issue... (observing that "a plaintiff [can be]  
27 deemed 'prevailing' even though he succeeded on only some of his claims for  
28 relief").

1 See, LVMPD v Blackjack Bonding, Inc., 131 Nev. Adv. Op 10, 343 P.3d 608, 615 (2015) (internal  
2 citations omitted, emphasis added to the quoted language in the opinion).

3 Here, both parties claim to have “prevailed.” The School did not achieve the benefit it  
4 sought in bringing the suit as it did not succeed in compelling distribution of funds from the Estate;  
5 however, it did defend against the Estate’s declaratory relief and equitable claims. The Estate  
6 successfully defended against the Petition for Distribution but was unsuccessful on its counter-  
7 petition for declaratory and equitable relief.

8 It is impossible to determine which costs either party claimed are related to issues presented  
9 to the jury versus the equitable issues decided by the Court. The School brought the Petition for  
10 distribution and the Jury found that the bequest was based on Mr. Schwartz’ mistaken belief he had  
11 naming rights, so the bequest failed. Therefore the School was not successful with respect to the  
12 benefit it sought in bringing the Petition for Distribution. Although the School defended the Estate’s  
13 equitable claims, this does not overcome the fact that it was unsuccessful on its affirmative claims  
14 for relief. Therefore, the Court finds that the School was not the prevailing party and denies its  
15 motion for costs.

16 While the Estate also did not recover on its counterclaims, it successfully defended against  
17 the School’s claims and was successful in its defense. It is impossible to parse out which costs were  
18 related solely to the unsuccessful equitable claims as opposed to the successful defense of the  
19 Petition for distribution. Therefore, under the circumstances of this case, the Court finds that the  
20 Estate is the prevailing party for purposes of an award of costs pursuant to NRS 18.020.

## 21 22 **CROSS-MOTIONS TO RETAX COSTS**

23 The Estate filed a memorandum of costs claiming the following costs:<sup>3</sup>  
24  
25

---

26 <sup>3</sup> The Court notes that both parties provided documentation for their respective memoranda of costs such that the Court  
27 can determine whether any specific item of costs was reasonable necessary and actually incurred. See, *The Cadle*  
28 *Company, v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345.3d 1049, (2015) and NRS 18.110(1).

Description	Amount
Certified Copies <sup>1</sup>	\$ 10.00
Witness Fees <sup>2</sup>	\$ 1,225.00
Long Distance Telephone Charges <sup>3</sup>	\$ 41.45
Laser Copy Charges – In House <sup>4</sup>	\$ 11,172.50
Postage <sup>5,6</sup>	\$ 133.74
Travel Expenses <sup>7</sup>	\$ 768.40
Miscellaneous Expenses <sup>8</sup>	\$ 5,795.74
Professional Copy Charges – Outside Services <sup>9</sup>	\$ 1,895.95
Scan Charges – In House <sup>10</sup>	\$ 449.50
Secretary of State <sup>11</sup>	\$ 14.00
Filing Fees <sup>12</sup>	\$ 336.00
Process Server Fees <sup>13</sup>	\$ 4,727.50
Courier Service – In House <sup>14, 15</sup>	\$ 872.00
Outside Professional Fees <sup>16</sup>	\$ 8,698.65
Transcription Fees <sup>17</sup>	\$ 21,905.98
Westlaw Legal Research <sup>18</sup>	\$ 8,730.93
<b>Total Costs</b>	<b>\$ 66,777.34</b>

The Motions to Retax were taken under consideration to determine which party was the “prevailing party” as well as the issues raised in the Motion to Retax. Recoverable costs are defined in NRS 18.005.<sup>4</sup>

The School raises the following issues in its Motion to Retax Costs:

Outside Professional Fees (\$8,698.65)

Mediation fees (\$3,660) –mediation costs are not permitted within NRS 18.005, although

<sup>4</sup> 18.005: For the purposes of NRS 18.010 to 18.150, inclusive, the term “costs” means:

1. Clerks' fees.
2. Reporters' fees for depositions, including a reporter's fee for one copy of each deposition....
4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless the court finds that the witness was called at the instance of the prevailing party without reason or necessity....
7. The fee of any sheriff or licensed process server for the delivery or service of any summons or subpoena used in the action, unless the court determines that the service was not necessary.
8. Compensation for the official reporter or reporter pro tempore....
11. Reasonable costs for telecopies.
12. Reasonable costs for photocopies.
13. Reasonable costs for long distance telephone calls.
14. Reasonable costs for postage.
15. Reasonable costs for travel and lodging incurred taking depositions and conducting discovery.
16. Fees charged pursuant to NRS 19.0335.
17. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research.

1 both parties listed this fee, which was split between the parties, mediation fees are not specifically  
2 recoverable, this cost will not be awarded.

3 Videotaped deposition of Sheldon Adelson (\$1,857.89) and deposition transcript costs for the  
4 Estate's experts (\$586.75) –the School argues that NRS 18.005 does not permit an award of costs for  
5 videotaped depositions, especially when they were not played at trial. The School also objects to  
6 transcript costs for Layne Rushforth and Rabbi Wyne, as these witnesses were precluded from  
7 testifying as experts at trial.<sup>5</sup> The Court agrees that cost of videotaping depositions is not  
8 specifically permitted. NRS 18.005 provides that the cost of the original and one copy of a  
9 transcript is awardable. The use of the video recording of deposition testimony is a useful trial  
10 technique, such as here where counsel for the Estate played excerpts of Mr. Adelson's deposition  
11 during closing arguments, but the cost is not chargeable to the other party. The costs of the  
12 transcripts for the witnesses who were precluded from testifying at trial, however, will be awarded.

13 Process Server Fees (\$4,727.50) –the School challenges \$1,920 for unnecessary expedited  
14 service charges without any explanation. The School also argues \$310 for ineffective attempts to  
15 serve Paul Schiffman in New York is not a recoverable cost. Similarly, \$510 in fees to serve Dr.  
16 Miriam Adelson, who was not deposed, is not recoverable. The Court denies these objections except  
17 to the extent the Estate concedes that \$540 should be deducted for witnesses who did not testify.

18 Westlaw (\$8,730.93) – the School objected on the grounds that the method of allocating  
19 Westlaw charges was not clear. The Estate explained that each entry represents the Estate's pro-rata  
20 share of the total monthly Westlaw charge incurred by SDF based on the total number of search  
21 transactions per month. The Court finds this explanation sufficient under Cadle and finds the  
22 Westlaw charges reasonable, necessary, and actually incurred.

23 Travel Expenses/Parking (\$768.40) –the School objected to missing documentation for \$132  
24 and double charged for Aug. 28, 2018, for a total reduction of \_\$156. However, none of the "travel  
25 expenses/parking" appear to be related to traveling to conduct depositions or otherwise related to  
26 \_\_\_\_\_

27 <sup>5</sup> Rabbi Wyne did testify at trial, but only as a percipient witness.

discovery, so the entire category is disallowed.

Courier Fees (\$872) – the School objected on the grounds of missing documentation for \$376 and double billed on two days; the Estate conceded \$16 should be properly deducted for total reduction of \$392. The Court grants the objection pursuant to Cadle.


Long Distance Charges (\$41.45) –no supporting documentation, the Estate agreed to waive this item of costs due to the expense of responding.

### CONCLUSION

WHEREFORE, based on pleadings and papers on file herein, the arguments of counsel and the law that applies in this case as set forth above, the Court hereby finds that the prevailing party in this matter is the Estate. Therefore, the School's Motion for Costs is DENIED; the Estate's Motion for Costs is GRANTED.

FURTHER, the School's Motion to Retax Costs is GRANTED IN PART: Of the \$66,777.34 in costs requested by the Estate, the Court disallows \$41.45 (Long Distance Telephone Charges); \$768.40 (Travel Expenses); \$540 (Process Server Fees); \$392 (Courier Service – In House); \$5517.82 (Outside Professional Services) for a total reduction of \$7,259.67; thereby leaving the Estate's Motion for Costs granted in the amount of \$59,517.67.

DATED: This 15<sup>th</sup> day of July, 2019

  
 GLORIA J. STURMAN  
 District Court Judge, Dept. XXVI

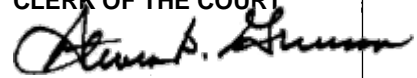
Counsel for the Estate is directed to prepare a Notice of Entry of Decision and Order.





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1 **SAO**

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2 Nevada State Bar No. 7706

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SOLOMON DWIGGINS & FREER

5 9060 West Cheyenne Avenue

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6 Telephone: (702) 853-5483

7 Facsimile: (702) 853-5485

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

10 **DISTRICT COURT**

11 **COUNTY OF CLARK, NEVADA**

12 In the Matter of the Estate of

13 MILTON I. SCHWARTZ,

14 Deceased.

Case No. P061300

Dept. No.: 26/Probate

15 **STIPULATION AND ORDER REGARDING TRIAL TRANSCRIPTS**

16  
17  
18 A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz, by and through  
19 his Counsel of Record, the law firm of SOLOMON DWIGGINS & FREER, LTD. and The Dr.  
20 Miriam and Sheldon G. Adelson Educational Institute, by and through its Counsel of Record,  
21 KEMP, JONES & COULTHARD, LLP, hereby stipulate and agree as follows:

22 ///

23 ///

24 ///

25 ///

26 ///

27

28

1. That the Rough Drafts of the Trial Transcripts which were filed with the Court on September 3, 2018 may be used as the official transcripts for the trial that took place on August 28, 2018 through September 5, 2018 in the above-referenced matter.

Dated this 31<sup>st</sup> day of July, 2019.

Dated this 31<sup>st</sup> day of July, 2019.

**SOLOMON DWIGGINS & FREER**

**KEMP, JONES & COULTHARD, LLP**

By: Alan D. Freer (#7706)  
Alexander G. LeVeque (#11183)  
 9060 West Cheyenne Avenue  
 Las Vegas, Nevada 89129  
*Attorneys for A. Jonathan Schwartz,*  
*Executor of the Estate of Milton I. Schwartz*

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

**ORDER**

**IT IS SO ORDERED.**

DATED this 31<sup>st</sup> day of July, 2019.

[Signature]  
 DISTRICT COURT JUDGE

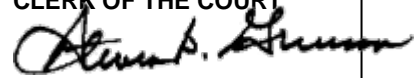
Respectfully submitted,

**SOLOMON DWIGGINS & FREER**

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

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Case No.: 07-P-061300  
Dept. No.: 26/Probate

**NOTICE OF APPEAL**

Please take note that The Dr. Miriam and Sheldon G. Adelson Educational Institute (the "School"), hereby appeals to the Supreme Court of Nevada from the District Court's July 19, 2019 Decision and Order denying the School's requests for costs, granting the Estate of Milton I. Schwartz's request for costs, and granting in part the School's Motion to Re-Tax and Settle Costs.

DATED this 19th day of August, 2019.

KEMP, JONES & COULTHARD, LLP

/s/ Joshua D. Carlson

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*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 19th day of August, 2019, the foregoing **NOTICE OF APPEAL** was served on all parties on the service list through the Court's electronic filing system.

/s/ Angela Embrey  
An employee of Kemp, Jones & Coulthard, LLP

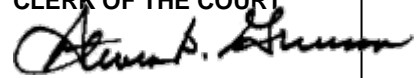
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Facsimile: (702) 385-6001  
*Attorneys for The Dr. Miriam and  
Sheldon G. Adelson Educational Institute*

**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

**CASE APPEAL STATEMENT**

**1. Name of appellants filing this Case Appeal Statement:**

The Dr. Miriam and Sheldon G. Adelson Educational Institute (the "Adelson Campus" or the "School")

**2. Identify the judge issuing the decision, judgment or order appealed from:**

Honorable Gloria J. Sturman

**3. Identify each appellant and the name and address of counsel for each appellant:**

The Dr. Miriam and Sheldon G. Adelson Educational Institute (the "Adelson Campus" or the "School"):

J. Randall Jones, Esq.  
Joshua D. Carlson, Esq.  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169

**4. Identify each respondent and the name and address of appellate counsel if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):**

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

Alan. D. Freer  
Alexander G. LeVeque  
SOLOMON DWIGGINS & FREER, LTD.  
9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129

Daniel F. Polsenberg  
Joel D. Henriod  
Abraham G. Smith  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169

**5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada, and if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):**

All counsel are licensed to practice law in Nevada.

**6. Indicate whether appellant was represented by appointed counsel in the district court or on appeal:**

Appellants were and are not represented by appointed counsel.

**7. Indicate whether appellant is represented by appointed or retained counsel on this appeal:**

Appellants are represented by retained counsel on appeal.

**8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:**

Appellants did not request leave to proceed in forma pauperis.

**9. Indicate the date of proceedings commenced in the district court:**

May 3, 2013.

**10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:**

At issue is the enforceability of a purported naming rights agreement and a \$500,000 Bequest from Milton I. Schwartz to "the Hebrew Academy for the purpose of funding scholarships to educate Jewish children only." On May 3, 2013, after Mr. Schwartz's son and the executor of his estate, Jonathan Schwartz, refused to make the Bequest to the School, the School filed a Petition to Compel

Distribution of the Bequest, in addition to seeking other relief. On May 28, 2013, the Estate filed its own petition for declaratory relief, raising claims for breach of contract, fraud in the inducement, Bequest void for mistake, offset of the Bequest, revocation of gift and constructive trust, and construction of the Will. On May 28, 2014, the Estate filed a supplemental petition for declaratory relief adding causes of action for specific performance and injunctive relief.

A jury trial commenced in August 2018. The jury found that Milton Schwartz did not have an enforceable naming rights contract with the school. The jury also found that Mr. Schwartz had intended a bequest in his will to go only to a school known as the “Milton I. Schwartz Hebrew Academy” based on his mistaken belief that he had a perpetual naming rights agreement.

The parties then conducted post-trial briefing on the remaining equitable issues. The Court denied the School’s Petition and granted the Estate’s competing claims (affirmative defenses) for construction of will and bequest void for mistake. The Court further denied the Estate’s claims for promissory estoppel and revocation and constructive trust regarding Milton I. Schwartz’s lifetime gifts to the School. Judgments were entered accordingly. The Estate appealed and the School cross-appealed the various Judgments regarding the parties’ claim in Nevada Supreme Court Case No. 78341, which is currently pending.

Subsequently, both parties moved for an award of their costs. On July 19, 2019, the district court issued its Decision and Order denying the School’s request for costs, granting the Estate’s request for costs, and granting in part the School’s Motion to Re-Tax and Settle Costs, which the School appeals herein.

**11. Indicate whether the case has been the subject of an appeal or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:**

- *Schwartz v. Eighth Judicial District Court*, Case No. 73066
- *In the Matter of the Estate of Milton I. Schwartz: Schwartz v. The Dr. Miriam and Sheldon G. Adelson Educational Institute*, Case No. 78341

This appeal does not involve child custody or visitation.

The case involves the possibility of settlement.

DATED this 19th day of August, 2019.

KEMP, JONES & COULTHARD, LLP

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

## CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of August, 2019, the foregoing **CASE APPEAL STATEMENT** was served on all parties on the service list through the Court's electronic filing system.

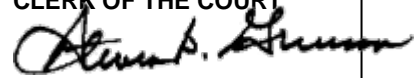
An employee of Kemp, Jones & Coulthard, LLP

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

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Case No.: 07-P-061300  
Dept. No.: 26/Probate

**Notice of Posting Supersedeas Bond on Appeal**

WHEAREAS, the above-entitled Court issued its Decision and Order on July 19, 2019, granting A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz's (the "Estate") Motion for Costs and ordering The Dr. Miriam and Sheldon G. Adelson Educational Institute (the "Adelson Campus") to pay the Estate's permitted litigation costs in the amount of \$59,517.67. On August 16, 2019, the Adelson Campus filed its Notice of Appeal regarding the District Court's July 19, 2019 Decision and Order.

///

///

///

1 Notice is hereby given that the Adelson Campus, by and through its counsel of record, J.  
 2 Randall Jones, Esq. and Joshua D. Carlson, Esq. of the law firm Kemp, Jones & Coulthard, LLP,  
 3 posted a supersedeas bond in the amount of \$59,517.67 on August 16, 2019, thereby staying the  
 4 enforcement of the above-referenced award of costs pursuant to NRCP 62 during the pendency of the  
 5 appeal of the District Court's July 19, 2019 Decision and Order. A copy of the receipt for the posting  
 6 of said supersedeas bond is attached hereto.

7 DATED this 19th day of August, 2019.

8 KEMP, JONES & COULTHARD, LLP

9 /s/ Joshua D. Carlson

10 J. Randall Jones, Esq. (#1927)

11 Joshua D. Carlson, Esq. (#11781)

12 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor

13 Las Vegas, Nevada 89169

14 *Attorneys for The Dr. Miriam and*

15 *Sheldon G. Adelson Educational Institute*

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on the 19th day of August, 2019, the foregoing **Notice of Posting**  
 18 **Supersedeas Bond** was served on all parties on the service list through the Court's electronic filing  
 19 system.

20 /s/ Pam Montgomery

21 An employee of Kemp, Jones & Coulthard, LLP

# OFFICIAL RECEIPT

District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

006606

Payor  
The Adelson School

Receipt No.  
**2019-50500-CCCLK**

Transaction Date  
08/16/2019

Description	Amount Paid
On Behalf Of Schwartz, Jonathan A 07P061300 In the Matter of the Estate of Milton Schwartz Registry and Trust Account-Probate Probate Trust Deposit	59,517.67
<b>SUBTOTAL</b>	<b>59,517.67</b>

**PAYMENT TOTAL** **59,517.67**

Check (Ref #19483) Tendered	59,517.67
Total Tendered	59,517.67
Change	0.00

Per the Decision and Order - filed on 7/19/2019

08/16/2019  
03:39 PM

Cashier  
Station RJCC1

Audit  
36534281

## OFFICIAL RECEIPT

909900

909900

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

AUG 22 1990

RECEIVED DEL. PAPA, SECRETARY OF STATE  
No. 1075

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

FILED

AUG 29 2 43 PM '90

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

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

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

ARTICLE I

This corporation shall be known as:

THE MILTON I. SCHWARTZ HEBREW ACADEMY

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

///

///

///

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

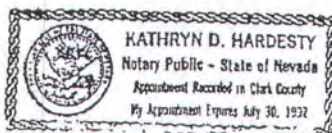
MILTON I. SCHWARTZ, President

LENARD E. SCHWARTZER, Secretary

STATE OF NEVADA       )  
                                  SS:  
COUNTY OF CLARK     )

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

WITNESS MY HAND AND OFFICIAL SEAL.



Kathryn D. Hardesty  
NOTARY PUBLIC



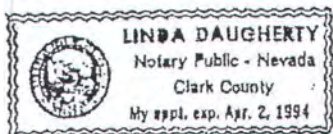
STATE OF NEVADA )

SS:

COUNTY OF CLARK )

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

WITNESS MY HAND AND OFFICIAL SEAL..

  
NOTARY PUBLIC

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MINUTES OF THE BOARD OF TRUSTEES OF  
THE MILTON I. SCHWARTZ HEBREW ACADEMY

October 18, 1990, 5:00 p.m.

PRESENT: Milton I. Schwartz  
Frederic I. Berkley  
Lenard E. Schwartz  
Roberta Sabbath  
Elliot Klain  
Tamar Lubin

The meeting was called to order at 5:15 p.m. by Milton I. Schwartz. Minutes from the previous meeting held on September 27, were approved with one change.

Revision of By-Laws

The Board considered revising By-Laws. A motion was made to amend the by-laws as follows:

- a. staggering the terms of Board members,
- b. correcting the name and address of the school,
- c. changing the name administrator to "school head",
- d. changing the title of president to "chairman of the board and president"; and
- e. adding a category "non-voting honorary board members."

The motion by Roberta Sabbath and Seconded by Fred Berkley was unanimously passed.

Student Aid Committee Authorization

It was moved by Dr. Tamar Lubin and seconded by Fred Berkley that the Student Aid Committee is authorized to reallocate the unused student aid. The motion was unanimously passed.

Three p.m. Pickup Problems/Solutions TBA

Dr. Lubin will report on 3:00 p.m. pickup problems and possible solutions at the next meeting. All board members are encouraged to view the 3:00 p.m. pickup of students.

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Authorization to Employ Photographer

A motion was made to authorize the employment of a photographer to take pictures of the Board members and benefactors of the school to be hung in the entry of the school.

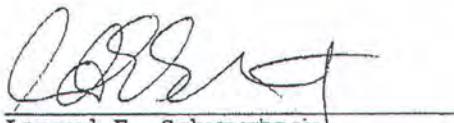
Invitation of Jewish Federation of Las Vegas to Board Meeting

A motion was made by Neville Pokroy and seconded by Fred Berkley to invite Jewish Federation of Las Vegas to have a Board meeting at the school. The motion passed unanimously.

Return of Mrs. Clifford's Deposit

A motion was made by Neville Pokroy to return Mrs. Clifford's deposit on the basis that there was no contract signed by Mrs. Clifford. The motion was seconded by Elliot Klain and passed (Fred Berkley dissenting and Dr. Lubin abstaining).

The meeting was adjourned at 6:15 p.m.




Lenard E. Schwartzek  
Secretary

LES:wgd

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1990

## BYLAWS OF

THE MILTON I. SCHWARTZ HEBREW ACADEMY

## ARTICLE I

NAME AND OFFICE

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

## ARTICLE II

TRUSTEES

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

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

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

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

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

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



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

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

#### ARTICLE III

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

#### ARTICLE IV

##### COMMITTEES

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

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

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

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

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

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

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

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

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

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

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

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

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



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

#### ARTICLE V

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

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

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

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

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

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

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

#### ARTICLE VI

##### MEETINGS OF THE BOARD OF TRUSTEES

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

#### ARTICLE VII

##### ELECTIONS

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

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

#### ARTICLE VIII

##### AMENDMENTS

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

#### ARTICLE IX

##### RULES

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

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

KNOW ALL MEN BY THESE PRESENT:

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



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

Amber H. Hines  
Edith Hines  
Shirley Hines  
Rheta S. Schatz  
Keri R. Tuhler  
Wynne Hines  
Cheryl C. Hines  
David Hines  
Robert Hines  
Heidi Hines  
Tanner Rubin-Sapash

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RPTT \$

## QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That The Hebrew Academy, a Nevada non-profit corporationIn consideration of \$ 10.00 the receipt of which is hereby acknowledged, do hereby remise, release and forever quitclaim to  
47 The Milton I. Schwartz Hebrew Academy, a Nevada non-profit corporationall 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 thereto belonging or in anywise appertaining.

 Witness \_\_\_\_\_ hand \_\_\_\_\_ this 9th day of April, 1991  
The Hebrew Academy  
 BY Milton I. Schwartz  
Milton I. Schwartz, President

STATE OF Nevada

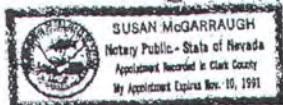
County of ClarkOn this 9th day of April, 1991

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 use and  
 purposes therein mentioned.

Susan McGarraugh  
 Notary Public in and for said County and State.


ESCROW NO. \_\_\_\_\_

WHEN RECORDED MAIL TO: \_\_\_\_\_

E-11

EST-00155

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

FILED

DEC 21 4 29 PM '92

CLERK

DISTRICT COURT  
 CLARK COUNTY, NEVADA

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

11 Plaintiff,

12 vs.

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

20 Defendants.

Case No. 1310725  
 Dept. No. III  
 Docket E

ARBITRATION EXEMPTION:  
 DECLARATORY JUDGMENT

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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

21 1. That the Plaintiff, The Board of Directors of the MILTON  
 22 I. SCHWARTZ HEBREW ACADEMY, (hereinafter ACADEMY) are residents of Clark  
 23 County, Nevada.

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

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

28 / / / /





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

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

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

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

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

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

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

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

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

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

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

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

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

1 legitimate Board of Directors of the ACADEMY;

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

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


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

8 LAW OFFICE OF DANIEL MARKS

9  
10 By \_\_\_\_\_

11 DANIEL MARKS, NSB #002003  
12 302 East Carson, Suite 702  
13 Las Vegas, NV 89101  
14 Attorney for Plaintiff  
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## MINUTES

## HEBREW ACADEMY EMERGENCY BOARD MEETING

MAY 19, 1996

The meeting was called to order at 12:15 p.m. by President Geri Rentchler. Present at the meeting were Ira David Sternberg, Geri Rentchler, Jacalyn Glass, Dr. Roberta Sabbath, and Anita Lederman in a non-board member capacity. Gertrude Rudiak was absent.

A motion was made by Ira David Sternberg to approve the minutes of the meeting of May 7, 1996 with the corrections that had been made. The motion was seconded by Jacalyn Glass and the motion passed unanimously. Ira David Sternberg made an additional motion that we accept the May 13, 1996 minutes with the corrections made. Jacalyn Glass seconded that motion and it also passed unanimously.

A discussion was had regarding inviting Stuart Deane of the Parents Coalition to sit on the Board in an advisory or liaison capacity. The Board determined that additional thought would have to be put into that at this stage.

Dennis Sabbath reported that efforts were being made to continue to try and obtain officer and director liability policies for the board members.

Dennis Sabbath also discussed the text of the Milton Schwartz letter and a general discussion was had regarding the contents of the letter. Jacalyn Glass moved to accept the letter to Milton Schwartz as to the substance and form; however, leaving the form of the letter to the discretion of the school head. Ira David Sternberg seconded the motion and it passed unanimously. The Board passed a resolution returning the name of the school to the Milton I. Schwartz Hebrew Academy. The name would be returned to the stone outside of the school as well as the school letterhead and other appropriate places.

Dennis Sabbath discussed with the Board the letter he had prepared regarding the Jewish Community Day School. A discussion was had regarding the letter and the Board had Dennis delete the second paragraph on Page 2. Jacalyn Glass moved to accept the wording of the letter and leaving the form up to the discretion of the school head. Ira David Sternberg seconded the motion and the motion passed unanimously.

Dennis Sabbath had the Board review a letter he had prepared regarding the termination of Dr. Tamar Lubin. The letter contains language that Dr. Lubin's salary benefits would continue to be paid through the end of the term of her current contract, which is June 30,

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CONFIDENTIAL

Hebrew Academy  
Board Meeting Minutes  
May 19, 1996  
Page 2

1996. Dr. Lubin would be notified of the availability of Cobra to continue her insurance coverage on her own for 18 months. The school will continue to pay for her insurance coverage through the 60 day notification period. Jacalyn Glass moved that the Board accept the language of the letter as edited during the meeting to take out the other language regarding any other monies that may be paid to Dr. Lubin. The motion was seconded by Ira David Sternberg and it passed unanimously.

There was a discussion regarding the amount of bad debt that the school has with parents who have removed their children from the school over the last few years. A motion was made by Jacalyn Glass to forgive the bad debt of all students who have been removed from the school up until this point. It would be up to the discretion of the school head, Roberta Sabbath, to deal with the monies owed by parents of students currently enrolled in the school. Ira David Sternberg seconded the motion. The vote was held and it passed unanimously.

Dennis Sabbath discussed with the Board the Nancy Clayton lawsuit. He explained the advantages and disadvantages of settling the case at this point. It appears that this is one of the issues that concerns the Parent Coalition. Jacalyn Glass moved that the Board authorize Dennis Sabbath to instruct Scott Cantor to talk to the attorney for Nancy Clayton to settle the case in an amount not to exceed the remainder of the balance of Nancy Clayton's contract with the school. That he attempt to obtain a no admission of liability clause in the release and that Nancy Clayton, as a part of the settlement, to refrain from any further actions and communications regarding the school. Ira David Sternberg seconded the motion and the motion passed unanimously.

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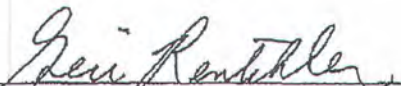
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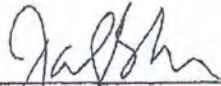
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Hebrew Academy  
Board Meeting Minutes  
May 19, 1996  
Page 3


It should also be noted that Stuart Deane and Mort Winer met with the Board informally, before the regular Board meeting, to present them their concerns and bring to the Board information regarding a group of parents and the school. A motion was made to adjourn by Ira David Sternberg at 1:20 p.m. The motion was seconded by Jacalyn Glass and it passed unanimously.

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
SECRETARY

CONFIDENTIAL

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

THE HEBREW ACADEMY

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given to B/w  
3-24-05

BYLAWS  
OF  
THE MILTON I. SCHWARTZ  
HEBREW ACADEMY

## ARTICLE I

PURPOSE AND POWERS

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

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

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

## ARTICLE II

OFFICES

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

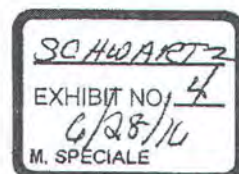
## ARTICLE III

BOARD OF TRUSTEES

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

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

CAUSE NO. 13501-02 Webrod by LSH  
March 8, 1999



EST-00106



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THE HEBREW ACADEMY

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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. Exofficio 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. Exofficio 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. *Provide yearly executive slate*

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.

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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 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

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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.

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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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participating in the making of such loan, shall be jointly and severally liable to the Corporation for the amount 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 or procedural 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: Carol G. Zimm  
President

Adopted this 13th day of April, 19 99

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

<sup>13</sup>  
At 13 April, 19 99

By: Geir R. Antikler  
Secretary



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# LAST WILL AND TESTAMENT

OF

MILTON I. 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 aforementioned 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.

## SECOND: BEQUESTS

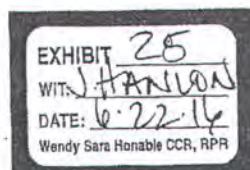
2.1 Written Directions. I may leave one or more written directions disposing of items of personal and household articles. Each shall be effective only if (i) executed by me with all the formalities of a deed (i.e., witnessed and notarized), and (ii) delivered to the Trustees of the trust referred to 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

*MS*



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

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

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

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

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

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

### THIRD: RESIDUARY BEQUESTS

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

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

Testator's Initials MS



FOURTH: EXECUTOR

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

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

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

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

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

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

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

- (a) Elect any valuation date for purposes of federal estate tax permitted by law which my Executor deems to be to the best advantage of the family considered as a whole rather than the advantage of those interested only in my estate, even to the extent of making the election in such a way that the federal estate tax is greater rather than less a result of such election, provided that in my Executor's discretion such is likely to be for the best advantage, present and future, of the family taken as a whole.
- (b) Choose the methods of payment of federal estate taxes or state estate or inheritance taxes.
- (c) Determine whether any or all of the expenses of administration of my estate shall be used as federal estate tax deductions or as federal income tax deductions. No beneficiary under this Will shall have any right to recoupment or restoration of any loss the beneficiary suffers as a result of the use of such deduction for one or the other of these purposes.
- (d) Join with my spouse or the estate of my spouse in filing a joint income or gift tax return or returns for any arrears for which I have not filed returns prior to my death.
- (e) Consent that any gifts made by me or my spouse have been made one-half by me and one-half by my spouse for gift tax purposes even though these actions may subject my estate to additional tax liabilities.

Testator's Initials JS



- (f) Allocate in my Executor's sole discretion, any portion of my exemption under Sec. 2631(a) of the Internal Revenue Code, as amended, to any property as to which I am the transferor, including any property transferred by me during life as to which I did not make an allocation prior to my death.
- (g) Exercise any other options or elections afforded by the tax law of the United States or of any other jurisdiction. My Executor may exercise this authority in my Executor's sole discretion; regardless of any other provisions in this Will or the effect on any other provisions of this Will or the effect on any person interested in my estate. No beneficiary under this Will shall be entitled to a compensating adjustment even though the exercise of these tax powers affects the size or composition of my estate or of any disposition under this Will. The determination of my Executor with respect to the exercise of the election shall be conclusive upon all affected persons.

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

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

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

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

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

Testator's Initials LSH



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

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

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

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

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

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

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

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

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

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

#### FIFTH: TESTAMENTARY DECLARATIONS

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

Testator's Initials WDS



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

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

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

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

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

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

#### SIXTH: MISCELLANEOUS

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

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

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

Testator's Initials JS

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 5<sup>th</sup> 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 Triandes Dr.  
Henderson, NV 89012

Residing At:

1511 Jurf Drive  
Henderson, NV 89015

STATE OF NEVADA )

) ss.:

COUNTY OF CLARK )

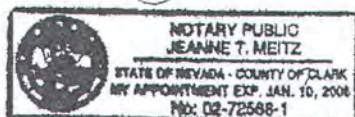
Then and there personally appeared the within named Richard B. Newman and Beverley J. Jones who, being duly sworn, depose and say:

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

SUBSCRIBED and SWORN to before me

This 5<sup>th</sup> day of February, 2004.

Notary Public



EST-00096

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**The Dr. Miriam and Sheldon G. Adelson Educational Campus  
Board of Trustees Meeting  
Tuesday, April 10, 2006 6:00 PM**

The meeting of the Adelson Educational Campus was called to order at 6:00 pm, April 10, 2008.

Present: Victor Chaltiel, Jill Hanlon, Roni Amid, Yasmin Lukatz, Larry Cohler, Ercy Rosen, Philip Kantor, Sam Ventura, Tom Spiegel, Leah Stromberg

Staff: Paul Schiffman, Rabbi Yonaton Yussman, Paul Mahoney, Stacy Colwell, Benjamin Feinstein, Allison Shay, Mike Wiley, Jim Stroh

Absent: Suzanne Steinberg, Sheldon Adelson, Rachel Schwartz, Dorit Schwartz Irv Steinberg, Benny Yerushalmi

**Chairman's Report**

The Gala was discussed. Allison Shay reported a gross revenue of approximately \$501,850. It is estimated that 350 guests attended the event.

Victor Chaltiel reported that several board members met with a performer who will help with a future fundraiser for the school.

Faye and Dr. Leon Steinberg were asked to allow the school to honor them at next years gala. We are waiting for their answer.

**Construction Report**

Jim Stroh reported that building is on schedule, but they we face some challenges to complete on time.

**Head of School Report**

Paul Schiffman reported that re-enrollment is lower than expected in the middle and upper school, but that it was expected that most students would re-enroll. The lower school enrollment is going very well.

**Motion**

Jill Hanlon made a motion that the board confirm that each and every trustee will be held harmless and indemnified for all liabilities related to their functions as trustee of the school, including all legal costs incurred. Philip Kantor seconded the motion. The motion passed.

**Other Matters**

The minutes from March 11, 2008 were approved.

The next board meeting was scheduled from May 13, 2008.

**Respectively submitted,  
Jill Hanlon  
Board of Trustees**

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**STATE OF NEVADA - DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH - SECTION OF VITAL STATISTICS  
CERTIFICATE OF DEATH**

TYPE OR PRINT IN PERMANENT BLACK INK	1a. DECEASED-NAME FIRST Milton		1b. MIDDLE I		1c. LAST SCHWARTZ		2. DATE OF DEATH (Mo/Day/Year) August 09, 2007		3a. COUNTY OF DEATH Clark	
	3b. CITY, TOWN, OR LOCATION OF DEATH Las Vegas		3c. HOSPITAL OR OTHER INSTITUTION - Name (If not either, give street and number) Valley Hospital Medical Center		3e. If Hosp. or Inst. Indicate DOA, OP/Emer. Rm. Inpatient (Specify) Inpatient		4. SEX Male			
DECEDENT	5. RACE (e.g., White, Black, American Indian) (Specify) White		6. Was Decedent of Hispanic Origin? If yes, specify Mexican, Cuban, Puerto Rican, etc. Non-hispanic		7a. AGE-Last birthday (Years) 85		7b. UNDER 1 YEAR MOS DAYS HOURS MINS		7c. UNDER 1 DAY HOURS MINS	
	8. DATE OF BIRTH (Mo/Day/Yr) December 07, 1921									
IF DEATH OCCURRED IN INSTITUTION SEE HANDBOOK REGARDING COMPLETION OF RESIDENCE ITEMS	9a. STATE OF BIRTH (If not U.S.A., name country) New York		9b. CITIZEN OF WHAT COUNTRY United States		10. EDUCATION 12		11. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (Specify) Divorced		12. SURVIVING SPOUSE (if wife, give maiden name)	
	13. SOCIAL SECURITY NUMBER 052-12-9515		14a. USUAL OCCUPATION (Give Kind of Work Done During Most of Working Life, Even if Retired) Entrepreneur		14b. KIND OF BUSINESS OR INDUSTRY Various					
PARENTS	15a. RESIDENCE - STATE Nevada		15b. COUNTY Clark		15c. CITY, TOWN OR LOCATION Las Vegas		15d. STREET AND NUMBER 2293 Duneville Street		15e. INSIDE CITY LIMITS (Specify Yes or No) No	
	16. FATHER - NAME (First Middle Last Suffix) Samuel SCHWARTZ		17. MOTHER - NAME (First Middle Last Suffix) Gussie KOPPELMAN							
DISPOSITION	18a. INFORMANT- NAME (Type or Print) Jonathan SCHWARTZ		18b. MAILING ADDRESS (Street or R.F.D. No, City or Town, State, Zip) 440 Pinnacle Heights Las Vegas, Nevada 89146							
	19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify) Removal from State		19b. CEMETERY OR CREMATORY - NAME New Montefiore Cemetery		19c. LOCATION City or Town State Farmingdale New York					
TRADE CALL	20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such) BART BURTON		20b. FUNERAL DIRECTOR LICENSE 50		20c. NAME AND ADDRESS OF FACILITY King David Memorial Chapel 2697 E Eldorado Ln Las Vegas NV 89120					
	20d. SIGNATURE AUTHENTICATED									
CERTIFIER	21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title) <i>[Signature]</i>		21b. DATE SIGNED (Mo/Day/Yr) 8/10/07		21c. HOUR OF DEATH 17:17		22a. On the basis of examination and/or investigation, in my opinion, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title)			
	21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)						22b. DATE SIGNED (Mo/Day/Yr)		22c. HOUR OF DEATH	
REGISTRAR	23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) Oscar Batugal MD 2501 W Charleston Las Vegas Nevada 89102		23b. LICENSE NUMBER 8269		24a. REGISTRAR (Signature) <i>[Signature]</i>		24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr) AUG 10 2007		24c. DEATH DUE TO COMMUNICABLE DISEASE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
	25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).) PART I (a) <i>Respiratory failure</i> DUE TO, OR AS A CONSEQUENCE OF: (b) <i>Respiratory pneumonia</i> DUE TO, OR AS A CONSEQUENCE OF: (c)								Interval between onset and death	
CAUSE OF DEATH	PART II <i>Bowel obstruction</i>								Interval between onset and death	
	26. AUTOPSY (Specify Yes or No) No		27. WAS CASE REFERRED TO CORONER (Specify Yes or No) No							
CONDITIONS IF ANY WHICH GAVE RISE TO IMMEDIATE CAUSE STATING THE UNDERLYING CAUSE LAST	28a. ACC., SUICIDE, HOMICIDE, UNDET. OR PENDING INVEST. (Specify)		28b. DATE OF INJURY (Mo/Day/Yr)		28c. HOUR OF INJURY		28d. DESCRIBE HOW INJURY OCCURRED			
	28e. INJURY AT WORK (Specify Yes or No)		28f. PLACE OF INJURY- At home, farm, street, factory, office building, etc. (Specify)		28g. LOCATION STREET OR R.F.D. No. CITY OR TOWN STATE					

STATE REGISTRAR

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA." This copy was issued by the Southern Nevada Health District from State certified documents as authorized by the State Board of Health pursuant to NRS 440.175.

NOT VALID WITHOUT THE RAISED  
SEAL OF THE SOUTHERN NEVADA  
HEALTH DISTRICT

Lawrence K. Sands, D.O., M.P.H.  
Registrar of Vital Statistics

By:

Date Issued: AUG 14 2007

**STATE OF NEVADA - DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH - SECTION OF VITAL STATISTICS  
CERTIFICATE OF DEATH**

TYPE OR PRINT IN PERMANENT BLACK INK	1a. DECEASED - NAME FIRST Milton		1b. MIDDLE I		1c. LAST SCHWARTZ		2. DATE OF DEATH (Mo/Day/Year) August 09, 2007		3a. COUNTY OF DEATH Clark	
	3b. CITY, TOWN, OR LOCATION OF DEATH Las Vegas		3c. HOSPITAL OR OTHER INSTITUTION - Name (if not either, give street and number) Valley Hospital Medical Center		3d. If Hosp. or Inst. Indicate DOA, OPI Emer. Rm. Inpatient (Specify)		4. SEX Male			
DECEDENT	5. RACE (e.g., White, Black, American Indian) (Specify) White		6. Was Decedent of Hispanic Origin? No		7a. AGE - Last birthday (Years) 85		7b. UNDER 1 YEAR MOS DAYS HOURS MINS		7c. UNDER 1 DAY HOURS MINS	
	8. DATE OF BIRTH (Mo/Day/Year) December 07, 1921		9. STATE OF BIRTH (if not U.S.A., name country) New York		10. CITIZEN OF WHAT COUNTRY United States		11. EDUCATION 12		12. SURVIVING SPOUSE (if wife, give maiden name) Divorced	
IF DEATH OCCURRED IN INSTITUTION SEE HANDBOOK REGARDING COMPLETION OF RESIDENCE ITEMS	13. SOCIAL SECURITY NUMBER 052-12-9515		14a. USUAL OCCUPATION (Give Kind of Work Done During Most of Working Life, Even If Retired) Entrepreneur		14b. KIND OF BUSINESS OR INDUSTRY Various		15a. INSIDE CITY LIMITS (Specify Yes or No) No			
	16a. RESIDENCE - STATE Nevada		16b. COUNTY Clark		16c. CITY, TOWN OR LOCATION Las Vegas		16d. STREET AND NUMBER 2293 Dunneville Street			
PARENTS	17. FATHER - NAME (First Middle Last Suffix) Samuel SCHWARTZ				17. MOTHER - NAME (First Middle Last Suffix) Gussie KOPPELMAN					
	18a. INFORMANT - NAME (Type or Print) Jonathan SCHWARTZ				18b. MAILING ADDRESS (Street or R.F.D. No., City or Town, State, Zip) 440 Pinnacle Heights Las Vegas, Nevada 89146					
DISPOSITION	19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify) Removal from State				19b. CEMETERY OR CREMATORY - NAME New Montefiore Cemetery				19c. LOCATION City or Town State Farmingdale New York	
	20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such) BART BURTON SIGNATURE AUTHENTICATED				20b. FUNERAL DIRECTOR LICENSE 50		20c. NAME AND ADDRESS OF FACILITY King David Memorial Chapel 2697 E Eldorado Ln Las Vegas NV 89120			
TRADE CALL	TRADE CALL - NAME AND ADDRESS Riverside Nassau North Chapel 55 N. Stillman Plaza Great Neck NY 11020									
CERTIFIER	21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title) <i>[Signature]</i>					22a. On the basis of examination and/or investigation, in my opinion, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title) <i>[Signature]</i>				
	21b. DATE SIGNED (Mo/Day/Yr) 8/10/07					21c. HOUR OF DEATH 17:17				
REGISTERAR	21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print) Oscar Batugal MD 2501 W Charleston Las Vegas Nevada 89102					22b. DATE SIGNED (Mo/Day/Yr) AUG 10 2007				
	22c. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) Oscar Batugal MD 2501 W Charleston Las Vegas Nevada 89102					22d. LICENSE NUMBER 8269				
CAUSE OF DEATH	23. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c)) PART I (a) <i>Respiratory failure</i> (b) <i>Respiratory pneumonia</i> (c) <i>Respiratory pneumonia</i>					24. DEATH DUE TO COMMUNICABLE DISEASE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>				
	PART II (a) <i>Bowel obstruction</i>					25. AUTOPSY (Specify Yes or No) No				
CONDITIONS IF ANY WHICH GAVE RISE TO IMMEDIATE CAUSE STATING THE UNDERLYING CAUSE LAST	26. ACC., SUICIDE, HON., UNDET. OR PENDING (INVEST.) (Specify)					27. DATE OF INJURY (Mo/Day/Yr)				
	28a. INJURY AT WORK (Specify Yes or No)					28b. PLACE OF INJURY: At home, farm, street, factory, office building, etc. (Specify)				
	28c. HOUR OF INJURY					28d. DESCRIBE HOW INJURY OCCURRED				
	28e. LOCATION STREET OR R.F.D. No. CITY OR TOWN STATE									

STATE REGISTRAR

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Lawrence K. Sands, D.O., M.P.H.

Registrar of Vital Statistics

By:

Date Issued: AUG 14 2007

SOUTHERN NEVADA HEALTH DISTRICT • 625 Shadow Lane P.O. Box 3902 • Las Vegas, Nevada 89127 • 702-759-1010 • Tax ID# 88-0151573



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CLERK OF THE COURT

1 PPW  
 2 Steven J. Oshins, Esq., Bar No. 5732  
 3 Heidi C. Freeman, Esq., Bar No. 8458  
 4 Kristen E. Simmons, Esq., Bar No. 9187  
 5 Oshins & Associates  
 6 1645 Village Center Circle, Suite 170  
 7 Las Vegas, NV 89134  
 8 (702)341-6000  
 9 Attorneys for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

P61300

In the Matter of the Estate of

Case No. P

MILTON I. SCHWARTZ,

PETITION FOR PROBATE OF WILL AND CODICILS  
AND FOR ISSUANCE OF LETTERS TESTAMENTARY

Deceased

Date of Hearing: November 9, 2007

Time of Hearing: 9:30 a.m.

17 The Petitioner, A. JONATHAN SCHWARTZ, hereby submits his Petition praying for  
 18 probate of the Will of MILTON I. SCHWARTZ dated February 5, 2004, as well as the First  
 19 Codicil to Will dated January 27, 2006 and Second Codicil to Will dated July 21, 2006, and for  
 20 the issuance of Letters Testamentary. The Petitioner declares that:

21 1. The decedent, MILTON I. SCHWARTZ, died August 9, 2007, as a resident of  
 22 Clark County, Nevada. A certified copy of the decedent's death certificate is attached hereto and  
 23 incorporated herein by this reference.

24 2. Jurisdiction is proper under NRS 136.010 because the decedent died as a resident  
 25 of Clark County, Nevada.

26 3. The decedent left a Will dated February 5, 2004 and two Codicils to said Will  
 27 dated January 27, 2006 and July 21, 2006, respectively. The original Will and First Codicil have  
 28 been filed with the Court Clerk, and a conformed copy of the Will and First Codicil are attached

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OCT 15 2007

CLERK OF THE COURT

hereto and incorporated herein by this reference. The original Second Codicil can not be located. However, to the best of Petitioner's knowledge and belief the Second Codicil was never revoked or destroyed by the decedent. A true and correct copy of the Second Codicil is attached hereto and incorporated herein by this reference. Petitioner respectfully requests that the true and correct copy of the Second Codicil be entered into probate. The decedent's Will and Codicils are proved by self-proving affidavits, which are attached to said Will and Codicils and Affidavits of Attesting Witnesses and/or Notary which will be filed in these proceedings.

4. Petitioner, A. JONATHAN SCHWARTZ, is the son of the decedent. The Petitioner is entitled to appointment as Executor because the decedent nominated him in his Will. The Petitioner is of sound mind and legal age, and has never been convicted of a felony.

5. That the character of the estate is personal property, tangible and intangible, the same being the decedent's separate property. To the best of the Petitioner's knowledge, the character and estimated value of the assets subject to administration in Nevada is in excess of \$200,000.00.

6. Petitioner's address is 2293 Duneville Street, Las Vegas, NV 89146.

7. Bond should be waived as provided in Paragraph 4.2 of the decedent's Will.

8. The beneficiaries named in the decedent's Will and the decedent's heirs under NRS Chapter 134 are:

EILEEN JOANNA ZARIN 9 Steven Lane Kings Point, NY 11024	Daughter/Adult
ROBIN SUE LANDSBURG 1028 Bobwhite Drive Cherry Hill, NJ 08003	Daughter/Adult
SAMUEL SCHWARTZ 351 Woodlake Drive Marlton, NJ 08053	Son/Adult
A. JONATHAN SCHWARTZ 2293 Duneville Street Las Vegas, NV 89146	Son/Adult



THE MILTON I. SCHWARTZ HEBREW ACADEMY 9700 Millpointe Road Las Vegas, NV 89134	Beneficiary
MICHAEL LANDSBURG 1028 Bobwhite Drive Cherry Hill, NJ 08003	Beneficiary/Grandson/Adult
ZACHARY LANDSBURG 1028 Bobwhite Drive Cherry Hill, NJ 08003	Beneficiary/Grandson/Adult
BENJAMIN LANDSBURG 1028 Bobwhite Drive Cherry Hill, NJ 08003	Beneficiary/Grandson/Adult
JOSHUA LANDSBURG 1028 Bobwhite Drive Cherry Hill, NJ 08003	Beneficiary/Grandson/Adult
FRANCES A. MARTEL 253 Vista Del Parque Redondo Beach, CA 90277	Beneficiary/Ex-Wife/Adult
THE MILTON I. SCHWARTZ REVOCABLE FAMILY TRUST, A. JONATHAN SCHWARTZ, Trustee 2293 Duneville Street Las Vegas, NV 89146	Beneficiary
LAS VEGAS JEWISH FEDERATION (a/k/a Jewish Federation of Las Vegas) 2317 Renaissance Drive Las Vegas, NV 89119	Disinherited Beneficiary
LAS VEGAS FEDERATION DAY SCHOOL c/o Jewish Federation of Las Vegas 2317 Renaissance Drive Las Vegas, NV 89119	Disinherited Beneficiary
ABIGAIL RICHLIN SCHWARTZ Address unknown	Disinherited Beneficiary/ Ex-wife/Adult

9. No beneficiary named in the Will to whom the estate is to be distributed is deceased.

1 WHEREFORE, Petitioner prays for an order of the Court providing that:

2 A. The decedent's Will dated February 5, 2004 and two Codicils to said Will dated  
3 January 27, 2006 and July 21, 2006, respectively, be admitted to probate.

4 B. The Petitioner be appointed as Executor to act for the Estate.

5 C. Letters Testamentary be issued to Petitioner upon the filing of the oath of office,  
6 as required by law.

7 D. Bond be waived as provided in Paragraph 4.2 of the decedent's Will.

8 Dated this 11<sup>th</sup> day of OCTOBER, 2007.

9  
10 By: 

11 STEVEN J. OSHINS, ESQ., Bar No. 5732  
12 1645 Village Center Circle, Suite 170  
13 Las Vegas, NV 89134  
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Certified Copy of Death Certificate



STATE OF NEVADA - DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH - SECTION OF VITAL STATISTICS  
CERTIFICATE OF DEATH

STATE FILE NUMBER

TYPE OR  
PRINT IN  
PERMANENT  
BLACK INK

DECEASED

IF DEATH  
OCCURRED IN  
INSTITUTION SEE  
HANDBOOK  
REGARDING  
COMPLETION OF  
RESIDENCE  
ITEMS

PARENTS

DISPOSITION

TRADE CALL

CERTIFIER

REGISTRAR

CAUSE OF  
DEATHCONDITIONS IF  
ANY WHICH  
GAVE RISE TO  
IMMEDIATE  
CAUSE  
→  
STATING THE  
UNDERLYING  
CAUSE LAST

1a. DECEASED-NAME FIRST Milton			1b. MIDDLE I		1c. LAST SCHWARTZ		2. DATE OF DEATH (Mo/Day/Year) August 09, 2007		3a. COUNTY OF DEATH Clark		
3b. CITY, TOWN, OR LOCATION OF DEATH Las Vegas			3c. HOSPITAL OR OTHER INSTITUTION -Name (If not either, give street and number) Valley Hospital Medical Center			3e. If Hosp. or Inst. Indicate DOA, OP, Emer. Rm. Inpatient (Specify) Inpatient		4. SEX Male			
5. RACE (e.g., White, Black, American Indian) (Specify) White		6. Was Decedent of Hispanic Origin? No If yes, specify Mexican, Cuban, Puerto Rican, etc. Non-hispanic		7a. AGE-Last birthday (Years) 85		7b. UNDER 1 YEAR MOS DAYS		7c. UNDER 1 DAY HOURS MINS		8. DATE OF BIRTH (Mo/Day/Yr) December 07, 1921	
9a. STATE OF BIRTH (If not U.S.A., name country) New York		9b. CITIZEN OF WHAT COUNTRY United States		10. EDUCATION 12		11. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (Specify) Divorced		12. SURVIVING SPOUSE (if wife, give maiden name)			
13. SOCIAL SECURITY NUMBER 052-12-9515			14a. USUAL OCCUPATION (Give Kind of Work Done During Most of Working Life, Even If Retired) Entrepreneur				14b. KIND OF BUSINESS OR INDUSTRY Various				
15a. RESIDENCE - STATE Nevada		15b. COUNTY Clark		15c. CITY, TOWN OR LOCATION Las Vegas		15d. STREET AND NUMBER 2293 Duneville Street		15e. INSIDE CITY LIMITS (Specify Yes or No) No			
16. FATHER - NAME (First Middle Last Suffix) Samuel SCHWARTZ						17. MOTHER - NAME (First Middle Last Suffix) Gussie KOPPELMAN					
18a. INFORMANT- NAME (Type or Print) Jonathan SCHWARTZ						18b. MAILING ADDRESS (Street or R.F.D. No. City or Town, State, Zip) 440 Pinnacle Heights Las Vegas, Nevada 89146					
19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify) Removal from State				19b. CEMETERY OR CREMATORY - NAME New Montefiore Cemetery				19c. LOCATION City or Town State Farmingdale New York			
20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such) BART BURTON SIGNATURE AUTHENTICATED				20b. FUNERAL DIRECTOR LICENSE 50		20c. NAME AND ADDRESS OF FACILITY King David Memorial Chapel 2697 E Eldorado Ln Las Vegas NV 89120					
TRADE CALL - NAME AND ADDRESS Riverside Naussau North Chapel 55 N. Station Plaza Great Neck NY 11020											
21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title) <i>[Signature]</i>						22a. On the basis of examination and/or investigation, in my opinion, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title)					
21b. DATE SIGNED (Mo/Day/Yr) 8/10/07						21c. HOUR OF DEATH 17:17					
21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)						22d. PRONOUNCED DEAD (Mo/Day/Yr)					
21e. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)						22e. PRONOUNCED DEAD AT (Hour)					
23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) Oscar Batugal MD 2501 W Charleston Las Vegas Nevada 89102										23b. LICENSE NUMBER 8269	
24a. REGISTRAR (Signature) <i>[Signature]</i>						24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr) AUG 10 2007		24c. DEATH DUE TO COMMUNICABLE DISEASE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>			
25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).)											
PART I (a) <i>Respiratory failure</i> DUE TO, OR AS A CONSEQUENCE OF: Interval between onset and death											
(b) <i>Respiratory pneumonia</i> DUE TO, OR AS A CONSEQUENCE OF: Interval between onset and death											
(c) <i>Other significant conditions</i> Interval between onset and death											
PART II OTHER SIGNIFICANT CONDITIONS-Conditions contributing to death but not resulting in the underlying cause given in Part 1. <i>Bowel obstruction</i>											
26a. ACC. SUICIDE, HON. UNDET. OR PENDING INVEST. (Specify)		26b. DATE OF INJURY (Mo/Day/Yr)		26c. HOUR OF INJURY		26d. DESCRIBE HOW INJURY OCCURRED					
26e. INJURY AT WORK (Specify Yes or No)		26f. PLACE OF INJURY- At home, farm, street, factory, office building, etc. (Specify)		26g. LOCATION		STREET OR R.F.D. No.		CITY OR TOWN		STATE	

STATE REGISTRAR

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA." This copy was issued by the Southern Nevada Health District from State certified documents as authorized by the State Board of Health pursuant to NRS 440.175.

NOT VALID WITHOUT THE RAISED  
SEAL OF THE SOUTHERN NEVADA  
HEALTH DISTRICT

Lawrence K. Sands, D.O., M.P.H.

Registrar of Vital Statistics

By:

Date Issued: AUG 14 2007



Conformed Copy of Last Will and Testament

# LAST WILL AND TESTAMENT

OF

MILTON I. SCHWARTZ

FILED

OCT 11 4 23 PM '07

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 aforementioned 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.

## 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

*MS*



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

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

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

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

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

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

### THIRD: RESIDUARY BEQUESTS

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

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

Testator's Initials MS



FOURTH: EXECUTOR

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

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

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

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

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

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

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

- (a) Elect any valuation date for purposes of federal estate tax permitted by law which my Executor deems to be to the best advantage of the family considered as a whole rather than the advantage of those interested only in my estate, even to the extent of making the election in such a way that the federal estate tax is greater rather than less a result of such election, provided that in my Executor's discretion such is likely to be for the best advantage, present and future, of the family taken as a whole.
- (b) Choose the methods of payment of federal estate taxes or state estate or inheritance taxes.
- (c) Determine whether any or all of the expenses of administration of my estate shall be used as federal estate tax deductions or as federal income tax deductions. No beneficiary under this Will shall have any right to recoupment or restoration of any loss the beneficiary suffers as a result of the use of such deduction for one or the other of these purposes.
- (d) Join with my spouse or the estate of my spouse in filing a joint income or gift tax return or returns for any arrears for which I have not filed returns prior to my death.
- (e) Consent that any gifts made by me or my spouse have been made one-half by me and one-half by my spouse for gift tax purposes even though these actions may subject my estate to additional tax liabilities.

Testator's Initials lc JS



- (f) Allocate in my Executor's sole discretion, any portion of my exemption under Sec. 2631(a) of the Internal Revenue Code, as amended, to any property as to which I am the transferor, including any property transferred by me during life as to which I did not make an allocation prior to my death.
- (g) Exercise any other options or elections afforded by the tax law of the United States or of any other jurisdiction. My Executor may exercise this authority in my Executor's sole discretion; regardless of any other provisions in this Will or the effect on any other provisions of this Will or the effect on any person interested in my estate. No beneficiary under this Will shall be entitled to a compensating adjustment even though the exercise of these tax powers affects the size or composition of my estate or of any disposition under this Will. The determination of my Executor with respect to the exercise of the election shall be conclusive upon all affected persons.

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

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

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

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

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

Testator's Initials LS



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

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

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

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

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

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

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

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

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

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

#### FIFTH: TESTAMENTARY DECLARATIONS

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

Testator's Initials WJS



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

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

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

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

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

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

#### SIXTH: MISCELLANEOUS

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

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

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

Testator's Initials

JS



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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 5<sup>th</sup> day of February

2004.

Milton I. Schwartz  
MILTON I. SCHWARTZ

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

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

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

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

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

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

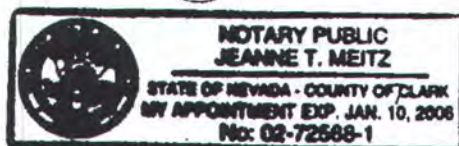
[Signature]

Beverley J. Jones

SUBSCRIBED and SWORN to before me

This 5<sup>th</sup> day of February, 2004.

Jeanne T. Meitz  
Notary Public



Conformed Copy of First Codicil to Last Will and Testament

FIRST CODICIL **FILED**

TO

OCT 11 4 23 PM '07

LAST WILL & TESTAMENT

OF

*CRAY*  
CLERK OF THE COURT

**MILTON I. SCHWARTZ**  
(Will dated February 5<sup>th</sup>, 2004)

I, MILTON I. SCHWARTZ, declare that I am a resident of Las Vegas, County of Clark, State of Nevada, and that this is the First Codicil to my Last Will and Testament dated February 5, 2004.

DECLARATIONS AND RECITALS

WHEREAS, my currently effective Last Will & Testament was executed on February 5, 2004 in Las Vegas, Nevada (herein "Will").

WHEREAS, I hereby ratify, confirm and republish my Will dated February 5, 2004 in every respect. If any part of the Will or my First Codicil is inconsistent, this First Codicil dated January 27, 2006 shall govern (hereinafter, the "First Codicil").

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 February 5, 2004 and not acting under duress, menace, fraud or undue influence of any person, do hereby make, publish and declare the following to be the First Codicil to my Last Will and Testament:

I.

I hereby amend Article "Second", Section 2.5 of my Will entitled "Bequests" as follows:

*ic 89*



The purpose of the Milton I. Schwartz 1991 Irrevocable Trust, dated August 21, 1991 has been satisfied (hereinafter, "MIS 1991 Trust") as follows: My wife, Abigail Richlin Schwartz (hereinafter, "Abigail") has relinquished all rights to that certain property located at 2120 Silver Avenue, Las Vegas, NV 89102 (hereinafter, the "Residence"). I, Milton I. Schwartz, no longer have any duty to purchase the Residence from the MIS 1991 Trust and gift it to Abigail. Abigail has accepted a payment of One Million Dollars (\$1,000,000.00) less a debt owed from Abigail to me in the amount of Two Hundred Thirty Thousand Dollars (\$230,000.00) for a total payment from me to Abigail in the amount of Seven Hundred Seventy Thousand Dollars (\$770,000.00) (hereinafter, "Consideration"). The Consideration was paid to Abigail August of 2004. Therefore, I hereby cancel, revoke, repudiate and terminate section 2.5 of Article Second of my Will. Abigail shall have no rights to ownership of the Residence. Notwithstanding the foregoing, provided Abigail and I are married and living together at my death, Abigail shall have the right to live at the Residence for a period of one year rent free from the date of my death. Should Abigail choose not to inhabit the residence personally, any right to occupy the Residence shall terminate.

II.

I hereby amend Article Fourth, entitled "Executor", section 4.10 (c) only, of my Will as follows:

In connection with management duties performed by **A. JONATHAN SCHWARTZ** for or on behalf of the Grantor, the Grantor's estate and the Milton I. Schwartz Revocable Trust, dated January 29, 1986, Ninth Amendment dated February 5, 2004 (hereinafter, "Revocable Trust") or any successor entity thereto regarding Yellow, Checker, Star Cab Companies



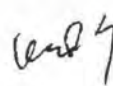


(hereinafter, "YCS") and any successor companies thereto, and all real estate related thereto; **A. JONATHAN SCHWARTZ** shall receive that Payroll, Director's fees, medical insurance and all other benefits (hereinafter "YCS Director's Salary") customarily received by me (Milton I. Schwartz) as a Director of YCS during my life. To the extent that the Board of Directors of YCS amends or changes the YCS Director's Salary after my death, **A. JONATHAN SCHWARTZ's** YCS Salary shall be amended to equal that of the respective YCS Directors. If any portion of this First Codicil shall conflict with the Revocable Trust, this First Codicil shall govern.

### III.

I hereby amend Article Fifth of my Will, titled Testamentary Declarations, section 5.5 as follows:

On January 26, 1993 I entered into a Premarital Agreement (hereinafter, the "Premarital Agreement") with my wife, Abigail Richlin Schwartz (hereinafter, "Abigail") which was amended October 26, 1994, (hereinafter, the "October 1994 Amendment"), was the subject of a Reconciliation Agreement dated December 24, 1996 (hereinafter, the "Reconciliation Agreement"), was amended April 9, 1997 (hereinafter, the "1997 Amendment") and amended October of 2004 (hereinafter, the "October 2004 Amendment"). I hereby affirm, ratify confirm and republish the Premarital Agreement, the October 1994 Amendment, the Reconciliation Agreement, the 1997 Amendment and the October 2004 Amendment by reference as if set forth in full hereinafter. I hereby direct my Executor to take any action necessary or appropriate to carry out the terms of the Premarital Agreement, the October 1994 Amendment, the Reconciliation Agreement, the 1997 Amendment and the October 2004 Amendment. I hereby instruct my representatives to fulfill the terms and provisions of the Premarital Agreement, the



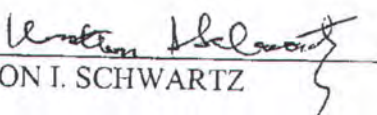
Reconciliation Agreement, the October 1994 Amendment, the 1997 Amendment and the October 2004 Amendment in lieu of any other bequests or legacies to Abigail, only to the extent agreed to in writing by Abigail and myself. Abigail shall have no further interest in my estate, Will or trusts other than what is provided for in the Premarital Agreement, the Reconciliation Agreement, the October 1994 Amendment, the 1997 Amendment and the October 2004 Amendment.

IV.

I hereby amend Article Fifth of my Will, titled Testamentary Declarations, section 5.5 (b) as follows:

As of January 2006, Abigail Schwartz currently has no outstanding loans to me or my estate. The balance on the Note has been satisfied in full.

I subscribe my name to this FIRST CODICIL this 27 day of January, 2006.

  
MILTON I. SCHWARTZ

On the date last above written, MILTON I. SCHWARTZ declared to us, the undersigned, that this instrument, consisting of five (5) pages, including the page signed by us as witnesses, was his FIRST CODICIL to LAST WILL AND TESTAMENT, and requested that we act as witnesses to it. He thereupon signed this First 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.



William P SHRANKO residing at 2012 Fort Halifax Henderson NV  
 Witness Name Witness Address 89052

Sheila L. Robertson residing at 4174 Don Bonito, LVNV 89121  
 Witness Name Witness Address

STATE OF NEVADA )

)ss.

COUNTY OF CLARK )

Then and there personally appeared the within named William R Shranko and Sheila L Robertson who, being duly sworn, depose and say:

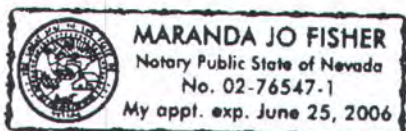
That they witnessed the execution of the within First Codicil to Last Will and Testament, dated February 5, 2004, of the within named Testator, MILTON I. SCHWARTZ, that the Testator subscribed the First Codicil and declared the same to be the First Codicil to his Last Will and Testament in their presence; 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 sound mind and memory; and that they make this Affidavit at the request of the Testator.

William P Shranko  
 Witness Signature

Sheila L Robertson  
 Witness Signature

SUBSCRIBED and SWORN to before me  
 this 27<sup>th</sup> day of January, 2006.

Maranda Jo Fisher  
 NOTARY PUBLIC in and for said County and State.



True and Correct Copy of Second Codicil to Last Will and Testament

SECOND CODICIL  
TO  
LAST WILL & TESTAMENT  
OF

**MILTON I. SCHWARTZ**  
(Will dated February 5<sup>th</sup>, 2004)  
(First Codicil dated January 27, 2006)

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 February 5, 2004.

DECLARATIONS AND RECITALS

WHEREAS, my currently effective Last Will & Testament was executed on February 5, 2004 in Las Vegas, Nevada (herein "Will").

WHEREAS, I executed a currently effective First Codicil to my Will dated January 27, 2006 ("First Codicil").

WHEREAS, I married Abigail Richlin Schwartz ("Abigail") on January 28, 1993.

WHEREAS, Abigail and I are parties to both a valid and enforceable Premarital Agreement dated January 26, 1993 (the "Premarital Agreement"), and a Reconciliation Agreement dated December 24, 1996 ("Reconciliation Agreement"), an Addendum to Reconciliation Agreement dated April 9, 1997 ("Addendum to Reconciliation"), a Second Addendum To Reconciliation Agreement dated October 1, 1999 ("Second Addendum To Reconciliation Agreement") and an Addendum to Premarital Agreement dated October 28, 2004 ("Addendum to Premarital Agreement"), all of which shall be incorporated as if set forth in full



herein by reference and referred to as the "Marital Agreements". I hereby ratify, confirm and republish the Marital Agreements except as modified below herein.

WHEREAS, I executed an Affidavit dated March 30, 2006 stating my decision to divorce Abigail which shall be incorporated by reference as if set forth in full herein ("Affidavit").

WHEREAS, I hereby ratify, confirm and republish my Will dated February 5, 2004 and my First Codicil in every respect. Notwithstanding the foregoing, if any part of the Will or my First Codicil dated January 26, 2006 is inconsistent, this Second Codicil dated July 31, 2006 shall govern and control (hereinafter, the "Second Codicil").

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 February 5, 2004 and my First Codicil dated January 27, 2006 and not acting under duress, menace, fraud or undue influence of any person, do hereby make, publish and declare the following to be the Second Codicil to my Last Will and Testament:

I.

I informed my wife, Abigail Richlin Schwartz ("Abigail") of my decision to divorce her on March 29, 2006. Due to my decision to divorce Abigail, and because we are not living together as husband and wife, I hereby cancel, revoke and terminate any bequest or gift to Abigail whatsoever within my Will, First Codicil, Premarital Agreement, the Reconciliation Agreement, the Addendum to Reconciliation Agreement, the Second Addendum to Reconciliation Agreement, the Addendum to Premarital Agreement, and any other written agreements that may exist between Abigail and myself. Abigail shall share in no part of the various trusts created by me. There are no oral agreements between Abigail and myself. Abigail

shall share in no part of my estate whatsoever.

II.

Notwithstanding the terms of section 4.9 of my Will, to the extent that my Executor is also a Director of Yellow, Checker, Star Cab Companies (hereinafter, "YCS") and receives Director's Fees, Director's Salary and other direct pecuniary payments as a Director in the amount of \$272,000.00 or more annually, my Executor shall receive no compensation for his or her role as Executor. The foregoing calculation of Director's Fees, Salary and pecuniary payments (\$272,000.00) (hereinafter, "Director's Salary") shall not include any benefits, financial or otherwise, attributable to travel expenses, health insurance, sports box benefits, and any distributions of cash flow or profits as an owner or shareholder of YCS, National Automotive, Besdew or any successors thereto. However, my Executor is authorized to employ 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, but said firm or affiliate of my Executor shall be uncompensated therefor while a Director of YCS receiving the Director's Salary. In the event that my estate is no longer an owner of YCS or the Director receives substantially less than the foregoing Director's Salary, 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

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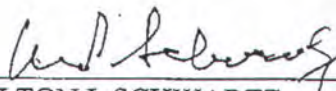
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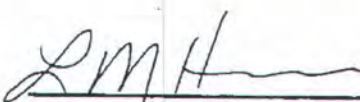


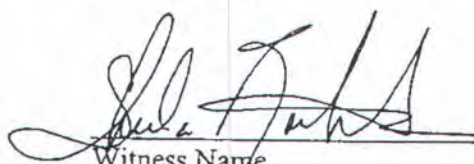
administration of my estate.

I subscribe my name to this SECOND CODICIL this 21 day of July, 2006.

  
MILTON I. SCHWARTZ

On the date last above written, MILTON I. SCHWARTZ declared to us, the undersigned, that this instrument, consisting of five (5) 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.

  
Witness Name \_\_\_\_\_, residing at 1410 W. Scales Way  
Witness Address \_\_\_\_\_

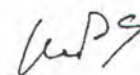
  
Witness Name \_\_\_\_\_, residing at 4174 Don Benito  
Witness Address \_\_\_\_\_

STATE OF NEVADA )

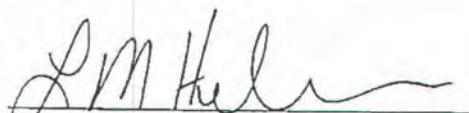
)ss.

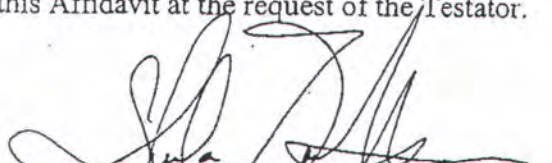
COUNTY OF CLARK )

Then and there personally appeared the within  
named Lynn Henderson and  
Sheila Robertson who, being duly sworn, depose and say:  
That they witnessed the execution of the within Second Codicil to Last Will and

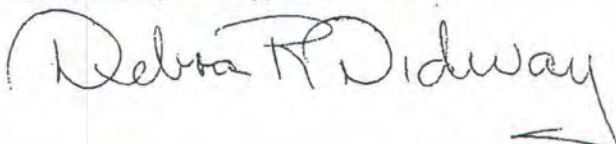


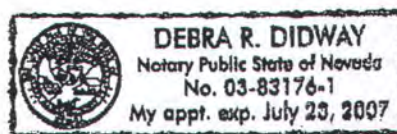
Testament, dated February 5, 2004, of the within named Testator, MILTON I. SCHWARTZ, that the Testator subscribed the Second Codicil and declared the same to be the Second Codicil to his Last Will and Testament in their presence; that they thereafter subscribed the same as witnesses in the presence of 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 Second Codicil appeared to them to be of sound mind and memory; and that they make this Affidavit at the request of the Testator.

  
Witness Signature

  
Witness Signature

SUBSCRIBED and SWORN to before me  
this 21st day of July, 2006.





NOTARY PUBLIC in and for said County and State

129

129

**THE MILTON I. SCHWARTZ HEBREW ACADEMY**  
**RESOLUTIONS OF THE BOARD OF TRUSTEES**

December 13, 2007

At a meeting duly called and noticed, the Board of Trustees of The Milton I. Schwartz Hebrew Academy (the "Board"), a Nevada non-profit corporation (the "Corporation"), represented by a quorum and acting by majority vote, approved and adopted the following resolutions. The Secretary is hereby directed to file these resolutions with the minutes of the meetings of the Board of Trustees of the Corporation.

The following votes are hereby adopted:

**RESOLVED:** That the Articles of Incorporation of the Corporation (the "Corporate Articles") be and hereby are amended in the following manner: (i) Article I of the Corporate Articles be and hereby is amended and restated in its entirety to state that: "This corporation shall be known in perpetuity as "The Dr. Miriam and Sheldon G. Adelson Educational Institute"; (ii) a new paragraph be and hereby is added to the end of Article II of the Corporate Articles to state the following specific language "The schools conducted by the corporation shall not be orthodox Judaic. Students in the schools shall not be required to pray and shall not be required to wear a kippa, except in holy studies or similar classes.", and (iii) Article IV of the Corporate Articles be and hereby is amended and restated in its entirety to state the following specific language: "The governing board of the corporation shall be known as the Board of Trustees and the Board of Trustees shall constitute the corporation. The term of office of each Trustee shall be three years. The number of Trustees may from time to time be increased or decreased by the Board of Trustees but in no event shall the number of Trustees be fewer than seven (7) or more than twenty (20). If for any reason a Trustee shall not be elected in the time and manner provided for herein, or in the Bylaws, such Trustee shall continue to serve as Trustee until his or her successor has been elected."

**RESOLVED:** That the Corporation's elementary school shall be named in honor of Milton I. Schwartz in perpetuity.

**THE MILTON I. SCHWARTZ HEBREW ACADEMY - RESOLUTIONS OF THE  
BOARD OF TRUSTEES Dated December 13, 2007**

**RESOLVED:** That the Bylaws of the Corporation be and hereby are amended in the following manner: (i) Section 1.01 of the Bylaws be and hereby is deleted in its entirety and replaced with the following: "The corporation shall be known in perpetuity as "The Dr. Miriam and Sheldon G. Adelson Educational Institute"; and (ii) Article IX of the Bylaws be and hereby is deleted in its entirety and replaced with the following: "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."

**RESOLVED:** Having adopted the foregoing resolutions, the Board resolves that the number of Trustees on the Board be and hereby is increased to sixteen (16) and that Tom Spiegel be and hereby is appointed a Trustee of the Board of Trustees.

**RESOLVED:** That the Corporation borrow (the "Borrowing") the sum of \$1,810,000 from the Bank of Nevada (the "Bank"), in accordance with the terms and conditions set out in the Business Loan Agreement (the "Agreement") dated December \_\_\_, 2007, and that in connection with the Borrowing, the Corporation grant a mortgage (the "Mortgage") to the Bank on the elementary school and the portion of the land on which the elementary school is situated, including the access road.

**RESOLVED:** That, any and all actions (i) previously taken by Victor Chaltiel and/or any other officer or Trustee of the Corporation in connection with the Borrowing are hereby ratified, and (ii) necessary, convenient or desirable on the part of any officer or Trustee of the Corporation in connection with the Borrowing are hereby authorized. Victor Chaltiel and each officer of the Corporation is authorized on behalf of the Corporation to execute and deliver to the Bank any and all documents related to the Borrowing, including, but not limited to, the Agreement, the Mortgage, and the promissory note in respect thereof.

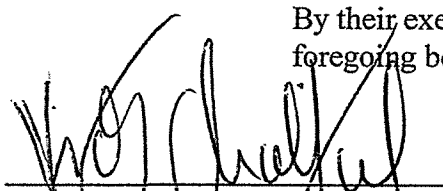
**RESOLVED:** That the Corporation is authorized to open a line of credit with the Bank, that the Corporation may secure such line of credit with the Mortgage, and that Victor Chaltiel and each officer of the Corporation is authorized on behalf of the Corporation to execute and deliver to the Bank any and all documents related to the line of credit, including, but not limited to, the line of credit agreement, the Mortgage, and the promissory note in respect thereof.


**THE MILTON I. SCHWARTZ HEBREW ACADEMY - RESOLUTIONS OF THE  
BOARD OF TRUSTEES Dated December 13, 2007**

**RESOLVED:** That Victor Chaltiel is authorized on behalf of the Corporation to execute and deliver that Grant Agreement letter dated December 13, 2007 by and between the Corporation and the Adelson Family Charitable Foundation, and that Victor Chaltiel and each officer of the Corporation are authorized, in the name and on behalf of the Corporation, to do any and all such further acts and things and to execute and deliver any and all such other documents, forms, instruments and certificates as may, in the opinion of said officers, be necessary, convenient or desirable to carry out the terms of the Grant Agreement and effectuate the purposes thereof, including, but not limited to, actions regarding the naming of the campus and the schools.

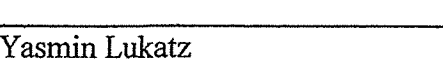
**RESOLVED:** That Victor Chaltiel and each of the officers of the Corporation be and hereby are authorized, in the name and on behalf of the Corporation, to do any and all such further acts and things and to execute and deliver any and all such other documents, forms, instruments and certificates as may, in the opinion of said officers, be necessary, convenient or desirable to effectuate the purposes of the foregoing resolutions and to carry out the actions hereinabove approved.

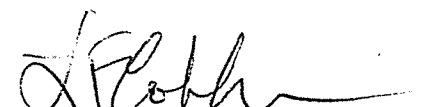
By their execution below, each of the Trustees consents to each of the foregoing board resolutions.

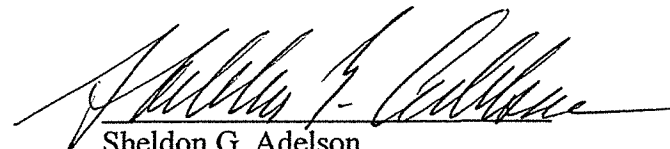
  
Victor Chaltiel

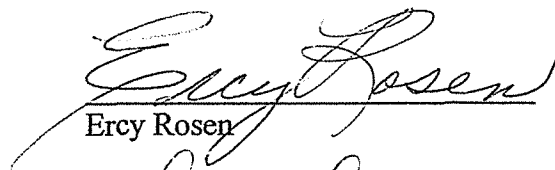
  
Jill Hanlon

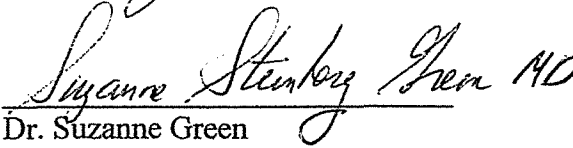
  
Roni Amid


  
Yasmin Lukatz

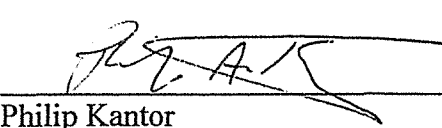
  
Dr. Larry Cohler

  
Sheldon G. Adelson

  
Ercy Rosen

  
Dr. Suzanne Green

  
Sam Ventura

  
Philip Kantor



**THE MILTON I. SCHWARTZ HEBREW ACADEMY - RESOLUTIONS OF THE  
BOARD OF TRUSTEES Dated December 13, 2007**

006679

\_\_\_\_\_  
Dorit Schwartz

\_\_\_\_\_  
Rachel Schwartz

\_\_\_\_\_  
Irv Steinberg

\_\_\_\_\_  
Leah Stromberg

  
\_\_\_\_\_  
Benjamin Yerushalmi


By his execution below, Tom Speigel hereby acknowledges his acceptance of his appointment as Trustee and his approval and ratification of the foregoing resolutions.

\_\_\_\_\_  
Tom Speigel

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December 13, 2007

Victor Chaltiel  
Chair of the Board of Trustees  
The Milton I. Schwartz  
Hebrew Academy  
9700 West Hillpointe Road  
Las Vegas, NV 89134

Dear Victor,

The following outlines the grant the Adelson Family Charitable Foundation ("AFCF") has pledged to The Milton I. Schwartz Hebrew Academy (the "Corporation").

AFCF agrees to make a grant of \$3,000,000.00 to the Corporation. AFCF's grant is made in reliance on the following representations by the Corporation.

1. The Corporation has provided AFCF with a copy of its March 12, 1981 IRS Determination Letter in which the Corporation, then known as The Hebrew Academy, was classified as a Section 509(a)(1) and Section 170(b)(1)(A)(ii) organization. The Corporation hereby confirms that its tax-exempt status as a Section 509(a)(1) and Section 170(b)(1)(A)(ii) organization is still in effect and has not been revoked.
2. The Corporation agrees that all of the funds received from AFCF are to be used exclusively for the construction of multiple buildings that will be used by the Corporation for educational purposes, including construction of a middle school classroom building and a high school classroom building, and for certain specified operational expenses, all as reflected on the project report attached hereto as Exhibit A. The Corporation will not use any portion of the grant funds, including any interest earned thereon, for any other purpose without the prior written approval of AFCF.
3. The Corporation agrees that the Corporation, the campus, the high school, the middle school and the classroom buildings themselves will be named in perpetuity in honor of Dr. Miriam Adelson and Sheldon G. Adelson, with the exact names to be as specified by AFCF. Unless the Corporation receives instructions to the contrary from AFCF, (i) the Corporation shall be named "The Dr. Miriam and Sheldon G. Adelson Educational Institute"; (ii) the Corporation's campus shall be named "The Dr. Miriam & Sheldon G. Adelson Educational Campus"; (iii) the Corporation's high school shall be named "The Dr. Miriam and Sheldon G. Adelson Upper School"; and (iv) the Corporation's middle school shall be named "The Dr. Miriam and Sheldon G. Adelson Middle School". The Corporation agrees that such name(s) will be prominently displayed at all times in a manner acceptable to AFCF. Upon written request of AFCF at any time, the Corporation will immediately change and remove the name(s) selected by AFCF. The Corporation and its personnel shall not make any statement which suggests

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that such termination was improper or not within the letter or spirit of the commitment of the AFCF.

4. Reference is made to the fact the Corporation's purposes include: (i) conducting a private school providing both secular education and special Judaic studies for children of Jewish families as well as for non-Jewish children whose families desire to expose them to the benefits of inter-cultural education; and (ii) affording students the opportunity of absorbing the Jewish cultural heritage through courses in Hebrew language and Jewish history, literature, customs, law, ethics and religion. In addition to conducting its current and any future schools in accordance with the foregoing, the Corporation specifically agrees that (i) the schools conducted by the Corporation shall not be orthodox Judaic, (ii) students in the schools shall not be required to pray, and (iii) students shall not be required to wear a kippa, except in holy studies or similar classes. The foregoing provisions shall apply in perpetuity (absent consent of AFCF), and the Corporation agrees that within five (5) days of the date of this letter, the Corporation shall take any and all steps necessary to effect the foregoing provisions, including, but not limited to, filing the attached amendment to its articles of incorporation (Exhibit B).
5. The Corporation agrees to provide detailed quarterly reports to AFCF, certified by the Corporation's CEO and CFO, on the use of the grant funds, compliance with the terms of the grant, and the progress made toward achieving the goals of the grant project. The Corporation will submit its first quarterly report within 30 days after the end of first quarter, 2008.
6. In addition to the quarterly reports, the Corporation will also submit other such interim reports as AFCF may reasonably request, and Corporation personnel will confer with AFCF personnel or consultants at the reasonable request of AFCF regarding expenditures, records and progress of the grant project. The Corporation also agrees to submit its audited financial statements to AFCF for the year(s) in which the grant funds were received and/or expended within four months of the applicable fiscal year end(s).

[Intentionally left blank]

If this letter correctly sets forth the Corporation's understanding of the terms of this grant, please countersign and return the attached copy of this letter to me. This agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

ADELSON FAMILY CHARITABLE FOUNDATION

By \_\_\_\_\_  
Michael J. Bohnen, President

Agreed:

THE MILTON I. SCHWARTZ HEBREW  
ACADEMY

By \_\_\_\_\_  
Victor Chaitiel, Chairman of the Board of Trustees

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

617-742-5720

T-154 P. 03/04 F-375



ROSS MILLER  
Secretary of State  
204 North Carson Street, Ste 1  
Carson City, Nevada 89701-4299  
(775) 684 5708  
Website: [secretaryofstate.biz](http://secretaryofstate.biz)

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

### Nonprofit Amendment (After First Meeting)

(PURSUANT TO NRS 81 AND 82)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

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

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

1. Name of corporation:

The Milton I. Schwartz Hebrew Academy

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

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

See attachment for additional amendments.

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

4. Officer Signature (Required):

X Signature

Chairman  
Title

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

FILING FEE: \$50.00

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

This form must be accompanied by appropriate fees.

Nevada Secretary of State 332 51-002 03/20/07  
Revised 06/01/07

EST-00250

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

617-742-5720

T-154 P.04/04 F-375

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

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

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

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

Exhibit AC

August 28, 2008

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

Re: Milton I. Schwartz Scholarship

Dear Paul:

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

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

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

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

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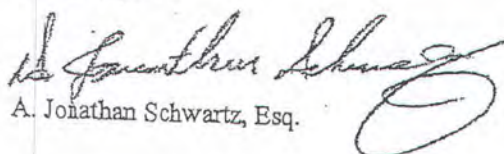
Mr. Paul Schiffman, MISHA

Page No. 2


August 28, 2008:

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

Sincerely yours:

  
A. Jonathan Schwartz, Esq.

EST-00030



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

May 10, 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 Chaitiel ("Victor") twice. While Paul has been very gracious, my attempts to legally finalize the Bequest have been ignored by the Board. I'm not certain why the Board has reacted this way, but I know it would be in the best interest of the MISHA to have the Bequest completed. Again, I'm writing this last letter as a final attempt to conclude the Bequest.

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

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

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

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

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

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

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

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

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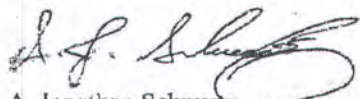
Despite the terms of the Agreements and the 2007 Gala Docs, for purposes of settlement and to do what is best for the schools, I believe (contingent upon the Settlement Agreement being executed) that the naming of the various institutions should be left as they currently are. Please refer to the attached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

EST-00003



**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.

EST-00004



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



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

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

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

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

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

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

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

EST-00006



The Adelson Educational Campus, Victor  
Chaltiel, President

EST-00007



May 28, 2008

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

*file  
in  
taxes*

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	\$ <u>0</u>
Deductible Contribution	\$ 12,500

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

Sincerely,

*Thank you!*

2008 Gala Committee

9700 West Hillpointe Road

Las Vegas, NV 89134

(702) 255-4500

EST-00008

# AGREEMENTS

EST-00009

cc Fred Berkley

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

## Present:

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

388-61FT (10AM)

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

The minutes were approved as read.

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

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

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

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

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

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

*Susan McGarraugh*  
Susan McGarraugh  
Acting Secretary

EST-00010



# THE HEBREW ACADEMY

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



Dr. Roberta Sabbath  
School Head

May 23, 1996

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

Dear Milton:

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

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



Accreditation: Northwest Association of Schools and Colleges



License: State of Nevada Department of Education



Member: National Association of Independent Schools

1996-49-1996 11:18

1 702 2557232

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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."

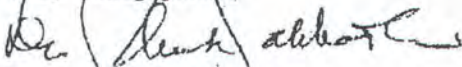
Your invitation to me as new School Head to meet and resolve differences and to work with me and the Board to bring "shalom" to our Jewish community will serve as a much needed example of Jewish leadership.

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



**The Milton I. Schwartz  
HEBREW ACADEMY**

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



Dr. Roberta Sabbath  
School Head



Accreditation, Northpoint Association of Schools and Colleges



License: State of Nevada Department of Education



Member: National Association of Independent Schools

HRV-23-1506 11:46

1 702 2557232

P.B.S.

EST-00013

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

THE HEBREW ACADEMY

0001

given to Blw  
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

CHARTER (JAN 1201-01) Revised by L.M.  
March 3, 1999

EST-00014

2007 GALA DOCUMENTS

EST-00015



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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 9<sup>th</sup> and 10<sup>th</sup> grade classes begin their studies this August, we know that these children are beginning an exceptional journey at a school where a passion for learning, respect for Jewish mores, and a truly world class education coincide.

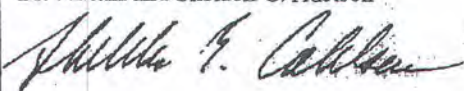
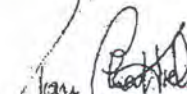
Many people have worked hard to create the success of our current Pre-K through 8<sup>th</sup> grade program and the beginning of our new high school. Tonight, we come together both to honor our "Pursuit of Excellence" Award winner and to say thank you to our wonderful teaching and administrative staff,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

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

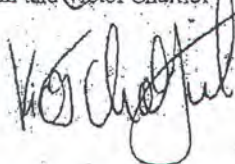
Enjoy the Evening!



Dr. Miriam and Sheldon G. Adelson

Toni and Victor Chaitiel







## 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.

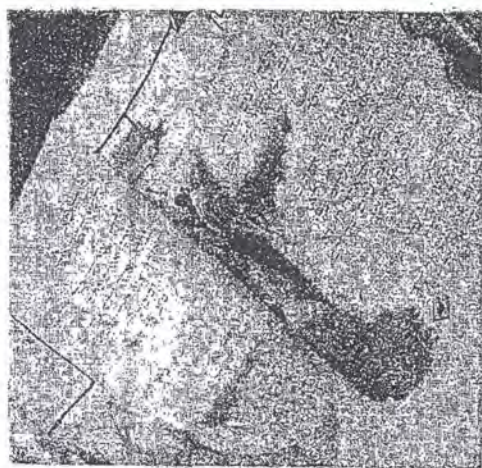
Born in Brooklyn, New York, Milton Schwartz attended both New York University and the Wharton School of Finance. During World War II, Mr. Schwartz enlisted in the Army and saw combat in the elite Army Signal Corps in the Far East. After his distinguished military service, Mr. Schwartz came to Nevada 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.

2010

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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



THE ADELSON EDUCATIONAL CAMPUS  
HEBREW ACADEMY

THE ADELSON EDUCATIONAL CAMPUS | 15  
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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 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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Print

Page 1 of 1

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

Paul:

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

Jonathan Schwartz

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

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

Victor:

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

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

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

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

Jonathan Schwartz





DRAFT FOR DISCUSSION PURPOSES ONLY

EDUCATION FOR LIFE

The Dr. Miriam & Sheldon G. Adelson Educational Campus  
The Milton I. Schwartz Hebrew Academy, 18 Months - Grade 4 • The Adelson Middle School, Grades 5 - 8 • The Adelson Upper School, Grades 9 - 12  
9700 West Hightpointe Road, Las Vegas, Nevada 89134 • Tel 702-255-4500 • Fax 702-255-7232 • [www.adelsoncampus.org](http://www.adelsoncampus.org)

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DRAFT FOR DISCUSSION PURPOSES ONLY

EDUCATION FOR LIFE

The Dr. Miriam & Sheldon G. Adelson Educational Campus  
The Milton I. Schwartz Hebrew Academy, 18 Months - Grade 4 • The Adelson Middle School, Grades 5 - 8 • The Adelson Upper School, Grades 9 - 12  
9700 West Hillpointe Road, Las Vegas, Nevada 89134 • Tel. 702-255-4500 • Fax 702-255-7232 • [www.adelsoncampus.org](http://www.adelsoncampus.org)

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THE MILTON I. SCHWARTZ  
HEBREW ACADEMY



THE  
ADELSON  
SCHOOL

DRAFT FOR DISCUSSION PURPOSES ONLY

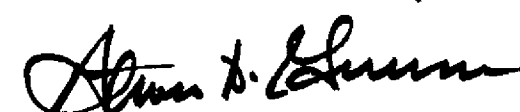
EDUCATION FOR LIFE

The Dr. Miriam & Sheldon G. Adelson Educational Campus  
The Milton I. Schwartz Hebrew Academy, 18 Months - Grade 4 - The Adelson Middle School, Grades 5 - 8 - The Adelson Upper School, Grades 9 - 12  
9700 West Hillpointe Road, Las Vegas, Nevada 89134 - Tel 702-255-4500 - Fax 702-255-7232 - [www.adelsoncampus.org](http://www.adelsoncampus.org)

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CLERK OF THE COURT

**PET**  
Maximiliano D. Couvillier, III (SBN #7661)  
mcouvillier@lionelsawyer.com  
Ketan D. Bhirud (SBN #10515)  
kbhirud@lionelsawyer.com  
Kendal L. Davis (SBN #11946)  
kdavis@lionelsawyer.com  
LIONEL SAWYER & COLLINS  
1700 Bank of America Plaza  
300 South Fourth Street, Suite 1700  
Las Vegas, Nevada 89101  
(702) 383-8888 (Telephone)  
(702) 383-8845 (Fax)

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

DISTRICT COURT

Clark COUNTY, NEVADA

In the Matter of the Estate of

MILTON I. SCHWARTZ,

Deceased

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

**PETITION TO COMPEL  
DISTRIBUTION, FOR ACCOUNTING  
AND FOR ATTORNEYS' FEES**

1. Pursuant to the terms of Milton I. Schwartz's Will, as amended and restated, and NRS §§ 151.010, 137.080, 137.120, 150.080, and 150.105, the Dr. Miriam and Sheldon G. Adelson Educational Institute ("Adelson Campus" or "Petitioner"), devisee of the will of the Decedent in the above-referenced Estate, by and through its attorneys, Maximiliano D. Couvillier, III, Ketan D. Bhirud, and Kendal L. Davis, of the law firm of Lionel Sawyer & Collins, petitions this Court for an order compelling the Executor of the Estate of Milton I. Schwartz ("the Executor"), to distribute the \$500,000.00 gift ("Gift") for scholarships that is provided for by Milton I. Schwartz's Will, plus accrued interest.

2. In the event that the Executor claims that there is somehow insufficient funds to distribute the Gift, Petitioner petitions this Court for an accounting, which the Executor has *never filed* during the almost 6 years that this matter has been pending.

3. Finally, Petitioner requests its attorneys' fees and costs in connection with these



proceedings. Because of his malfeasance and total lack of diligence, and to preclude the Executor from depleting the assets of the Estate, the Court should hold the Executor *personally* responsible for the attorneys' fees and costs incurred by both the Petitioner and the Executor.

#### **PROCEDURAL HISTORY & PRELIMINARY STATEMENT**

4. This probate matter has been pending for almost 6 years. Milton I. Schwartz passed away on August 9, 2007. The Executor filed the Petition for Probate of Will and Codicils on October 15, 2007. The Letters Testamentary were issued on January 1, 2008. The Executor *has never filed an accounting* as required by NRS §§ 150.080 and 150.105. The Executor has *never filed the report* required by NRS 143.035(2). The Executor filed an initial inventory on July 7, 2008, and an amended inventory on January 8, 2009.

5. In his Last Will and Testament ("Will") dated February 5, 2004, Mr. Schwartz bequeathed the \$500,000.00 Gift to Petitioner. Both inventories filed by the Executor showed sufficient assets to make the Gift. The Executor has also represented to the Petitioner that there are sufficient funds in the Estate to make the Gift.<sup>1</sup> The Executor, however, wrongfully refuses to make such Gift unless Petitioner meets the Executor's host of personal conditions; personal conditions which are not in Milton I. Schwartz's Will.

6. Petitioner is a non-profit educational institute. It has attempted for a couple of years to obtain the Gift from the Executor without this Court's intervention in order to preserve its resources and the resources of Estate so as to maximize the scholarships from the Gift which stand to benefit many deserving children. The Executor, however, remains unreasonable and unresponsive. As such, the Court's intervention is necessary to rectify the Executor's malfeasance.

7. To the extent that the Executor changes his tune and suddenly claims that there are insufficient funds to make the Gift, Petitioner requests the Court to compel the Executor to submit an accounting.

8. The Court should further hold the Executor personally liable for procuring the

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<sup>1</sup> Declaration of Paul Schiffman at ¶ 23, attached hereto as Exhibit 1.

1 accounting and for Petitioner's attorneys' fees and costs. The Executor's personal liability is  
 2 appropriate because of his gross breach of responsibilities and diligence in administering the  
 3 Estate, and to preserve the resources of the Estate and the Petitioner.

#### 4 MEMORANDUM OF POINTS AND AUTHORITIES

##### 5 I. 6 FACTS

###### 7 A. The Petitioner and Mr. Schwartz's Gift

8 9. When Milton I. Schwartz ("Mr. Schwartz") passed away on August 9, 2007, he  
 9 left behind an estate worth approximately \$39 million.<sup>2</sup> Mr. Schwartz's Will bequeathed a  
 10 \$500,000.00 Gift to the Petitioner, which was then known as "The Milton I. Schwartz Hebrew  
 11 Academy" and was previously known as "The Hebrew Academy."<sup>3</sup>

12 10. Indeed, since its modest inception in 1980, the school has gone through several  
 13 different corporate names. The seeds for what is today known as The Dr. Miriam and Sheldon  
 14 G. Adelson Education Institute began when "The Hebrew Academy" opened at the original  
 15 Temple Beth Sholom in eastern Las Vegas.<sup>4</sup> In 1988, the school moved west near the corner of  
 16 Lake Mead Boulevard and Hills Center Drive, and thereafter changed names several times  
 17 between "The Hebrew Academy" and "The Milton I. Schwartz Hebrew Academy."<sup>5</sup> The school  
 18 was initially a very modest educational enterprise; its campus was primarily a single building and  
 19 provided education to preschool through eighth grade children.<sup>6</sup>

22 <sup>2</sup> <http://www.lasvegassun.com/news/2009/oct/23/multi-million-dollar-battle-waged-over-estate-milt/>

23 <sup>3</sup> A courtesy copy of Mr. Schwartz's Will is attached hereto as Exhibit 2. The Will was  
 24 previously filed with the Court on October 15, 2007, as part of the Executor's Petition for  
 25 Probate of Will and Codicils.

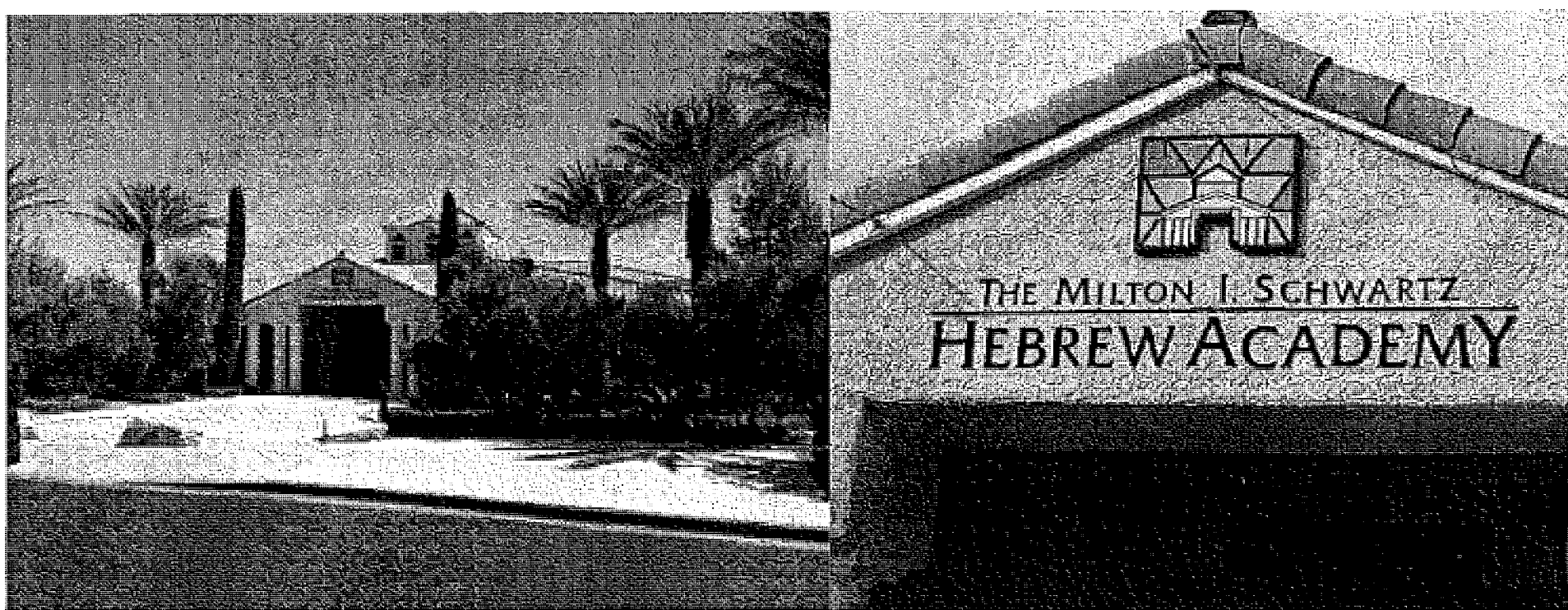
26 <sup>4</sup> Exhibit 1 at ¶ 7; *see also* Articles of Incorporation dated February 27, 1980, attached  
 27 hereto as Exhibit 3.

28 <sup>5</sup> *Id.* at ¶ 8; *see also* August 22, 1990 Certificate of Amendment of the Articles of  
 Incorporation, attached hereto as Exhibit 4; October 19, 1994 Certificate of Amendment of the  
 Articles of Incorporation, attached hereto as Exhibit 5; *See* March 21, 1997 Certificate of  
 Amendment of the Articles of Incorporation, attached hereto as Exhibit 6.

<sup>6</sup> *Id.* at ¶ 9.

11. Over the years, the school grew considerably, primarily due to the generous financial contributions of Dr. Miriam and Sheldon G. Adelson.<sup>7</sup> By 2006, it was no longer a single school for young children, but had expanded to include a high school and expanded from a single building to a multi-building campus.<sup>8</sup> And, in 2008, the corporate name was changed to "The Dr. Miriam and Sheldon G. Adelson Educational Institute."<sup>9</sup> Today, the Petitioner operates an accredited private educational institution with a state-of-the-art campus that is spread over several acres and includes three separate schools, numerous buildings, a large auditorium, athletic fields and facilities, a gymnasium and an indoor Olympic swimming pool.<sup>10</sup> The three schools are known as follows:

- (1) the school for 9th through 12th graders is known as the Adelson Upper School;
- (2) the middle school for 5th through 8th graders is known as the Adelson Middle School; and
- (3) the lower school for preschool through 4<sup>th</sup> graders is known as The Milton I. Schwartz Hebrew Academy and is housed in the building identified as "The Milton I. Schwartz Hebrew Academy," as depicted in the following true and correct pictures of the building:<sup>11</sup>



<sup>7</sup> *Id.* at ¶ 10.

<sup>8</sup> *Id.* at ¶ 11.

<sup>9</sup> *Id.* at ¶ 12; *see also* March 21, 2008 Certificate of Amendment of the Articles of Incorporation, attached hereto as Exhibit 7.

<sup>10</sup> *Id.* at ¶ 13.

<sup>11</sup> *Id.* at ¶¶ 14-15.

**B. The Will Imposes Only Two Conditions on the Gift**

12. The express language of the Will imposes *only two conditions* on the Gift. The *first* condition requires the \$500,000.00 or portions thereof to be applied to any mortgages held by the school at the time of Mr. Schwartz's death for which he was a guarantor. The *second and last* condition requires the Gift to be used for scholarships to educate Jewish children only.

The Will provides:

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.*<sup>12</sup>

13. Mr. Schwartz executed a First Codicil to his Will on January 27, 2006, and Second Codicil on June 21, 2006, but neither Codicil concerned the Gift.<sup>13</sup>

**C. The Only Two Conditions of the Gift Are Satisfied**

**(1) There Is No Mortgage Guaranteed by Milton I. Schwartz**

14. At the time of Milton I. Schwartz's death, the school had an outstanding mortgage of over \$1.8 million, which was personally guaranteed by Mr. Schwartz up to \$1 million.<sup>14</sup> The

<sup>12</sup> See Exhibit 2 at §2.3.

<sup>13</sup> See First Codicil to Last Will and Testament dated January 27, 2006, attached hereto as Exhibit 8; *see also* Second Codicil to Last Will and Testament dated July 21, 2006, attached hereto as Exhibit 9. The First and Second Codicils were previously filed with the Court on October 15, 2007, as part of the Executor's Petition for Probate of Will and Codicils.

<sup>14</sup> See Exhibit 1, at ¶ 16; *see also* Promissory Note dated December 7, 2006, attached

1 school, however, continued to make payments under said mortgage and did not make any  
 2 impositions upon Mr. Schwartz's Estate.<sup>15</sup> The \$1.8 million mortgage was paid off and the  
 3 guaranty by Mr. Schwartz was extinguished on November 2, 2010 from the proceeds of a portion  
 4 of a generous \$25 million donation made by the Adelsons.<sup>16</sup> The Adelsons made another  
 5 unprecedented \$50 million gift and the school has been able to pay off all its debt.<sup>17</sup>

6 (2) *The School Is Prepared to Implement the Gift to Fund Scholarships*

7 15. Once the school receives the Gift, it is prepared to establish the "Milton I.  
 8 Schwartz Scholarship" to be used for the education of Jewish children only.<sup>18</sup>

9 **D. Mr. Schwartz's Death and the Executor's Refusal to Distribute the Gift**

10 16. Mr. Schwartz passed away on August 9, 2007.<sup>19</sup> On October 15, 2007, the  
 11 Executor opened this matter and submitted a Petition for Probate of Will and Codicils. After this  
 12 Court entered an Order granting the Petition, this Court issued the Letters Testamentary on  
 13 January 30, 2008.<sup>20</sup> The Executor has not made the Gift and refuses to make the Gift.<sup>21</sup>

14 17. The Petitioner has made numerous request to the Executor to make the Gift, most  
 15 recently on March 13, 2013.<sup>22</sup> On each occasion the Executor has represented to the Petitioner  
 16 that there are sufficient funds in the Estate to make the Gift, but refuses to make the Gift unless  
 17 Petitioner meets the Executor's *personal* conditions.<sup>23</sup> The Executor's outrageous personal  
 18 demands include that (1) "all letter-head, stationery, correspondence, promotional material,  
 19 websites, business cards, fundraisers, advertisements, etc. (hereinafter, 'Media') associated with  
 20 the Schools shall clearly and prominently identify the *Milton I. Schwartz Hebrew Academy* as

21  
 22 hereto as Exhibit 10.

23 <sup>15</sup> *Id.* at ¶ 17.

<sup>16</sup> *Id.* at ¶ 18.

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

<sup>18</sup> *Id.* at ¶ 19.

25 <sup>19</sup> See Certificate of Death, attached hereto as Exhibit 11. The Certificate of Death was  
 26 previously filed with the Court on October 15, 2007, as part of the Executor's Petition for  
 27 Probate of Will and Codicils.

<sup>20</sup> See Letters Testamentary, attached hereto as Exhibit 12.

<sup>21</sup> Exhibit 1 at ¶ 21.

<sup>22</sup> *Id.* at ¶ 22.

<sup>23</sup> *Id.* at ¶ 23.



grades Pre-K through Fourth in perpetuity"; and (2) "All Media shall depict a logo bearing the name, the Milton I. Schwartz Hebrew Academy (in bold, all capital letters), no smaller than any other logo located on the face of said Media."<sup>24</sup> **None of the Executor's conditions, however, are included in the Will.** The only relevant conditions are described above and have been satisfied.

18. The Executor claims that there are certain, purported "agreements" which contain such conditions to the Gift.<sup>25</sup> No such "agreements" exist. Petitioner has made countless demands, and the Executor has never produced any such purported "agreements."<sup>26</sup> Instead, the Executor offered Petitioner an illusory document, captioned "Settlement Agreement," which sets forth his personal conceptions, some of which are mentioned above.<sup>27</sup> Importantly, the Executor drafted this so-called "Settlement Agreement" long *after* the Will and Mr. Schwartz's death, and *after* Petitioner school requested distribution of the Gift. Moreover, the Executor's caption of the document as a "settlement" is a gross misnomer. The document is merely an attempt to extort Petitioner by withholding the Gift until the Executor's *personal* and onerous demands are satisfied. There is no consideration, no mutual releases. The Executor does not provide the school with any new benefit in exchange for his slew of personal requests. **The Gift is already provided for by the Will and all conditions of the Will have been met.**

### III. LEGAL ARGUMENT

#### A. This Court Should Compel the Executor to Distribute \$500,000.00 Gift to the Petitioner in Accordance with the Will Plus Interest

19. NRS 151.010 provides as follows:

1. At any time after the lapse of 3 months from the issuing of letters, the personal representative or any heir or

<sup>24</sup> See Email from Jonathan Schwartz to Victor Chaltiel and Paul Schiffman, attached hereto as Exhibit 13; and Proposed Settlement Agreement Between the Estate of Milton I. Schwartz and the Milton I. Schwartz Hebrew Academy, attached hereto as Exhibit 14. Notably, although the Proposed Settlement Agreement makes numerous demands of the Adelson Educational Campus, the Agreement does not actually release any claims even after full performance.

<sup>25</sup> *Id.* at ¶ 24.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at ¶ 25; see also proposed "Settlement Agreement" attached hereto as Exhibit 14.

devisee, or the assignee, grantee or successor in interest of any heir or devisee, may petition the court to distribute a share of the estate, or any portion thereof, to any person entitled thereto, upon the person giving a bond, with approved security, for the payment of the person's proportion of the debts of the estate.

2. The court may dispense with a bond if it is made to appear that the bond is unnecessary.

20. The Letters Testamentary were issued on January 30, 2008, and thus, more than 3 months have passed since the issuances of the letters.<sup>28</sup> As was explained above, the Will provides the \$500,000.00 Gift to Petitioner with the only conditions that (1) the Gift or portions thereof be applied to any mortgages held by the school at the time of Mr. Schwartz's death for which he was a guarantor; and (2) the Gift be used for scholarships to educate Jewish children only.

21. There is no current mortgage guaranteed by Mr. Schwartz and the school has agreed to use the Gift to fund scholarships for Jewish children only.<sup>29</sup> Therefore, this Court should order the Executor to distribute the \$500,000.00 Gift to the Petitioner. Additionally, because there are no competing claims to the Gift, a bond is not necessary.

22. Because of the Executor's almost 6 year delay in making the distribution, Petitioner request that the Court award income on the \$500,000.00 pursuant to NRS 164.800 or, to the extent that there is no income or that income is nominal, that the Court impute income through an award of interest at the statutory rate.<sup>30</sup>

**B. The Executor Did Not Contest the Validity of the Will and the Gift, and Cannot Do So Now**

23. NRS 137.080 provides as follows:

After a will has been admitted to probate, any interested person other than a party to a contest before probate or a person who had actual notice of the previous contest in time to have joined therein may, at any time within 3 months after the order is entered admitting the will to probate, contest the admission or the validity of the will.

<sup>28</sup> See Exhibit 12.

<sup>29</sup> See Exhibit 1, at ¶¶ 18-19.

<sup>30</sup> See *Jordan v. State, Dep't of Motor Vehicles*, 121 Nev. 44, 59, 110 P.3d 30, 41, 42 (2005) ("Nevada courts also possess inherent powers of equity . . .").

1 The contestant must file with the court in which the will  
2 was proved a petition containing the allegations of the  
3 contestant against the validity of the will or against the  
sufficiency of the proof, and requesting that the probate be  
revoked.

4 24. NRS 137.120 provides as follows:

5 If no person contests the validity of a will or of the probate  
6 thereof, within the time specified in NRS 137.080, the  
probate of the will is conclusive.

7 25. The Executor did not contest the validity of the Will, including the Gift, within  
8 the time frame required by NRS 137.080. Therefore, the Executor is now precluded by NRS  
9 137.120 from contesting the Gift or the Will.

10 **C. To the Extent the Executor Suddenly Claims There Are Insufficient Funds**  
11 **Available for the Gift, the Court Should Compel the Executor to File an Accounting**

12 26. NRS 150.080 provides as follows:

13 Within 6 months after the appointment of a personal  
14 representative, or sooner if required by the court, upon its  
own motion or upon the petition of an interested person, a  
personal representative shall file with the clerk the first,  
verified account, showing:

15 1. The amount of money received and expended by the  
16 personal representative.

17 2. The claims filed or presented against the estate,  
18 giving the name of each claimant, the nature of his or her  
claim, when it became due or will become due, whether it  
19 was allowed or rejected by the personal representative, or  
not yet acted upon.

20 3. All other matters necessary to show the condition of  
21 the estate.

22 27. NRS 150.105 provides as follows:

23 Until all remaining property is delivered pursuant to an  
order of final distribution, a personal representative shall  
24 file with the court, annually, an account showing the  
income the personal representative has received, what  
25 expenditures he or she has made, what property has been  
disbursed, or sold and at what price, and the nature and  
26 value of the property remaining on hand.

27 28. NRS 143.035(1) requires the Executor to use reasonable diligence in performing  
28 his duties and administering the Estate. The Executor has not been reasonably diligent. The

1 probate matter has been pending for almost six years. The Executor has not filed the report  
2 required by NRS 143.035(2).

3 29. The Executor has also failed to provide either the initial accounting or the annual  
4 accountings required by statute. Thus, the Court should order the Executor to comply with NRS  
5 150.080 and NRS 150.105 and provide an accounting, which Executor should personally pay for  
6 given his gross malfeasance, and in order to preserve the assets of the Estate and of Petitioner (a  
7 non-profit education entity).

8 **D. This Court Should Suspend the Executor's Letters Testamentary**

9 30. Petitioner does not wish to become involved in the administration of the Estate.  
10 However, to the extent that the Executor refuses to make the distribution, Petitioner requests that  
11 the Court remove the Executor or suspend his Letters Testamentary to preclude him from using  
12 and depleting the assets of the Estate.

13 31. NRS 141.090 provides that

14 If a court has reason to believe, from its own knowledge or from  
15 credible information, that a personal representative: . . .

16 *6. Has unreasonably delayed the performance of necessary acts*  
17 *in any particular as personal representative*, the court may, by an  
order entered upon the minutes, suspend the powers of the personal  
representative until the matter can be investigated, or take such  
other action as it deems appropriate under the circumstances.<sup>31</sup>

18 32. Thereafter, "[i]f an order of suspension is entered, the clerk shall issue a citation,  
19 reciting the order of suspension, to the personal representative to appear before the court at a  
20 time stated, as fixed by the court, to show cause why the letters of the personal representative  
21 should not be revoked."<sup>32</sup>

22 33. Pursuant to NRS 141.095, "[a]fter receipt of notice of a proceeding to suspend or  
23 remove a person as personal representative, the person shall not act except to account, correct  
24 misfeasance of administration, or preserve the estate."<sup>33</sup> Accordingly, Petitioner requests that  
25 this Court enter an order prohibiting the Executor from acting except to account, correct  
26

27 <sup>31</sup> NRS § 141.090(6) (2011) (emphasis added).

28 <sup>32</sup> NRS § 141.110(1) (2011).

<sup>33</sup> NRS § 141.095 (2011).

1 misfeasance of administration, or preserve the estate until the date and time of his court  
2 appearance pursuant to this Court's citation.

3 34. The Adelson Campus requests the Executor's suspension for the sole purpose of  
4 seeking payment of the Gift because the Adelson Campus has no confidence in the Executor's  
5 ability to make the Gift. The Adelson Campus has no interest in becoming involved in the  
6 subsequent probate proceedings regarding the Executor's possible suspension.

7 35. Therefore, this Court should suspend the Executor's Letters Testamentary  
8 pursuant to NRS 141.090.

9  
10 **IV.  
CONCLUSION**

11 36. For the foregoing reasons, this Court should order the Executor:

12 (a) to distribute the \$500,000.00 Gift to Petitioner (plus interest accrued since  
13 August 9, 2007), and ultimately to the numerous children who stand to benefit from the  
14 scholarships to be funded by the Gift;

15 (b) personally liable for Petitioner's attorney's fees and costs incurred in  
16 connection with its petition; and

17 (c) personally liable for the Executor's attorney's fees and costs incurred in  
18 connection with this petition.

19 37. To the extent that the Executor claims that there are insufficient funds to make the  
20 distribution, the Court should compel the Executor to file an accounting, and that Executor be  
21 personally liable for procuring such accounting.

22 LIONEL SAWYER & COLLINS

23 By: K. D. Bhirud  
24 Maximiliano D. Couvillier, III (SBN #7661)  
25 Ketan D. Bhirud (SBN #10515)  
Kendal L. Davis (SBN #11946)

26 Attorneys for The Dr. Miriam and Sheldon G.  
27 Adelson Educational Institute  
28

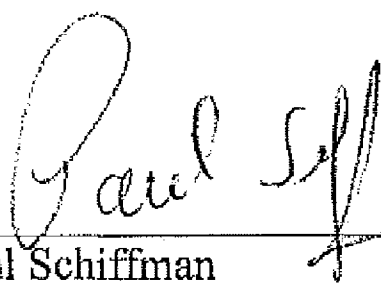


VERIFICATION

I, Paul Schiffman, hereby declare under penalty of perjury under the laws of the State of Nevada:

I am Head of School at The Dr. Miriam and Sheldon G. Adelson Educational Institute, the Petitioner named in the foregoing Petition to Compel Distribution, for Accounting, and for Attorneys' Fees. I have read the same and know the contents thereof. The Petition is true to the best of my own personal knowledge, except for any matters stated upon information and belief; and as to those statements, I believe them to be true.

Dated: May 2, 2013

  
Paul Schiffman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 3, 2013, I deposited in the United States Mail at Las Vegas, Nevada, a true and correct copy of the foregoing **PETITION TO COMPEL DISTRIBUTION, FOR ACCOUNTING AND FOR ATTORNEYS' FEES** enclosed in a sealed envelope upon which first class postage was paid, addressed as follows:

Steven J. Oshins, Esq.  
OSHINS & ASSOCIATES  
645 Village Center Circle  
Las Vegas, NV 89134

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Zachary Landsburg  
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Cherry Hill, NJ 08003

Joshua Landsburg  
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The Milton I. Schwartz Revocable Family  
Trust, A. Jonathan Schwartz, Trustee  
2293 Duneville Street  
Las Vegas, NV 89146

Robert P. Dickerson, Esq.  
THE DICKERSON LAW GROUP  
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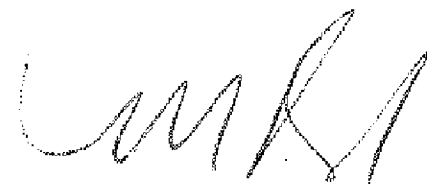
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Redondo Beach, CA 90277

Medicaid Estate Recovery  
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Carson City, NV 89701-3199



An Employee of Lionel Sawyer & Collins

# Exhibit 1

# Exhibit 1

1 **DEC**  
 2 Maximiliano D. Couvillier, III (SBN #7661)  
 3 mcouvillier@lionelsawyer.com  
 4 Ketan D. Bhirud (SBN #10515)  
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 12 (702) 383-8888 (Telephone)  
 13 (702) 383-8845 (Fax)

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

16 **DISTRICT COURT**

17 **Clark COUNTY, NEVADA**

18 In the Matter of the Estate of

19 **MILTON I. SCHWARTZ,**

20 **Deceased**

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

23 **DECLARATION OF PAUL SCHIFFMAN**

24 Paul Schiffman, pursuant to NRS 53.045, declares as follows:

25 1. I am Head of School at The Dr. Miriam and Sheldon G. Adelson Educational  
 26 Institute ("Petitioner") and have held that position since July 15, 2006.

27 2. I make this Declaration in support of the Petitioner's Petition to Compel  
 28 Scholarship Gift from the Estate of Milton I. Schwartz, and If Necessary, Petition for Account  
 (the "Petition").

3. In my capacity as Head of School, I am the sole employee of the Board of  
 Trustees and am responsible for the daily operation of Petitioner's campus. Specifically, I am  
 responsible for developing and cascading the organization's strategy to the staff, and  
 implementing appropriate practices to align personnel with company goals.

4. As a result of my employment responsibilities and my performance thereof, I  
 have knowledge of the facts set forth herein which are known by me to be true and correct. I am  
 competent to testify if called as a witness.

1           5.     It is Petitioner's practice and procedure to maintain records and to record  
2 transactions, acts, conditions, and events at or about the time such transactions, acts, conditions  
3 or events occur. It is the standard operating procedure to preserve all such documents in a place  
4 of safe keeping, that has in fact been done, and I have personal access to and the power to  
5 exercise control over these books and records.

6           6.     I have personally reviewed Petitioner's business records which are attached to the  
7 Petition. As part of my duties for Petitioner, I monitor Petitioner's finances and oversee  
8 construction. In that capacity, I am personally familiar with the manner in which Petitioner's  
9 documents, books, files, and records are prepared and maintained. The records which are  
10 attached to the Petition are true and correct copies of business records kept and maintained in the  
11 course of Petitioner's regularly conducted business activity.

12           7.     The seeds for what is today known as "The Dr. Miriam and Sheldon G. Adelson  
13 Educational Institute" ("Adelson Campus") began when "The Hebrew Academy" opened at the  
14 original Temple Beth Sholom in eastern Las Vegas. Attached to the Petition as Exhibit 3 is a  
15 true and correct copy of the Articles of Incorporation dated February 27, 1980.

16           8.     In 1988, the school moved west near the corner of Lake Mead Boulevard and  
17 Hills Center Drive, and thereafter changed names several times between "The Hebrew Academy"  
18 and "The Milton I. Schwartz Hebrew Academy." Attached to the Petition as Exhibits 4, 5, and 6,  
19 respectively, are the August 22, 1990 Certificate of Amendment of the Articles of Incorporation;  
20 the October 19, 1994 Certificate of Amendment of the Articles of Incorporation; and the March  
21 21, 1997 Certificate of Amendment of the Articles of Incorporation.

22           9.     The school was initially a very modest educational enterprise; its campus was  
23 primarily a single building and provided education to preschool through eighth grade children.

24           10.    Over the years, the school grew considerably, primarily due to the generous  
25 financial contributions of Dr. Miriam and Sheldon G. Adelson.

26           11.    By 2006, it was no longer a single school for young children, but had expanded to  
27 include a high school and expanded from a single building to a multi-building campus.

28



1           12. In 2008, the corporate name was changed to "The Dr. Miriam and Sheldon G.  
2           Adelson Educational Institute." Attached to the Petition as Exhibit 7 is a true and correct copy of  
3           the March 21, 2008 Certificate of Amendment of the Articles of Incorporation.

4           13. Today, the Petitioner operates an accredited private educational institution with a  
5           state-of-the-art campus that is spread over several acres and includes three separate schools,  
6           numerous buildings, a large auditorium, athletic fields and facilities, a gymnasium and an indoor  
7           Olympic swimming pool.

8           14. The three schools are known as follows:

9                   (1) the school for 9th through 12th graders is known as the Adelson Upper  
10           School;

11                   (2) the middle school for 5th through 8th graders is known as the Adelson Middle  
12           School;

13                   (3) the lower school for preschool through 4<sup>th</sup> graders is known as The Milton I.  
14           Schwartz Hebrew Academy and is housed in the building identified as "The Milton I.  
15           Schwartz Hebrew Academy."

16           15. True and correct pictures of the "The Milton I. Schwartz Hebrew Academy" are  
17           attached included in the Petition in Section I.A.

18           16. At the time of Milton I. Schwartz's ("Mr. Schwartz") death, the school had an  
19           outstanding mortgage of over \$1.8 million, which was personally guaranteed by Mr. Schwartz up  
20           to \$1 million. A true and correct copy of the Promissory Note evidencing that debt is attached to  
21           the Petition as Exhibit 10.

22           17. The school, however, continued to make payments under said mortgage and did  
23           not make any impositions upon Mr. Schwartz's Estate.

24           18. The \$1.8 million mortgage was paid off and the guaranty by Mr. Schwartz was  
25           extinguished on November 2, 2010, from the proceeds of a portion of a generous \$25 million  
26           donation made by the Adelsons. The Adelsons made another unprecedented \$50 million gift and  
27           the school has been able to pay off all its debt.

28



# Exhibit 2

# Exhibit 2

# LAST WILL AND TESTAMENT

OF

MILTON I. SCHWARTZ

FILED

OCT 11 4 23 PM '07

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 aforementioned 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.

## 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

*MIS*

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

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

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

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

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

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

### THIRD: RESIDUARY BEQUESTS

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

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

Testator's Initials MS



#### FOURTH: EXECUTOR

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

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

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

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

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

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

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

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

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

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

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

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

Testator's Initials 12-25

- (f) Allocate in my Executor's sole discretion, any portion of my exemption under Sec. 2631(a) of the Internal Revenue Code, as amended, to any property as to which I am the transferor, including any property transferred by me during life as to which I did not make an allocation prior to my death.
- (g) Exercise any other options or elections afforded by the tax law of the United States or of any other jurisdiction. My Executor may exercise this authority in my Executor's sole discretion; regardless of any other provisions in this Will or the effect on any other provisions of this Will or the effect on any person interested in my estate. No beneficiary under this Will shall be entitled to a compensating adjustment even though the exercise of these tax powers affects the size or composition of my estate or of any disposition under this Will. The determination of my Executor with respect to the exercise of the election shall be conclusive upon all affected persons.

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

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

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

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

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

Testator's Initials LSJ

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

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

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

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

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

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

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

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

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

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

#### FIFTH: TESTAMENTARY DECLARATIONS

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

Testator's Initials ledg

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

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

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

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

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

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

#### SIXTH: MISCELLANEOUS

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

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

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

Testator's Initials

JS

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 5<sup>th</sup> 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 )

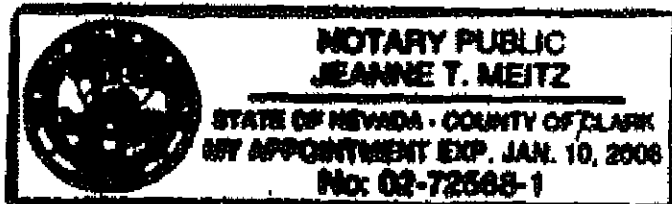
Then and there personally appeared the within named Richard B. Newman and Beverley J. Jones who, being duly sworn, depose and say:

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

SUBSCRIBED and SWORN to before me

This 5<sup>th</sup> day of January, 2004.

Notary Public





# Exhibit 3

# Exhibit 3

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

Organizational fee: \$1.00  
 BY: George Rudian  
 Suite 610  
 302 E. Carson Av.  
 Las Vegas, Nevada 89101

FEB 27 1980

ARTICLES OF INCORPORATION

WIL SWACINER, SECRETARY OF STATE

OF

THE HEBREW ACADEMY

S

KNOW ALL MEN BY THESE PRESENTS:

THAT, pursuant to the provisions of N.R.S. 81.290 to 81.340 we, the undersigned, have this day associated ourselves together for the purpose of engaging in certain educational, religious, scientific and charitable activities, as follows:

ARTICLE I

NAME

This corporation shall be known as:

THE HEBREW ACADEMY

ARTICLE II

PURPOSE

This corporation is, and shall at all times be, a non-profit corporation organized solely for educational, religious, scientific and charitable purposes, which shall include, but not necessarily be limited to the following:

A. To conduct private schools providing both secular education and special Judaic studies, from the grade school through the high school level, for children of Jewish families as well as for non-Jewish children whose families desire to expose them to the benefits of inter-cultural education.

B. To afford its students the opportunity of absorbing the Jewish cultural heritage through courses in Hebrew language and Jewish history, literature, customs, law, ethics, and religion.

C. To encourage, inspire, and foster the

1 academic, social, moral and religious growth of its  
 2 students, to the end that each child may achieve his  
 3 own maximum potential as a human being, and acquire a  
 4 sensitivity to the problems, needs, and cultural heritage  
 5 of his fellow human beings of all races, nationalities,  
 6 faiths, and creeds.

7 D. To foster in its students an appreciation  
 8 for learning and intellectual achievement.

9 E. To provide scholarships and other forms of  
 10 financial aid to worthy students whose families are  
 11 financially unable to pay for their tuition in whole, or  
 12 in part.

### 13 ARTICLE III

#### 14 PRINCIPAL OFFICE

15 The County in this State where the principal office for  
 16 the transaction of the business of the corporation is to be located  
 17 is the County of Clark, State of Nevada.

### 18 ARTICLE IV

#### 19 TRUSTEES

20 The governing board of the corporation shall be known  
 21 as the Board of Trustees and shall consist of eleven (11) members.  
 22 The term of office of each trustee shall be one (1) year which  
 23 shall coincide with the school year as set forth in the By-Laws  
 24 of the corporation.  
 25

26 Eight (8) of the Trustees, to be known as the "Member-  
 27 ship Trustees", shall be elected at an annual meeting of the  
 28 members of the corporation. Every family which has one or more  
 29 children enrolled as students in the Hebrew Academy during the  
 30 semester in which the annual meeting of the members is held, shall  
 31 be considered a member of the corporation, and shall be entitled,  
 32 as a member, to cast one (1) vote for each trustee to be elected

1 at the annual meeting, irrespective of the number of children  
2 enrolled in the school.

3 Of the other three (3) Trustees, to be known as the  
4 "Organizational Trustees", one (1) shall be elected annually by the  
5 Board of Trustees of the Jewish Federation, one (1) by the Board  
6 of Trustees of Temple Beth Shalom, and one (1) by the Board of  
7 Trustees of Congregation Ner Tamid, each of which organizations  
8 shall certify to the Board of Trustees of this corporation, the  
9 "Organizational Trustees" so selected.

10 If, for any reason, the Trustees shall not be elected  
11 at the time and in the manner provided herein, or in the By-Laws,  
12 the Trustees then in office shall continue to serve as Trustees  
13 until their successors shall have been elected.

14 The number of Trustees may, from time to time, be  
15 increased or decreased to the number of no fewer than seven (7),  
16 and the method for the election of the Trustees may be changed,  
17 by the By-Laws, or an amendment to the By-Laws, of the corporation  
18 in that regard without the necessity of amending these Articles of  
19 Incorporation.

20 The names and places of residence of the non-organiza-  
21 tional Trustees chosen to serve from the time of incorporation  
22 through the first school year, which Trustees are also the  
23 incorporators signing these Articles of Incorporation, are as  
24 follows:

25	(1) DENNIS SABBATH	(5) GEORGE RUDIAK
26	300 S. Fourth St., #1505	302 E. Carson, #610
	Las Vegas, NV 89101	Las Vegas, NV 89101
27	(2) ARNE ROSENCRANTZ	(6) KALMAN APPEL
28	309 Rosemary Lane	1413 S. 17th Street
	Las Vegas, NV 89107	Las Vegas, NV 89104
29	(3) CAROLYN GOODMAN	(7) GERT RENTCHLER
30	2000 Bannies Lane	1201 S. Rancho Dr.
	Las Vegas, NV 89102	Las Vegas, NV 89102
31	(4) ALVIN D. BLUMBERG, M.D.	(8) MELANIE GREENBERG
32	4330 S. Burnham, #140	1530 Bonita Avenue
	Las Vegas, NV 89109	Las Vegas, NV 89104

GEORGE RUDIAK  
CHARTERED  
ATTORNEY AT LAW  
LAS VEGAS, NEVADA

1 ARTICLE V2 POWERS OF CORPORATION

3 This Corporation is organized exclusively as a nonprofit  
4 corporation for educational, religious, scientific, and charitable  
5 purposes, which purposes shall include the making of contributions  
6 to organizations which qualify as exempt organizations under  
7 Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended,  
8 or as the same may hereafter be amended.

9 No part of the earnings of the Corporation, nor shall  
10 any of its property or assets, inure to the benefit of, or be  
11 distributed to, any of its members, trustees, officers, or to any  
12 other private persons, firms, or corporations, except that the  
13 Corporation shall be authorized and empowered to pay reasonable  
14 compensation for services rendered to the Corporation, reimbursement  
15 for costs incurred on behalf of the Corporation, and distributions  
16 in furtherance of the purposes herein set forth.

17 This corporation shall not engage in any activities  
18 designed to influence legislation, nor participate in any political  
19 campaign on behalf of any candidate for public office, or carry  
20 on any other activities not permitted to be carried on:

21 A. By a corporation exempt from Federal income  
22 taxes under Section 501(c)(3) of the Internal Revenue  
23 Code of 1954, as amended, or as the same may hereafter  
24 be amended, or

25 B. By a corporation, contributions to which  
26 are deductible under Section 170(c)(2) of the Internal  
27 Revenue Code of 1954, as amended, or as the same may  
28 hereafter be amended.

29 Notwithstanding any other provision of these Articles  
30 of Incorporation, this Corporation shall not, except to an insub-  
31 stantial degree, engage in any activities or exercise any powers  
32 that are not in furtherance of the purposes of this Corporation.

GEORGE H. HANAN  
COUNSELLOR  
ATTORNEY AT LAW  
LAS VEGAS, NEVADA



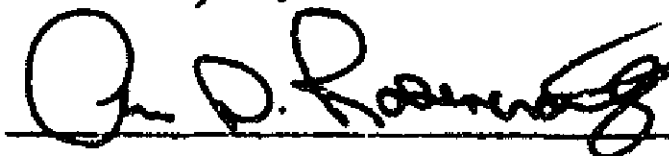
1 ARTICLE VI

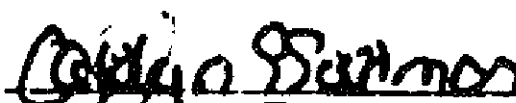
2 DISSOLUTION

3 Upon the dissolution of the Corporation, the Board of  
 4 Trustees, after paying, or making provision for payment, of all  
 5 the debts, obligations, and liabilities of the Corporation, shall  
 6 dispose of all the remaining assets of the Corporation exclusively  
 7 for the purposes for which this Corporation was organized by dis-  
 8 tributing such assets in such manner, or to such organization or  
 9 organizations, organized and operated exclusively for educational,  
 10 religious, scientific or charitable purposes as shall at the time  
 11 qualify as exempt organizations under Section 501(c)(3) of the  
 12 Internal Revenue Code of 1954, as amended, or as the same may here-  
 13 after be amended (or the corresponding provision of any future  
 14 Internal Revenue laws of the United States) as the Board of  
 15 Trustees of this Corporation shall determine to be proper. Any  
 16 assets not so disposed of, shall be disposed of by the Eighth  
 17 Judicial District Court of the State of Nevada in and for the  
 18 County of Clark by ordering the distribution thereof for such  
 19 purposes, or to such organization or organizations, as said Court  
 20 may determine, to be organized and operated as near as may be for  
 21 the purposes for which this Corporation is organized.

22 IN WITNESS WHEREOF, we have executed these presents  
 23 this 20th day of February, 1980.

24 

25 

26 

27 

28 

Kalman Appel  
Geri Rentchler  
Melanie Greenberg

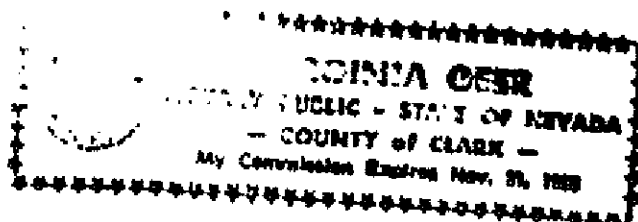
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STATE OF NEVADA)  
: ss.  
COUNTY OF CLARK)

On this 20th day of February, 1980, before me, the undersigned, a Notary Public in and for said County and State, personally appeared DENNIS SABBATH, ARNE ROSENCRANTZ, CAROLYN GOODMAN, ALVIN D. BLUMBERG, M.D., GEORGE RUDIAK, KALMAN APPEL, GERI RENTCHLER, MELANIE GREENBERG known to me to be the persons mentioned in, and who executed the foregoing instrument, and duly acknowledge to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Virginia Geer  
NOTARY PUBLIC in and for said  
County and State.  
VIRGINIA GEER

My commission expires:



GEORGE DUNNAN  
TRANSCRIBER  
ATTORNEY AT LAW  
LAS VEGAS, NEVADA

## STATE OF NEVADA

**ROSS MILLER**  
Secretary of State

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

OFFICE OF THE  
SECRETARY OF STATE**Commercial Recordings Division**

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

LIONEL, SAWYER &amp; COLLINS

**Job: C20130412-0697**

April 12, 2013

**Special Handling Instructions:**

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