

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT G. REYNOLDS, AN
INDIVIDUAL,

Appellant,

vs.

RAFFI TUFENKJIAN, AN
INDIVIDUAL; AND LUXURY
HOLDINGS LV, LLC, A NEVADA
LIMITED LIABILITY COMPANY,

Respondents.

SUPREME COURT NO. 84413

District Court Case No. A753532

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**RAFFI TUFENKJIAN AND LUXURY HOLDINGS, LV, LLC'S LIMITED
RESPONSE TO APPELLANT'S MOTION FOR ENLARGEMENT OF
TIME**

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MAC:14229-003 4753031_1

I. LEGAL ARGUMENT

Respondents partially oppose the motion to extend time. They don't have a per se problem with an extension. They just believe 120 days (roughly four months) is too long. They would request that the extension be limited to 60 days. If Appellant files the motions identified in the motion to extend time, then the briefing timeline can be revisited then. However, the judgment at issue in Mr. Reynolds' appeal was entered last year. At some point this matter needs to be briefed, or Mr. Reynolds should abandon what the Respondents contend is a frivolous appeal. In support of this contention, Respondents provide the Court with the following excerpts from the trial in this matter:

10 8. The Court finds that Mr. Reynolds is highly experienced in purchasing
11 businesses and other assets.

12 9. The Court finds that Mr. Reynolds also has experience in contracts, having
13 utilized contracts previously, including during his acquisition of the hotel.

14 10. However, Mr. Reynolds testified that he is not somewhat sophisticated with
15 contracts. (RT, 79, ll. 21 – 25)

16 11. The Court does not find Mr. Reynolds' testimony on this topic to be credible,
17 and finds him to be sophisticated as it relates to contracts.

18 12. When confronted with his deposition testimony, wherein Mr. Reynolds
19 testified that he is somewhat sophisticated with contracts and graded himself as a 6 or 7 out of
20 10, Mr. Reynolds responded to this impeachment by testifying during the trial he would not
21 let defense counsel take him off to "la-la land of fairy," and asked that one of defense
22 counsel's "alternate lawyers" come in and ask questions because he and defense counsel were
23 "not going to get along." (RT, 84, l. 18 – 85 – l. 5).

24 13. This sort of conduct permeated throughout the bulk of Mr. Reynolds cross-
25 examination.

26 14. On cross-examination, Mr. Reynolds rarely answered the question posed.

See Judgment at pg. 2, attached hereto as **Exhibit A**. Appellant Mr. Reynolds also said the following:

27 15. When confronted with the first few pages of his deposition where it was
28 volunteered that the deposition was being conducted on his birthday, Mr. Reynolds began

1 resorting to attacks on defense counsel, such as “I can remember you very well from the time
2 that we’d done the deposition together, and I wasn’t struck with your intelligence or your
3 demeanor then, and you’re certainly not doing anything to change my mind.” (RT 82, ll. 21-
4 25) This exchange came up in probably the first few minutes of defense counsel’s cross-
5 examination of Mr. Reynolds.

6 16. Shortly after, Mr. Reynolds went on to tell defense counsel that he didn’t see
7 defense counsel “nearly as attractive as you [defense counsel] think you [defense counsel]
8 are.” (RT 87, ll. 24-25)

9 17. These are just a few examples of Mr. Reynolds’ behavior on cross-
10 examination.

See id. at pgs. 2 – 3. This was a fraud case, and the excerpt from the underlying judgment summarizes the “conversations” Appellant Mr. Reynolds claims he had:

17 78. During trial, Mr. Reynolds testified he had roughly six conversations with
18 Mr. Tufenkjian prior to submitting an offer, having testified in his deposition that he could not
19 recall how many conversations he had with Mr. Tufenkjian before making an offer, but if he
20 “had one, it was too damn many.” (RT 105, l. 9)

See id. at pg. 8.

II. CONCLUSION

We thank the Court for your time and consideration of this pleading.

Dated this 16th day of June, 2022.

MARQUIS AURBACH

/s/ Christian T. Balducci

Christian T. Balducci, Esq.

Nevada Bar No. 12688

10001 Park Run Drive

Las Vegas, Nevada 89145

Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RAFFI TUFENKJIAN AND LUXURY HOLDINGS, LV, LLC'S LIMITED RESPONSE TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME** was electronically served on the 16th day of June, 2022 in accordance with the Master Service List to the following:

Joseph Z. Gersten
The Gersten Law Firm PLLC
9680 W. Tropicana Ave., Suite 146
Las Vegas, Nevada 89147
Attorneys for Appellant

/s/ Kellie Piet

An employee of Marquis Aurbach

EXHIBIT A

EXHIBIT A

Heather S. Smith
CLERK OF THE COURT

1 FFCL

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4 ROBERT G. REYNOLDS, an individual,
5 DIAMANTI FINE JEWELERS, LLC, a Nevada
6 limited liability company,

7 Plaintiffs,

8 vs.

9 RAFFI TUFENKJIAN, an individual, and
10 LUXURY HOLDINGS LV, LLC, a Nevada
11 Limited Liability Company, DOES 1-10, and
12 ROE CORPORATIONS 1-10 inclusive,

13 Defendants.

Case No.: A-17-753532-B
Dept. No.: XIII

14 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

15 The above-captioned matter, having come on for bench trial before this Court on
16 September 21, 22, and October 6, 2021 on Plaintiffs Robert G. Reynolds and Diamanti Fine
17 Jewelers, LLC's claim for intentional misrepresentation against Defendants Raffi Tufenkjian
18 and Luxury Holdings, LV, LLC. Christian T. Balducci, Esq. appeared on behalf of
19 Defendants Raffi Tufenkjian and Luxury Holdings, LV, LLC and Brad Marx, Esq. appeared
20 on behalf of Plaintiff Robert G. Reynolds and Diamanti Fine Jewelers, LLC. ("Plaintiff").

21 The Court having admitted various exhibits into evidence (Exhibits J1 – J38),
22 entertained testimony from Robert Reynolds, Raffi Tufenkjian, and Aldo Aguirre, the
23 pleadings, together with opening statements and closing arguments presented at the trial on
24 this matter, and good cause appearing therefor, makes the following Findings of Fact,
25 Conclusions of Law, and Judgment:

26 **FINDINGS OF FACT**

27 **A. PLAINTIFFS**

28 1. The plaintiffs in this case are Robert G. Reynolds ("Mr. Reynolds") and
Diamanti Fine Jewelers, LLC ("**Diamanti**").

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

1 2. Diamanti and Mr. Reynolds are sometimes collectively referred to herein as
2 “Plaintiffs.”

3 3. Mr. Reynolds is the manager of Diamanti.

4 4. Mr. Reynolds has years of experience supervising entire construction projects
5 in the millions of dollars, with one project being \$1.2 Billion.

6 5. He previously purchased a hotel that he expanded to 100 hotel rooms, which
7 grossed roughly \$3 Million to \$4 Million per year.

8 6. That hotel had 50 employees.

9 7. Mr. Reynolds previously invested \$4 Million into a portion of a shopping mall.

10 8. The Court finds that Mr. Reynolds is highly experienced in purchasing
11 businesses and other assets.

12 9. The Court finds that Mr. Reynolds also has experience in contracts, having
13 utilized contracts previously, including during his acquisition of the hotel.

14 10. However, Mr. Reynolds testified that he is not somewhat sophisticated with
15 contracts. (RT, 79, ll. 21 – 25)

16 11. The Court does not find Mr. Reynolds’ testimony on this topic to be credible,
17 and finds him to be sophisticated as it relates to contracts.

18 12. When confronted with his deposition testimony, wherein Mr. Reynolds
19 testified that he is somewhat sophisticated with contracts and graded himself as a 6 or 7 out of
20 10, Mr. Reynolds responded to this impeachment by testifying during the trial he would not
21 let defense counsel take him off to “la-la land of fairy,” and asked that one of defense
22 counsel’s “alternate lawyers” come in and ask questions because he and defense counsel were
23 “not going to get along.” (RT, 84, l. 18 – 85 – l. 5).

24 13. This sort of conduct permeated throughout the bulk of Mr. Reynolds cross-
25 examination.

26 14. On cross-examination, Mr. Reynolds rarely answered the question posed.

27 15. When confronted with the first few pages of his deposition where it was
28 volunteered that the deposition was being conducted on his birthday, Mr. Reynolds began

1 resorting to attacks on defense counsel, such as “I can remember you very well from the time
2 that we’d done the deposition together, and I wasn’t struck with your intelligence or your
3 demeanor then, and you’re certainly not doing anything to change my mind.” (RT 82, ll. 21-
4 25) This exchange came up in probably the first few minutes of defense counsel’s cross-
5 examination of Mr. Reynolds.

6 16. Shortly after, Mr. Reynolds went on to tell defense counsel that he didn’t see
7 defense counsel “nearly as attractive as you [defense counsel] think you [defense counsel]
8 are.” (RT 87, ll. 24-25)

9 17. These are just a few examples of Mr. Reynolds’ behavior on cross-
10 examination.

11 18. The Court finds that Mr. Reynolds understands the distinction between doing
12 business as a company, or limited liability company, as opposed to doing business as a natural
13 person.

14 19. Diamanti is a limited liability company that was formed for purposes of
15 acquiring the jewelry store that forms the foundation of this lawsuit.

16 20. Mr. Reynolds is the primary owner of Diamanti.

17 **B. DEFENDANTS**

18 21. The Defendants in this matter are Raffi Tufenkjian (“**Mr. Tufenkjian**”) and
19 Luxury Holdings LV, LLC (“**Luxury Holdings**”).

20 22. Mr. Tufenkjian and Luxury Holdings are sometimes collectively referred to
21 herein as “**Defendants**.”

22 23. Mr. Tufenkjian has been in the jewelry business for the bulk of his life,
23 beginning when he was a teenager in the 1980’s/1990’s.

24 24. Mr. Tufenkjian’s father was in the jewelry business.

25 25. Mr. Tufenkjian’s uncle was, and still is, in the jewelry business.

26 26. Mr. Tufenkjian’s brother, Nazareth Tufenkjian (“**Nazareth**”), was and still is
27 in the jewelry business.

28 27. Mr. Tufenkjian owns, and is manager of, Luxury Holdings.

1 28. Mr. Tufenkjian is also involved in commercial real estate, having owned the
2 Lynden Square shopping center where DW Bistro once was located through another
3 company.

4 29. Through other companies, Mr. Tufenkjian owns a number of commercial
5 properties throughout the Southwestern United States.

6 **C. THE JEWELRY STORE**

7 30. In or around August of 2013, Luxury Holdings opened a jewelry store in the
8 Tivoli Village Shopping Center located in Las Vegas ("**Tivoli**").

9 31. That jewelry store was named Diamanti Fine Jewelers ("**the Jewelry Store**").

10 32. The Jewelry Store was a high-end jewelry store catering to wealthier clientele.

11 33. In connection with the Jewelry Store, Mr. Tufenkjian caused Luxury Holdings
12 to enter into a lease agreement with the owner/landlord of Tivoli, Great Wash Park LLC.

13 34. The space for the Jewelry Store at Tivoli had some pre-existing cabinetry.

14 35. As part of opening the Jewelry Store, Luxury Holdings acquired all of the
15 equipment one would need to operate a fully functioning jewelry store, such as a security
16 system, phones, display cases, a large safe capable of resisting fire and theft attempts for a
17 period of time, a computer with an attendant point of sale system ("**POS System**"), diamond
18 testers, and other pieces of equipment as evidenced in Exhibit J8.

19 36. A significant amount of testimony was devoted to the POS System. The most
20 helpful, however, was the testimony from Mr. Aguirre regarding the POS System.

21 37. The POS System tracked all of the finished inventory within the Jewelry Store
22 (meaning completed rings, bracelets, pendants, etc.).

23 38. Loose stones such as diamonds and rubies were not identified within the POS
24 System.

25 39. The POS System tracked all sales within the Jewelry Store.

26 40. The POS System included inventory cost, mark up, sales, write downs,
27 discounts etc.

28 41. Cost, price, and mark up could be changed within the POS System.

- 1 42. It was a very robust system.
- 2 43. Mr. Tufenkjian worked at the Jewelry Store and operated it.
- 3 44. Mr. Tufenkjian's uncle, Zaven Tufenkjian ("**Zaven**"), also worked at the
- 4 Jewelry Store.
- 5 45. Aldo Aguirre ("**Mr. Aguirre**") was also employed at the Jewelry Store since it
- 6 opened.
- 7 46. Mr. Tufenkjian stocked the Jewelry Store with jewelry from a number of
- 8 sources, including consignment inventory and jewelry that Mr. Tufenkjian accumulated over
- 9 decades of working in the jewelry industry.
- 10 47. As evidenced in the exhibits submitted during trial, the Jewelry Store's
- 11 business steadily increased over time since it opened.

12 **D. THE GALLERIA MALL LOCATION**

- 13 48. In roughly October of 2014, Nazareth approached Mr. Tufenkjian about
- 14 opening a jewelry store location in the Galleria Mall in Henderson, Nevada.
- 15 49. For convenience, Luxury Holdings entered into the license agreement for the
- 16 location at the Galleria Mall, and Luxury Holdings Sale and Use Tax Form submittals
- 17 included sales generated at the Galleria Mall, which were hand tracked as shown in Exhibit
- 18 J31.
- 19 50. The POS System, however, did not include or track any inventory or sales
- 20 from the Galleria Mall location.
- 21 51. No inventory from the Galleria Mall location came from the Jewelry Store.
- 22 52. As testified to by Mr. Aguirre, no inventory at the Jewelry Store was
- 23 transferred from the Jewelry Store to the Galleria Mall location.
- 24 **E. THE JEWELRY STORE IS LISTED FOR SALE**
- 25 53. In November of 2014, Mr. Tufenkjian decided to sell the Jewelry Store to
- 26 move onto another business venture; specifically, getting out of the jewelry business entirely
- 27 and opening a Scavolini Cabinet Showroom.
- 28 54. Mr. Tufenkjian utilized Sunbelt Business Brokers to market the Jewelry Store.

1 55. As its fee for marketing the business, Sunbelt Business Brokers took a 10%
2 commission of the purchase price of the Jewelry Store and any inventory it may sell in or
3 outside escrow.

4 56. In connection with the proposed sale of the Jewelry Store, Sunbelt Business
5 Brokers prepared a business summary brochure which was admitted into evidence as Exhibit
6 J4 (“**the Marketing Brochure**”).

7 57. The Marketing Brochure was generated utilizing information from
8 Mr. Tufenkjian.

9 58. Mr. Tufenkjian participated in the production of the Marketing Brochure.

10 59. For example, as shown in Exhibit J.33 he told the business broker to “back
11 down” the revenue projection within the Marketing Brochure to \$800,000.00.

12 60. At the time the Marketing Brochure was finalized, Mr. Tufenkjian believed all
13 of the information within it was accurate and correct.

14 61. Because the Jewelry Store was not open for a full calendar year as of the time
15 the Marketing Brochure was prepared, Mr. Tufenkjian utilized estimates based upon his
16 experience in the jewelry industry in arriving at certain sales and revenue projections.

17 62. In particular, Mr. Tufenkjian utilized the sales and use forms from January of
18 2014 through October of 2014, monthly reports from the POS System, prior year tax returns,
19 financial statements, and then using estimations based upon his experience, estimated that the
20 total revenue for the Jewelry Store for the full year of 2014 would be \$800,000.00.

21 63. Mr. Tufenkjian also utilized information from his accountant, Mark Sherman,
22 CPA, in calculating profit/loss projections.

23 64. The Marketing Brochure includes a panoply of disclaimers informing potential
24 buyers that they bear the burden of doing due diligence into the Jewelry Store:

25 a. “During the due diligence process, it is the responsibility of the Buyer,
26 with the aid of an accountant and/or attorney, if necessary, to independently verify all
27 representations which have been made by the Seller, particularly as they relate to the
28 adjustments made to the profit and loss statements[.]”;

1 b. “Readers of this report should understand that statements are not
2 guarantees of value or results[.]”;

3 c. “Sunbelt Business Brokers cautions readers not to place undue reliance
4 on any forward-looking statements or projects that may have been used in the analysis
5 of value[.]”;

6 d. “It is the responsibility of the Buyer to verify all representations and to
7 make a final purchase decision based on their own independent investigation[.]”;

8 e. “The books are kept in house using a sophisticated register point of sale
9 software[.]”;

10 f. “Projection for the Year Ended December 2014[.]”;

11 g. “The Seller’s profit/loss statement projected out for 2014 was used in
12 the computation[.]”

13 65. The Marketing Brochure was completed prior to the conclusion of calendar
14 year 2014, and thus end of year financials were unavailable.

15 **F. MR. REYNOLDS MAKES AN OFFER AND A CONTRACT IS**
16 **FORMED**

17 66. As shown in Exhibit J15, on January 5, 2015, Mr. Reynolds contacted Sunbelt
18 Business Brokers for information regarding the Jewelry Store.

19 67. In response, Sunbelt Business Brokers provided Mr. Reynolds with the
20 Marketing Brochure.

21 68. On January 12, 2015, Mr. Reynolds submitted an offer to purchase the
22 business, which was accepted and signed by Mr. Tufenkjian on behalf of Luxury Holdings the
23 following day as shown in Exhibit J1 (“**Offer Agreement**”).

24 69. In connection with the Offer Agreement, Mr. Reynolds placed a \$10,000.00
25 earnest money deposit to be applied to the purchase price, which was \$395,000.00
26 (“**Purchase Price**”) for the Jewelry Store exclusive of inventory.

27 70. Inclusive in the purchase price were various items of furniture, fixtures, and
28 equipment (“**FF&E**”) which the Marketing Brochure identified as being worth \$270,000.00.

1 71. \$100,000.00 of the total Purchase Price was allocated to the FF&E.

2 72. The Offer Agreement states it is made on behalf of "Robert G. Reynolds or
3 entity to be formed by purchaser...."

4 73. ¶20 of the Offer Agreement states "Except for express warranties made in this
5 Contract, the Closing of this transaction shall supersede this Contract."

6 74. ¶15 of the Offer Agreement states "This instrument together with its addenda
7 and disclosures constitutes the entire contract between the parties and supersedes and replaces
8 any and all prior negotiations, representations, warranties, understandings, or contracts
9 between the parties."

10 75. In bold font at the bottom, the Offer Agreement tells all of the parties to it that
11 if they "do not understand it, consult an attorney."

12 76. Pursuant to the Offer Agreement, the closing date for the sale of the Jewelry
13 Store was originally set for March 1, 2015.

14 77. Pursuant to the Offer Agreement, the period of time for Mr. Reynolds to
15 conduct due diligence began once accepted, and his earnest money deposit was refundable for
16 a period of 14 days.

17 78. During trial, Mr. Reynolds testified he had roughly six conversations with
18 Mr. Tufenkjian prior to submitting an offer, having testified in his deposition that he could not
19 recall how many conversations he had with Mr. Tufenkjian before making an offer, but if he
20 "had one, it was too damn many." (RT 105, l. 9)

21 **G. DUE DILIGENCE AND WHAT MR. REYNOLDS LEARNED**

22 79. Mr. Reynolds began performing due diligence into the Jewelry Store almost
23 immediately upon the Offer Agreement being counter-signed by Luxury Holdings.

24 80. Mr. Reynolds did not utilize the services of an accountant or bookkeeper to
25 assist in his due diligence.

26 81. Nor did he utilize the services of an attorney.

27 82. At the time, one of Mr. Reynolds' sons was an attorney.

28

1 83. According to Mr. Reynolds, he would from time to time ask Mr. Tufenkjian
2 questions about the Jewelry Store's financial viability, and on each occasion, Mr. Tufenkjian
3 would direct Mr. Reynolds to review the Marketing Brochure.

4 84. This is the same Marketing Brochure which specifically stated "During the due
5 diligence process, it is the responsibility of the buyer, with the aid of an accountant and/or
6 attorney, if necessary, to independently verify all representations which have been made by
7 the seller, particularly as they relate to the adjustments made to the Profit and loss
8 Statements."

9 85. Mr. Reynolds, Mr. Tufenkjian, and Mr. Aguirre all testified that Mr. Reynolds
10 would come to the store during the due diligence period, and had an opportunity to monitor
11 foot traffic, look at all of the inventory, and had full and complete access to the POS System.

12 86. During the due diligence period Mr. Reynolds became aware of the existence
13 of the Galleria Mall location, and had full and complete access to everything in the Jewelry
14 Store, including the drawers and cabinets where the document admitted into evidence as
15 Exhibit J31 was located (which is the sales at the Galleria Mall location on Galleria Mall
16 stenciling).

17 87. Mr. Reynolds (and his wife) also spent a significant amount of time utilizing
18 the POS System during the due diligence period.

19 88. Mr. Tufenkjian testified that the hand-written revenue numbers for the Galleria
20 Mall location were located in a filing cabinet in the Jewelry Store that Mr. Reynolds had
21 access to and reviewed as a part of due diligence.

22 89. When asked about Mr. Tufenkjian's testimony concerning this filing cabinet,
23 Mr. Reynolds testified that the Jewelry Store did not have a filing cabinet, thus insinuating
24 that Mr. Tufenkjian was being untruthful.

25 90. Mr. Reynolds was then confronted with the pictures of the Jewelry Store in the
26 Marketing Brochure which showed cabinets, including a filing cabinet, at which point he
27 testified "you can't put files in there."
28

1 91. On the issue of the Galleria Mall location and not knowing about its revenues,
2 the Court finds that Mr. Reynolds was not credible.

3 92. The Court finds that Mr. Reynolds knew about the Galleria Mall location, and
4 knew the sales and use forms included sales from the Galleria Mall location.

5 93. When questioned about the contents of the Marketing Brochure, Mr. Reynolds
6 attempted to speak with his counsel on the record, and said "I'd like to say something to Brad
7 [counsel for Mr. Reynolds and Diamanti]. I'd like for you to kind of listen good to what he's
8 [counsel for the defense] putting on the screen and what he's saying, and if any of that stuff is
9 legally out of bounds, say something, because he keeps fishing for something, and I'm not
10 sure exactly what, and I don't trust him. And I don't - - [] I don't want him to get me to say
11 something that's going to come back to bite us later on." (RT 98, l. 24 – 99, l. 8)

12 94. Mr. Reynolds testified that he could have utilized any consultant to assist him
13 during the due diligence period, and said he could have even used an "iron worker" as a
14 consultant if he wanted too. (RT, 100, l. 25 – 101, l. 11)

15 95. Mr. Reynolds testified that he asked for tax returns, profit and loss statements,
16 and sales and use forms during due diligence, and that he only received the sales and use
17 forms.

18 96. Mr. Reynolds testified that he asked for these documents early on in the
19 process, but was impeached with his deposition wherein he provided the following response
20 when asked whether he asked for those documents before or after February 27, 2015: "Oh
21 hell. I wouldn't know" and "I wouldn't have a clue." (RT, 111, ll. 6 – 11)

22 97. The February 27, 2015 date has significance because that is the date the parties
23 entered into an amendment continuing the closing date for the sale of the Jewelry Store to on
24 or before April 15, 2015 in exchange for a release of a portion of the earnest money.

25 98. Regardless of what Mr. Reynolds said about the time in which he asked for
26 certain documents, every witness agreed Mr. Reynolds had full and unfettered access to the
27 POS System and absolutely anything and everything within the Jewelry Store, and the Court
28 finds that Mr. Reynolds was unobstructed during due diligence and was able to review

1 anything located in the Jewelry Store (which included all of its financial information from the
2 POS System, its inventory, sales, revenues, profits, costs, and all other pertinent information
3 the buyer of a business would want to review).

4 99. When examined about the inconsistency as to his testimony concerning when
5 he asked for documents in due diligence, Mr. Reynolds said his memory was not as good as it
6 once was.

7 100. When asked for an explanation as to how his recollection of things was clear
8 during direct examination as opposed to “murky” (at best) during cross, Mr. Reynolds
9 testimony was “I forget.” (RT, 112, l. 3)

10 101. During due diligence, Mr. Reynolds came to the conclusion that
11 Mr. Tufenkjian was lying, that he could not “believe him,” “[t]he numbers aren’t right[,]” and
12 they “don’t balance.” (RT, 117, 15-18)

13 102. According to Mr. Reynolds, the seller of a business “will lie about 10 or 20
14 percent [,]” but he presumed Mr. Tufenkjian lied “50%[,]” and felt he could meet his
15 “commitment, if he [Mr. Tufenkjian] had lied 100 percent.” (RT 118, ll. 5-10)

16 103. In other words, Mr. Reynolds believed the figures in the Marketing Brochure
17 were incorrect, and did not believe that any statements from Mr. Tufenkjian regarding the
18 financial health of the Jewelry Store were true.

19 104. Mr. Reynolds testified that he was provided with a customer list during due
20 diligence that was admitted into evidence as Exhibit J24.

21 **H. CLOSING OF THE SALE OF THE JEWELRY STORE**

22 105. Ultimately, the sale of the Jewelry Store closed on or around March 25, 2015
23 (“Closing Date”).

24 106. At some time prior to the Closing Date, Mr. Reynolds and Mr. Tufenkjian
25 came to an agreement whereby Mr. Reynolds (through his company) would purchase all of
26 the Jewelry Store’s inventory “at cost.”

27 107. No one was particularly certain as to the date oral agreement was reached.
28

1 108. However, on or around February 22, 2015, Mr. Tufenkjian went into the POS
2 System and raised the cost of all finished inventory actually owned outright by Luxury
3 Holdings roughly 10% (the bulk of the jewelry inventory was on consignment).

4 109. According to Mr. Tufenkjian, he did this to account for the 10% commission
5 Sunbelt Business Brokers required as its fee to handle the transaction.

6 110. Mr. Reynolds knew that at any time prior to the Closing Date, he could have
7 backed out.

8 111. Mr. Reynolds had “alarms” going off in his head based upon the
9 inconsistencies in the financial records he reviewed, and had said to himself, “the guy is
10 trying to do something.” (RT 126, ll. 2-3)

11 112. Mr. Reynolds attempted to retreat from this position, and during trial testified
12 that the alarms were going off in his head during discovery. However, he was impeached with
13 his deposition, wherein he testified that during the due diligence period he understood that the
14 numbers were “everywhere” and they raised an “alarm” in his head. (RT 125, l. 25 – 128, l.
15 9)

16 113. When given an opportunity to explain his inconsistent testimony,
17 Mr. Reynolds said it is because he is “three years older.” (RT, 128, l. 11)

18 114. Despite the alarms and what he found as inconsistent and unreliable financial
19 records (in his mind), Mr. Reynolds decided to close on the sale of the Jewelry Store anyway.

20 115. The closing of the transaction culminated in, and is documented by, the
21 business sale closing instructions (“**Closing Agreement**”) admitted into evidence as Exhibit
22 J6.

23 116. Mr. Reynolds signed the Closing Agreement in his personal capacity in order
24 to assign the contractual obligations from the Offer Agreement to his company, Diamanti.

25 117. Mr. Reynolds also signed the Closing Agreement on behalf of the company he
26 formed for purposes of purchasing the Jewelry Store, that being, Diamanti.

1 118. The Closing Agreement, which is signed by Mr. Reynolds in his individual
2 capacity and on behalf of Diamanti, states that “[t]he parties hereto agree that no
3 representations have been made by either party.”

4 **I. THE JEWELRY INVENTORY**

5 119. On or about the Closing Date, Mr. Reynolds met Mr. Tufenkjian at the Jewelry
6 Store to go through the inventory.

7 120. Mr. Reynolds brought his son, the lawyer, with him.

8 121. While Mr. Reynolds took issue with the “cost” of the inventory on direct
9 examination, he testified to the opposite during his deposition, which in pertinent part was
10 read.

11 122. Mr. Reynolds had every opportunity to inspect all of the finished jewelry
12 inventory.

13 123. The portion of the finished jewelry inventory that belonged to Luxury
14 Holdings was sold for \$134,253.44, which was the cost shown in the point of sale.

15 124. However, in addition to finished jewelry inventory, Luxury Holdings also
16 included loose stones, such as diamonds, amethyst, rubies, sapphires, emeralds, findings
17 (which are pieces that are necessary to create and fix jewelry), batteries, etc. in the inventory
18 it provided to Mr. Reynolds and Diamanti.

19 125. When confronted with the \$134,253.44 price paid for inventory owned outright
20 by Luxury Holdings, Mr. Reynolds testified in his deposition (portion of which was read)
21 “I’m not arguing about this. We counted - - I paid for it. End of story.” (RT 152, ll. 5-6)

22 126. When asked whether he agreed with that \$134,253.55 price, Mr. Reynolds
23 testified in his deposition “Yes.” (RT 152, l. 8)

24 127. Mr. Reynolds ultimately paid \$300,691.23 for all of the inventory in the
25 Jewelry Store, including the inventory owned by Luxury Holdings outright, consignment
26 inventory from each of the consignors as shown on Exhibit J7 (Nazareth, G. Panther, Inc., and
27 National Gold & Diamond Centre, Inc.), and loose stones, findings, etc.

28 128. The retail price of the finished inventory, alone, was \$655,045.074.

1 **J. THE FF&E**

2 129. Included in the sale of the Jewelry Store was certain FF&E included on a bill
3 of sale admitted into evidence as Exhibit J8.

4 130. There are approximately 81 categories of FF&E listed in the bill of sale which
5 were conveyed from Luxury Holdings to Diamanti on the Closing Date, and within that
6 document Luxury Holdings represented and warranted that it was the true and actual owner of
7 each item of FF&E listed therein.

8 131. In connection with the closing for the sale of the Jewelry Store, the lease with
9 Tivoli was assigned from Luxury Holdings to Diamanti.

10 132. The assignment was admitted into evidence as Exhibit J14 (“**the**
11 **Assignment**”).

12 133. According to Paragraph 5 of the Assignment (wherein “Tenant” is defined as
13 Luxury Holdings), the Tenant/Luxury Holdings assigned all of its “right, title and interest to
14 any furniture, fixtures and equipment in the leased premises” to the “Assignee,” which was
15 defined in the Assignment as Diamanti.

16 134. Great Wash Park LLC, the landlord/owner of Tivoli, signed off on the
17 Assignment and thus agreed to the assignment of all of Luxury Holdings’ rights in and to the
18 Jewelry Store’s furniture, fixtures, and equipment to Diamanti.

19 135. Sometime after the Closing Date, a manager of Tivoli told Mr. Reynolds that
20 he (the manager) was unsure as to “who” owned certain cabinets in the Jewelry Store, and that
21 he “would have to go look in the files” to determine whether such cabinets (items 1 – 9 in
22 Exhibit J8) were owned by Diamanti/Mr. Reynolds or Tivoli.

23 136. This manager never followed up with Mr. Reynolds, and Mr. Reynolds never
24 followed up with the manager.

25 137. Tivoli never sent a letter or correspondence to Mr. Reynolds articulating
26 whether Tivoli believed it owned the cabinets/items of FF&E.

27 138. The issue never came up again.
28

1 **K. THE CUSTOMER LIST**

2 139. Sometime after the Closing Date, Mr. Reynolds desired to determine which
3 individuals on the customer list, Exhibit J24, were still alive, which had passed away and
4 which had moved away.

5 140. Mr. Reynolds testified that he hired someone to call everyone on the list, and
6 that this person reported back that most of the individuals were not customers.

7 141. Mr. Reynolds testified that he has no personal knowledge about this subject
8 matter, and any information he has was relayed to him by this third-party who did not testify
9 at trial.

10 **L. MR. REYNOLDS CLOSES THE JEWELRY STORE**

11 142. After the Closing Date, Mr. Reynolds operated the Jewelry Store.

12 143. He sold much of the finished jewelry inventory he purchased from Luxury
13 Holdings, although he could not approximate how much of the inventory he sold.

14 144. At some point in time, Mr. Reynolds closed the Jewelry Store. He did not
15 attempt to take any of the FF&E with him and testified that much of it was stolen.

16 If any of the foregoing Findings of Fact are more appropriately to be deemed to be
17 Conclusions of Law, they shall be so deemed.

18 FROM the foregoing Findings of Fact, the Court makes the following

19 **CONCLUSIONS OF LAW**

20 **A. PROCEDURAL HISTORY**

21 1. This action was initiated on April 5, 2017.

22 2. Various iterations of amended complaints were filed, ultimately culminating in
23 a Third Amended Complaint filed November 1, 2017, by Diamanti and Mr. Reynolds against
24 Luxury Holdings, Mr. Tufenkjian, and Great Wash Park LLC.

25 3. The Third Amended Complaint asserted fraud/intentional misrepresentation,
26 negligent misrepresentation, and elder abuse against Luxury Holdings and Mr. Tufenkjian,
27 breach of contract against Luxury Holdings, and no affirmative claims against Great Wash
28

1 Park LLC (which was named to support the request for rescission in order to unwind the lease
2 and attendant personal guaranty of Mr. Reynolds).

3 4. On October 12, 2018, this Court entered its Decision granting Luxury
4 Holdings and Mr. Tufenkjian's motion for summary judgment, written Order for which was
5 entered on November 14, 2018.

6 5. Notice of entry of that order was filed and served on November 16, 2018.

7 6. Following post-judgment tolling motions, Diamanti and Mr. Reynolds filed a
8 timely notice of appeal on February 19, 2019.

9 7. Diamanti and Mr. Reynolds entered into a Stipulation with Great Wash Park
10 LLC for purposes of dismissing Great Wash Park LLC, which was reduced to an Order
11 entered on April 25, 2019, notice of entry of which was filed and served on May 13, 2019.

12 8. An Appeal of the claims for breach of contract and negligent misrepresentation
13 was dismissed. *See Reynolds v. Tufenkjian*, 136 Nev. Adv. Op. 19, 475 P.3d 777 (2020).

14 9. Summary judgment against the elder abuse claim was affirmed on the basis
15 that the underlying transaction was at arms' length, and thus there could not be a relationship
16 of "trust and confidence" between Mr. Reynolds and Mr. Tufenkjian.

17 10. Summary judgment against the intentional misrepresentation was reversed,
18 leading to the instant trial and these Findings of Fact, Conclusions of Law, and Judgment.

19 **B. BURDENS OF PROOF**

20 **1. Burden of Production**

21 11. A plaintiff has the burden of production.

22 12. The party that carries the burden of production must establish a *prima facie*
23 case; burden of production entails only the presentation of evidence and a *prima facie*
24 showing is one sufficient to support the position of the party in question. *Rivera v. Philip*
25 *Morris, Inc.*, 125 Nev. 185, 209 P.3d 271 (2009) (citing *Aguilar v. Atl. Richfield Co.*, 25 Cal.
26 4th 826, 24 P.3d 493 (2001)).

27 **2. Burden of Persuasion**

28 13. Plaintiffs also have the burden of persuasion in this matter.

1 14. The party with the burden of persuasion must demonstrate that each element of
2 the cause of action has been proved.

3 15. The burden of persuasion rests with one party throughout the case and
4 “determines which party must produce sufficient evidence to convince a judge that a fact has
5 been established.” *Rivera*, 125 Nev. at 191, 209 P.3d at 275 (citations omitted).

6 **3. Clear and Convincing Evidence is Required for Fraud Claims**

7 16. Because the only claim that went to trial was for intentional misrepresentation,
8 it is necessary to establish the heightened standard for such claims.

9 17. Nevada law utilizes the clear and convincing standard for fraud. *See Lubbe v.*
10 *Barba*, 91 Nev. 596, 598, 540 P.2d 115, 117 (1975).

11 18. The Nevada Supreme Court has upheld the heightened standard for fraud time
12 and time again. *See Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592
13 (1992); *see also J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290, 89
14 P.3d 1009, 1018 (2004).

15 19. Clear and convincing evidence has been defined as “evidence establishing
16 every factual element to be highly probable,” or as “evidence [which] must be so clear as to
17 leave no substantial doubt[.]” *In re Discipline of Drakulich*, 111 Nev. 1556, 1567, 908 P.2d
18 709, 715 (1995).

19 20. Consequently, if Plaintiffs do not present such clear and convincing evidence
20 for each and every element of fraud, then a defense ruling must be entered by the Court.

21 21. A determination of fraud based on anything less than clear and convincing
22 proof is reversible error. *Hindenesh v. Whitney by Vogelheim*, 101 Nev. 175, 178, 697 P.2d
23 932, 934 (1985).

24 22. “A party alleging fraud must clearly and distinctly prove the fraud as alleged,
25 or as has been said, fraud must be established by clear and convincing proof.” *Miller v. Lewis*,
26 80 Nev. 402, 403, 395 P.2d 386, 387 (1964).

1 23. “Circumstances of mere suspicion will not warrant the court in coming to the
2 conclusion that a fraud has been committed.” *Gruber v. Baker*, 20 Nev. 453, 23 P. 858, 865
3 (1890).

4 24. In *Miller, supra*, the Nevada Supreme Court dealt with a situation where the
5 only fraud allegations were based on the testimony of plaintiff:

6 The occasions at which the fraudulent and deceitful statements of defendants
7 are alleged to have been made were four meetings between the parties, one at
8 the office of appellant Redelius, one at the Holiday Hotel, one at the offices of
9 the Sno-Lite Co., and one at the offices of attorney Emerson Wilson at the
Nevada Title Guaranty Company, all in Reno, Nevada. The testimony of the
plaintiffs in support of the allegations of fraud and deceit were all categorically
denied by the testimony of the defendants.

10 The court in its findings and conclusions said: ‘The burden of proof in
11 establishing fraud is upon plaintiffs. A party alleging fraud must clearly and
12 distinctly prove the fraud as alleged, or as has been said, fraud must be
established by clear and convincing proof. *Gruber v. Baker*, 20 Nev. 453 [23 P.
13 858, 9 L.R.A. 302]; *Tallman v. First National Bank of Nevada* [66 Nev. 248],
208 P.2d 302.

14 ‘The only testimony as to the making of the alleged promises and
15 representations upon which plaintiffs’ case is predicated is that of plaintiffs
themselves. The other non-party witnesses, Catron and Wilson, did not testify
that such representations were made in their presence.

16 ‘Plaintiffs have not sustained the burden of proof in establishing their claim of
17 fraud.

18 *Id.*

19 25. Thus, the uncorroborated testimony of a plaintiff was not enough.

20 **C. REQUIRED ELEMENTS FOR FRAUD/INTENTIONAL
MISREPRESENTATION**

21 26. In Nevada, it is well established that the elements of fraud / intentional
22 misrepresentation are as follows:

- 23 a. A false representation made by the Defendant;
- 24 b. Defendants’ knowledge or belief that the representation is false, or that
25 the Defendants does not have a sufficient basis of information to make such
26 representation;
- 27 c. The Defendants’ intention to induce Plaintiff to act or to refrain from
28 acting in reliance upon the misrepresentation;

- 1 d. Plaintiff's justifiable reliance upon the misrepresentation; and
2 e. Damage to Plaintiff resulting from such reliance.

3 *Lubbe, supra*, 91 Nev. 596, 540 P.2d 115.

4 27. It is also well established that it is essential for a plaintiff claiming fraud to
5 prove each and every element by clear and convincing evidence. *Id.* at 598, 540 P.2d at 117.

6 28. A cause of action for fraudulent concealment must be alleged with
7 particularity. *Golden Nugget, Inc. v. Ham*, 98 Nev. 311, 646 P.2d 1221 (1982).

8 29. There is no concealment claim to address here.

9 30. At the inception of this trial in opening statement, Mr. Reynolds and Diamanti
10 laid out four categories of misrepresentations they contended support their claim for
11 intentional misrepresentation:

12 a. That Luxury Holdings and Mr. Tufenkjian misrepresented the revenues
13 of the business in the Marketing Brochure, and provided financial information (sales
14 and use forms) during due diligence which included sales from the Galleria Mall
15 location (which was not being purchased as part of the transaction);

16 b. That Luxury Holdings and Mr. Tufenkjian misrepresented the cost of
17 the inventory sold to Diamanti and Mr. Reynolds when some of it was inflated roughly
18 10%;

19 c. That Luxury Holdings and Mr. Tufenkjian misrepresented their
20 ownership of certain items of the FF&E, and, in particular, the cabinets and items 1 –
21 9 on Exhibit J8; and

22 d. That the customer list provided during due diligence constituted a
23 misrepresentation because the individuals identified in that list were not customers.

24 31. In closing arguments, Diamanti and Mr. Reynolds abandoned the customer list
25 issue.

26 **D. THE REPRESENTATIONS AT ISSUE**

27 32. "Circumstances of mere suspicion will not warrant the court in coming to the
28 conclusion that a fraud has been committed." *Gruber, supra*, 20 Nev. 453, 23 P. at 865.

1 **1. The Revenue Figures Contained in the Marketing Brochure and Sales**
2 **and Use Forms**

3 33. The primary representation pursued at trial were the revenues contained in the
4 Marketing Brochure, Exhibit J4, and Sales and Use Forms, Exhibit J30.

5 34. According to Mr. Reynolds, he was informed by Mr. Tufenkjian that the
6 Marketing Brochure and Sales and Use Forms accurately portrayed the revenues, profits,
7 losses, and sales of the Jewelry Store and that these documents included false information.

8 35. According to Mr. Reynolds, on each occasion where he inquired about the
9 Jewelry Store's financial figures, he was directed to the Marketing Brochure, which included
10 false information.

11 36. In particular, Mr. Reynolds testified that the Marketing Brochure represents the
12 Jewelry Store as having revenues totaling \$800,000.00 a year and profits of roughly
13 \$110,000.00, both of which Mr. Reynolds contended were false and were inflated by the
14 Galleria Mall location.

15 37. Mr. Reynolds also testified that the Sales and Use Forms he received during
16 due diligence were inaccurate portrayals of the Jewelry Store because they included sales
17 from the Jewelry Store and the Galleria Mall location.

18 38. Mr. Tufenkjian testified that he did not utilize Galleria Mall location figures in
19 computing the numbers set forth in the Marketing Brochure.

20 39. Mr. Tufenkjian testified that he referred to prior sales figures that excluded the
21 Galleria Mall location, and then, using his experience in the market, came up with projections
22 and figures in order to create revenue and profit and loss projections.

23 40. Mr. Tufenkjian also testified that he informed Mr. Reynolds of the Galleria
24 Mall location and its existence.

25 41. In closing, it was acknowledged that Diamanti and Mr. Reynolds were aware
26 of the Galleria Mall location during due diligence.

27 42. As it relates to the revenue and profit/loss figures set forth in the Marketing
28 Brochure, the document explicitly states in multiple locations that "Readers of this report

1 should understand that statements are not guarantees of value or results[,]” that the financial
2 information set forth is a “Projection for the Year Ended December 2014[,]” that “[t]he
3 Seller’s profit/loss statement projected out for 2014 was used in the computation[,]” and it
4 “cautions readers not to place undue reliance on any forward-looking statements or projects
5 that may have been used in the analysis of value.”

6 43. Given that the Marketing Brochure was generated in year 2014, before the
7 2014 financial year ended, it was impossible to provide accurate financial figures; hence why
8 the Market Brochure stated in multiple locations that they were projections.

9 44. In light of the foregoing, the Court does not find that the projections were
10 false. They were just that – projections.

11 45. Moreover, the Court has previously stated it questions Mr. Reynolds’
12 credibility as it relates to how many conversations Mr. Reynolds did or did not have with
13 Mr. Tufenkjian, and consequently, this Court cannot and does not rely upon any conversation
14 Mr. Reynolds claimed to have with Mr. Tufenkjian.

15 46. As it relates to the Sales and Use forms, Mr. Reynolds and Diamanti conceded
16 they were aware of the Galleria Mall location and its existence.

17 47. Other than Mr. Reynolds’ own testimony, there is no evidence that
18 Mr. Tufenkjian told Mr. Reynolds that the Sale and Use forms are only for the Jewelry Store.

19 48. Mr. Tufenkjian testified contrary to Mr. Reynolds, and specifically testified
20 that Mr. Reynolds was informed that the Sales and Use included sales from both locations.

21 49. Moreover, the sales numbers from the Galleria Mall location were on site at
22 the Jewelry Store on Galleria Mall stencil paper, readily available to Mr. Reynolds during one
23 of his many visits to the Jewelry Store during the due diligence period.

24 50. In addition, other than his own testimony, Mr. Reynolds did not present any
25 financial records during the trial establishing the financial performance of the Jewelry Store in
26 2015, 2016, 2017, or after.

27 51. In other words, there was no evidence presented at trial of the Jewelry Store’s
28 financial performance (for better or worse) after the Closing Date.

1 52. Consequently, the evidence adduced at trial does not establish to the level of
2 clear and convincing evidence that either Luxury Holdings or Mr. Tufenkjian intentionally
3 made a false representation with respect to the financial performance of the Jewelry Store.

4 53. Equally as dispositive is the fact that the Closing Statement, which was signed
5 and agreed to by both Diamanti and Mr. Reynolds, states that “[t]he parties hereto agree that
6 no representations have been made by either party.”

7 54. Thus, to find a misrepresentation occurred, this Court must first disregard the
8 contractual agreement between the parties, which this Court will not do.

9 **2. The FF&E**

10 55. As it relates to the FF&E, at trial, Diamanti and Mr. Reynolds contended that
11 Luxury Holdings and Mr. Tufenkjian falsely stated they owned (and could convey) ownership
12 of items 1 – 9 of the FF&E identified in Exhibit J8 (that being some mirrors, display cases,
13 counters).

14 56. In particular, Diamanti and Mr. Reynolds contended that Tivoli owned those
15 pieces.

16 57. Diamanti and Mr. Reynolds relied on statements from a manager (named
17 “Fickenstein”) and the lease agreement.

18 58. As for the statements from Fickenstein, this is information Mr. Reynolds heard
19 that he testified about.

20 59. Mr. Reynolds did not present Fickenstein as a witness.

21 60. As for the lease, the lease agreement does not specifically address the FF&E
22 items 1 – 9 in Exhibit J8.

23 61. The Assignment, however, provides that the “Tenant” (Luxury Holdings) is
24 assigning any and all of its interest in and to any FF&E located within the leased premises of
25 the Jewelry Store from itself to the Assignee (Diamanti).

26 62. Tivoli never sent a letter claiming it owned FF&E items 1 – 9 within Exhibit
27 J8, and Mr. Reynolds made no effort to determine if he could take those items with him when
28 he closed the Jewelry Store.

63. Based upon the foregoing, Diamanti and Mr. Reynolds did not meet their burden to establish that the statements made regarding FF&E items 1 – 9 within Exhibit J8 are false.

3. Cost of the Inventory

64. The final representation Diamanti and Mr. Reynolds claim to be false is that the finished jewelry inventory was not sold at “cost” because it was the subject of a 10% markup.

65. Exhibit J7 lists the various inventory which was sold:

- a. Jewelry from consignor G. Panther, Inc., for \$28,352.00;
- b. Jewelry from consignor National Gold & Diamond Centre, Inc., for \$88,085.79;
- c. Jewelry from Nazareth for \$50,000.00; and
- d. Jewelry from Luxury Holdings for \$134,253.44.

66. Diamanti and Mr. Reynolds did not present any evidence capable of showing, or even intimating, that the G. Panther, National Gold & Diamond Centre, Inc., or Nazareth jewelry pieces were marked up.

67. The only pieces of inventory that Diamanti and Mr. Reynolds presented evidence of a mark-up were those owned by Luxury Holdings.

68. According to Mr. Reynolds, the Luxury Holdings items were marked up roughly 10% as shown in the spreadsheet generated by the POS System and admitted into evidence as Exhibit J27.

69. Mr. Tufenkjian testified that he marked up the Luxury Holdings finished jewelry pieces because he had to pay his broker 10% commission, meaning, if he sold the pieces at their original cost he would have lost money by selling them for under cost.

70. Mr. Tufenkjian testified that he informed Mr. Reynolds of this markup, and that Mr. Reynolds agreed to it.

71. Mr. Reynolds, on the other hand, testified that he was never informed of the mark up.

1 72. Ultimately, Mr. Reynolds testified in his deposition (with which he was
2 impeached) that he took no issue with the price he paid for the finished inventory from
3 Luxury Holdings.

4 73. The Court concludes Mr. Reynolds is not credible.

5 74. Consequently, this Court does not find that Diamanti and Mr. Reynolds
6 sustained their burden of establishing the false nature of the “cost” representation.

7 75. The \$134,253.44 is the dollar figure for “cost” of the finished inventory in the
8 POS System.

9 76. Moreover, Diamanti and Mr. Reynolds ignore the fact that they also received
10 loose diamonds, rubies, emeralds, sapphires, findings, gold, silver, etc., and that none of these
11 items were within the POS System despite having a value exceeding \$20,000.00 according to
12 the testimony of Mr. Tufenkjian (which was undisputed on that issue).

13 77. Thus, assuming the 10% markup which would total roughly \$14,000.00,
14 Diamanti and Mr. Reynolds still come out ahead and acquired the finished inventory and
15 loose stones for less than cost.

16 4. The Customer List

17 78. Although it was abandoned in closing, it is worth the time to address the
18 customer list since it was raised in opening and raised by Mr. Reynolds during his testimony.

19 79. The specific representation Mr. Reynolds takes issue with as it relates to the
20 customer list is that most, if not all, of the individuals identified on the customer list submitted
21 into evidence as Exhibit J24 were never customers of the Jewelry Store.

22 80. The only evidence Mr. Reynolds presented in furtherance of this contention
23 was his testimony regarding information told to him by a woman he had hired (namely, that
24 many were not customers).

25 81. Mr. Reynolds did not call this woman to testify, and, consequently, the
26 information relayed to him regarding the customers about which he testified is hearsay which
27 this Court cannot rely upon for the truth of the matter asserted.

1 82. Aside from this hearsay statement, neither Diamanti nor Mr. Reynolds
2 presented any evidence that the customer list contained inaccurate information.

3 83. Mr. Reynolds specifically testified that he did not have “personal knowledge”
4 as to whether the customers on the customer list were customers of the Jewelry Store or not.

5 84. As such, no admissible evidence was presented to demonstrate whether the
6 representations regarding the customer list were false.

7 85. The Court, therefore, finds that Diamanti and Mr. Reynolds did not meet their
8 burden to show that a misrepresentation was made regarding the customer list.

9 86. Moreover, Mr. Reynolds testified that there was a customer of the Jewelry
10 Store named Robert Reynolds, and the customer list specifically identifies a customer named
11 Robert Reynolds.

12 87. Consequently, the Court does not find Mr. Reynolds testimony regarding the
13 customer list to be credible.

14 **E. WHETHER DEFENDANTS KNEW THE REPRESENTATIONS WERE**
15 **FALSE, OR LACKED A SUFFICIENT BASIS TO MAKE SUCH**
16 **REPRESENTATIONS**

17 **1. The Revenue Figures**

18 88. In compiling the revenue figures set forth in the Marketing Brochure,
19 Mr. Tufenkjian testified that he relied on prior sales in 2014 (which were limited because the
20 Jewelry Store was fairly new), prior year tax returns, financial statements, and monthly
21 reports from the POS System, and then utilizing his experience in the industry, reached the
22 projections which are laid out.

23 89. Mr. Tufenkjian testified that he believes the figures set forth within the
24 Marketing Brochure were true at the time he made them, and testified at trial he believes those
25 projections are still true today.

26 90. Mr. Tufenkjian testified that at the time he compiled the projections, he did not
27 take into account the sales from the Galleria Mall location.

28 91. At the time the Marketing Brochure was generated, the Galleria Mall location
had been open two weeks, at most.

1 92. Mr. Tufenkjian testified that he utilized his accountant, Mark Sherman, CPA in
2 coming up with the figures, as well.

3 93. Other than innuendo regarding the Galleria Mall location, no evidence was
4 presented indicating that Luxury Holdings or Mr. Tufenkjian believed or knew that the figures
5 set forth in the Market Brochure were false.

6 94. Likewise, through using historical sales, referring to the accountant, and
7 relying upon experience, Luxury Holdings and Mr. Tufenkjian did not lack a justifiable basis
8 for making such representations.

9 95. As for the Sale and Use forms, the figures within them are true, and, other than
10 Mr. Reynolds' testimony (which the Court does not find credible), there is no evidence to
11 suggest that Mr. Tufenkjian ever stated that the Sales and Use forms are for the Jewelry Store,
12 only.

13 96. Diamanti and Mr. Reynolds failed to meet their burden on this issue.

14 2. FF&E

15 97. There was a lack of evidence tending to show that either Luxury Holdings or
16 Mr. Tufenkjian believed items 1 – 9 of the FF&E were not their property.

17 98. Mr. Tufenkjian consistently testified that those items were included as the
18 landlord's contribution to tenant improvements.

19 99. Moreover, given the plain language of the Assignment Luxury Holdings,
20 Diamanti, and Tivoli signed, Luxury Holdings and Mr. Tufenkjian had every reason to
21 believe those items were their property.

22 100. Indeed, the Assignment has Luxury Holdings assigning all of its right, title,
23 and interest in all of the FF&E to the Diamanti, and the landlord Tivoli signed off on that
24 document.

25 101. While it is true the lease agreement does not expressly say that Luxury
26 Holdings owns those items of FF&E, it equally does not say the opposite (that Luxury
27 Holding does not own those items).

1 102. And, Diamanti and Mr. Reynolds did not call any witness from or on behalf of
2 the landlord Tivoli.

3 103. Diamanti and Mr. Reynolds did not sustain their burden on this issue.

4 **3. Cost of the Inventory**

5 104. Mr. Tufenkjian ultimately testified that he sold the Luxury Holdings jewelry
6 inventory not just at cost, but actually below cost because he included (and did not charge for)
7 loose diamonds, rubies, sapphires, emeralds, findings, and other items.

8 105. According to Mr. Tufenkjian, the finished jewelry in conjunction with the
9 loose stones were valued at far more than the \$134,253.44 they were sold for.

10 106. Neither Diamanti nor Mr. Reynolds presented any testimony to counter this.

11 107. Instead, they steadfastly maintained the 10% markup increased the Luxury
12 Holdings inventory over cost without ever addressing the loose stones and other items.

13 108. Moreover, Luxury Holdings and/or Mr. Tufenkjian did in fact pay a
14 commission on the inventory.

15 109. Consequently, the Court concludes that Luxury Holdings and Mr. Tufenkjian
16 believed their representations were true and they had sufficient basis to make such
17 representations.

18 **4. The Customer List**

19 110. Diamanti and Mr. Reynolds did not present any evidence tending to show that
20 Luxury Holdings or Mr. Tufenkjian knew or believed that the customers on the customer list
21 were not in fact customers of the Jewelry Store.

22 111. Therefore, they did not sustain their burden on this issue.

23 **F. INTENTION TO INDUCE**

24 112. Based upon the lack of false statements and the Defendants' knowledge and/or
25 belief that each statement they made was true, the Court concludes that Diamanti and
26 Mr. Reynolds did not sustain their burden to a degree of clear and convincing evidence as to
27 the element of inducement.

1 **G. JUSTIFIABLE RELIANCE**

2 113. The element of justifiable reliance is well developed in Nevada.

3 114. It requires that the plaintiff plead and prove he or she justifiably relied on the
4 misrepresentation in question. *Lubbe, supra*, 91 Nev. 596, 540 P.2d 115 (outlining elements
5 of intentional misrepresentation); *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 449, 956 P.2d
6 1382, 1387 (1998) (providing that one who, without exercising reasonable care or
7 competence, “supplies false information for the guidance of others in their business
8 transactions” is liable for “pecuniary loss caused to them by their justifiable reliance upon the
9 information” (emphasis added)).

10 115. “Circumstances of mere suspicion will not warrant the court in coming to the
11 conclusion that a fraud has been committed.” *Gruber, supra*, 20 Nev. at 453, 23 P. at 865.

12 **1. Sophisticated Parties**

13 116. Courts have also held that a sophisticated party is not entitled to rely on a
14 representation when that party can protect itself by conducting its own investigation. As the
15 court explained in *Emergent Capital Inv. Mgmt., LLC v. Stonepath Grp., Inc.*, 165 F. Supp. 2d
16 615, 623 (S.D.N.Y. 2001):

17 In evaluating justifiable reliance, the plaintiffs sophistication and expertise is a
18 principal consideration. Moreover, the sophisticated investor such an Emergent
19 must show that he or she has made an independent inquiry into all available
20 information. As the Second Circuit has noted on this point: put another way, if
21 the plaintiff “has the means of knowing, by the exercise of ordinary
22 intelligence, the truth, or the real quality of the subject of the representation, he
23 must make use of those means, or he will not be heard to complain that he was
24 induced to enter into the transaction by misrepresentations.”

25 *Id.* at 623.

26 117. In other words, a sophisticated party is deemed to be able to protect himself
27 and thus not just rely upon anything presented by the opposing side in an arms-length
28 transaction.

2. Reliance Must Actually be Justifiable

 118. The Nevada Supreme Court case of *Collins v. Burns*, 103 Nev. 394, 741 P.2d
819 (1987), is illustrative on this element.

1 119. In that case, the Nevada Supreme Court held that the lack of justifiable reliance
2 bars recovery in an action for damages for the tort of fraud and deceit.

3 120. However, this principle does not impose a duty to investigate upon the plaintiff
4 absent any facts to alert the defrauded party that his reliance is unreasonable.

5 121. As the Supreme Court pointed out, the test is whether the recipient has
6 information which would serve as a “red light” to any normal person of his intelligence and
7 experience.

8 122. Justifiable reliance is such an intricate issue in fraud claims, that it has
9 elements in and of itself. It requires:

10 In order to establish justifiable reliance, the plaintiff is required to show the
11 following: the false representation must have played a material and substantial
12 part in leading the plaintiff to adopt his particular course; and when he was
13 unaware of it at the time that he acted, or it is clear that he was not in any way
14 influenced by it, and would have done the same thing without it for other
15 reasons, his loss is not attributed to the defendant.

16 *Blanchard v. Blanchard*, 108 Nev. 908, 911 – 912, 839 P.3d 1320 (1992).

17 123. A plaintiff who undertakes his own investigation which should have alerted
18 him to misrepresentation is charged with relying on himself, and no one else:

19 Generally, a plaintiff making an independent investigation will be charged with
20 knowledge of facts which reasonable diligence would have disclosed. Such a
21 plaintiff is deemed to have relied on his own judgment and not on the
22 defendant's representations.

23 *Id.*

24 **3. Diamanti and Reynolds Contentions**

25 124. Mr. Reynolds is savvy businessman with years of experience in buying and
26 selling companies, assets, and running large projects worth over a billion dollars.

27 125. He has purchased, and sold, a hotel, an investment in a mall, and operated a
28 theater.

 126. He paid for the Jewelry Store in cash.

 127. The Court finds that Mr. Reynolds is a sophisticated businessman that is more
than capable of protecting himself in an arms’ length transaction such as the one at issue here.

1 128. He testified he could have utilized a lawyer, accountant, bookkeeper, and even
2 an “iron worker” if he so desired during due diligence.

3 129. Mr. Reynolds also undertook his own investigation, visiting the Jewelry Store
4 frequently during due diligence, spending as much time as he wanted on the POS System and
5 elsewhere throughout the Jewelry Store.

6 130. Mr. Reynolds is charged with having to perform his own investigation, and
7 relying exclusively upon himself and the results of his investigation.

8 **a. The Revenues**

9 131. To prove fraud as it relates to the revenue aspect of their claim, Diamanti and
10 Mr. Reynolds were obligated to prove they justifiably relied upon the figures in the Marketing
11 Brochure and the figures in the Sales and Use forms.

12 132. The Marketing Brochure cannot be relied upon as a matter of law.

13 133. It includes a panoply of disclaimers informing prospective buyers:

14 a. “During the due diligence process, it is the responsibility of the Buyer,
15 with the aid of an accountant and/or attorney, if necessary, to independently verify all
16 representations which have been made by the Seller, particularly as they relate to the
17 adjustments made to the profit and loss statements[.]”;

18 b. “Readers of this report should understand that statements are not
19 guarantees of value or results[.]”;

20 c. “Sunbelt Business Brokers cautions readers not to place undue reliance
21 on any forward-looking statements or projects that may have been used in the analysis
22 of value[.]”;

23 d. “It is the responsibility of the Buyer to verify all representations and to
24 make a final purchase decision based on their own independent investigation[.]”;

25 e. “The books are kept in house using a sophisticated register point of sale
26 software[.]”;

27 f. “Projection for the Year Ended December 2014[.]”;

1 g. “The Seller’s profit/loss statement projected out for 2014 was used in
2 the computation[.]”

3 134. The Ninth Circuit observed that an individual could not rely on an insurance
4 booklet when it said the insurance contract is the controlling document:

5 This booklet describes provisions of the group insurance program contained in
6 the contract between the company and the insurance company. The contract
 shall be the controlling document.

7 *Pisciotta v. Teledyne Industries, Inc.*, 91 F.3d 1326, 1330 – 1331 (9th Cir. 1996).

8 135. As set forth above, the disclaimers in the Market Brochure go much farther
9 than the disclaimer in *Pisciotta*.

10 136. It is not justifiable to rely on a Marketing Brochure that is designed as an
11 advertisement that disclaims all of its contents, expressly states the figures are “projections,”
12 and tells prospective buyers they must perform their own due diligence.

13 137. The Court finds it is not justifiable to rely upon the Marketing Brochure in
14 light of its panoply of disclaimers.

15 138. As it relates to the Sales and Use forms, Mr. Reynolds testified that he knew
16 the financial figures did not reconcile after comparing them to the POS System, which
17 contained the sales and revenue figures for the Jewelry Store.

18 139. Mr. Reynolds agreed that the irreconcilable financial figures caused “alarms,”
19 and said to himself, “the guy is trying to do something.” (FOF 111, *supra*)

20 140. He was impeached with his deposition, wherein he testified that during the due
21 diligence period he understood that the numbers were “everywhere” and they raised an
22 “alarm” in his head. (FOF 112, *supra*)

23 141. It is not justifiable to rely upon financial figures one knows are inconsistent
24 and do not reconcile.

25 142. As Mr. Reynolds said, the numbers were everywhere.

26 143. Despite having these facts, Mr. Reynolds closed the transaction anyway.

1 144. Diamanti and Mr. Reynolds were not justified in relying upon the Sales and
2 Use forms that they were fully aware did not reconcile with the information in the POS
3 System.

4 145. In addition, the Court finds that Mr. Reynolds was fully aware of the Galleria
5 Mall location, and that Mr. Tufenkjian told Mr. Reynolds that the Galleria Mall location's
6 figures were on those forms.

7 146. Moreover, the document that listed the Galleria Mall locations figures were at
8 the Jewelry Store for Mr. Reynolds' inspection.

9 147. In fact, Mr. Reynolds testified that he independently learned about the Galleria
10 mall location during due diligence while comparing the figures from the Sales and Use form
11 to the POS System's figures.

12 148. These facts further support this Court's finding that Diamanti and
13 Mr. Reynolds were not justified in relying upon the Sales and Use forms (and were equally
14 not justified in relying upon the Marketing Brochure).

15 149. And, during due diligence, Mr. Reynolds came to the conclusion that
16 Mr. Tufenkjian was lying, that he could not "believe him," "[t]he numbers aren't right[,]" and
17 they "don't balance." (FOF 101, *supra*)

18 150. According to Mr. Reynolds, the seller of a business "will lie about 10 or 20
19 percent." (FOF 102, *supra*)

20 151. Mr. Reynolds also presumed Mr. Tufenkjian lied "50%[,]" and felt he could
21 meet his "commitment, if he [Mr. Tufenkjian] had lied 100 percent." (FOF 102, *supra*)

22 152. It is never justifiable to rely upon what you believe is a lie.

23 153. In other words, Mr. Reynolds knew the figures in the Marketing Brochure
24 were incorrect, and did not believe that any statements from Mr. Tufenkjian regarding the
25 financial health of the Jewelry Store were true.

26 154. The Court concludes that any reliance Diamanti and Mr. Reynolds had was not
27 justified based upon the foregoing facts.

28 155. It is never justified to rely information that you believe is a lie.

b. The FF&E

156. As it relates to the FF&E, Diamanti and Mr. Reynolds argue they justifiably relied upon Luxury Holdings and/or Mr. Tufenkjian's ownership of items 1 – 9 on Exhibit J8 in proceeding forward with the transaction.

157. Items 1 – 9, generally, are display cases and mirrors.

158. This contention by Diamanti and Mr. Reynolds ignores the 70+ other items (10 – 81) to which they concede they received good title, including a special jewelry safe, an alarm system, jewelry making equipment, etc.; basically, everything one would need to operate a fully functioning jewelry store which has the capabilities to make custom jewelry.

159. In the grand scheme of things, the display cases and mirrors identified as items 1 – 9 on Exhibit J8 are the most insignificant items of FF&E in the context of acquiring and operating a jewelry store such as the Jewelry Store.

160. The Court concludes that reliance upon valid ownership of items 1 – 9 on Exhibit J8 in terms of making the decision to proceed forward with the acquisition of the Jewelry Store is not justifiable in light of the fact that Diamanti and Mr. Reynolds concede they received good title to items 10 – 81 and concede they acquired the Jewelry Store.

161. To conclude otherwise would mean that items 1 – 9 on Exhibit J8 were the most important considerations in acquiring the Jewelry Store, a contention which is preposterous.

c. The Inventory

162. As it relates to the inventory, Diamanti and Mr. Reynolds are obligated to prove they justifiably relied upon representations from Luxury Holdings and/or Mr. Tufenkjian that the inventory was being sold at cost.

163. Here, Mr. Reynolds is a sophisticated businessman.

164. He had the abilities, and the means, to review the inventory himself and determine that the price he was about to pay was "cost."

1 165. The term cost, in and of itself, is a difficult term in the jewelry business given
2 the ever-fluctuating price of gold, silver, precious metals, and precious stones (as was testified
3 to by Mr. Tufenkjian, and not refuted by any other witness).

4 166. Mr. Reynolds also had access to the POS System, which specifically
5 articulated item cost at the date it was entered into the POS System.

6 167. As testified to by Mr. Reynolds, he reviewed the inventory, went through all of
7 it, and then took no issue with the price and paid it.

8 168. He fully satisfied himself that the price he was paying was cost.

9 169. As admitted to at trial, Mr. Tufenkjian was not representing Mr. Reynolds –
10 this was an arm's length transaction.

11 170. Consequently, to the extent Diamanti and Mr. Reynolds claim they rely upon
12 any representations that the Luxury Holdings inventory was being sold at "cost," such
13 reliance was not justified given that they did their own investigation and review of the jewelry
14 and satisfied themselves of the price.

15 171. As testified too, Mr. Reynolds took "no issue" with the price paid for the
16 Luxury Holdings jewelry.

17 **d. The Customer List**

18 172. Even though Diamanti and Mr. Reynolds abandoned the customer list issue
19 during closing, the Court addresses it for the sake of thoroughness.

20 173. While Diamanti/Mr. Reynolds testified that he in part relied upon the customer
21 list in purchasing the Jewelry Store, Mr. Reynolds acknowledged that the Jewelry Store and
22 its business does not have a monthly membership and testified that "customers are people"
23 that "come and [] go where they want to." (RT 131, ll. 6-8)

24 174. Consequently, Diamanti and Mr. Reynolds were not justified in relying upon
25 the customer list in deciding to proceed forward and close the transaction.

26 175. Moreover, Mr. Reynolds performed his own investigation, wherein he
27 concluded the Jewelry Store had low foot traffic.

1 **H. DAMAGES**

2 176. Last, Diamanti and Mr. Reynolds are obligated to prove damages.

3 177. “The measure of damages for fraudulent misrepresentation can be determined
4 in one of two ways.” *Randono v. Turk*, 86 Nev. 123, 130, 466 P.2d 218, 222–23 (1970).

5 178. “The first allows the defrauded party to recover the ‘benefit-of-his-bargain,’
6 that is, the value of what he would have if the representations were true, less what he had
7 received.” *Id.*

8 179. “The second allows the defrauded party to recover only what he has lost ‘out-
9 of-pocket,’ that is, the difference between what he gave and what he actually received.”
10 *Randano*, 86 Nev. at 130, 466 P.2d at 222 – 223.

11 180. The Restatement (Second) of Torts, which our Supreme Court often follows,
12 breaks down the calculation of damages in plain terms:

13 (1) The recipient of a fraudulent misrepresentation is entitled to recover as
14 damages in an action of deceit against the maker the pecuniary loss to him of
which the misrepresentation is a legal cause, including

15 (a) the difference between the value of what he has received in the
16 transaction and its purchase price or other value given for it; and

17 (b) pecuniary loss suffered otherwise as a consequence of the
recipient's reliance upon the misrepresentation.

18 (2) The recipient of a fraudulent misrepresentation in a business transaction is
19 also entitled to recover additional damages sufficient to give him the benefit of
his contract with the maker, if these damages are proved with reasonable
20 certainty.

21 RESTATEMENT (SECOND) OF TORTS § 549 (1977).

22 181. As it relates to purchase of the Jewelry Store, Diamanti and Mr. Reynolds did
23 not present any evidence of the Jewelry Store’s financial performance post-closing other than
24 Mr. Reynolds testifying that it performed poorly.

25 182. Mr. Reynolds never specifically testified as to the difference between what he
26 paid for the Jewelry Store, and what the value should have been; nor is he qualified to do so.

1 183. However, even assuming Mr. Reynolds is correct, Mr. Reynolds received the
2 benefit of owning the Jewelry Store and receiving a pay check up and until he decided to
3 close the Jewelry Store.

4 184. To award Mr. Reynolds the entire purchase price after allowing him to run the
5 store for years without there being any documented evidence of how the Jewelry Store
6 actually fared would be entirely speculative, lacking in foundation, and unfair.

7 185. This is particularly true in this case, where Mr. Reynolds testified that he had
8 never lost money on a business before, the Jewelry Store is the first business he has lost
9 money on, and he blames someone other than himself for its failure.

10 186. Moreover, such an award would be tantamount to rescission, which this Court
11 cannot grant because (a) there is no Jewelry Store to return, (b) the landlord is not a party to
12 this action, and (c) intentional misrepresentation does not provide for the relief of rescission.

13 187. The Court finds that Diamanti and Mr. Reynolds did not present any evidence
14 of benefit-of-the-bargain monetary damages proximately caused by the alleged
15 misrepresentations.

16 188. In addition, Diamanti and Mr. Reynolds failed to established that any monetary
17 loss was due to a reason other than general market conditions.

18 189. Perhaps the business brokers were correct in their statements set forth in the
19 email admitted as Exhibit J35: "That old man can't operate that business."

20 190. In terms of the FF&E, an alternative request of Diamanti and Mr. Reynolds is
21 that they be awarded all \$100,000.00 of the purchase price of the Jewelry Store that was
22 allocated to the FF&E.

23 191. The primary issue here is that Diamanti and Mr. Reynolds do not dispute all of
24 the FF&E within Exhibit J8; they only dispute the first nine of the eighty-one items.

25 192. No competent evidence was presented as to the value of these nine particular
26 items, and no competent evidence was presented to depreciation.

1 193. Moreover, it is impossible to come up with even an approximation as Diamanti
2 and Mr. Reynolds did not publish or admit pictures of what these nine categories of FF&E
3 look like.

4 194. Thus, it would be purely speculative to even guess what these items are, how
5 big they are, etc.

6 195. Because there is no evidence as to what these items look like, what their value
7 is, etc., assuming, *arguendo* only, liability, the Court cannot award damages for these nine
8 categories of FF&E.

9 196. Similarly, Mr. Reynolds acknowledged that he did not attempt to take those
10 particular items with him when he closed the Jewelry Store. He abandoned them.

11 197. As for the inventory of jewelry, Diamanti and Mr. Reynolds requested that the
12 entire purchase price for all of the jewelry (\$300,691.23) be awarded.

13 198. However, Diamanti and Mr. Reynolds only presented testimonial and
14 documentary evidence of a 10% markup which was limited to the Luxury Holdings finished
15 inventory, which was acquired for \$134,253.44.

16 199. That mark up, however, applied only to the finished inventory.

17 200. Also included in the sale were loose diamonds, rubies, sapphires, emeralds,
18 findings, gold, etc., which Mr. Tufenkjian – an individual that has been in the jewelry
19 business all of his life – values at far more than \$20,000.00.

20 201. Thus, by Mr. Reynolds' own logic, he purchased the Luxury Holdings
21 inventory at less than cost; meaning, he did not suffer any damage.

22 202. And regardless, the brokers emailed Mr. Reynolds and told him if
23 Mr. Tufenkjian didn't pay the commission, then he would be responsible for it as outlined in
24 Exhibit J37: "It also says in the confidentiality agreement in section 3 of the document
25 attached that you as the buyer have some financial responsibility to ensure we are paid
26 correctly by the seller."

27 203. Consequently, whether the commission was paid as a mark up or directly from
28 the buyer (Diamanti) reaches the same result – cost includes commission.

204. Equally problematic is that the retail price of all of the jewelry exceeded \$655,000.00, and Mr. Reynolds knew who sold a fair amount of the jewelry, but could not approximate how many pieces or how much in revenue or cost.

205. Consequently, Diamanti and Mr. Reynolds did not present any evidence regarding the amount of damages sustained and the amount that needed to be offset due to sales/profits made from the inventory.

206. Moreover, the Court cannot return the entire amount paid because this would require Diamanti and Mr. Reynolds to return the jewelry.

207. Because many pieces are sold, Diamanti and Mr. Reynolds cannot return the jewelry in exchange for what it was purchase for.

208. Allowing Diamanti and Mr. Reynolds to receive money and keep the jewelry (as well as all sales figures derived from sold jewelry) would be an impermissible double recovery.

209. Consequently, Diamanti and Mr. Reynolds did not present any admissible evidence of benefit-of-the-bargain or out of pocket damages.

If any of the foregoing Conclusions of Law would more appropriately be deemed to be Findings of Fact, they shall be so deemed.

JUDGMENT

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Final Judgment herein be, and the same hereby is, rendered in favor of Defendants Luxury Holdings and Tufenkjian and against Plaintiffs, and said Defendants shall have their costs of suit and any additional relief to which they may be entitled as prevailing parties.

Dated this 19th day of November, 2021

599 DB5 DEAD 79D3
Mark R. Denton
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Robert Reynolds, Plaintiff(s)

CASE NO: A-17-753532-B

7 vs.

DEPT. NO. Department 13

8 Raffi Tufenkjian, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 11/19/2021

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22 If indicated below, a copy of the above mentioned filings were also served by mail
23 via United States Postal Service, postage prepaid, to the parties listed below at their last
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