

TODD A. FREALY (SBN 198780)
 taf@lnbyb.com
 JULIET Y. OH (SBN 211414)
 jyo@lnbyb.com
 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
 10250 Constellation Boulevard, Suite 1700
 Los Angeles, California 90067

**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA**

In re:
 MOISEY FRIDMAN and ROSA FRIDMAN,

CASE NO.:
 8:12-bk-11721-ES

Debtor(s).

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: 6/18/13

Time: 10:30 a.m.

Location: Courtroom "5A" 411 West Fourth Street, Santa Ana, California

Type of Sale: Public Private

Last date to file objections:

6/4/13

Description of Property to be Sold: The bankruptcy estate's right, title, and interest in the Debtors' appeal of a judgment entered on 11/18/2011 and an order entered on 1/6/2012 against the Debtors by the California Superior Court, County of Orange, in that certain action titled Avetoom v. Fridman, et al., Case No. 30-2010-00345490, thereby commencing the appeal bearing the Case No. G046440 before the State of California Court of Appeal, Fourth Appellate District, Division Three.

Terms and Conditions of Sale: Please see Exhibit "1" attached hereto.

Proposed Sale Price: \$25,000.00

Overbid Procedure (If Any): Please see Exhibit "1" attached hereto.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e:mail address):

JULIET Y. OH, ESQ.
LEVENE, NEALE, BENDER, YOO & BRILL, L.L.P.
10250 Constellation Blvd., Ste. 1700, Los Angeles, CA 90067
Tel. 310-229-1234 Fax: 301-229-1244
Email: jyo@lnbyb.com

Date: 5/28/13

EXHIBIT “1”

1 TODD A. FREALY (SBN 198780)
JULIET Y. OH (SBN 211414)
2 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
10250 Constellation Boulevard, Ste. 1700
3 Los Angeles, CA 90067
4 Telephone: (310) 229-1234
Facsimile: (310) 229-1244
5 Email: taf@lnbyb.com, jyo@lnbyb.com

6 Attorneys for Karl T. Anderson,
Chapter 7 Trustee
7

8

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UNITED STATES BANKRUPTCY COURT

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CENTRAL DISTRICT OF CALIFORNIA

11

SANTA ANA DIVISION

12

13 In re

14 MOISEY FRIDMAN and ROSA FRIDMAN,

15 Debtors.

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Case No. 8:12-bk-11721-ES

Chapter 7

**NOTICE OF CHAPTER 7 TRUSTEE'S
MOTION FOR ORDER:
(A) AUTHORIZING SALE OF
ESTATE'S RIGHT, TITLE, AND
INTEREST IN STATE COURT
APPEAL; AND (B) APPROVING
OVERBID PROCEDURES**

[Appeal of Judgment and Order Entered by
Superior Court of the State of California,
County of Orange in *Avetoom v. Fridman, et
al.*, Case No. 30-2010-00345490]

Date: June 18, 2013

Time: 10:30 a.m.

Place: Courtroom "5A"
411 West Fourth Street
Santa Ana, California

1 **PLEASE TAKE NOTICE** that a hearing will be held on June 18, 2013, at 10:30 a.m.,
2 before the Honorable Erithe A. Smith, United States Bankruptcy Judge for the Central District
3 of California, Santa Ana Division, in Courtroom “5A” located at 411 West Fourth Street, Santa
4 Ana, California, for the Court to consider the motion (the “Motion”) filed by Karl T. Anderson,
5 the duly appointed Chapter 7 Trustee (the “Trustee”) for the bankruptcy estate (the “Estate”) of
6 Moisey Fridman and Rosa Fridman (collectively, the “Debtors”), pursuant to 11 U.S.C.
7 §363(b) and Rule 6004 of the Federal Rules of Bankruptcy Procedure, for an order
8 (A) authorizing the Trustee to sell the Estate’s right, title, and interest in the Debtors’ pre-
9 petition appeal (the “Appeal”) of a judgment entered on November 18, 2011, and an order
10 entered on January 6, 2012, against the Debtors by the Superior Court of the State of California
11 for the County of Orange (“Superior Court”) in that certain action titled *Karl Avetoom v.*
12 *Moisey Fridman, Rosa Fridman, et al.*, Case No. 30-2010-00345490 (the “State Court
13 Action”), thereby commencing the Appeal bearing the case number G046440 before the State
14 of California Court of Appeal, Fourth Appellate District, Division Three; and (B) approving the
15 overbid procedure set forth in the Motion. The complete relief requested and the bases for the
16 Motion are set forth in the Motion, the Memorandum of Points and Authorities annexed to the
17 Motion, and the Declaration of Karl T. Anderson annexed to the Motion (the “Anderson
18 Declaration”).

19 **PLEASE TAKE FURTHER NOTICE** that the Trustee is seeking authority to sell the
20 Estate’s right, title and interest in the Appeal (the “Appeal Rights”) to Karl Avetoom
21 (“Avetoom”), whose address is 1100 Rutland Road #9, Newport Beach, California 92660, for
22 the purchase price of \$25,000 (the “Purchase Price”), subject to overbid, and in accordance
23 with the terms substantially set forth in that certain *Asset Purchase Agreement* (the “APA”)
24 attached as **Exhibit “A”** hereto.¹ Avetoom was the plaintiff in the State Court Action and is a
25 creditor of the Debtors by virtue of the judgment (the “Judgment”) entered in his favor and
26 against the Debtors in the State Court Action on November 18, 2011. The proposed sale of the
27

28 ¹ A copy of the APA may be requested in writing to the Trustee’s bankruptcy counsel, whose name and
contact information are set forth on the upper left-hand corner of the first page of this Notice.

1 Appeal Rights to Avetoom is subject to notice to creditors, approval by the Court, and higher
2 and better bids received by the Trustee in accordance with the proposed overbid procedures
3 described in the Motion and below (the “Overbid Procedures”).

4 **PLEASE TAKE FURTHER NOTICE** that, in order to maximize the value obtained
5 by the Estate for the Appeal Rights, the Trustee is seeking Court approval of the following
6 Overbid Procedures in connection with the proposed sale of the Appeal Rights:

7 1. Any party interested in submitting an overbid for the Appeal Rights must attend
8 the hearing on the Motion (the “Sale Hearing”) or be represented by an individual with
9 authority to participate in the auction at the Sale Hearing.

10 2. The initial overbid for the Appeal Rights must be for at least \$26,000, with each
11 additional bid to be in an increment of at least \$1,000. All overbids must otherwise be on the
12 same terms and conditions set forth in the APA.

13 3. All overbidders (other than Avetoom) must deliver a deposit to the Trustee’s
14 counsel (Todd A. Frealy, 800 S. Figueroa Street, Suite 1260, Los Angeles, California 90017) in
15 the form of a cashier’s check made payable to “Karl T. Anderson, Chapter 7 Trustee,” in the
16 amount of \$26,000 (the “Deposit”), at or prior to the Sale Hearing to participate in the auction
17 at the Sale Hearing.

18 4. The Deposits of the overbidders (including Avetoom) who are not deemed to be
19 the successful bidder at the conclusion of the auction at the Sale Hearing shall be returned to
20 such overbidders immediately after the Sale Hearing. The Deposit of the successful bidder
21 shall be held by the Trustee pending the closing of the sale of the Appeal Rights.

22 5. To the extent that the final purchase price for the Appeal Rights is higher than
23 the amount of the Deposit provided by the successful bidder, the successful bidder shall be
24 required to deliver the difference between the final purchase price and the amount of the
25 Deposit to the Trustee’s counsel (Todd A. Frealy, 800 S. Figueroa Street, Suite 1260, Los
26 Angeles, California 90017) in the form of a cashier’s check made payable to “Karl T.
27 Anderson, Chapter 7 Trustee” within three (3) business days after the Sale Hearing. If the
28 successful bidder fails to deliver the foregoing payment, or is otherwise unable or unwilling to

1 consummate the purchase of the Appeal Rights, the Deposit of the successful bidder shall be
2 forfeited.

3 6. In the event that the successful overbidder does not timely consummate the
4 purchase of the Appeal Rights, the Trustee shall be authorized to proceed with the sale of the
5 Appeal Rights to the next highest overbidder, without further notice, hearing or Court order.

6 **PLEASE TAKE FURTHER NOTICE** that, given the nature of the Appeal Rights, as
7 discussed in the Motion, the Trustee believes that the only parties who will have any interest in
8 acquiring the Appeal Rights are Avetoom, Beach Crest Villas Homeowners Association (the
9 Debtors' former homeowners association), and the Debtors. Accordingly, the Trustee does not
10 believe that any extensive marketing effort is required or warranted in connection with the sale
11 of the Appeal Rights. However, as noted above, the Trustee is inviting overbids for the Appeal
12 Rights, in accordance with the proposed Overbid Procedures, to obtain the highest purchase
13 price possible for the Appeal Rights.

14 **PLEASE TAKE FURTHER NOTICE** that the Trustee anticipates that the proposed
15 sale of the Appeal Rights will generate unencumbered funds of at least \$25,000 for the benefit
16 of the Estate. On the other hand, it is unlikely that the Trustee's prosecution of the Appeal will
17 result in any affirmative recovery for the Estate. Given the risks and costs associated with any
18 litigation, and the fact that the litigation of the Appeal will not result in any affirmative
19 recovery for the Estate, the Trustee submits that the proposed sale of the Appeal Rights, which
20 will result in the recovery of at least \$25,000 in unencumbered cash for the Estate, is
21 overwhelming in the best interests of the Estate.

22 **PLEASE TAKE FURTHER NOTICE** that, to the extent the proposed sale of the
23 Appeal Rights is deemed a settlement of claims, the Trustee is seeking Court approval of the
24 proposed sale of the Appeal Rights, in accordance with the terms substantially set forth in the
25 APA, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

26 **PLEASE TAKE FURTHER NOTICE** that, pursuant to the Motion, the Trustee is
27 requesting that the Court waive the fourteen day stay provided by Rule 6004(h) of the Federal
28 Rules of Bankruptcy Procedure.

1 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule 9013-
2 1(f), any interested party that wishes to oppose the relief requested in the Motion must, not later
3 than fourteen (14) days prior to the scheduled hearing date set forth above, file with the Clerk of
4 the Bankruptcy Court and serve upon counsel for the Trustee (whose name and address are set
5 forth on the upper left-hand corner of the first page of this Notice) and the Office of the United
6 States Trustee, “[a] complete written statement of all reasons in opposition thereto ...,
7 declarations and copies of all photographs and documentary evidence on which the responding
8 party intends to rely, and any responding memorandum of points and authorities.”

9 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule 9013-
10 1(h), the failure to file and serve a timely opposition to the Motion may be deemed by the Court
11 to constitute consent to the relief requested in the Motion.

12 Dated: May 28, 2013

KARL T. ANDERSON, CHAPTER 7 TRUSTEE

13
14 

15 By: _____

16 TODD A. FREALY
17 JULIET Y. OH
18 LEVENE, NEALE, BENDER, YOO
19 & BRILL L.L.P.
20 Attorneys for Karl T. Anderson, Trustee
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EXHIBIT “A”
[Asset Purchase Agreement]

ASSET PURCHASE AGREEMENT

1. PARTIES: The parties to this Asset Purchase Agreement (the "Agreement") are Karl Avetoom ("Avetoom") and Karl T. Anderson, solely in his capacity as the Chapter 7 Trustee (the "Trustee") for the bankruptcy estate (the "Estate") of Moisey Fridman and Rosa Fridman (hereinafter, the "Debtors"). The Trustee and the Avetoom are hereinafter referred to collectively as the "Parties," and each individually as a "Party."

2. RECITALS: This Agreement is made with reference to the following facts:

a. The Debtors commenced a Chapter 13 bankruptcy case by filing a voluntary petition for relief under Title 11 of the United States Code (the "Bankruptcy Code") on February 10, 2012 (the "Petition Date"). The case is pending before the United States Bankruptcy Court for the Central District of California ("Bankruptcy Court") and is titled *In re Moisey Fridman and Rosa Fridman*, Case No. 8:12-bk-11721-ES.

b. On May 24, 2012, the Debtors filed a Notice of Conversion of Bankruptcy Case From Chapter 13 to Chapter 7.

c. Thereafter, the Trustee was appointed as Chapter 7 Trustee for the Debtors' bankruptcy estate.

d. Prior to the Petition Date, an action was commenced by Aveteoom against the Debtors and others for intentional infliction of emotional distress and other causes of action in the Superior Court of the State of California for the County of Orange ("Superior Court"), titled *Karl Avetoom v. Lynsey Arce aka Lynsey Diosa Arce, Moisey Fridman, Rosa Fridman, and Does 1-50*, Case No. 30-2010-00345490 (the "State Court Action").

e. On November 18, 2011, a judgment was entered in the State Court Action in favor of Avetoom and against the Debtors (the "Judgment"). A true and correct copy of the Judgment is attached as **Exhibit "1"** hereto and incorporated herein by this reference. The Judgment awarded Avetoom non-economic damages totaling \$600,000 and punitive damages totaling \$400,000 to be paid by the Debtors.

f. Following the entry of the Judgment, the Debtors filed a motion for a new trial and motion for a judgment notwithstanding the verdict (the "Motion for New Trial and JNOV") in the State Court Action. The Superior Court denied the Motion for New Trial and JNOV and issued an order accordingly (the "Superior Court Order") on January 6, 2012. A true and correct copy of the Superior Court Order is attached as **Exhibit "2"** hereto and is incorporated herein by this reference.

g. Prior to the Petition Date, on or about January 31, 2012, the Debtors filed a notice of appeal of both the Judgment and the Superior Court Order, thereby commencing that certain appeal bearing the Case No. G046440 (the "Appeal") before the State of California Court of Appeal, Fourth Appellate District, Division Three.

h. Avetoom wishes to purchase the Estate's right, title, and interest in the Appeal pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, and for valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

3. PAYMENT: Avetoom shall pay the sum of Twenty-Five Thousand Dollars (\$25,000) (the "Payment") for the Estate's right, title and interest in the Appeal. The Payment shall be remitted in the form of a cashier's check made payable to "Karl T. Anderson, Chapter 7 Trustee" and shall either be (i) brought to the hearing on the Trustee's motion for approval of this Agreement, or (ii) delivered to the following address at least one (1) business day prior to the hearing on the Trustee's motion for approval of this Agreement:

Todd A. Frealy
Levene, Neale, Bender, Yoo & Brill L.L.P.
800 S. Figueroa Street, Suite 1260
Los Angeles, California 90017

4. ASSIGNMENT OF INTEREST: Subject to the terms and conditions of this Agreement, the Trustee hereby assigns, transfers and otherwise delivers to Avetoom all of the Estate's right, title and interest in the Appeal.

5. APPROVAL BY THE COURT: The effectiveness of this Agreement is subject to the Bankruptcy Court's approval by entry of an order approving this Agreement on or before June 28, 2013, unless such deadline is waived by Avetoom. The Trustee shall file a motion for an order approving this Agreement with the Bankruptcy Court (the "Sale Motion") so that the Sale Motion may be heard and approved on or before June 28, 2013. The proposed sale of the Estate's right, title and interest in the Appeal will be subject to notice to creditors and higher and better bids through and including the hearing on the Sale Motion.

6. REPRESENTATIONS AND WARRANTIES: Each of the Parties to this Agreement represents, warrants, and agrees as to itself as follows:

a. Each Party hereto represents that he has full authority and capacity to execute this Agreement.

b. Neither Party (nor any agent, employee, representative, or attorney for either Party) has made any statement or representation to the other Party to this Agreement regarding any fact relied upon in entering into this Agreement, and neither Party has relied upon any statement, representation or promise of the other Party (or of any agent, employee, representative, or attorney for the other Party), in executing this Agreement except as expressly stated in this Agreement.

c. Each Party to this Agreement has made such investigation of the facts pertaining to this Agreement and of all the matters pertaining thereto as he deems necessary.

d. Each Party has read this Agreement and understands the contents hereof.

e. In entering into this Agreement, each Party assumes the risk of any misrepresentation, concealment or mistake. If either Party should subsequently discover that any fact relied upon by him in entering into this Agreement was untrue, or that any fact was concealed from him, or that his understanding of the facts or of the law was incorrect, such Party shall not be entitled to any relief in connection therewith, including, without limitation on the generality of the foregoing, any alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be and is final and binding between the Parties hereto, regardless of any claims of misrepresentation, promise made without the intention to performing, concealment of fact, mistake of fact or law, or of any other circumstance whatsoever.

f. The Parties will execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement.

g. Each term of this Agreement is contractual and not merely a recital.

7. MISCELLANEOUS

a. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

b. This Agreement is the entire Agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This Agreement may be amended only by an agreement in writing signed by both Parties.

c. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party.

d. In the event of litigation relating to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees.

e. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart (including facsimile signatures) shall be deemed an original, and, when taken together with other

signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

f. The Parties hereto agree that the Bankruptcy Court shall have sole and exclusive jurisdiction, sitting without a jury, to hear and determine any disputes that arise under or on account of this Agreement.

g. If any of the provisions of this Agreement are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall nonetheless continue in full force and effect without being impaired or invalidated in any way.

This Agreement, consisting of 4 pages, is made and entered into on and as of May __, 2013.

KARL T. ANDERSON, solely in his capacity
As Chapter 7 Trustee for the bankruptcy estate
of Moisey Fridman and Rosa Fridman



KARL AVETOOM

EXHIBIT “1”

[Judgment Entered on November 18, 2011]

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
HARBOR JUSTICE CENTER
NOV 18 2011
ALAN CARLSON, Clerk of the Court
BY: T. LEWIS DEPUTY
Rec'd
NOV 02 2011
T. LEWIS

1 Charles Murray, III. SBN: 195053
2 523 West Sixth Street, Suite 707
3 Los Angeles, California 90014
4 T.213.627.5983
5 F.213.627.6051
6
7 Attorney for Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE-HARBOR JUSTICE CENTER

10 KARL AVETOOM,) Case No: 30-2010-00345490
11)
12 Plaintiff,) Assigned to:
13 vs.) HON. JUDGE KAREN L. ROBINSON
14) Dept: H12
15)
16 MOISEY FRIDMAN and ROSA) ~~[PLAINTIFF'S PROPOSED]~~ JUDGMENT
17)
18 FRIDMANS, as individuals, and)
DOES 1-50,)
Defendants)

19
20 This cause came on regularly for trial on October 18, 2011 in
21 department H12, the Honorable Karen L. Robinson, Judge, presiding.
22 Plaintiff Karl Avetoom appeared by Charles L. Murray III of the Law
23 Offices of Charles L. Murray III, his attorney. Defendants Moisey
24 and Rosa Fridman appeared by D. Michael Bush of the Law Office of D.
25 Michael Bush, their attorney.

26 The trial was bifurcated. The first phase of the trial
27 consisted of the liability issues on the complaint; the second phase
28 would consist of punitive damages. A jury of twelve persons was

1 regularly impaneled and sworn to try the action.

2 **FIRST PHASE OF THE TRIAL-PLAINTIFF'S SPECIAL VERDICT**

3 **[MOISEY FRIDMAN]**

4 After hearing the evidence, arguments of counsel, and
5 instructions of the Court, and the following questions as stipulated
6 to by the parties, the jury deliberated and unanimously returned the
7 special verdict on the first phase-complaint, of the trial that
8 stated:

9
10 "We answer the questions submitted to us as follows:

11 1. Was Moisey Fridman's conduct outrageous?

12
13 Yes No

14
15 If your answer to question 1 is yes, then answer question 2.
16 If you answered no, stop here, answer no further questions,
17 and have the presiding juror sign and date this form.

18
19 2. Did Moisey Fridman intend to cause Karl Avetoom
20 emotional distress?

21 or

22 Did Moisey Fridman act with reckless disregard of the
23 probability that Karl Avetoom would suffer emotional
24 distress, knowing that Karl Avetoom was present when the
25 conduct occurred?

26
27 Yes No

1 If your answer to question 2 is yes, then answer question 3.
2 If you answered no, stop here, answer no further questions,
3 and have the presiding juror sign and date this form.
4

5 3. Did Karl Avetoom suffer severe emotional distress?
6

7 Yes No
8

9 If your answer to question 3 is yes, then answer question 4.
10 If you answered no, stop here, answer no further questions,
11 and have the presiding juror sign and date this form.
12

13 4. Was Moisey Fridman's conduct a substantial factor in
14 causing Karl Avetoom's severe emotional distress?
15

16 Yes No
17

18 If your answer to question 4 is yes, then answer question 5.
19 If you answered no, stop here, answer no further questions,
20 and have the presiding juror sign and date this form.
21

22 5. What are Karl Avetoom's damages?
23

24 [a] Past non-economic loss: Emotional distress includes suffering,
anguish, fright, horror, nervousness, grief, anxiety, worry, shock,
humiliation, and shame:..... \$ 200,000.00
25

26 [b] Future non-economic loss: Emotional distress includes
suffering, anguish, fright, horror, nervousness, grief, anxiety,
worry, shock, humiliation, and shame:..... \$ 100,000.00
27
28

1 TOTAL \$300,000.00

2

3 6. Did Defendant Rosa Fridman engage in a Conspiracy with
4 Defendant Moisey Fridman?

5

6 Or

7 Did Rosa Fridman aide and abet Moisey Fridman to cause Karl
8 Avetoom intentional infliction of emotional distress?

9

10 Yes No

11

12 Please proceed to question #7

13

14 7. Did Defendant Moisey Fridman engage in conduct, by clear
15 and convincing evidence, with either "malice", "oppression", or
16 "fraud"?

17 Yes No

18

19

20 Signed: /s/

21

22 Presiding Juror"

23

24 **FIRST PHASE OF THE TRIAL-PLAINTIFF'S SPECIAL VERDICT**

25 **[ROSA FRIDMAN]**

26 After hearing the evidence, arguments of counsel, and
27 instructions of the Court, and the following questions as stipulated
28 to by the parties, the jury deliberated and unanimously returned the

1 special verdict on the first phase-complaint, of the trial that
2 stated:

3 "We answer the questions submitted to us as follows:

4 1. Was Rosa Fridman's conduct outrageous?

5

6 Yes No

7

8 If your answer to question 1 is yes, then answer question 2.

9 If you answered no, stop here, answer no further questions,
10 and have the presiding juror sign and date this form.

11

12 2. Did Rosa Fridman intend to cause Karl Avetoom emotional
13 distress?

14

or

15

16 Did Rosa Fridman act with reckless disregard of the
17 probability that Karl Avetoom would suffer emotional
18 distress, knowing that Karl Avetoom was present when the
conduct occurred?

19

20 Yes No

21

22 If your answer to question 2 is yes, then answer question 3.

23 If you answered no, stop here, answer no further questions,
24 and have the presiding juror sign and date this form.

25

26 3. Did Karl Avetoom suffer severe emotional distress?

27

28 Yes No

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If your answer to question 3 is yes, then answer question 4.
If you answered no, stop here, answer no further questions,
and have the presiding juror sign and date this form.

4. Was Rosa Fridman's conduct a substantial factor in
causing Karl Avetoom's severe emotional distress?

Yes No

If your answer to question 4 is yes, then answer question 5.
If you answered no, stop here, answer no further questions,
and have the presiding juror sign and date this form.

5. What are Karl Avetoom's damages?

[a] Past non-economic loss: Emotional distress includes suffering,
anguish, fright, horror, nervousness, grief, anxiety, worry, shock,
humiliation, and shame:..... \$ 200,000.00

[b] Future non-economic loss: Emotional distress includes
suffering, anguish, fright, horror, nervousness, grief, anxiety,
worry, shock, humiliation, and shame:..... \$ 100,00.00

..... **TOTAL \$300,000.00**

6. Did Defendant Moisey Fridman engage in a Conspiracy with
Defendant Rosa Fridman?

Or

Did Moisey Fridman aide and abet Rosa Fridman to cause Karl

1 Avetoom intentional infliction of emotional distress?

2

3 Yes No

4

5 Please proceed to question #7

6 7. Did Defendant Rosa Fridman engage in conduct, by clear and
7 convincing evidence, with either "malice", "oppression", or
8 "fraud"?

9 Yes No

10

11 Signed: /s/

12 Presiding Juror"

13

14 **SECOND PHASE OF THE TRIAL-SPECIAL VERDICT:**

15 **PUNITIVE DAMAGES AGAINST MOISEY FRIDMAN**

16 After hearing the evidence, arguments of counsel, and
17 instructions of the Court, the jury deliberated and unanimously
18 returned a special verdict on the second phase of the trial-punitive
19 damages, awarding:

20 \$200,000.00 in punitive damages against Moisey Fridman.

21

22 **SECOND PHASE OF THE TRIAL-SPECIAL VERDICT:**

23 **PUNITIVE DAMAGES AGAINST ROSA FRIDMAN**

24 After hearing the evidence, arguments of counsel, and
25 instructions of the Court, the jury deliberated and unanimously
26 returned a special verdict on the second phase of the trial-punitive
27 damages, awarding:

28 \$200,000.00 in punitive damages against Rosa Fridman.

1 NOW, THEREFORE, IT IS ADJUDGED, ORDERED AND DECREED that
2 judgment be entered in favor of the plaintiff Karl Avetoom and
3 against defendants Moisey Fridman and Rosa Fridman on the complaint,
4 as follows:

5 The Court orders judgment against Moisey Fridman as follows:
6 \$300,000.00 non-economic damage for intentional infliction of
7 emotional distress, and \$200,000.00 in punitive damages by a finding
8 of clear and convincing evidence of malice, oppression or fraud
9 causing intentional infliction of emotional distress.

10 The Court orders judgment against Rosa Fridman as follows:
11 \$300,000.00 non-economic damage for intentional infliction of
12 emotional distress, and \$200,000.00 in punitive damages by a finding
13 of clear and convincing evidence of malice, oppression or fraud
14 causing intentional infliction of emotional distress.

15 The entire judgment against defendant Moisey Fridman is
16 \$500,000.00; (\$300,000.00 is joint and several with defendant Rosa
17 Fridman for compensatory damages).

18 The entire judgment against defendant Rosa Fridman is
19 \$500,000.00; (\$300,000.00 is joint and several with defendant Moisey
20 Fridman for compensatory damages).

21 All sums awarded hereunder will bear interest at the legal rate
22 of 10% per annum from the date ~~of the~~ judgment is entered until
23 paid.
24

25
26
27 Dated: 11.18.11

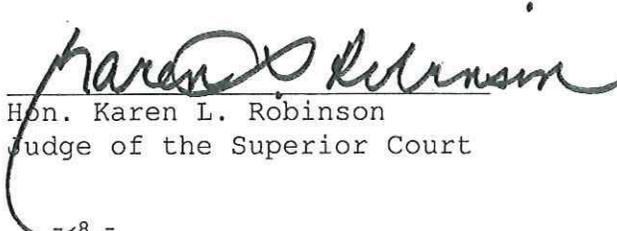

Hon. Karen L. Robinson
Judge of the Superior Court

EXHIBIT “2”

[Superior Court Order Entered on January 6, 2012]

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

JAN 06 2012

ALAN CARLSON, Clerk of the Court

L. Reid
BY L. REID

1
2
3
4
5
6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ORANGE - HARBOR JUSTICE CENTER - NEWPORT BEACH
9

10 Karl Avetoom,

30-2010-00345490

11 Plaintiff,

12 v.

13 Lynsey Arce, aka Lynsey Diosa
14 Arce, an individual, Moisey Fridman
and Rosa Fridman, as individuals and
15 Does 1-50,

**ORDER RE: DEFENDANTS' MOTION FOR
NEW TRIAL AND MOTION FOR
JUDGMENT NOTWITHSTANDING THE
VERDICT**

16 Defendants.

Hon. Karen L. Robinson
Dept. H1

17
18 Defendants' Motion for New Trial and Motion for Judgment Notwithstanding the Verdict
19 came on regularly for hearing before the Honorable Karen L. Robinson on January 4, 2012, at 1:30
20 p.m. in Department H1 of the above entitled court. Charles Murray, III., appeared on behalf of
21 plaintiff, Karl Avetoom. D. Michael Bush appeared on behalf of defendants, Moisey Fridman and
22 Rosa Fridman (Defendants).

23 The court, having reviewed the moving, opposing and reply papers filed in support and
24 opposition to the motions, as well as the respective objections that the parties filed regarding the
25 others' papers, and good cause appearing therefore, hereby rules as follows:

26 I. **Motion for New Trial**

27 The Motion for new trial is denied, conditioned on plaintiff's consent to a reduction of
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1 punitive damages against both defendants to \$25,000 each, which this court determines to be fair and
2 reasonable, in view of the financial condition evidence that was presented. If, however, the plaintiff
3 does not consent to this reduction in the amount of punitive damages, in writing, filed with the court,
4 by January 11, 2012, then the defendants' motion for new trial on the limited issue of punitive
5 damages is granted. See, *Torres v. Automobile Club of Southern California*, (1997) 15 Cal 4th 771,
6 782 [*defendant not entitled to a new trial on liability and compensatory damages following reversal*
7 *of a punitive damage award*].

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9 **A. The verdicts were supported by substantial evidence and the felony conviction was properly excluded**

10 The Court finds that the jury's verdict on the Intentional Infliction of Emotional Distress
11 claim was overwhelmingly supported by the evidence and rejects defendant's contention that
12 inclusion of plaintiff's felony conviction would have had any discernible probative value. This
13 remote, low-level felony conviction is plainly insufficient to justify defendants' 100-plus late night
14 hang up telephone calls to plaintiff and his wife, their ongoing hate filled racial name calling of
15 plaintiff as – an “Arabic Terrorist” “Muslim Terrorist” Middle Eastern Terrorist”- and hostile
16 statements—such as that plaintiff should not have children and that his wife was never pregnant but
17 is just fat or their threats to send plaintiff to jail and failed efforts to do so. Defendants' theories to the
18 contrary are without merit. Moreover, any probative value of the felony conviction was clearly
19 outweighed by the substantial likelihood that its admission would necessitate an undue consumption
20 of time and create a substantial danger of confusing the issues and misleading the jury as plaintiff
21 would have been permitted to put on evidence to explain the felony and otherwise convince the jury
22 that it was not probative of his credibility. Ev. Code §352.

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24 **B. The Court properly refused to send the Arce deposition transcript into the jury**
25 **room and even if there was error, defendants have failed to show any prejudice**

26 Defendants did not want to incur the cost of making 12 copies of the Arce Deposition
27 Transcript for the jurors. That alone is reason to deny their motion for new trial on this ground,
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1 which is predicated upon the stated error that it was the court that precluded the transcript from going
2 into the jury room. However, CCP §612 expressly prohibits the jury from taking depositions into the
3 jury room. Even if it were error not to allow the deposition transcript to go into the jury room,
4 defendants have failed to demonstrate any prejudice from the error, as the transcript was read to the
5 jurors without restriction in open court.

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7 **C. The Court properly refused Jury Instruction 1605, and even if there was error in its**
8 **exclusion, plaintiff has failed to show any prejudice from the error**

9 The rejection of CACI 1605 was likewise proper. On July 10, 2011, Judge Moss denied
10 defendant's CCP 425.16 Anti SLAPP motion as to the Intentional infliction of Emotional Distress
11 cause of action, noting that the gravamen of the claim was supported by defendants' harassing and
12 unprivileged telephone calls. Again, in response to defendants' motion for judgment on the
13 pleadings, Judge Moss stated that the trier of fact would determine whether defendants' telephone
14 calls constituted outrageous conduct. Moreover, the Intentional infliction of Emotional Distress
15 claim included a host of other highly offensive conduct and cruel statements repeatedly uttered by
16 defendants. Defendants have not cited a single case that would allow this court-even were it so
17 inclined-to abrogate the law of the case as previously ruled by Judge Moss. Whether a small portion
18 of defendants' conduct might be remotely connected to protected speech does not overcome the
19 malicious nature of their actions, which constitute the gravaman of this action.

20 Here, the jury evaluated defendants' conduct and found it to be malicious. As explained in
21 *Lundquist v. Reusser (1994) 7 Cal.4th 1193, 1205*, "[I]f malice is shown, the privilege is not merely
22 overcome; it never arises in the first instance." In enacting section 47, subdivision (c), "the
23 Legislature intended to codify without change the common law common-interest privilege. At
24 common law, that privilege embodied a two-step analysis, under which the defendant bore the initial
25 burden of demonstrating that the allegedly defamatory communication was made upon a privileged
26 occasion, and the plaintiff then bore the burden of proving that defendant had made the statement
27 with malice." (*Id. at 1208.*) "The malice referred to by the statute is actual malice or malice in fact.

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1 that is, a state of mind arising from hatred or ill will, evidencing a willingness to vex, annoy or injure
2 another person.” (*Id.* at 1213.) Thus, any protection afforded pursuant to a finding of a CACI 1605
3 privilege was not available to defendants and acceptance of this proposed instruction would not have
4 changed the outcome of the trial. *Lundquist v. Reusser* (1994) 7 Cal.4th 1193, 1205.

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6 **D. The defendants were not deprived of their right to protected speech.**

7 Defendants claim they were denied their right to protected speech. This ground for a new trial
8 fails for all of the reasons noted above concerning jury instruction 1605. The defendants were not
9 denied any rights to protected speech. Plaintiff’s relentless verbal racial attacks of plaintiff
10 repeatedly calling him an “Arab terrorist” a “middle eastern terrorist” a “Muslim terrorist” and
11 “Hitler”, making 119 hang up telephone calls to plaintiff and his wife during the middle of the night
12 over a one month period; making fun of plaintiff and his wife’s miscarriage, and continually
13 threatening plaintiff that he is going to jail or that he should be in jail is not protected speech and in
14 no way relates to any “public” interest. These comments and conduct relate solely to defendants’
15 private war against and hatred of plaintiff. Defendants have cited no authority to the contrary.
16 Accordingly, the motion for new trial on this stated ground is likewise denied.

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18 **E. Defendants’ new trial request for a based on juror misconduct fails for several**
19 **reasons.**

20 It is well settled that a party moving for new trial on the ground of juror misconduct must
21 show, by declaration or affidavit, that (1) misconduct occurred; (2) the misconduct was prejudicial to
22 a fair trial and cannot be remedied; (3) neither the moving party nor his or her attorney knew of the
23 misconduct until after the verdict, and (4) the attorney for the moving party acted promptly after
24 learning of the misconduct to call it to the court’s attention. *Linhart v. Nelson* (1976) 18 Cal 3d 641,
25 644-645; *Weathers v. Kaiser Found Hosps.* (1971) 5 Cal.3d 98, 103. Moreover, Juror misconduct as
26 a ground for granting a motion for new trial must be presented entirely by affidavits or declarations.
27 CCP §658 and 657(2); *Linhart v. Nelson, supra*, 18 Cal. 3d at 644.

1 As to the alleged juror misconduct in this case, defendants argue in their moving papers that,
2 “The jury is charged with the duty to weigh and balance evidence. It was inherently impossible for
3 the jury to deliberate for 3 hours, which included a 1 ½ hour lunch break and make such a large
4 award.” This is the sum total of defendants argument regarding juror misconduct.

5 Defendants did not file any affidavits or declarations pertaining to the claimed juror
6 misconduct – failing to weigh and balance the evidence - ie., arriving at a verdict by chance or
7 quotient/agreeing to a compromise verdict. While admissible evidence of juror misconduct is limited,
8 courts have held that juror declarations are admissible to show that one or more jurors agreed to a
9 chance or quotient verdict (see, *Lara v. Nevitt* (2004) 123 Cal. App. 4th 454, 462-463) as well as to a
10 compromise verdict (see *Lauren H. v. Kannappan* (2002) 96 Cal. App. 4th 834, 838-842). Despite the
11 authority for such declarations from jurors, none were submitted here.

12 Nor did defendants submit the required affidavits or declarations establishing that neither they
13 nor their attorney knew of the misconduct until after the verdict or that the attorney for the moving
14 party acted promptly after learning of the misconduct to call it to the court’s attention. Indeed, it was
15 precisely at the moment the verdicts were read that defendants’ were or should have been aware of
16 the jurors’ alleged misconduct as defendants knew when the jury began its deliberations and when the
17 jury returned its verdicts. If there was any concern that the jurors may have engaged in the
18 misconduct alleged by defendants during their deliberations, then the time to bring it to the courts
19 attention was then, immediately after the reading of the verdicts, *before* the jurors were discharged.
20 Defendants failed to do so and presented no declarations here to establish the contrary.

21 Moreover, by failing to bring the alleged juror misconduct to the court’s attention
22 immediately after the verdicts were read and before the jury was discharged the defendants have
23 waived any right to a new trial on this ground. *Weathers v. Kaiser Found Hosps.* (1971) 5 Cal.3d 98,
24 103.

25 **F. Excessive Damages**

26 The arguments presented by defendants in the motion for new trial contain only the sparsest
27 reference to an excessive award in connection with the evidence supporting punitive damages. These
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1 arguments are, instead, included in the JNOV and are "incorporated" into the new trial motion
2 without citation to any legal authority to do so. The Court, nevertheless, independently finds that the
3 evidence submitted to this jury clearly supports the award of compensatory damages, but does not
4 support an award of \$200,000 in punitive damages against each defendant.

5 **1. Compensatory Damages**

6 Upon weighing the evidence and determining the credibility of the witnesses, the court finds
7 that the noneconomic compensatory damages awarded against both defendants were not excessive
8 and were completely substantiated by the evidence of the pain and suffering experienced by plaintiff
9 as a result of the defendants conduct which exceeded the bounds of decency in a civilized society and
10 was extreme and outrageous. That conduct toward plaintiff included repeated insulting and hateful
11 racial name calling- "Arab terrorist," "Muslim terrorist," "Middle Eastern Terrorist,"; constant threats
12 of sending plaintiff to jail and failed efforts to do so; hurtful and insensitive comments and joking
13 about plaintiff and his wife's miscarriage, and nearly 120 hang up calls to plaintiff and his wife's cell
14 phones in the middle of the night in December 2010. As a result of defendants conduct plaintiff
15 experienced tightness in his chest, has developed elevated blood pressure, disinterest in sexual
16 relations with his wife, has become more and more agitated, unable to sleep, unable to focus on his
17 work, is exhausted all of the time, cries at night, and has been prescribed medication for the
18 emotional stress he is suffering.

19 **2. Punitive Damages**

20 As the California Supreme Court has held, "[B]ecause the quintessence of punitive damages
21 is to deter future misconduct by the defendant the key question before the court is whether the
22 amount of damages exceeds the level necessary to properly punish and deter." *Adams v. Murakami*,
23 (1991) 54 Cal. 3d 105, 110 citing *Neal v. Farmers Insurance Exchange* (1978) 21 Cal. 3d 910, 928.
24 The court cannot make a fully informed determination of whether an award of punitive damages is
25 excessive unless the record contains evidence of the defendant's financial condition. (*Id. at 110-*
26 *111*). Although there are two other factors to consider in determining if punitive damages are
27 excessive (nature of the defendants misconduct and relationship of the punitive damages to
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1 compensatory damages) even if an award is entirely reasonable in light of the other two, the award
2 can be so disproportionate to the defendant's ability to pay that the award is excessive for that reason
3 alone. *Adams, supra 54 Cal 3d at 111.*¹

4 A plaintiff seeking an award of punitive damages has the burden of producing evidence of the
5 defendant's financial condition. (*Id. at 119*); *Ev. Code §500*. Moreover, given the windfall nature
6 of punitive damages, "[I]t is inherently prejudicial to require a defendant to introduce evidence of
7 personal finances. Doing so places the defendant in the position of bidding against himself or
8 herself." (*Id. at 120-121*).

9 The evidence of the defendants' financial condition, in this case, consisted of the defendants'
10 oral testimony. Defendant Moisey Fridman testified that he had the following assets and debts:

- 11 1. \$30,000 IRA;
- 12 2. Checking account, balance \$100;
- 13 3. Unencumbered real property purchased in 1999 for \$200,000, present value unknown,
14 \$124,000 line of credit;
- 15 4. Social security payments of \$1,500 per month received by Moisey Fridman;
- 16 5. Social security payments of \$700 per month received by Rosa Fridman;
- 17 6. U.S. Bank account, balance \$300.00
- 18 7. Union Bank Money Market account, balance \$2,500
- 19 8. 2007 Toyota Camry
- 20 9. No other assets, no recurring debts

21 Defendant Rosa Fridman testified in sum that her husband's statements were true and that she
22 did not handle their financial affairs. Plaintiff testified, that he believed defendants' condo was worth
23 \$400,000 and that they owned some other property with their son.
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25 ¹ The First factor is the reprehensibility of the defendants conduct. As the evidence in this case demonstrates, the defendants' conduct was malicious,
26 extreme and outrageous. This factor weighs heavily in favor of punitive damages.

27 The second factor the court must consider is the reasonable relationship between the punitive damage award and the injury suffered by plaintiff
28 (compensatory damages). The \$200,000 punitive damage award against each defendant is less than the compensatory damages plaintiff received for the
harm he has suffered and will continue to suffer and thus there is a reasonable relationship between the punitive damages and the compensatory
damages reflecting plaintiff's injury.

1 No evidence or testimony was introduced about the present value of the defendant's primary
2 asset, their residence, or its condition. Nor was any evidence presented confirming defendants'
3 ownership of any other property. On the state of the evidence presented, the jury's punitive damage
4 award of \$200,000 per defendant represents nearly 100% of their net worth. This amount of punitive
5 damages is excessive in light of the evidence of defendants' financial condition.

6 Plaintiff's argument that, because the defendants failed to produce documents requested
7 regarding their financial condition, they are estopped from asserting any error. Putting aside the
8 proof of service issue regarding the plaintiff's request of defendants' financial records, it is plaintiff's
9 burden to establish the defendant's financial condition, not the defendants. *Adams, supra 54 Cal 3d*
10 *at 120-121.*

11 Notwithstanding the foregoing, pursuant to CCP §662.5(b) if the plaintiff consents to a
12 reduction in the amount of punitive damages against both defendants to \$25,000 each, which this
13 court determines to be fair and reasonable, in view of the financial condition evidence that was
14 presented, then the defendants' motion for new trial on the grounds of excessive punitive damages is
15 denied. If, however, the plaintiff does not consent to this reduction in the amount of punitive
16 damages, in writing, filed with the court, by January 11, 2012, then the defendants' motion for new
17 trial on the limited issue of punitive damages is granted. See, *Torres v. Automobile Club of Southern*
18 *California, (1997) 15 Cal 4th 771, 782 [defendant not entitled to a new trial on liability and*
19 *compensatory damages following reversal of a punitive damage award].²*

20 21 22 **II. Motion for Judgment Notwithstanding the Verdict**

23 For purposes of a JNOV motion, all evidence supporting the verdict is presumed true. The
24 issue is whether these facts *constitute a prima facie case or defense as a matter of law.* (*Moore v. San*
25 *Francisco (1970) 5 Cal.3d 728, 733.*) Moreover, the trial judge cannot weigh the evidence or
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27 ² As indicated herein, the evidence in this case supports an award of punitive damages. Should there be a retrial on that limited issue and plaintiff does
28 present evidence of the defendants true financial condition, including the present value of defendants' unencumbered residence in Newport Beach, California, another award of punitive damages is quite probable.

1 determine the credibility of witnesses on JNOV motions, as it may do on a motion for new trial.
2 (*Hauter v. Zogarts* (1975) 14 Cal.3d 104.)

3 Here, as discussed in the motion for new trial, there is substantial evidence to support the
4 jury's verdict. Accordingly, defendants cannot prevail on this motion. Pursuant to *Reynolds v.*
5 *Wilson* (1958) 51 Cal.2d 94, 99, "[A] JNOV in favor of defendant is proper only where no evidence
6 of "sufficient substantiality" supports the verdict in plaintiff's favor. This is determined by
7 *disregarding* evidence on defendant's behalf, giving plaintiff's evidence all the value to which it is
8 legally entitled, and indulging in every legitimate inference that may be drawn from that evidence."

9 The only argument not previously addressed in the motion for new trial is defendants'
10 contention that the settlement with Arce bars litigation against the defendants because there has not
11 been a finding of good faith; the argument is without merit.

12 Any party, including the defendants, could have sought a determination that the plaintiff and
13 Arce's settlement was made in good faith. (CCP §877.6(a)(1)) Instead, defendants made no
14 objection when the settlement was placed on the record nor have asserted that the settlement was
15 reached in bad faith. The burden of proof is placed on the party challenging the settlement. *Jones v.*
16 *John Crane* (2005) 132 Cal.App.4th 990.

17 Several courts have recognized that CCP §877 abrogated the common law rule that a
18 settlement with one tortfeasor barred action against any other party liable for the same injury (*Watson*
19 *v. McEwen* (1967) 225 Cal.App.2d 771, 775.) Defendants rely on a case that is currently on appeal
20 before the California Supreme Court and is readily distinguishable on its facts. In *Leung v. Verdugo*,
21 a medical malpractice case previously published at 193 Cal.App.4th 971, the physician settled for a
22 fraction of his obvious responsibility. The trial court soundly rejected the settlement, which did not
23 even approximate good faith. The plaintiff nevertheless proceeded against the remaining defendants.
24 A bad faith finding by the trial court, wherein the details of the case, apportionment and contribution
25 were examined, is far different from the instant matter, where there is simply no finding regarding the
26 settlement at all. As noted, here, no party even presently contends that the Arce settlement was in

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bad faith. Moreover, any issues of apportionment or contribution are not presently before the court.
Accordingly, the motion for judgment notwithstanding the verdict on this ground is denied.

IT IS SO ORDERED.

Dated: January 6, 2012


Karen L. Robinson
Superior Court Judge

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, HARBOR JUSTICE CENTER-NEWPORT BEACH**

Avetoom Plaintiff(s) Vs. Arce Defendant(s)	CASE NUMBER: 30-2101-00345490 CERTIFICATE OF SERVICE BY MAIL OF Order Re: Motion for New Trial and Motion for Judgment Notwithstanding the Verdict, DATED 01/06/2012
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I, ALAN CARLSON, Executive Officer and Clerk of the Superior Court, in and for the County of Orange, State of California, hereby certify; that I am not a party to the within action or proceeding; that on 01/06/2012, I served the Order Re: Motion for New Trial and Motion for Judgment Notwithstanding the Verdict, dated 01/06/2012, on each of the parties herein named by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service mail box at Newport Beach, California addressed as follows:

D M BUSH
9 CORPORATE PARK, SUITE 100
IRVINE, CA 92606

CHARLES MURRAY, III
523 W. 6TH STREET #707
LOS ANGELES, CA 90014

ALAN CARLSON,
Executive Officer and Clerk of the Superior Court
In and for the County of Orange

DATED: 01/06/2012

By: *L. Reid*

L. REID, Deputy Clerk

CERTIFICATE OF SERVICE BY MAIL