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Attorneys for Plaintiff **JOHN C. TORJESEN**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOHN C. TORJESEN, an individual, Plaintiff, *vs.* HARRY MANSDORF, individually and as Trustee of the Mansdorf Family, JAMIE GONZALES, an individual, ROBERT MULLEN, an individual, PAUL ORLOFF, an individual, and DOES 1 through 100, inclusive, Defendants	**Case No. BC425880** [Assigned for all purposes to the Hon. Elizabeth Allen White, Dept. 48] **PLAINTIFF JOHN C. TORJESEN, ESQ.'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT HARRY MANSDORF'S MOTION FOR RECONSIDERATION & MOTION TO VACATE AND SET ASIDE DEFAULT** Date: March 27, 2012 Time: 8:30 a.m. Dept.: 48

I.

INTRODUCTION

Long after default has been entered in this action, after repeatedly failing to appear in nearly every hearing on this case, after failing to file the required substitution of attorney as directed by the Court (even after Plaintiff filed an OBJECTION TO AND REQUEST TO STRIKE THE PETITION FOR REJECTION OF AWARD AND REQUEST FOR TRIAL DE NOVO on November 22, 2011) Defendant now files the instant MOTION FOR RECONSIDERATION and

MOTION TO VACATE AND SET ASIDE DEFAULT.

Defendant MANSDORF'S motion cannot be sustained for the following reasons:

(1) The Motion for Reconsideration is untimely pursuant to California Code of Civil Procedure § 1008;

(2) The Motion for Reconsideration is in violation of California Code of Civil Procedure § 1008 and cannot be considered because judgment has already been entered on January 31, 2012, and this Court has no jurisdiction to hear a motion for reconsideration;

(3) Defendants have failed to offer any new facts to justify reconsideration under California Code of Civil Procedure § 1008;

(4) The Court has no jurisdiction to consider Mansdorf's Petition for Reconsideration because he is currently in default;

(5) The default judgment against Mansdorf cannot be set aside under C.C.P § 473(b) on grounds of mistake, inadvertence, surprise or excusable neglect, as the statutory time limit to bring such a motion has long passed;

(6) The Default Judgment against Mansdorf cannot be set aside under C.C.P § 473 for lack of personal jurisdiction because Mansdorf filed the Petition for Mandatory Fee Arbitration after Default Judgment was entered, and he never served the Petition on Mr. Torjesen as required by California Business and Professions Code § 6201(b) & (c);

(7) The Default Judgment cannot be set aside since Mansdorf failed to timely file a notice of stay of action prior to entry of default as required by California Rules of Court, Rule 3.650(a).

II.

DEFENDANTS' MOTION FOR RECONSIDERATION CANNOT BE CONSIDERED BY THIS COURT BECAUSE IT IS UNTIMELY, IS BEING MADE AFTER JUDGMENT HAS ALREADY BEEN ENTERED, AND OFFERS NO NEW OR DIFFERENT FACTS

Under the conditions described below, the losing party may make a motion before the same judge to reconsider and enter a different order. Such motion must be:

- brought before the same judge that made the order.
- **"made within 10 days after service upon the party of notice of entry of the order"**
- **based on "new or different facts, circumstances or law" than those before the court at the time of the original ruling;**
- supported by declaration stating the previous order, by which judge it was made, and the new or different facts, circumstances or law claimed to exist; and
- **made and decided before entry of judgment.**

California Code of Civil Procedure § 1008.

A. Defendants Motion is Untimely, Since it was Filed and Served More Than 10 Days After the Notice of Ruling was Served

A formal notice of ruling is required to set the time limit running on a motion for reconsideration. *The 10-day time limit runs only from "service of notice of entry" of the order.* California Code of Civil Procedure § 1008(a); Advanced Bldg. Maintenance v. State Comp. Ins. Fund (1996) 49 Cal.App.4th 1388, 1392, 57 Cal.Rptr.2d 310, 312; Forrest v. State of Calif. Dept. of Corps. (2007) 150 Cal.App.4th 183, 203, 58 Cal.Rptr.3d 466, 481.

The 10-day deadline for seeking reconsideration is not extended under California Code of Civil Procedure § 1013 for service by mail, fax or overnight delivery, which applies "in the absence of a specific exception provided for by this section or other statute or rule of court."

Because California Code of Civil Procedure § 1008(a) expressly provides a 10-day time limit for a motion for reconsideration, California Code of Civil Procedure § 1013 extension does not apply.

In this case, Plaintiff TORJESEN served his Notice of Ruling January 18, 2012. (See Plaintiff Torjesen's Notice of Ruling dated January 18, 2012, a copy of which is attached hereto as Plaintiff's EXHIBIT "A"). Therefore, Defendants must have filed and served any Motion for Reconsideration of this ruling no later than January 28, 2012. Defendants failed to do so, and in fact, served the instant motion on February 2, 2012. As such, the motion is untimely and cannot be considered pursuant to the statutory language of California Code of Civil Procedure § 1008.

B. Judgement Has Already Been Entered, Precluding Reconsideration by This Court

The court loses jurisdiction to rule on a pending motion for reconsideration after entry of judgment. APRI Ins. Co. v. Sup.Ct. (Schatteman) (1999) 76 Cal.App.4th 176, 181, 90 Cal.Rptr.2d 171, 174--immaterial that motion to reconsider was filed before entry of judgment; Branner v. Regents of Univ. of Calif., supra, 175 Cal.App.4th at 1048, 96 Cal.Rptr.3d at 693--"A motion to reconsider is not valid if it is filed after the final judgment is signed." Once a judgment has been entered, the proper challenge is a motion for new trial (Ca Civ Pro § 657), which may be based on various grounds including errors of law. See Ramon v. Aerospace Corp. (1996) 50 Cal.App.4th 1233, 1237-1238, 58 Cal.Rptr.2d 217, 219.

This Court heard this motion and ruled upon the motion on January 11, 2012. However, the Court did not immediately enter judgment and in fact waited until January 31, 2012, to enter judgment so as to give Defendants the statutory time to object to entry of judgment or file a motion for reconsideration. Defendants failed to do so, and judgment was entered on January 31, 2012. (See Judgment for Plaintiff Torjesen, signed by this Court on January 31, 2012, a copy of which is attached hereto as Plaintiff's EXHIBIT "B"). Since judgment has been entered, this Court has no jurisdicition to rule on the pending motion for reconsideration, and must deny it based on this basis alone.

C. Defendants Have Offered No New or Different Facts, Circumstances, or Law Justifying Reconsideration

The legislative intent was to restrict motions for reconsideration to circumstances where a party offers the court some fact or circumstance not previously considered, and some valid reason for not offering it earlier. Gilberd v. AC Transit (1995) 32 Cal.App.4th 1494, 1500, 38 Cal.Rptr.2d 626, 629-630; Mink v. Sup.Ct. (Arnel Develop. Co., Inc.) (1992) 2 Cal.App.4th 1338, 1342, 4 Cal.Rptr.2d 195, 197; Baldwin v. Home Sav. of America (1997) 59 Cal.App.4th 1192, 1198, 69 Cal.Rptr.2d 592, 597.

The burden under § 1008 "is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: *the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial*." New York Times Co. v. Sup.Ct. (Wall St. Network, Ltd.) (2005) 135 Cal.App.4th 206, 212-213, 37 Cal.Rptr.3d 338, 343 (emphasis added). A party seeking reconsideration of a prior order based on "new or different facts, circumstances or law" must provide a satisfactory explanation for failing to present the information at the first hearing; i.e., a showing of reasonable diligence. Garcia v. Hejmadi (1997) 58 Cal.App.4th 674, 690, 68 Cal.Rptr.2d 228, 238; California Correctional Peace Officers Ass'n v. Virga (2010) 181 Cal.App.4th 30, 47, 103 Cal.Rptr.3d 699, 714, fn. 15 (collecting cases)--renewal motion also subject to reasonable diligence requirement.

Lack of a chance for oral argument is "clearly collateral to the merits" and therefore not ground for reconsideration. Garcia v. Hejmadi, supra, 58 Cal.App.4th at 691, 68 Cal.Rptr.2d at 238-239. *Counsel's mistake based on ignorance of the law is not a proper basis for reconsideration.* Pazderka v. Caballeros Dimas Alang, Inc. (1998) 62 Cal.App.4th 658, 670, 73 Cal.Rptr.2d 242, 248. A motion for reconsideration was properly denied where based on evidence that could have been presented in connection with the original motion. Morris v. Agfa Corp. (2006) 144 Cal.App.4th 1452, 1460, 51 Cal.Rptr.3d 301, 308].

The sole alleged "new fact" stated by Mr. Orloff in this motion is:

"The new fact or law is the Substitution of Attorney filed by Paul Orloff on January 12,

2012." (See Defendants' Motion, p. 15, line 1). Mr. Orloff then goes on in his declaration to claim that he made a mistake by failing to file a substitution of attorney earlier:

> "I did not believe that I needed to file a substitution of attorney for due to the fact that I made a general appearance for Mr. Mansdorf on November 16, 2011." (Orloff Declaration, par. 8, lines4-5). If it is the Court's determination that I should have filed a Substitution of Attorney form earlier than I had, **I apologize and ask that this Court not hold *my error* against Mr. Mansdorf.**" (Orloff Declaration, par. 9, lines 9-11).

Mr. Orloff admits in his declaration that the sole "new fact" in his motion for reconsideration is his own error to timely file a substitution of attorney. As the case above, clearly states, *counsel's mistake based on ignorance of the law is not a proper basis for reconsideration.* Pazderka v. Caballeros Dimas Alang, Inc. (1998) 62 Cal.App.4th 658, 670, 73 Cal.Rptr.2d 242, 248. As such, this admission of fault cannot be considered as a basis to reconsider.

III.

THE COURT HAS NO JURISDICTION TO CONSIDER MANSDORF'S PETITION FOR RECONSIDERATION, AS HE IS CURRENTLY IN DEFAULT

Entry of defendant's default instantaneously cuts off its right to appear in the action. The defendant is "out of court." It has no right to participate in the proceedings until either (a) its default is set aside (in which event, it may respond to the complaint), or (b) a default judgment is entered (in which event, it may appeal). Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc. (1984) 155 Cal.App.3d 381, 385-386, 202 Cal.Rptr. 204, 207. *Entry of default ousts the court of jurisdiction to consider any motion other than a motion for relief from default.* W.A. Rose Co. v. Mun.Ct. (FitzSimmons) (1959) 176 Cal.App.2d 67, 71, 1 Cal.Rptr. 49, 52.

In this case, Mansdorf's default was entered on September 16, 2010, and again on December 10, 2010. This entry of default has not been set aside, and as will be shown below, cannot be set aside. Further, Plaintiff Torjesen has yet to prove up his default, so Mansdorf must wait until default is proven up and entered by the Court. At that point, Mansdorf has the option to appeal.

IV.

THE DEFAULT JUDGMENT AGAINST MANSDORF CANNOT BE SET ASIDE UNDER C.C.P § 473(b) ON GROUNDS OF MISTAKE, INADVERTENCE, SURPRISE OR EXCUSABLE NEGLECT, AS THE STATUTORY TIME LIMIT TO BRING SUCH A MOTION HAS LONG PASSED

Defendant may seek discretionary relief from default under California Code of Civil Procedure § 473(b) on grounds of "mistake, inadvertence, surprise or excusable neglect." (¶5:282 *The motion for discretionary relief must be filed within 6 months after the clerk's entry of default.* The motion is ineffective if filed thereafter, even if it is within 6 months after entry of the default judgment.

In this case, default was entered against Mr. Mansdorf by the Clerk of Court on September 16, 2010. (See Defendant's Motion, Exhibit F). Therefore, under this section, Defendants or his attorneys must have filed a motion to set aside default based on California Code of Civil Procedure § 473(b), no later than March 2011. Therefore, Defendants cannot obtain relief under this section and default cannot be set aside.

V.

THE DEFAULT JUDGMENT AGAINST MANSDORF CANNOT BE SET ASIDE UNDER C.C.P § 473 FOR LACK OF PERSONAL JURISDICTION

Persons domiciled within the forum state when suit is commenced are subject to the personal jurisdiction of local courts. Milliken v. Meyer (1940) 311 U.S. 457, 462, 61 S.Ct. 339, 342; Allen v. Sup.Ct. (Bromberg) (1953) 41 Cal.2d 306, 310-311, 259 P.2d 905, 907. Therefore, Mr. Mansdorf clearly was subject to personal jurisdiction in this lawsuit, as he is a resident of Beverly Hills. Defendants claim that this jurisdiction was somehow suspended when Mr. Mansdorf **FILED** a Petition for Mandatory Fee Arbitration. However, this is not the case.

California Business and Professions Code § 6201 holds:

> (b) If an attorney, or the attorney's assignee, commences an action in any court or any other proceeding and the client is entitled to maintain arbitration under this article, and the dispute is not one to which subdivision (b) of Section 6200 applies, **the client may stay the action or other proceeding *by serving* and filing a request for arbitration in accordance with the rules established by the board of trustees pursuant to subdivision (a) of Section 6200.** The request for arbitration ***shall be served* and filed** prior to the filing of an answer in the action or equivalent response in the other proceeding; failure to so request arbitration prior to the filing of an answer or equivalent response shall be deemed a waiver of the client's right to arbitration under the provisions of this article if notice of the client's right to arbitration was given pursuant to subdivision (a).
>
> (c) Upon filing ***and service*** of the request for arbitration, **the action or other proceeding shall be automatically stayed until the award of the arbitrators is issued or the arbitration is otherwise terminated**. The stay may be vacated in whole or in part, after a hearing duly noticed by any party or the court, if and to the extent the court finds that the matter is not appropriate for arbitration under the provisions of this article. The action or other proceeding may thereafter proceed subject to the provisions of Section 6204.

In this action, Mr. Torjesen was never served with the Petition for Mandatory Fee Arbitration. Mr. Mansdorf has attached no documents to this motion indicating that Mr. Torjesen was ever served with any such Petition. Moreover, Defendants go on to attempt to mislead the Court by claiming that, "[o]n July 15, 2010, the Los Angeles County Bar Association notified Plaintiff of the Fee Arbitration. See Exhibit C." (See Defendant's Motion, p. 3, lines21-22). In fact, however, "Exhibit C" to Defendant's motion is letter sent to Mr. Mansdorf on July 14, 2010, advising him that his request for a fee waiver for arbitration has been denied. This document was copied to Mr. Torjesen but was in no way directed to him, and it did not advise Mr. Torjesent that any such arbitration request had been filed or served. Having no notice of any arbitration request since it was not served upon him, Mr. Torjesen lawfully requested entry of default against Mansdorf on August 20, 2010, which was entered on September 16, 2010. Torjesen requested entry of default as to Plaintiff's First Amended Complaint on December 7, 2010,which was entered on December 10, 2010.

On November 22, 2010, Mr. Torjesen was contacted for the first time by the Los Angeles County Bar Association and advised that a Petition for Mandatory Fee Arbitration had been filed. (See November 22, 2010, Letter from LACBA to Torjesen, a copy of which is attached hereto as Plaintiff's EXHIBIT "C"). After receiving this first notice of petition for fee arbitration, on December 6, 2010, Mr. Torjesen represented to this Court that he received a "generic notice with the person and case number" indicating that Mr. Mansdorf had initiated a petition for fee arbitration." (See Defendant's Exhibit H, p. 2, lines 18-27). On March 28, 2011, Mr. Mansdorf filed a declaration under the penalty of perjury that stated as follows:

> **"On or about December 6, 2010, Harry Mansdorf filed a Notice of Petition for Fee Arbitration."**

(See Mansdorf Declaration in Response to OSC, dated March 28, 2011, a copy of which is attached hereto as Plaintiff's EXHIBIT "D").

The uncontradicted evidence shows that Mr. Mansdorf did not file a Notice of Petition for Fee Arbitration until December 6, 2010. The evidence clearly shows that Mr. Torjesen was first informed of this fee dispute on November 22, 2010, ***two months after he requested entry of default***, and that notice was by letter from the LACBA, and not the required service of petition from Mansdorf. Defendants have submitted no evidence that Mansdorf served the Petition for Mandatory Fee Arbitration on Torjesen prior to entry of default. *In fact, Mansdorf's own prior pleadings calls into question his veracity and potentially implicates both Mansdorf and his counsel in intentional fraud.* Either Mr. Mansdorf forgot when he actually filed his Notice of Petition for Fee Arbitration, or he and his attorney are being intentionally deceptive in an effort to convince this Court that Mr. Torjesen somehow received a Notice of said Petition five months before Mansdorf ever even filed it. Therefore, Mr. Torjesen was under no obligation to file a Request for

Stay of Action until he received Mansdorf's Notice of Petition for Fee Arbitration, which was allegedly filed on December 6, 2010, *and never served on Torjesen.* As such, the default of Mansdorf was properly entered on September 16, 2010, and December 10, 2010. Therefore, the default judgments are not void, as the action was not automatically stayed prior to entry of default.

VI.

<u>THE DEFAULT JUDGMENT CANNOT BE SET ASIDE SINCE DEFENDANT FAILED TO TIMELY FILE A NOTICE OF STAY OF ACTION PRIOR TO ENTRY OF DEFAULT</u>

California Rules of Court, Rule 3.650(a) states:

> The party who requested or caused a stay of a proceeding must immediately serve and file a notice of the stay and attach a copy of the order or other document showing that the proceeding is stayed. **If the person who requested or caused the stay <u>has not appeared</u>, or is not subject to the jurisdiction of the court, the plaintiff must immediately file a notice of the stay** and attach a copy of the order or other document showing that the proceeding is stayed. The notice of stay must be served on all parties who have appeared in the case.

A general appearance is participation in the action in a manner that recognizes the court's jurisdiction before filing a motion to quash: "If the defendant raises an issue for resolution or seeks relief available only if the court has jurisdiction over the defendant, then the appearance is a general one." <u>Factor Health Management, LLC v. Sup.Ct</u>. (Apex Therapeutic Care, Inc.) (2005) 132 Cal.App.4th 246, 250, 33 Cal.Rptr.3d 599, 601 (emphasis added; internal quotes omitted); Mt. <u>Holyoke Homes, LP v. California Coastal Comm'n</u> (2008) 167 Cal.App.4th 830, 844, 84 Cal.Rptr.3d 452, 463--participating in action "in some manner which recognizes the authority of the court to proceed." *An attorney's appearance for defendant at a case management conference, and participating therein without objecting as to lack of jurisdiction over the defendant, has been held to be a general appearance by defendant because the case management process is "premised on the trial court having jurisdiction over the parties participating in* it." <u>Mansour v. Sup.Ct.</u>

(Eidem), supra, 38 Cal.App.4th at 1757, 46 Cal.Rptr.2d at 195.

In this action, attorney Orloff has declared that he "made an appearance on behalf of Mansdorf during the time period May 7, 2010, through October 18, 2011. . ." (See Orloff Declaration, p. 21, lines 21-23). Orloff claims that this appearance was not a general appearance, and he may be correct. However, as shown above, appearance at a status conference may constitute a general appearance. Plaintiff contests that Orloff was lawfully allowed to appear on behalf of Mandorf, as Mansdorf was in pro per, and Orloff was repeatedly advised by the Court that he could not appear absent a substitution of attorney. However, assuming arguendo that Orloff did make an appearance on or about May 7, 2010, this would have constituted a general appearance and required Mansdorf to file the Notice of Stay in this action. Mansdorf however, never filed any such notice of stay, and Plaintiff Torjesen filed the Notice of Stay in an abundance of caution on March 1, 2011. Therefore, arguably, it was Defendant that violated CRC Rule 3.650(a) by failing to file a Notice of Stay after he filed his Notice of Petition for Mandatory Arbitration on December 6, 2010. However, this issue is moot, since it is clear from the record that Mansdorf did not even file a Petition for Fee Arbitration until December 6, 2010, and never served it on Torjesen as required by California Business and Professions Code § 6201.

VII.

CONCLUSION

Based on the foregoing, Defendant's motion must be denied in its entirety.

DATED: February 8, 2012

MANCINI & ASSOCIATES
A Professional Law Corporation

By: ______________________
CHRISTOPHER BARNES, ESQ.
Attorneys for Plaintiff

EXHIBIT ‘A’

MARCUS A. MANCINI, ESQ. (State Bar No.146905)
CHRISTOPHER BARNES, ESQ. (State Bar No.206186)
TARA J. LICATA, ESQ. (State Bar No. 266111)
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Attorneys for Plaintiff **JOHN C. TORJESEN**

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JAN 19 2012

John A. Clarke, Executive Officer/Clerk
By [signature] Dep
RAUL SANCHEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOHN C. TORJESEN, an individual, Plaintiff, *vs.* HARRY MANSDORF, individually and as Trustee of the Mansdorf Family, JAMIE GONZALES, an individual, ROBERT MULLEN, an individual, PAUL ORLOFF, an individual, and DOES 1 through 100, inclusive, Defendants	**Case No. BC425880** [Assigned for all purposes to the Hon. Elizabeth Allen White, Dept. 48] **NOTICE OF RULING AT PLAINTIFF'S PETITION TO CONFIRM ARBITRATION AWARD**

TO ALL PARTIES HEREIN, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the Court heard Plaintiff's Petition to Confirm Arbitration Award on January 11, 2012, at 8:30 a.m., in Department 48 of the Los Angeles Superior Court, and ruled as follows:

1. Plaintiff John C. Torjesen's Petition to Confirm Arbitration Award is granted.
2. Moving party is to give notice and prepare an order and judgment.

///

///

A copy of Court's Minute Order of January 11, 2012, is attached herein as reference.

DATED: January 18, 2012

MANCINI & ASSOCIATES
A Professional Law Corporation

By: ______________________
CHRISTOPHER BARNES, ESQ.
Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/11/12	DEPT. 48
HONORABLE ELIZABETH ALLEN WHITE JUDGE	A. BARTON DEPUTY CLERK
HONORABLE JUDGE PRO TEM	ELECTRONIC RECORDING MONITOR
#2 S. SATO, C.A. Deputy Sheriff	L. MACHUCA, CSR #12274 Reporter

8:30 am	BC425880 JOHN C. TORJESEN VS HARRY MANSDORF, ET AL.	Plaintiff Counsel: CHRISTOPHER BARNES (X) Defendant Counsel: NO APPEARANCE

NATURE OF PROCEEDINGS:

PETITION OF PLAINTIFF, JOHN C. TORJESEN, TO CONFIRM ARBITRATION AWARD

STATUS CONFERENCE REGARDING PETITION CONFIRMING ARBITRATOR'S AWARD

AO

Matter is called for hearing and argued.

Plaintiff John C. Torjesen's petition to confirm arbitration award is granted.

The status conference is ordered off calendar.

Moving party is to give notice and prepare an order and judgment.

MINUTES ENTERED
01/11/12
COUNTY CLERK

01/12/2012

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 15303 Ventura Boulevard, Suite 600, Sherman Oaks, California 91403.

On **January 18, 2012**, I served the foregoing document described as **NOTICE OF RULING AT PLAINTIFF'S PETITION TO CONFIRM ARBITRATION AWARD** on the interested party or parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Paul Orloff, Esq.
ORLOFF & ASSOCIATES APC
8402 Florence Avenue, Suite B1
Downey, CA 90240

I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Sherman Oaks, California.

Executed on **January 18, 2012**, at Sherman Oaks, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Hermina Avakian

HERMINA AVAKIAN

EXHIBIT 'B'

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY OR PARTY WITHOUT ATTORNEY : (LEAVE BLANK IF NOTICE IS BY CLERK OF THE COURT)	STATE BAR NUMBER	Reserved for Clerk's File Stamp
ATTORNEY FOR (Name):		ORIGINAL FILED JAN 3 1 2012 LOS ANGELES SUPERIOR COURT
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES		
COURTHOUSE ADDRESS: **111 North Hill Street, Los Angeles, CA 90012**		
PLAINTIFF: **John C. Torjessen**		
DEFENDANT: **Harry Mansdorf, et al.**		
NOTICE OF ENTRY OF: ☑ JUDGMENT ☐ DISMISSAL ☑ OTHER ORDER		CASE NUMBER: **BC425880**

To the above named parties and to their attorneys of record, you are hereby given notice of entry of:

☑ Judgment in the above-entitled matter, entered on (date): **January 31, 2012**

☐ Order of Dismissal in the above-entitled matter, filed on (date): ______

☑ Order **confirming arbitration award**, filed on (date): **January 31, 2012**

DECLARATION OF MAILING

I, (typed or printed name) **A. Barton**, do hereby *(check one)*:

☐ declare under penalty of perjury under the laws of the State of California that I am an active member of the State Bar of California;

☑ declare under penalty of perjury under the laws of the State of California that I am *(check one)* ☑ employed in / ☐ a resident of **Los Angeles** County, *(where mailing occurred)* over the age of 18 years, and not a party to the cause within; that my *(check one)* ☑ business/☐ residence address is as shown above;

and that on the date shown below I served the notice of entry of the above-named document filed and entered herein, by depositing true copies thereof in sealed envelope(s), with postage fully prepaid, in the United States Mail Service located at **Los Angeles** *(city)*, **California** *(state)*

addressed to the parties named below:

Christopher Barnes, Esq.
Mancini & Associates
15303 Ventura Boulevard, Suite 600
Sherman Oaks, California 91403

Paul Orloff, Esq.
Orloff & Associates, APC
8402 Florence Avenue, Suite B1
Downey, California 90240

☐ Additional names and addresses on attached sheet.

Dated: **January 31, 2012**

Signed: A. Barton
(Signature of declarant)

Typed or printed name of declarant: **A. Barton**

MARCUS A. MANCINI, ESQ. (State Bar No.146905)
CHRISTOPHER BARNES, ESQ. (State Bar No.206186)
MANCINI & ASSOCIATES
A Professional Law Corporation
15303 Ventura Boulevard, Suite 600
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Phone: (818) 783-5757
Fax: (818)783-7710

Attorneys for Plaintiff **JOHN C. TORJESEN**

ORIGINAL FILED
JAN 31 2012
LOS ANGELES SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOHN C. TORJESEN, an individual,

Plaintiff,

vs.

HARRY MANSDORF, individually and as Trustee of the Mansdorf Family, JAMIE GONZALES, an individual, ROBERT MULLEN, an individual, PAUL ORLOFF, an individual, and DOES 1 through 100, inclusive,

Defendants

Case No. BC425880

[Assigned for all purposes to the Hon. Elizabeth Allen White, Dept. 48]

[~~PROPOSED~~] ORDER CONFIRMING ARBITRATION AWARD

GOOD CAUSE HAVING BEEN SHOWN, this COURT hereby CONFIRMS the arbitration award reached in the matter of HARRY MANSDORF/MANSDORF FAMILY TRUST, Petitioner, and JOHN C. TORJESEN, ESQ/JOHN C. TORJESEN & ASSOCIATES PC, Respondent, before the LOS ANGELES COUNTY BAR ASSOCIATION, Case No. M-266-10-HM, dated October 18, 2011.

DATED: JAN 31 2012

Elizabeth Allen White

Hon. Elizabeth Allen White,
Judge of the Superior Court

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 15303 Ventura Boulevard, Suite 600, Sherman Oaks, California 91403.

On **January 11, 2012,** I served the foregoing document described as **[PROPOSED] ORDER CONFIRMING ARBITRATION AWARD** on the interested party or parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Harry Mansdorf
811 N. Alta Drive
Beverly Hills, CA 90210

I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Sherman Oaks, California.

Executed on **January 11, 2012,** at Sherman Oaks, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Hermina Avakian

HERMINA AVAKIAN

ORIGINAL FILED

JAN 3 1 2012

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOHN C. TORJESEN, an individual, Plaintiff, vs. HARRY MANSDORF, individually and as Trustee of the Mansdorf Family, JAMIE GONZALES, an individual, ROBERT MULLEN, an individual, PAUL ORLOFF, an individual, and DOES 1 through 100, inclusive, Defendants	**Case No. BC425880** Los Angeles County Barr Assn. Case No. M-266-10-HM [Assigned for all purposes to the Hon. Elizabeth Allen White, Dept. 48] **[~~PROPOSED~~] JUDGMENT FOR PLAINTIFF/RESPONDENT JOHN C. TORJESEN, ESQ. AND TORJESEN & ASSOCIATES PC**

This action came on for arbitration on July 1, 2011, before hearing arbitrators Jack Fine, Esq., Dr. Martin Martov, and Lee Dicker, Esq.. Plaintiff and Respondent JOHN C. TORJESEN, ESQ. was represented by MARCUS A. MANCINI, ESQ., and CHRISTOPHER BARNES, ESQ., and Defendants and Petitioner, HARRY MANSDORF, and the MANSDORF FAMILY TRUST were represented by ROBERT MULLEN, ESQ.

Witnesses were sworn and testified, and having duly heard the proofs and allegations of the parties, and considered all the briefs and papers filed on the matter(s), the ARBITRATORS issued an award in favor of Plaintiff and Respondent JOHN C. TORJESEN AND ASSOCIATES PC.

The Court hereby confirms the arbitration award, and default having been entered on all remaining matters, enters judgment as follows:

1. John C. Torjesen & Associates PC is awarded a $2,000,000 bonus for services rendered in Mansdorf v. Giancomazza, Los Angeles Superior Court Case Number BC285946 in that it obtained the Malibu property, eliminated $115,600,000 in mechanic's liens thereon, and obtained the 811 North Alta Drive property in Beverly Hills for the Trust.

2. John C. Torjesen & Associates, PC is awarded $2,000,000 upon the earliest of:

a. Development of the Malibu property and obtaining a take-out loan;

b. Sale of the Trust's interest in the Malibu property; or

c. Sale of some or all of the Malibu property.

3. John C. Torjesen & Associates, PC is not awarded any interest on the $2,000,000 awarded through the date of the earliest of the items set forth in number 2 above.

4. John C. Torjesen & Associates is awarded interest on the $2,000,000 from the date any of the items in section 2 are satisfied to the date the judgment is satisfied.

5. John C. Torjesen, Esq., & John C. Torjesen & Associates is awarded attorneys fees and costs incurred in Mansdorf v. Giancomazza, Los Angeles Superior Court Case Number BC285946, in the amount of ______________________________, to be proven by motion, by declaration, or live testimony in any subsequent default prove-up hearing.

6. John C. Torjesen & Associates is awarded attorneys fees and costs incurred in Torjesen v. Mansdorf, Case No. BC425880, in the amount of ______________________________, to be proven by motion, by declaration, or live testimony in any subsequent default prove-up hearing.

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7. John C. Torjesen & Associates is awarded all attorneys fees and costs incurred in the arbitration of Mansdorf, Petitioner, Torjesen, Respondent, Torjesen v. Mansdorf, Los Angeles County Barr Assn. Case No. M-266-10-HM, in the amount of ______________________________, to be proven by motion, by declaration, or live testimony in any subsequent default prove-up hearing.

DATED: 1/31/, 2012

Elizabeth Allen White
HONORABLE ELIZABETH ALLEN WHITE
Superior Court Judge

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 15303 Ventura Boulevard, Suite 600, Sherman Oaks, California 91403.

On **January 11, 2012**, I served the foregoing document described as **[PROPOSED] JUDGMENT FOR PLAINTIFF/RESPONDENT JOHN C. TORJESEN, ESQ. AND TORJESEN & ASSOCIATES PC** on the interested party or parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Harry Mansdorf
811 N. Alta Drive
Beverly Hills, CA 90210

I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Sherman Oaks, California.

Executed on **January 11, 2012**, at Sherman Oaks, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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HERMINA AVAKIAN

EXHIBIT 'C'

LOS ANGELES COUNTY BAR ASSOCIATION
MANDATORY FEE ARBITRATION
NOTICE OF ATTORNEY RESPONSIBILITY

In the Matter of

Harry Mansdorf/ Mansdorf Family Trust

Case No. M-266-10-HM

vs.

John Torjesen, Esq./
John C. Torjesen & Associates PC

To Attorney John Torjesen:

This proceeding is being conducted under the provisions of Business and Professions Code sections 6200-6206. PLEASE BE ADVISED that if (1) the client in this matter is awarded a refund of previously paid fees and/or costs; or (2) you and the client reach a mediated agreement which includes a refund of previously paid fees and or costs and you do not comply with that award once it has become final, or the written mediated agreement. the State Bar of California may place you on temporary inactive status until that award or agreement requiring such refund is paid.

If you believe that you are not personally responsible for any potential refund fees and/or costs to the client, you must notify this program in writing of the name and address of the responsible attorney(s) within fifteen days of the date this notice. Failure to do so may result in being held personally responsible for any refund and subject to possible enforcement under the provisions of Business and Code section 6203(d).

If there is a dispute over responsibility for the fees and/or costs, the arbitrator(s) will determine responsibility based upon the evidence presented in arbitration. Any communications in this regard should be mailed to this program at the following address with a copy provided to the client:

Attorney-Client Mediation & Arbitration Services
Los Angeles County Bar Association
P.O. Box 55020
Los Angeles, CA 90055
213-896-6576

cc: Harry Mansdorf/ Mansdorf Family Trust

Date this notice was mailed: November 22, 2010

Responsibility
5/07

EXHIBIT 'D'

Harry Mansdorf
811 N. Alta Drive
Beverly Hills, California 90210
Telephone (310) 275-0680
Facsimile (310) 440-0005

In Pro Per

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

JOHN C. TORJESEN, an individual, Plaintiff, vs. HARRY MANSDORF, individually and as Trustee of the Mansdorf Family, JAMIE GONZALES, an individual, ROBERT MULLEN, an individual, PAUL ORLOFF, an individual, and DOES 1 through 100 inclusive, Defendants.	Case Number BC 425880 Assigned for all purposes to Hon. Elizabeth Allen White, Dept. 48 **DECLARATION OF HARRY MANSDORF IN RESPONSE TO ORDER TO SHOW CAUSE WHY THIS MATTER SHOULD NOT PROCEED BY DEFAULT** Date: March 29, 2011 Time: 8:30 a.m. Dept: 48

<u>DECLARATION OF HARRY MANSDORF</u>

I, HARRY MANSDORF, declare as follows:

1. I am a Defendant in the case known as <u>TORJESEN v. MANSDORF</u> Los Angeles County Superior Court case number BC 425880. As such, I have personal knowledge of the facts of this case. I make this declaration in response to the Order to Show Cause Why this Matter Should Not Proceed by Default. If called upon as a witness, I could and would competently testify to the following:

2. Plaintiff filed the above action on or about November 13, 2009. I have not ever received a notice of right to arbitrate from Attorney John Torjesen.

3. Due to the fact that I am 90 years old, I have had the assistance of three individuals who have been helping me with this claim, namely Jaime Gonzalez, Attorney Paul Orloff and Attorney Robert

Mullen.

4. On or about July 6, 2010, I submitted paperwork to begin fee Arbitration with the Los Angeles County Bar Association for a fee dispute which I had with Attorney John Torjesen. See Exhibit A.

5. Due to circumstances surrounding a lawsuit that I have been involved in, Mansdorf v Giacomazza *et al* Case No. BC385946, I have been practically indigent and have not had the money with which to pay for the Arbitration fees. I applied for a waiver of the fees and was provided with a payment plan. See Exhibit B. I note to the Court that the letter identifies that John Torjesen, Esq. was provided a courtesy copy of this letter.

6. Shortly after July 15, 2010, I received a letter from Dispute Resolution Services, Inc (DRS), which I understand to be a division of the Los Angeles County Bar Association for Fee Dispute resolution. A true and correct copy of the letter is attached as Exhibit C. I note to the Court that the letter identifies that John Torjesen, Esq. was provided a courtesy copy of this letter.

7. On or about August 25, 2010, Plaintiff Torjesen attempted to file a request for entry of default against me.

8. I received a courtesy copy of a letter dated August 31, 2010 to Plaintiff Torjesen regarding request for reconsideration for fee waiver of Arbitration Fees. See Exhibit D.

9. In light of my petition for reconsideration, the DRS reduced the fees for Arbitration. See Exhibit E. I note to the Court that the letter identifies that John Torjesen, Esq. was provided a courtesy copy of this letter.

10. On or about September 8, 2010, Plaintiff Torjesen again attempted to file a request for entry of default against me.

11. On or about October 22, 2010 Plaintiff Torjesen filed a First Amended Complaint.

12. In a letter dated November 22, 2010, I received a courtesy copy of a notice which was sent to Plaintiff Torjesen that proceedings were instituted for Fee Arbitration. See Exhibit F.

13. On or about December 6, 2010, Harry Mansdorf filed a Notice of Petition for Fee Arbitration.

14. On or about December 27, 2010, Plaintiff Torjesen submitted a response to the Fee Arbitration proceeding. See Exhibit G.

15. I have been informed through Jaime Gonzalez that he received an email on or about March 8,

2011, from Armando Castro which states specifically that Mr. Castro is trying to assign this case a.s.a.p. to an arbitrator and that he hopes he can get this case assigned no later than the week of March 14, 2011.

16. I received a letter dated March 14, 2011 from Armando Castro of the Los Angeles County Bar Association identifying that Lee Dicker is the Arbitration Panel chairperson for the fee dispute. A true and correct copy of the letter is attached as Exhibit H.

17. I received another letter dated March 14, 2011 from Armando Castro identifying that the panel of Arbitrators has been made and specifically identifies the members of the Arbitration panel. A true and correct copy of the letter is attached as Exhibit I.

I DECLARE UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 28, 2011, at Beverly Hills, California.

Dated: March 28, 2011

Harry Mansdorf

HARRY MANSDORF, Declarant

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 15303 Ventura Boulevard, Suite 600, Sherman Oaks, California 91403.

On **March 2, 2012**, I served the foregoing document described as **PLAINTIFF JOHN C. TORJESEN, ESQ.'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT HARRY MANSDORF'S MOTION FOR RECONSIDERATION & MOTION TO VACATE AND SET ASIDE DEFAULT RECONSIDERATION** on the interested party or parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Paul Orloff, Esq.
ORLOFF & ASSOCIATES APC
8402 Florence Avenue, Suite B1
Downey, CA 90240

I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Sherman Oaks, California.

Executed on **March 2, 2012**, at Sherman Oaks, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

HERMINA AVAKIAN