

**FILED**  
LOS ANGELES SUPERIOR COURT

SEP 17 2008

JOHN A. CLARKE, CLERK  


ELYASZADEH V. NEMAN  
BC 328019  
September 17, 2008

FINAL STATEMENT OF DECISION (CCP 632; CRC 3.1590)

This case involves a bitter and long-running dispute between former business associates over the development of land in Malibu, California. The initial action was filed in January 2005. In a Third Amended Complaint (“TAC”), filed August 18, 2005, Elyaszadeh alleged eight causes of action primarily having to do with the formation of “U.S. Development 26, LLC” (“LLC”) and allegations that defendant Neman forged an “operating agreement” for the LLC. Elyaszadeh seeks damages, an accounting and dissolution of the LLC.

On September 21, 2005, Neman, on behalf of himself and purportedly on behalf of the LLC, filed a Cross-Complaint, alleging four causes of action, including breach of contract and breach of fiduciary duty, against Elyaszadeh. Neman also asked for the dissolution of the LLC.

Prior to trial, the Court dismissed the LLC as a plaintiff in the Cross-Complaint. Also, two other cases, BC 372874 and BC 329745, were consolidated with this action, but the issues in those cases were resolved prior to trial in a series of rulings which are part of the record.

On May 5, 2008, a bench trial on the TAC and the Cross-Complaint commenced. The Court heard the testimony of 12 witnesses. On July 3, 2008, the parties made their closing arguments and the case was deemed submitted.<sup>1</sup>

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<sup>1</sup> At the conclusion of the closing arguments, counsel were ordered to meet and confer so as to provide the Court with binders of those exhibits which were received in evidence at trial. Counsel for Elyaszadeh, Mr. Satterthwaite, timely complied and he also provided his July 21, 2008 declaration identifying these exhibits. Mr. Satterthwaite’s declaration then references some other exhibits which the parties stipulated *before* trial would be “admissible and authentic.” Mr. Satterthwaite labels these: “Exhibits Stipulated as to Admissibility and Authenticity.” Counsel for Neman, Mr. Mink, filed a declaration dated July 7, 2008 in which he references exhibits “intended to be admissible and part of the record.” The Court concludes that the statements in these declarations do not reflect a meeting of the minds as to documents which were *not* moved into evidence at trial. Accordingly, the state of the written evidence is the following: (1) those documents which the Court received into evidence on the record during trial are deemed admitted; (2) those documents not so received, regardless of the parties’ pretrial agreements on

The Court issued its Tentative Statement of Decision on July 30, 2008. On August 5, 2008, Elyaszadeh submitted proposed corrections to the Tentative Statement of Decision. On August 11, 2008, Neman filed his so-called "Request for Statement of Decision." Each of these documents has been fully considered by the Court.

On September 15, 2008, pursuant to the Court's Tentative Statement of Decision, the punitive damages phase of the trial was held. Elyaszadeh called three witnesses and introduced some additional exhibits. Neman declined to call witnesses or introduce exhibits.<sup>2</sup>

The case is now fully submitted and the Court issues its Final Statement of Decision.

#### 1. FACTS ESTABLISHED AT TRIAL<sup>3</sup>

The key issue at trial was whether Exhibit 19, the so-called "first" operating agreement (dated May 14, 2003), was false because it contained the forged signature of Mr. Elyaszadeh. Accordingly, Elyaszadeh's first witness was his handwriting expert, Mr. Blanco. He was asked to examine the signature page of that agreement to determine if Mr. Elyaszadeh in fact had placed his signature above his pre-printed name. Mr. Blanco concluded that it was "highly probable" that Mr. Elyaszadeh did not sign his name on that page. He believed that the signature in question was a "simulation" of Mr. Elyaszadeh's true signature, but he was not able to

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admissibility and authenticity, are not admitted. It is incumbent on the party seeking the consideration of a document to properly move to have it admitted before the evidence is closed. It is not proper for a party to seek to have documents admitted after closing argument, on the sole basis that there was a pretrial stipulation as to admissibility. To permit such a practice would create substantial confusion and would be prejudicial to the opposing party who has rested, given closing argument on the evidence admitted, and then submitted the case to the Court for a ruling.

<sup>2</sup> Mr. Neman's objection to a punitive damages phase rings hollow. Neman's June 30, 2008 "Post-Trial Brief" also requested a Court determination of punitive damages (to be awarded to Neman).

<sup>3</sup> The facts recited herein are those the Court has found were established by the testimony of witnesses and the documentary evidence presented. To the extent that this recitation differs from any party's position, that is the result of a determination as to credibility and relevance, burden of proof considerations and the weighing of evidence, both oral and written.

“absolutely eliminate” Mr. Elyaszaeh as the one of the signers.<sup>4</sup>

Mr. Sokol, an attorney, testified that he assisted the parties in drafting Exhibit 64, the so-called “second” operating agreement for the LLC. He finalized that agreement over a several month time period. It was executed by the parties on May 19, 2004. No one advised him that there was an “earlier” operating agreement.

On or about February 20, 2005, Mr. Sokol attended a meeting with his client (Mr. Elyaszadeh), Mr. Elyaszadeh’s father, Mr. Neman, and Mr. Weiss, the attorney for Mr. Neman. The meeting was “heated.” Mr. Sokol testified that Mr. Neman stated during the meeting that he (Neman) had signed Mr. Elyaszadeh’s signature on the first operating agreement because “Mr. Elyaszadeh would not have signed it.”

Mr. Sokol sent a letter (Ex. 80) to Commercial Capital Bank (“CCB”) asking it to make disbursements to the LLC only when authorized by both Mr. Elyaszadeh and Mr. Neman. Mr. Sokol had learned that CCB had been given a copy of the first operating agreement only. CCB was providing loans to the LLC for the purchase of the property and for construction.

Mr. Elyaszadeh took the stand in his own behalf. He is a licensed mortgage broker and a licensed real estate broker. He testified that in or about 2002, Mr. Neman came to his office looking for financing on a real estate project. Mr. Neman continued to call him in order to establish a “business relationship” and eventually Mr. Elyaszadeh came to trust him.

In 2003, Mr. Neman took Mr. Elyaszadeh to a site in Malibu and talked about a project to build four single family homes. Mr. Elyaszadeh agreed to contribute the financing for the project, in part because he would be able to purchase one of the homes being developed on the site. Mr. Neman was to contribute no financing to the project, but instead was to be “in charge” of the project by, *inter alia*, working with the architect, the structural and civil engineers and to oversee the construction. On or about March 10, 2003, Mr. Neman and Mr. Elyaszadeh signed Ex. 17, a “deal memorandum,” setting forth the basic terms of their agreement.<sup>5</sup>

During the time period of July 2003 through May 2004, Mr. Elyaszadeh invested about

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<sup>4</sup> Mr. Blanco actually testified about Exhibits 20 and 139-21 which were derived from Exhibit 19.

<sup>5</sup> Ex. 17 was prepared by Mr. Neman.

\$3.67 million in the project. Ex. 3.<sup>6</sup> These funds were to be used for the acquisition of the land and for the plans and permits, among other things. However, according to Mr. Elyaszadeh, much of these funds instead were diverted to Mr. Neman's personal use for such items as car registration fees, car payments, pharmacy bills, food, payments to Mr. Neman's CPA, salary to a secretary for Mr. Neman's personal use, excessive cash draws and for use on Mr. Neman's other projects.

Mr. Elyaszadeh testified that the only operating agreement he signed for the LLC was Ex. 64 which, like Ex. 17, provided that profits would be split between himself and Mr. Neman "50 - 50." Ex. 64, page 33, reflects that Mr. Elyaszadeh contributed \$3.675 million to the project and Mr. Neman initialed that page. Paragraph 5.1 and 5.2 of Ex. 64 provided for the "joint" approval of both managers (Messrs. Elyaszadeh and Neman) on all significant decisions to be made by the LLC. This agreement was signed in the escrow office on May 19, 2004, one week before the "transaction [the real estate purchase] closed."

Mr. Elyaszadeh denied signing his name on page 27 of Ex. 19. Mr. Elyaszadeh also testified that Ex. 19 falsely shows that Mr. Neman had contributed \$600,000 to the project, which was supposedly "90% of the fair market value" of the project. According to Mr. Elyaszadeh, he was first shown Exhibit 19 by employees of Commercial Capital Bank in early 2005 after the dispute between Mr. Neman and himself arose.

Among the disputes between the parties in 2005 were: (1) Mr. Elyaszadeh's attempts to get an accounting for all of the funds he had contributed to the project, (2) a return to Mr. Elyaszadeh by the bank of \$200,000 he had contributed at closing and (3) Mr. Elyaszadeh's demands to get a deed of trust on the property to secure his investments.<sup>7</sup> However, Mr. Neman was avoiding Mr. Elyaszadeh by not returning his telephone calls or attending meetings.

As further evidence of the fraud he is alleging, Mr. Elyaszadeh testified that someone signed his name without his authorization to Ex. 18, a "Limited Liability Company Articles of Incorporation," filed with the California Secretary of State on May 12, 2003. The bank first showed him a copy of this document in 2005. Mr. Elyaszadeh also testified that he never approved the filing (on April 29, 2004) with the Secretary of State of Ex. 45, a "Limited Liability

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<sup>6</sup> Exhibits 21, 23, 24, 26, 27, 29, 31, 32, 35, 66, 68, 69 and 161 are a number of checks which are further evidence of the capital contributions of Mr. Elyaszadeh to the project.

<sup>7</sup> Ex. 75 shows that Mr. Neman had the \$200,000 released to himself and not to Mr. Elyaszadeh. Mr. Elyaszadeh never recovered any of the \$3.675 million he invested.

Company Certificate of Amendment,” which improperly showed that Mr. Neman was the sole “managing member” of the LLC.

In or about June 2004, some preliminary construction activities began on the Malibu site. Mr. Elyaszadeh visited the site about once a week, but Mr. Neman had become far less communicative with him.

Mr. Neman and his attorney, Mr. Weiss, put the LLC into bankruptcy without Mr. Elyaszadeh’s authorization. Mr. Weiss purported to represent the LLC without Mr. Elyaszadeh’s approval.

After four years the project is not completed. Only two foundations have been constructed at the site and they are defective. Mr. Elyaszadeh has since purchased the Malibu property for himself for \$6.625 million through the bankruptcy court and he also has a creditor’s claim in the LLC bankruptcy case.

Mr. Freeman was called next as a witness. He worked for CCB for much of the time period in question. In January 2005, he was notified that Mr. Elyaszadeh had “all rights as an equal partner” in the LLC. Mr. Freeman thought this was unusual because the bank had an operating agreement (Ex. 19) which purported to give Mr. Neman “90% ownership.” The bank also had Ex. 45 in its files. However, Ex. 64 was not in the bank’s files. Ex. 64 was first given to the bank in 2005 by Mr. Elyaszadeh’s attorney. The terms of Ex. 64 as to ownership and control of the LLC were in conflict with Ex. 19, which caused concern to the bank.

Tracie Lyons was the next witness. She worked for the bank from September 2004 through November 2006 as in-house counsel. Her memory of the “loan file” at issue in this case was vague. She did, however, remember that a dispute arose in 2005 as to what was the true operating agreement of the LLC. The bank had received Ex. 80, the February 2, 2005 letter from Mr. Elyaszadeh’s attorney, Mr. Sokol. As a result, the bank decided to “freeze” funding on the Malibu project until the dispute between Mr. Neman and Mr. Elyaszadeh was resolved.

Mr. Neman was called as a witness pursuant to Evidence Code 776. He admitted that he is not a licensed real estate broker or general contractor and is not currently employed. He first met Mr. Elyaszadeh in 2002. In 2003, they agreed to work together with Mr. Elyaszadeh providing the investment capital and Mr. Neman acting as the project manager. He signed Ex. 17 which reflected the amount of money Mr. Elyaszadeh would invest in the project. The profits were to be split “50-50.” He admitted signing Ex. 19 and also admitted that he had not in fact contributed \$600,000 to project. Mr. Neman’s later attempts to explain that he had made some capital contribution to the project were very confusing and unpersuasive.

Mr. Neman admitted that he signed Ex. 45, dated April 29, 2004. This admission was especially damning because Ex. 64, the “second operating agreement” has an effective date of January 30, 2004 and the evidence was that the terms of the agreement were being negotiated for several months in the early part of 2004. And, Exhibit 64 clearly shows that Elyaszadeh was one of the *two* managers of the LLC. In his deposition, Mr. Neman admitted that Ex. 64 “controls the relationship with Mr. Elyaszadeh in connection with the U.S. Development LLC.”<sup>8</sup>

Mr. Neman also admitted that he did not have “too many communications” with Mr. Elyaszadeh once the construction on the project had begun. However, Mr. Neman controlled the disbursement of funds from the LLC’s account. The LLC was funded with a \$3.675 million investment by Mr. Elyaszadeh. Mr. Neman, on the other hand, admitted he invested nothing in the LLC.<sup>9</sup>

Mr. Neman testified that he signed the LLC checks “99.9% of the time.” Mr. Neman also testified that Ex. 5 consisted of checks “for expenses related to U.S. Development 26 LLC.” But it is apparent that a number of those checks were used to pay for Mr. Neman’s personal expenses or for business expenses on his other projects, such as car payments, payments for a pool and deck, payments to his attorney, payments of taxes and for Mr. Neman’s personal business office. The Court did not find Mr. Neman credible when he attempted at trial to explain how it was proper for the LLC to be paying for these expenses.

It was also significant to the Court that Mr. Neman authorized a number of checks made payable to himself for amounts less than \$10,000. Ex. 64 required the approval of both managers for all checks over \$10,000, so it is reasonable to infer that Mr. Neman was seeking to conceal from Mr. Elyaszadeh multiple cash payments from the LLC account.

Mr. Michael Aulert was called as an expert in contracting and real estate development. In preparation for his testimony, he visited the Malibu site to ascertain what construction had

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<sup>8</sup> Mr. Neman attempted to show through Ex. 22 that he had properly advised the Secretary of State in 2003 that Mr. Elyaszadeh was also a manager of the LLC. However, the Court gives no weight to Ex. 22 because the copy produced by Mr. Neman bears no file stamp or other indicia of authenticity.

<sup>9</sup> Mr. Neman had a difficult time keeping his story straight as to funds he contributed. At various times in his testimony he claimed that he had invested funds in the LLC and further claimed that it was shown in the “bank documents.” However, neither he nor his attorney ever made clear which exhibits received in evidence corroborated this version of his testimony.

occurred. He defined the term “hard construction costs” (which is found in Ex. 64) as well as the term “soft construction costs.” He also examined Ex. 4 and Ex. 5, which reflect the expenses paid by the LLC. He concluded that the “hard construction costs” on the Malibu project before it was shut down were \$368,931. Based upon the provisions of Ex. 64, Mr. Neman’s “fee” for this project would be 15% of this number (\$55,339). But Mr. Aulert concluded that the LLC had in fact paid Mr. Neman and his business entities (other than the LLC) approximately \$400,635. *See also* Ex. 170-3.<sup>10</sup>

James Gordon was called as Mr. Elyaszadeh’s expert real estate appraiser. He opined that, had the project been completed on schedule, the house on lot 1 would have been sold in or about April 2006 for approximately \$5.5 million. He further estimated the land value of each of the four lots in April 2006 to have been in excess of \$2.2 million.

Patrick Ayau was called by Mr. Neman as his first witness. He testified that he has been in the “real estate business” for 25 years. He spoke with Mr. Neman in 2002 or 2003 and advised him that there was an opportunity to develop four home sites in Malibu. He also claimed to have had some conversations with both Mr. Elyaszadeh and Mr. Neman. However, he had a very poor memory for when these conversations took place and who said what to whom. Indeed, after many questions posed by Mr. Neman’s counsel to this witness, this Court was left with the very strong impression that Mr. Ayau either had no memory of any conversation with Mr. Elyaszadeh and/or was simply fabricating a story to assist Mr. Neman.<sup>11</sup>

Thomas Weiss, Mr. Neman’s attorney, was next called by Mr. Neman. Mr. Weiss testified that he was hired by Mr. Neman to try to resume funding for the Malibu project after the bank had received Ex. 80. He spoke with Mr. Sokol and Ms. Lyons during the February 2005 time period. On February 20, 2005, he attended the meeting with Messrs. Neman, Sokol and Elyaszadeh. The meeting lasted only about 30 minutes, was heated and resulted in no agreements between the parties. Messrs. Neman and Elyaszadeh sometimes spoke in Farsi during the meeting.

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<sup>10</sup> Ex. 170 also shows that the total amount of checks written on the LLC account supposedly for the Malibu project was \$1,070,221. But many of these “costs” were questionable or non-related. Nevertheless, if this figure was hypothetically used as the “hard construction costs” figure, Mr. Neman would have been entitled at most to fees of \$160,533.

<sup>11</sup> In response to questions by the Court, Mr. Ayau admitted that his relationship with Mr. Neman goes back to 1984. Mr. Ayau acted as real estate broker on seven or eight properties developed by Mr. Neman and Mr. Ayau was paid commissions on these deals.

Jim Lohuis, who formerly worked for the bank, was called as the next defense witness. He testified that he met with both Mr. Neman and Mr. Elyaszadeh before the bank loan was closed. He understood that Mr. Elyaszadeh was the “investor” in the Malibu project, but did not want to sign a guaranty on the project. The bank required an additional \$200,000 deposit as security. However, in considering his prior deposition testimony and his demeanor in trial, Mr. Lohuis’ testimony is entitled to minimal weight as to his assertions about CCB’s requirements of a guaranty based upon Mr. Elyaszadeh’s “percentage ownership” of the LLC.

Mr. Neman next called his long-term employee, Jason Zarabi, as a witness. Mr. Zarabi’s job was to keep the documents on the project and to work with the bank to facilitate the draws. He recalled that Mr. Elyaszadeh did not review any documents until 2005, and then only in connection with the seventh draw. However, he did meet with Mr. Elyaszadeh over a dozen times in connection with the project.

Mr. Neman testified again in his own behalf. He talked about his work history before he began developing real estate. He then related his efforts to begin construction on the Malibu project. This included grading and compacting the soil, and putting in two foundations.

Mr. Neman claimed that he got Ex. 19 from a “Mr. Zar,” an attorney who was supposedly hired by himself and Mr. Elyaszadeh. Mr. Neman then attempted to testify about a series of exhibits, which his counsel characterized as establishing his “damages.” However, both the questions of Mr. Neman’s counsel and the answers of Mr. Neman were very confusing. Indeed, the Court noted at trial that Mr. Neman should have employed the services of an accountant or some other financial expert to interpret the various documents. But this was not done either to save costs or for some other strategic reason. Regardless, the Court gives no weight to Mr. Neman’s rambling explanations of costs, finances, loans and “losses.”<sup>12</sup>

Mr. Howard Rile was called as defendant’s handwriting expert. He was not able to eliminate or identify Mr. Elyaszadeh as the true author of the signature on Ex. 19. Thus, he somewhat disagreed with Mr. Blanco. However, Mr. Rile also admitted that he has had a long-standing and serious professional dispute with Mr. Blanco which usually causes him to recuse himself when Mr. Blanco is on the other side of the case. But here, Mr. Neman’s counsel

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<sup>12</sup> Mr. Neman was not designated or qualified as an expert in financial matters. But he tried to testify as such and the Court sustained Mr. Elyaszadeh’s objections. The Court also declines to give any weight to Mr. Neman’s confusing and unintelligible testimony that “he [Mr. Elyaszadeh] demanded me \$800,000 above the loan he pay me” and the “threat” which was allegedly made in the same conversation.



apparently insisted on using Mr. Rile.

## 2. CONCLUSIONS OF LAW

At closing argument in the first phase of trial, counsel for Mr. Elyaszadeh agreed that the first and second causes of action in the TAC were moot. He also agreed to withdraw the fifth cause of action. The Court does not have jurisdiction to grant relief as to the seventh cause of action, *i.e.*, “winding up and dissolution” of the LLC, because the LLC is under the jurisdiction of the U.S. Bankruptcy Court. Thus, Mr. Elyaszadeh is pursuing only the third cause of action (breach of contract), the fourth cause of action (breach of fiduciary duty), the sixth cause of action (fraud) and the seventh cause of action (constructive fraud).

As to the cross-complaint, Mr. Neman’s viable causes of action are the first (breach of contract), the second (breach of fiduciary duty) and the third (intentional interference with prospective economic advantage). His fourth cause of action requesting dissolution of the LLC is beyond this Court’s jurisdiction for the reasons noted above.

Having heard the evidence and having considered the arguments of counsel, the Court concludes that Mr. Elyaszadeh has carried his burden of proof as to each of his outstanding causes of action. On the other hand, Mr. Neman has failed to carry his burden of proof as to the causes of action in his cross-complaint.

Despite the years of protracted litigation, the often convoluted testimony of the witnesses and the dozens of documents received into evidence at trial, this case involved only a few very narrow issues.

First, did Mr. Elyaszadeh sign his name to Ex. 19, the so-called first operating agreement? The Court concludes that he did not. The Court finds that Mr. Elyaszadeh was far more credible than was Mr. Neman on this point. Moreover, the Court concludes that Mr. Blanco was much more persuasive in his testimony than was Mr. Rile. In addition, Mr. Neman had available to him Ex. 17, the March 10, 2003 “deal memo” between the parties. The Court concludes that Mr. Neman, or someone acting on his behalf, used Mr. Elyaszadeh’s signature from Ex. 17 to forge or copy his signature on Ex. 19. The signatures are strikingly similar. *See* Evid. Code 1417. It is significant that Mr. Neman was not able to produce the original of Ex. 19 at trial.

Ex. 17 is also significant for another reason. That deal memo was signed by the parties just two months prior to the purported signing of Ex. 19. And Ex. 17 clearly shows that this was to be a “50 - 50 deal” between Messrs. Elyaszadeh and Neman. No persuasive reason has been advanced by Mr. Neman, and the Court cannot conceive of one, why Mr. Elyaszadeh, who was

investing millions of dollars in this project, would agree two months later to be only a 10% participant. Further, the statement in Ex. 19 that Mr. Neman had contributed \$600,000 in “cash, services or property” was not supported by any evidence. Indeed, Mr. Neman’s testimony on this point was contradictory, without support and completely unbelievable.

Further calling into question the validity of Ex. 19 is the fact that the attorney who supposedly prepared this document and witnessed its signing, the mysterious “Mr. Zar,” was never called by Mr. Neman as a witness. This, despite the fact that Mr. Neman’s counsel promised to do so in his opening statement.

Mr. Neman forged or caused to be forged Mr. Elyaszadeh’s signature on Ex. 19 so that he would have easier access to the funds either contributed by Mr. Elyaszadeh or available through the CCB loans. While Mr. Neman no doubt hoped to have the Malibu project completed and be successful, the Court concludes that Mr. Neman had a very expensive life style which, during the relevant time period, included multiple expensive automobiles and substantial debt service on several pieces of real estate. The evidence strongly suggests that Mr. Neman is a “promoter” who moves from one real estate project to the next and uses the money from bank loans and investors to support himself and his life style.

Mr. Neman’s deception and greed are further shown by the series of five checks he wrote to himself or one of his companies on December 28, 2004. *See* Ex. 5-296 — 5-300. By making these checks for amounts of \$10,000 or less, Mr. Neman avoided having to get Mr. Elyaszadeh’s approval. Mr. Neman basically looted the LLC account to fund his own personal expenses and lifestyle.

The next issue to be resolved is whether or not Mr. Elyaszadeh authorized the payment of more than \$400,000 of the LLC’s funds to Mr. Neman. The answer to this question is “no.” Mr. Neman presented no credible evidence that these withdrawals were ever authorized. It is significant that Mr. Neman, who was primarily dealing with the bank, never gave the bank a copy of Ex. 64, the “second” (May 19, 2004) operating agreement, at the time the loans were closed. Instead, he gave the bank Ex. 19 which had the forged signature of Mr. Elyaszadeh. Thus, the bank believed that the only manager on the project was Mr. Neman and the bank therefore approved his numerous draw requests.

Only after Mr. Elyaszadeh tried unsuccessfully to obtain information about the expenditures on a project that was progressing slowly at best did he learn that Ex. 64 (which this Court concludes is the true operating agreement) had not been given to the bank. Mr. Elyaszadeh, through counsel, immediately and properly acted to notify the bank and halt the disbursement of funds to Mr. Neman. The bank then acted properly, as this Court has previously ruled, to cease

funding the project until the dispute could be sorted out.

Mr. Neman and his counsel then engaged in a series of legal actions, including the filing of the federal bankruptcy action and the filing of additional actions in the Los Angeles Superior Court, to attempt to delay the resolution of this dispute and to further the fraud perpetrated by Mr. Neman. But the trial in this matter has shown by clear and convincing evidence that Mr. Neman's scheme to defraud Mr. Elyaszadeh and to enrich himself has been discovered. The only issue remaining is to determine the damages to which Mr. Elyaszadeh is entitled.

This Court concludes that Mr. Elyaszadeh has suffered project loss and non project loss damages under each of his causes of action. The total project loss damages are \$12,637,500. This amount can be calculated first by considering the uncontested evidence that the project would have realized \$21.4 million had Neman not breached his contract, breached his fiduciary duties and engaged in the fraud outlined above. From those proceeds, Mr. Elyaszadeh would have initially been entitled to recover his investment of capital (\$3.675 million) and his bank deposit (\$200,000). These amounts total \$3.875 million. The remainder, \$17,525,000, would be divided equally between Messrs. Elyaszadeh and Mr. Neman, with each receiving \$8,762,500.<sup>13</sup>

As to non project damages, this Court has concluded that Mr. Neman fraudulently paid himself \$345,306 in "developer fees" to which he was not entitled. This amount is calculated first by using Mr. Aulert's unimpeached testimony that the "hard construction costs" on the project were \$368,931. Mr. Neman's proper developer fees would be 15% of that amount, or \$55,339. However, according to Ex. 170-3, Mr. Neman wrote checks to himself and/or to entities he personally controlled for developer fees totaling \$400,635.<sup>14</sup> Thus, Mr. Elyaszadeh is entitled to recover an additional \$345,306 from Mr. Neman.

Finally, this Court awards Mr. Elyaszadeh the additional \$1.3 million in punitive damages he requests. Mr. Neman clearly engaged in extensive fraudulent conduct, and Mr. Elyaszadeh's request is reasonable given the amount of actual damages incurred and the need to deter Mr. Neman and others from similar conduct in the future. The evidence introduced during both

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<sup>13</sup> Neman's sworn discovery responses stated that *he* had incurred project losses in excess of \$10 million. Neman's Post-Trial Brief sought damages of more than \$7.3 million.

<sup>14</sup> This Court does not agree with Mr. Elyaszadeh's suggestion that this number should be \$426,546. This number comes from Ex. 170-3, but includes checks written to "U.S. Dev. 26, LLC" in the amount of \$25,911. The Court is not persuaded that these checks were used for the benefit of Mr. Neman.

phases of the trial shows that Mr. Neman's net worth in the relevant time period was at least \$9 million. Thus, it is clear to this Court that Mr. Neman has sufficient net worth to justify this award.<sup>15</sup>

Accordingly, Mr. Elyaszadeh is entitled to Judgment in his favor in accordance with this Final Statement of Decision. Mr. Elyaszadeh shall prepare a [Proposed] Judgment and lodge it with this Court on or before September 30, 2008.

Notice by Mr. Elyaszadeh.

IT IS SO ORDERED.

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<sup>15</sup> Further, by failing to comply with proper demands to appear at the second phase of the trial and produce relevant documents pertaining to his net worth, Mr. Neman has waived any objection to a punitive damages award.