

CLERK OF THE COURT

Electronically Filed  
Nov 20 2015 11:02 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**NOTC**

W. CHRIS WICKER  
Nevada State Bar No. 1037  
Woodburn and Wedge  
6100 Neil Road, Suite 500  
Reno, NV 89511  
Telephone: (775) 688-3000  
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Chris Nielsen, Esq.  
Nevada Bar No. 8206  
PUBLIC EMPLOYEES RETIREMENT SYSTEM  
693 W. Nye Lane  
Carson City, NV 89703  
Telephone: (775) 687-4200

*Attorneys for the Public Employees'  
Retirement System of Nevada*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SHAE E. GITTER, an individual, and JARED  
SHAFER, as Special Administrator of the Estate  
of Kristine Jo Freshman

Case No. A-14-697642-C

Dept. No. XXIV

Plaintiffs,

vs.

**NOTICE OF APPEAL**

PUBLIC EMPLOYEES RETIREMENT  
SYSTEM OF NEVADA, a public entity and  
Component unit of the State of Nevada,

Defendant.

Notice is hereby given that PUBLIC EMPLOYEES RETIREMENT SYSTEM OF  
NEVADA, above-named Defendant, hereby appeals to the Supreme Court of Nevada from the  
Order Granting Plaintiff's Motion for Partial Summary Judgment and Denying Defendants'  
Motion for Summary Judgment entered on January 29, 2015, and the Order Granting Plaintiffs'  
Motion for Pre-Judgment and Post-Judgment Interest and Final Judgment entered in the above-  
referenced case on the 16<sup>th</sup> day of October, 2015.

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DATED this 13<sup>th</sup> day of November, 2015.

By: /s/ W. Chris Wicker  
W. Chris Wicker, Esq.  
Nevada Bar No. 1037

Attorneys for Public Employees'  
Retirement System of Nevada

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Dennis L. Kennedy  
Kelly B. Stout  
Bailey Kennedy  
8984 Spanish Ridge Avenue  
Las Vegas, NV 89148

Jennifer Chisel  
OFFICE OF THE ATTORNEY GENERAL  
100 North Carson Street  
Carson City, NV 89701

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CLERK OF THE COURT

ASTA  
W. CHRIS WICKER  
Nevada State Bar No. 1037  
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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SHAE E. GITTER, an individual, and JARED  
SHAFER, as Special Administrator of the Estate  
of Kristine Jo Freshman,

Case No. A-14-697642-C

Dept. No. XXIV

Plaintiffs,

vs.

**CASE APPEAL STATEMENT**

PUBLIC EMPLOYEES RETIREMENT  
SYSTEM OF NEVADA, a public entity and  
Component unit of the State of Nevada,

Defendant.

1. The name of the appellant filing this case appeal statement is PUBLIC  
EMPLOYEES RETIREMENT SYSTEM OF NEVADA.

2. The Judge issuing the order appealed from is the Honorable James Crockett of  
the Eighth Judicial District, Clark County, State of Nevada, Case No. A-14-697642-C, Dept.  
XXIV.

3. The parties to the proceedings in the district court were as follows:

1 SHAE E. GITTER, an individual, and JARED SHAFER, as Special  
2 Administrator of the Estate of Kristine Jo Freshman, as Plaintiffs; and

3 PUBLIC EMPLOYEES RETIREMENT SYSTEM OF NEVADA, a public  
4 entity of the State of Nevada, as Defendant.

5 4. The parties involved in this appeal are as follows:

6 PUBLIC EMPLOYEES RETIREMENT SYSTEM OF NEVADA, a public  
7 entity of the State of Nevada, as Appellant; and

8 SHAE E. GITTER, an individual, and JARED SHAFER, as Special  
9 Administrator of the Estate of Kristine Jo Freshman, as Respondents.

10 5. The names, law firms, addresses and telephone numbers of all counsel on appeal  
and the party or parties whom they represent are:

11 W. Chris Wicker, Nevada Bar No. 1037  
12 Joshua Woodbury, Nevada Bar No. 11326  
13 WOODBURN AND WEDGE  
14 6100 Neil Road, Suite 500  
Reno, NV 89511  
Telephone: (775) 688-3000

15 Chris Nielsen, Nevada Bar No. 8206  
16 PUBLIC EMPLOYEES RETIREMENT SYSTEM OF NEVADA  
17 693 W. Nye Lane  
Carson City, NV 89703  
Telephone: (775) 687-4200

18 Attorneys for Appellant

19 Dennis L. Kennedy  
20 Kelly B. Stout  
21 BAILEY KENNEDY  
22 8984 Spanish Ridge Avenue  
Las Vegas, NV 89148  
Telephone: (702) 562-8820

23 Attorneys for Respondents

24 6. Appellant was represented by retained counsel in the district court.

25 7. Appellant was represented by retained counsel on appeal.

26 8. Appellant did not seek and was not granted leave to proceed in forma pauperis.

27 9. The Complaint was filed and the proceedings commenced on March 13, 2014.  
28

1           10. Plaintiff was the child of deceased Kristine Jo Freshman. Plaintiffs filed suit  
2 against PERS asserting that PERS is required or authorized to pay benefits to Plaintiffs  
3 pursuant to the Survivor Beneficiary Designation by the decedent, Kristine Jo Freshman, as a  
4 result of Ms. Freshman's murder by her spouse, Walter Freshman. PERS asserted it could not  
5 pay the survivor benefit because Ms. Freshman was married at the time of her death. The Trial  
6 Court granted Plaintiffs' Motion for Summary Judgment stating Plaintiffs are entitled to receive  
7 Survivor Benefits as set forth in NRS 286.6767-NRS 286.6769 (the Future Payments),  
8 including any statutory increases in such benefits, for the remainder of her life; PERS shall  
9 continue to pay interest on each of the Back Payments at the rate of 12% per annum until paid;  
10 and PERS shall pay interest on each of the Future Payments at the rate of 12% per annum from  
11 the date each payment is due until it is paid in full.

12           11 This case has not previously been the subject of an appeal.

13           12. No child custody or visitation is involved.

14           13. This appeal does involve the possibility of settlement.

15           14. Per NRS 20.040, PERS is exempt from the filing of an undertaking, bond or  
16 security.

17                           **AFFIRMATION**  
18                           **Pursuant to NRS 239B.030**

19           The undersigned does hereby affirm that the preceding document does not contain the  
20 social security number of any person.

21           DATED this 13<sup>th</sup> day of November, 2015.

22   WOODBURN AND WEDGE

23   By: /s/ W. Chris Wicker  
24   W. Chris Wicker, Esq.  
25   Nevada Bar No. 1037

26   Chris Nielsen, Esq.  
27   Nevada Bar No. 8206  
28   PUBLIC EMPLOYEES RETIREMENT  
29   SYSTEM

30   Attorneys for Public Employees'  
31   Retirement System of Nevada

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of Woodburn and Wedge, and that on this 13<sup>th</sup> day of November, 2015., I caused to be sent via electronic mail, through the Court's filing system, a true and correct copy of the foregoing CASE APPEAL STATEMENT, addressed as follows

Dennis L. Kennedy  
Kelly B. Stout  
Bailey Kennedy  
8984 Spanish Ridge Avenue  
Las Vegas, NV 89148

Chris Nielsen, Esq.  
PUBLIC EMPLOYEES RETIREMENT SYSTEM  
693 W. Nye Lane  
Carson City, NV 89703

By: /s/ Kelly N. Weaver  
Kelly N. Weaver

DEPARTMENT 24  
**CASE SUMMARY**  
**CASE NO. A-14-697642-C**

**Shae Gitter, Plaintiff(s)**  
**vs.**  
**Public Employees Retirement System of Nevada,**  
**Defendant(s)**

§  
§  
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§

Location: **Department 24**  
Judicial Officer: **Crockett, Jim**  
Filed on: **03/13/2014**  
Case Number History:  
Cross-Reference Case Number: **A697642**

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**CASE INFORMATION**

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**Statistical Closures**

10/16/2015      Summary Judgment

Case Type: **Breach of Contract**  
Subtype: **Other Contracts/Acc/Judgment**

Case Flags: **Appealed to Supreme Court**  
**Jury Demand Filed**  
**Automatically Exempt from Arbitration**

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**DATE**

**CASE ASSIGNMENT**

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**Current Case Assignment**

Case Number	A-14-697642-C
Court	Department 24
Date Assigned	01/05/2015
Judicial Officer	Crockett, Jim

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**PARTY INFORMATION**

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<b>Plaintiff</b>	<b>Gitter, Shae E</b>	<i>Lead Attorneys</i> <b>Kennedy, Dennis L.</b> <i>Retained</i> 7025628820(W)
	<b>Jared Shafer as Special Administrator of the Estate of Kristine Jo Freshman</b>	<b>Kennedy, Dennis L.</b> <i>Retained</i> 7025628820(W)
<b>Defendant</b>	<b>Public Employees Retirement System of Nevada</b>	<b>Wicker, Walter C.</b> <i>Retained</i> 7756883000(W)





---

**DATE**















**EVENTS & ORDERS OF THE COURT**

**INDEX**

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03/13/2014	 Complaint Filed By: Plaintiff Gitter, Shae E <i>Verified Complaint</i>	
03/13/2014	 Initial Appearance Fee Disclosure Filed By: Plaintiff Gitter, Shae E <i>Initial Appearance Fee Disclosure</i>	
03/13/2014	Case Opened	
03/25/2014	 Summons Filed by: Plaintiff Gitter, Shae E <i>Summons</i>	
05/01/2014	 Answer to Complaint Filed by: Defendant Public Employees Retirement System of Nevada <i>Defendant's Answer to Complaint</i>	

DEPARTMENT 24  
**CASE SUMMARY**  
**CASE NO. A-14-697642-C**

05/28/2014	 Demand for Jury Trial Filed By: Plaintiff Gitter, Shae E <i>Plaintiffs' Demand for Jury Trial</i>
06/25/2014	 Joint Case Conference Report Filed By: Plaintiff Gitter, Shae E <i>Joint Case Conference Report</i>
06/30/2014	 Notice to Appear for Discovery Conference <i>Notice to Appear for Discovery Conference</i>
07/15/2014	 <b>Discovery Conference</b> (9:00 AM) (Judicial Officer: Bulla, Bonnie) <i>Discovery Conference (CourtCall)</i>
07/28/2014	 Scheduling Order <i>Scheduling Order</i>
08/12/2014	 Order Setting Civil Jury Trial <i>Order Setting Civil Jury Trial</i>
10/27/2014	 Motion for Summary Judgment Filed By: Defendant Public Employees Retirement System of Nevada <i>Defendant's Motion For Summary Judgment</i>
10/27/2014	 Motion for Partial Summary Judgment Filed By: Plaintiff Gitter, Shae E <i>Plaintiffs' Motion for Partial Summary Judgment</i>
10/28/2014	 Errata Filed By: Plaintiff Gitter, Shae E <i>Errata to Plaintiffs' Motion for Partial Summary Judgment</i>
10/28/2014	 Notice of Hearing Filed By: Plaintiff Gitter, Shae E <i>Notice of Hearing on Plaintiffs' Motion for Partial Summary Judgment</i>
11/17/2014	 Opposition to Motion For Summary Judgment Filed By: Defendant Public Employees Retirement System of Nevada <i>Defendant's Opposition to Plaintiffs' Motion for Summary Judgment</i>
11/17/2014	 Opposition to Motion For Summary Judgment Filed By: Plaintiff Gitter, Shae E <i>Plaintiffs' Opposition to PERS' Motion for Summary Judgment</i>
11/21/2014	 Reply to Opposition Filed by: Defendant Public Employees Retirement System of Nevada <i>reply to opposition to motion for summary judgment</i>
11/21/2014	 Reply in Support Filed By: Plaintiff Gitter, Shae E <i>Reply In Support of Plaintiffs' Motion for Partial Summary Judgment</i>

# CASE SUMMARY

## CASE NO. A-14-697642-C

12/02/2014	<b>Motion for Partial Summary Judgment</b> (8:15 AM) (Judicial Officer: Barker, David) <i>Plaintiffs' Motion for Partial Summary Judgment</i>
12/02/2014	<b>Motion for Summary Judgment</b> (8:15 AM) (Judicial Officer: Barker, David) <i>Defendant's Motion For Summary Judgment</i>
12/02/2014	 <b>All Pending Motions</b> (8:15 AM) (Judicial Officer: Barker, David) <i>Plaintiffs' Mtn for Partial Summary Judgment...Deft's Mtn for Summary Judgment</i>
01/05/2015	Case Reassigned to Department 24 <i>District Court Case Reassignment 2015</i>
01/12/2015	 Order Setting Civil Jury Trial <i>Amended Order Setting Civil Jury Trial</i>
01/29/2015	 Order Granting Filed By: Plaintiff Gitter, Shae E <i>Order Granting Plaintiffs' Motion for Partial Summary Judgment and Denying Defendant's Motion for Summary Judgment</i>
01/29/2015	 Notice of Entry of Order Filed By: Plaintiff Gitter, Shae E <i>Notice of Entry of Order Granting Plaintiffs' Motion for Partial Summary Judgment and Denying Defendant's Motion for Summary Judgment</i>
01/29/2015	<b>Partial Summary Judgment</b> (Judicial Officer: Crockett, Jim) Debtors: Public Employees Retirement System of Nevada (Defendant) Creditors: Shae E Gitter (Plaintiff), Jared Shafer as Special Administrator of the Estate of Kristine Jo Freshman (Plaintiff) Judgment: 01/29/2015, Docketed: 02/04/2015 Comment: Certain Claims
01/30/2015	 Substitution of Attorney Filed by: Defendant Public Employees Retirement System of Nevada <i>Substitution of Attorney</i>
02/12/2015	 Order Setting Civil Jury Trial <i>Order Setting Civil Jury Trial</i>
02/12/2015	 Stipulation and Order Filed by: Plaintiff Gitter, Shae E <i>Stipulation and Order to Extend Trial Date</i>
02/13/2015	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Gitter, Shae E <i>Notice of Entry of Stipulation and Order to Extend Trial Date</i>
03/16/2015	<b>CANCELED Jury Trial</b> (10:00 AM) (Judicial Officer: Barker, David) <i>Vacated - per Stipulation and Order</i>
06/11/2015	 <b>Status Check</b> (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Status Check: Trial Readiness</i>
06/16/2015	 Notice of Change of Hearing <i>Notice of Change of Hearing</i>

DEPARTMENT 24  
**CASE SUMMARY**  
**CASE NO. A-14-697642-C**


07/15/2015	 Stipulation and Order Filed by: Plaintiff Gitter, Shae E <i>Stipulation and Order to Extend Trial Date (Second Request)</i>
07/15/2015	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Gitter, Shae E <i>Notice of Entry of Stipulation and Order to Extend Trial Date (Second Request)</i>
07/17/2015	 Order Setting Civil Jury Trial <i>Order Setting Civil Jury Trial</i>
07/31/2015	 Motion Filed By: Plaintiff Gitter, Shae E <i>Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest</i>
08/04/2015	<b>CANCELED Pre Trial Conference</b> (9:30 AM) (Judicial Officer: Crockett, Jim) <i>Vacated - per Stipulation and Order</i> <b>PRE TRIAL CONFERENCE</b>
08/07/2015	 Opposition to Motion Filed By: Defendant Public Employees Retirement System of Nevada <i>Opposition to Plaintiff's Motion for Pre-Judgment and Post-Jugment Interest</i>
08/14/2015	 Reply in Support Filed By: Plaintiff Gitter, Shae E <i>Reply in Support of Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest</i>
08/25/2015	 Substitution of Attorney Filed by: Defendant Public Employees Retirement System of Nevada <i>Substitution of Counsel</i>
09/01/2015	 <b>Motion</b> (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest</i>
09/03/2015	<b>CANCELED Calendar Call</b> (9:30 AM) (Judicial Officer: Barker, David) <i>Vacated - per Stipulation and Order</i>
09/08/2015	<b>CANCELED Jury Trial</b> (10:00 AM) (Judicial Officer: Crockett, Jim) <i>Vacated - per Stipulation and Order</i>
09/17/2015	<b>Status Check</b> (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Status Check: Stipulation and Order to Dismiss with Prejudice</i>
09/17/2015	<b>Status Check</b> (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Status Check - Trial Readiness</i>
09/17/2015	 <b>All Pending Motions</b> (9:00 AM) (Judicial Officer: Crockett, Jim)
10/16/2015	 Notice of Entry of Order Filed By: Plaintiff Gitter, Shae E <i>Notice of Entry of Order Granting Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest and Final Judgment</i>
10/16/2015	 Order Granting Filed By: Plaintiff Gitter, Shae E


# CASE SUMMARY


## CASE NO. A-14-697642-C


*Order Granting Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest and Final Judgment*

10/20/2015 **CANCELED Pre Trial Conference** (9:30 AM) (Judicial Officer: Crockett, Jim)  
*Vacated - Case Closed*


10/22/2015  Amended Certificate of Service  
Party: Plaintiff Gitter, Shae E  
*Amended Certificate of Service*


10/23/2015  Memorandum of Costs and Disbursements  
Filed By: Plaintiff Gitter, Shae E  
*Plaintiffs' Memorandum of Costs and Disbursements*

10/29/2015  Motion to Retax  
Filed By: Defendant Public Employees Retirement System of Nevada  
*Motion to Retax Costs*

11/09/2015  Motion for Attorney Fees  
Filed By: Plaintiff Gitter, Shae E  
*Motion for Attorneys' Fees*

11/12/2015 **CANCELED Calendar Call** (9:30 AM) (Judicial Officer: Crockett, Jim)  
*Vacated - Case Closed*

11/13/2015  Notice of Appeal  
Filed By: Defendant Public Employees Retirement System of Nevada  
*Notice of Appeal*

11/13/2015  Case Appeal Statement  
Filed By: Defendant Public Employees Retirement System of Nevada  
*Case Appeal Statement*

11/16/2015 **CANCELED Jury Trial** (10:00 AM) (Judicial Officer: Crockett, Jim)  
*Vacated - Case Closed*

12/15/2015 **Motion to Retax** (9:00 AM) (Judicial Officer: Crockett, Jim)  
*Motion to Retax Costs*

12/17/2015 **Motion for Attorney Fees** (9:00 AM) (Judicial Officer: Crockett, Jim)  
*Motion for Attorneys' Fees*

**DATE****FINANCIAL INFORMATION**

**Defendant** Public Employees Retirement System of Nevada

Total Charges 224.00

Total Payments and Credits 224.00

**Balance Due as of 11/18/2015 0.00**

**Plaintiff** Gitter, Shae E

Total Charges 470.00

Total Payments and Credits 470.00

**Balance Due as of 11/18/2015 0.00**

**Plaintiff** Jared Shafer as Special Administrator of the Estate of Kristine Jo Freshman

Total Charges 30.00

Total Payments and Credits 30.00

**Balance Due as of 11/18/2015 0.00**

**DEPARTMENT 24**  
**CASE SUMMARY**  
**CASE NO. A-14-697642-C**

|

## CIVIL COVER SHEET

Clark County, Nevada

A- 14- 697642- C

Case No. \_\_\_\_\_

XVI I I

(Assigned by Clerk's Office)

**I. Party Information**

Plaintiff(s) (name/address/phone): Shae E. Gitter, an individual, and Jared Shafer, as Special Administrator of the Estate of Kristine Jo Freshman

Attorney (name/address/phone):

Dennis L. Kennedy, Kelly B. Stout, Mark Hesiak,  
BAILEY ♦ KENNEDY, 8984 Spanish Ridge Avenue, Las Vegas, Nevada 89148

Telephone: (702) 562-8820

Defendant(s) (name/address/phone): Public Employees' Retirement System of Nevada, a public entity and component unit of the State of Nevada

Attorney (name/address/phone): Unknown

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> <b>Negligence</b> <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition

**Probate****Other Civil Filing Types**

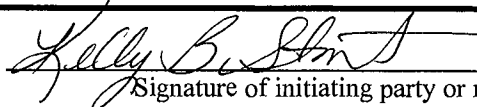
<b>Estimated Estate Value:</b> _____ <input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input checked="" type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input checked="" type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters
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**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt/Business <input type="checkbox"/> Other Business Court Matters
--	---	---

March 13, 2014

Date



Signature of initiating party or representative

See other side for family-related case filings.

BAILEY ♦ KENNEDY  
8984 SPANISH RIDGE AVENUE  
LAS VEGAS, NEVADA 89148  
PHONE (702) 562-8820

1 **ORDG**

2 DENNIS L. KENNEDY, Nev. Bar No. 1462

3 KELLY B. STOUT, Nev. Bar No. 12105

4 MARK HESIAK, Nev. Bar No. 12397

5 Bailey ♦ Kennedy

6 8984 Spanish Ridge Avenue

7 Las Vegas, Nevada 89148-1302

8 Telephone: (702) 562-8820

9 Facsimile: (702) 562-8821

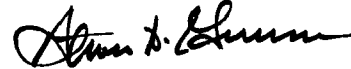
10 DKennedy@BaileyKennedy.com

11 KStout@BaileyKennedy.com

12 MHesiak@BaileyKennedy.com

13 *Attorneys for Plaintiffs Shae E. Gitter, and*  
14 *Jared Shafer as Special Administrator of the*  
15 *Estate of Kristine Jo Freshman*

Electronically Filed  
01/29/2015 02:13:37 PM



CLERK OF THE COURT

11 DISTRICT COURT  
12 CLARK COUNTY, NEVADA

13 SHAE E. GITTER, an individual, and JARED  
14 SHAFER, as Special Administrator of the  
15 Estate of Kristine Jo Freshman,

16 Plaintiffs,

17 v.

18 PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF  
19 NEVADA, a public entity and component unit  
20 of the State of Nevada,

21 Defendant.

Case No. A-14-697642-C  
Dept. No. XVIII

**Date of Hearing: December 2, 2014**  
**Time of Hearing: 8:15 a.m.**

22 **ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND**  
23 **DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

24 On December 2, 2014 at the hour of 8:15 a.m., the following matters came before the  
25 Court: (1) Plaintiffs' Motion for Partial Summary Judgment on their claim for declaratory relief  
26 and (2) Defendant's Motion for Summary Judgment. Plaintiffs, Shae E. Gitter and Jared Shafer,  
27 were represented by Kelly B. Stout of the law firm Bailey Kennedy. Defendant, Public  
Employees' Retirement System of Nevada ("PERS"), was represented by Kimberly A. Okezie

1 (appearing telephonically) of the Nevada Attorney General's Office, and W. Chris Wicker of the  
2 law firm Woodburn and Wedge.

3 **I. FINDINGS OF FACT**

4 The Court finds the following material facts are not disputed by the Parties and are  
5 proven by admissible evidence:

6 **The Death of Kristine Jo Freshman.**

7 1. Kristine Jo Freshman was an employee of the Clark County School District and a  
8 member of PERS;

9 2. Kristine Jo Freshman had one child, Plaintiff Shae E. Gitter.

10 3. On or about August 2007, Kristine Jo Freshman completed a "Survivor Beneficiary  
11 Designation" identifying Shae E. Gitter as her survivor beneficiary.

12 4. Kristine Jo Freshman's August 2007 "Survivor Beneficiary Designation" superseded all  
13 previous designations and she did not submit any subsequent "Survivor Beneficiary  
14 Designation" or otherwise designate any other survivor beneficiary.

15 5. Kristine Jo Freshman died on December 6, 2009.

16 6. Kristine Jo Freshman was killed by Walter E. Freshman.

17 7. At the time of her death, Kristine Jo Freshman was married to Walter E. Freshman.

18 8. Walter E. Freshman was Shae E. Gitter's step-father.

19 9. On September 10, 2010, Walter E. Freshman pleaded guilty to second-degree murder for  
20 causing the death of Kristine Jo Freshman.

21 10. On December 10, 2010, Walter Freshman was adjudicated a "killer" as defined by  
22 section 41B.130 of the Slayer Statutes.

23 11. At the time of her death, Kristine Jo Freshman had accrued more than 20 years of service  
24 credit with PERS.

25 12. On or about April 25, 2011, Shae E. Gitter submitted a completed "Application for  
26 Survivor Benefits."

1 13. PERS has not paid any benefits to Kristine Jo Freshman, the Estate of Kristine Jo  
2 Freshman, or any other person.

3 **II. CONCLUSIONS OF LAW**

4 **A. THE PERS ACT.**

5 14. Chapter 286 of the Nevada Revised Statutes contains the PERS Act.

6 15. NRS 286.671 through 286.679 provide for payment of benefits to survivors of a deceased  
7 PERS member.

8 16. NRS 286.674 provides that upon the death of a PERS member with 10 years or more of  
9 accredited contributing service, the spouse of the deceased member is entitled to receive a  
10 cumulative benefit of at least \$450.00 per month (the "Spousal Benefit").

11 17. NRS 286.674 further provides that the surviving spouse of a PERS member is entitled to  
12 receive Spousal Benefits beginning on the first day of the month immediately following the  
13 death of the PERS member.

14 18. NRS 286.6767(1) provides that a PERS "member may designate, in writing, a survivor  
15 beneficiary and one or more additional payees to receive payments . . . if the member is  
16 unmarried on the date of the member's death."

17 19. NRS 286.669 states that "[a]ny person convicted of the murder or voluntary  
18 manslaughter of a [PERS] member . . . is ineligible to receive any benefit conferred by any  
19 provision of [the PERS Act] by reason of the death of that member."

20 20. NRS 286.669 further states that PERS "may withhold the payment of any benefit  
21 otherwise payable under this chapter by reason of the death of any member from any person  
22 charged with the murder or voluntary manslaughter of that member, pending final determination  
23 of those charges."

24 **B. Nevada's Slayer Statutes.**

25 21. Chapter 41B of the Nevada Revised Statutes contains Nevada's "Slayer Statutes," which  
26 are intended to prevent a killer from profiting or benefiting from his or wrong. NRS 41B.200(1).  
27

1 22. NRS 41B.200(1) states that “[n]otwithstanding any other provision of law, the provisions  
2 of [Chapter 41B] apply to any . . . interest or benefit that accrues or devolves to a killer of a  
3 decedent based upon the death of the decedent.”

4 23. NRS 41B.200(2)(b)(1) – (2) further provides that the Slayer Statutes “do not abrogate or  
5 limit the application of . . . (b) [a]ny provision of a governing instrument that designates: (1) [a]  
6 contingent or residuary beneficiary who is not a killer of the decedent; or (2) [a]ny other  
7 beneficiary who is not a killer of the decedent.”

8 24. NRS 41B.100(1) defines an “interest” as “[a]ny interest, in whole or in part, in any  
9 property or estate, whether such interest is legal or equitable, present or future, or contingent or  
10 vested.”

11 25. NRS 41B.090(9) defines a governing instrument to include “[a]ny public or private plan  
12 or system that entitles a person to the payment or transfer of any property, interest or benefit,  
13 including, without limitation, a plan or system that involves . . . (1) [p]ension benefits, retirement  
14 benefits, or other similar benefits.”

15 26. NRS 41B.310(1) states that “a killer of a decedent forfeits any . . . interest or benefit that,  
16 pursuant to the provisions of a governing instrument executed by the decedent or any other  
17 person, accrues or devolves to the killer based upon the death of the decedent.”

18 27. NRS 41B.310(3) states that “[i]f a killer of a decedent forfeits any appointment,  
19 nomination, power, right, property, interest or benefit pursuant to this section, the provisions of  
20 each governing instrument affected by the forfeiture must be treated as if the killer had  
21 predeceased the decedent.”

22 28. The PERS Act is a governing instrument as defined in NRS 41B.090(9).

23 29. PERS benefits for survivors, including a benefits for a member’s surviving spouse or  
24 designated survivor beneficiary, are an “interest” as defined in NRS 41B.100(1).

25 30. Benefits for survivors of a deceased PERS member, including, but not limited to Spousal  
26 Benefits, are an “interest” that “accrues or devolves . . . based upon the death of a decedent.”  
27

1 31. NRS Chapter 41B applies to PERS benefits for survivors of a deceased PERS member,  
2 including, but not limited to Spousal Benefits and benefits for a survivor beneficiary pursuant to  
3 NRS 286.6767.

4 32. Pursuant to NRS 41B.310(3), Walter Freshman is deemed to have predeceased Kristine  
5 Jo Freshman for the purposes of determining entitlement to PERS benefits for survivors as set  
6 forth in NRS 286.671 – 286.679, inclusive.

7 33. Pursuant to NRS 41B.310(3), PERS shall treat Kristine Jo Freshman as being unmarried  
8 at the time of her death for the purpose of determining entitlement to PERS benefits for  
9 survivors.

10 34. Kristine Jo Freshman's August 2007 designation of Shae E. Gitter complied with NRS  
11 286.6767.

12 35. Shae E. Gitter is entitled to survivor benefits as set forth in NRS 286.6767 – 286.6769,  
13 inclusive.

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III. ORDER

The Court, after reviewing the Parties' Motions; the memoranda, declarations, and exhibits related thereto; the pleadings and papers on file; hearing argument of counsel; and being fully advised of the premises, and good cause appearing:

A. HEREBY ORDERS that Plaintiffs' Motion for Partial Summary Judgment on their claim for declaratory relief is GRANTED.

B. IT IS FURTHER ORDERED that:

1. Chapter 41B of the Nevada Revised Statutes is applicable to PERS benefits for survivors of a deceased PERS member payable to a surviving spouse and/or a survivor beneficiary designated pursuant to NRS 286.6767;
2. Walter E. Freshman shall be treated as if he predeceased Kristine Jo Freshman for the purposes of determining entitlement to PERS benefits for survivors;
3. Kristine Jo Freshman shall be treated as being unmarried at the time of her death for the purposes of determining entitlement to PERS benefits for survivors; and
4. Shae E. Gitter, as the sole survivor beneficiary of Kristine Jo Freshman, is entitled to survivor benefits as set forth in NRS 286.6767 – NRS 286.6769, inclusive.

C. IT IS FURTHER ORDERED that Defendant PERS' Motion for Summary Judgment is DENIED in its entirety as to all claims.

DATED this 20<sup>th</sup> day of January, 2015.

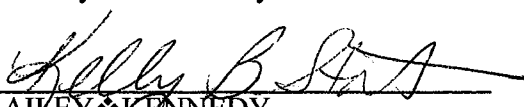
Judge David Barker

(P)

Respectfully Submitted By:

Approved as to Form and Content:

By:

  
BAILEY ♦ KENNEDY  
Dennis L. Kennedy  
Kelly B. Stout  
Mark Hesiak

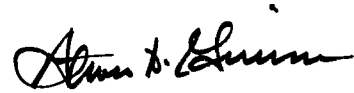
By:

  
WOODBURN AND WEDGE  
Chris Wicker

Kimberly A. Okezie  
OFFICE OF THE ATTORNEY GENERAL

*Attorneys for Plaintiffs Shae E. Gitter and  
Jared Shafer as Special Administrator of the  
Estate of Kristine Jo Freshman*

*Attorneys for the Public Employees'  
Retirement System*



CLERK OF THE COURT

1 **NEOJ**

DENNIS L. KENNEDY, Nev. Bar No. 1462

2 KELLY B. STOUT, Nev. Bar No. 12105

MARK HESIAK, Nev. Bar No. 12397

3 Bailey ♦ Kennedy

8984 Spanish Ridge Avenue

4 Las Vegas, Nevada 89148-1302

Telephone: (702) 562-8820

5 Facsimile: (702) 562-8821

DKennedy@BaileyKennedy.com

6 KStout@BaileyKennedy.com

MHesiak@BaileyKennedy.com

7  
8 *Attorneys for Plaintiffs Shae E. Gitter, and*  
9 *Jared Shafer as Special Administrator of the*  
10 *Estate of Kristine Jo Freshman*

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DISTRICT COURT  
CLARK COUNTY, NEVADA

SHAE E. GITTER, an individual, and JARED  
SHAFFER, as Special Administrator of the  
Estate of Kristine Jo Freshman,

Plaintiffs,

v.

PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF  
NEVADA, a public entity and component unit  
of the State of Nevada,

Defendant.

Case No. A-14-697642-C

Dept. No. XVIII

**NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY  
JUDGMENT AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that an Order Granting Plaintiffs' Motion for Partial Summary  
Judgment and Denying Defendant's Motion for Summary Judgment was entered on the 29<sup>th</sup> day

///

///

1 of January, 2015, in the above-captioned matter. A true and correct copy of the Order is attached  
2 hereto.

3 DATED this 29<sup>th</sup> day of January, 2015.

4 BAILEY ♦ KENNEDY

6 By: /s/ Kelly B. Stout

DENNIS L. KENNEDY

KELLY B. STOUT

MARK HESIAK

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148

*Attorneys for Petitioner Shae E. Gitter and  
Jared Shafer as Special Administrator of the  
Estate of Kristine Jo Freshman*

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of Bailey❖Kennedy and that on the 29<sup>th</sup> day of January,  
3 2015, service of the foregoing NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS'  
4 MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING DEFENDANT'S  
5 MOTION FOR SUMMARY JUDGMENT was made by mandatory e-service through the Eighth  
6 Judicial District Court's e-filing system and/or by depositing a true and correct copy in the U.S.  
7 Mail, first class postage prepaid, addressed to the following at their last known addresses:

8 Kimberly A. Okezie  
9 Deputy Attorney General  
10 Office of the Attorney General  
11 100 North Carson Street  
12 Carson City, NV 89701  
13 Telephone: (775) 684-1270  
14 Facsimile: (775) 684-1108

15 W. Chris Wicker, Esq.  
16 WOODBURN AND WEDGE  
17 6100 Neil Road, Suite 500  
18 Reno, Nevada 89511  
19 Telephone: (775) 688-3000  
20 Facsimile: (775) 688-3088

21 *Attorneys for Defendant Public Employees'*  
22 *Retirement System of Nevada*

23 /s/ Jennifer Kennedy  
24 Jennifer Kennedy, an Employee of  
25 BAILEY❖KENNEDY  
26  
27

1 **ORDG**

2 DENNIS L. KENNEDY, Nev. Bar No. 1462

3 KELLY B. STOUT, Nev. Bar No. 12105

4 MARK HESIAK, Nev. Bar No. 12397

5 Bailey ♦ Kennedy

6 8984 Spanish Ridge Avenue

7 Las Vegas, Nevada 89148-1302

8 Telephone: (702) 562-8820

9 Facsimile: (702) 562-8821

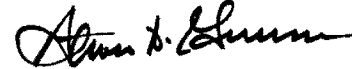
10 DKennedy@BaileyKennedy.com

11 KStout@BaileyKennedy.com

12 MHesiak@BaileyKennedy.com

13 *Attorneys for Plaintiffs Shae E. Gitter, and*  
14 *Jared Shafer as Special Administrator of the*  
15 *Estate of Kristine Jo Freshman*

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CLERK OF THE COURT

11 DISTRICT COURT  
12 CLARK COUNTY, NEVADA

13 SHAE E. GITTER, an individual, and JARED  
14 SHAFER, as Special Administrator of the  
15 Estate of Kristine Jo Freshman,

16 Plaintiffs,

17 v.

18 PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF  
19 NEVADA, a public entity and component unit  
20 of the State of Nevada,

21 Defendant.

Case No. A-14-697642-C  
Dept. No. XVIII

Date of Hearing: December 2, 2014  
Time of Hearing: 8:15 a.m.

22 **ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND**  
23 **DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

24 On December 2, 2014 at the hour of 8:15 a.m., the following matters came before the  
25 Court: (1) Plaintiffs' Motion for Partial Summary Judgment on their claim for declaratory relief  
26 and (2) Defendant's Motion for Summary Judgment. Plaintiffs, Shae E. Gitter and Jared Shafer,  
27 were represented by Kelly B. Stout of the law firm Bailey Kennedy. Defendant, Public  
Employees' Retirement System of Nevada ("PERS"), was represented by Kimberly A. Okezie

1 (appearing telephonically) of the Nevada Attorney General's Office, and W. Chris Wicker of the  
2 law firm Woodburn and Wedge.

3 **I. FINDINGS OF FACT**

4 The Court finds the following material facts are not disputed by the Parties and are  
5 proven by admissible evidence:

6 **The Death of Kristine Jo Freshman.**

7 1. Kristine Jo Freshman was an employee of the Clark County School District and a  
8 member of PERS;

9 2. Kristine Jo Freshman had one child, Plaintiff Shae E. Gitter.

10 3. On or about August 2007, Kristine Jo Freshman completed a "Survivor Beneficiary  
11 Designation" identifying Shae E. Gitter as her survivor beneficiary.

12 4. Kristine Jo Freshman's August 2007 "Survivor Beneficiary Designation" superseded all  
13 previous designations and she did not submit any subsequent "Survivor Beneficiary  
14 Designation" or otherwise designate any other survivor beneficiary.

15 5. Kristine Jo Freshman died on December 6, 2009.

16 6. Kristine Jo Freshman was killed by Walter E. Freshman.

17 7. At the time of her death, Kristine Jo Freshman was married to Walter E. Freshman.

18 8. Walter E. Freshman was Shae E. Gitter's step-father.

19 9. On September 10, 2010, Walter E. Freshman pleaded guilty to second-degree murder for  
20 causing the death of Kristine Jo Freshman.

21 10. On December 10, 2010, Walter Freshman was adjudicated a "killer" as defined by  
22 section 41B.130 of the Slayer Statutes.

23 11. At the time of her death, Kristine Jo Freshman had accrued more than 20 years of service  
24 credit with PERS.

25 12. On or about April 25, 2011, Shae E. Gitter submitted a completed "Application for  
26 Survivor Benefits."

1 13. PERS has not paid any benefits to Kristine Jo Freshman, the Estate of Kristine Jo  
2 Freshman, or any other person.

3 **II. CONCLUSIONS OF LAW**

4 **A. THE PERS ACT.**

5 14. Chapter 286 of the Nevada Revised Statutes contains the PERS Act.

6 15. NRS 286.671 through 286.679 provide for payment of benefits to survivors of a deceased  
7 PERS member.

8 16. NRS 286.674 provides that upon the death of a PERS member with 10 years or more of  
9 accredited contributing service, the spouse of the deceased member is entitled to receive a  
10 cumulative benefit of at least \$450.00 per month (the "Spousal Benefit").

11 17. NRS 286.674 further provides that the surviving spouse of a PERS member is entitled to  
12 receive Spousal Benefits beginning on the first day of the month immediately following the  
13 death of the PERS member.

14 18. NRS 286.6767(1) provides that a PERS "member may designate, in writing, a survivor  
15 beneficiary and one or more additional payees to receive payments . . . if the member is  
16 unmarried on the date of the member's death."

17 19. NRS 286.669 states that "[a]ny person convicted of the murder or voluntary  
18 manslaughter of a [PERS] member . . . is ineligible to receive any benefit conferred by any  
19 provision of [the PERS Act] by reason of the death of that member."

20 20. NRS 286.669 further states that PERS "may withhold the payment of any benefit  
21 otherwise payable under this chapter by reason of the death of any member from any person  
22 charged with the murder or voluntary manslaughter of that member, pending final determination  
23 of those charges."

24 **B. Nevada's Slayer Statutes.**

25 21. Chapter 41B of the Nevada Revised Statutes contains Nevada's "Slayer Statutes," which  
26 are intended to prevent a killer from profiting or benefiting from his or wrong. NRS 41B.200(1).  
27

1 22. NRS 41B.200(1) states that “[n]otwithstanding any other provision of law, the provisions  
2 of [Chapter 41B] apply to any . . . interest or benefit that accrues or devolves to a killer of a  
3 decedent based upon the death of the decedent.”

4 23. NRS 41B.200(2)(b)(1) – (2) further provides that the Slayer Statutes “do not abrogate or  
5 limit the application of . . . (b) [a]ny provision of a governing instrument that designates: (1) [a]  
6 contingent or residuary beneficiary who is not a killer of the decedent; or (2) [a]ny other  
7 beneficiary who is not a killer of the decedent.”

8 24. NRS 41B.100(1) defines an “interest” as “[a]ny interest, in whole or in part, in any  
9 property or estate, whether such interest is legal or equitable, present or future, or contingent or  
10 vested.”

11 25. NRS 41B.090(9) defines a governing instrument to include “[a]ny public or private plan  
12 or system that entitles a person to the payment or transfer of any property, interest or benefit,  
13 including, without limitation, a plan or system that involves . . . (1) [p]ension benefits, retirement  
14 benefits, or other similar benefits.”

15 26. NRS 41B.310(1) states that “a killer of a decedent forfeits any . . . interest or benefit that,  
16 pursuant to the provisions of a governing instrument executed by the decedent or any other  
17 person, accrues or devolves to the killer based upon the death of the decedent.”

18 27. NRS 41B.310(3) states that “[i]f a killer of a decedent forfeits any appointment,  
19 nomination, power, right, property, interest or benefit pursuant to this section, the provisions of  
20 each governing instrument affected by the forfeiture must be treated as if the killer had  
21 predeceased the decedent.”

22 28. The PERS Act is a governing instrument as defined in NRS 41B.090(9).

23 29. PERS benefits for survivors, including a benefits for a member’s surviving spouse or  
24 designated survivor beneficiary, are an “interest” as defined in NRS 41B.100(1).

25 30. Benefits for survivors of a deceased PERS member, including, but not limited to Spousal  
26 Benefits, are an “interest” that “accrues or devolves . . . based upon the death of a decedent.”  
27

1 31. NRS Chapter 41B applies to PERS benefits for survivors of a deceased PERS member,  
2 including, but not limited to Spousal Benefits and benefits for a survivor beneficiary pursuant to  
3 NRS 286.6767.

4 32. Pursuant to NRS 41B.310(3), Walter Freshman is deemed to have predeceased Kristine  
5 Jo Freshman for the purposes of determining entitlement to PERS benefits for survivors as set  
6 forth in NRS 286.671 – 286.679, inclusive.

7 33. Pursuant to NRS 41B.310(3), PERS shall treat Kristine Jo Freshman as being unmarried  
8 at the time of her death for the purpose of determining entitlement to PERS benefits for  
9 survivors.

10 34. Kristine Jo Freshman's August 2007 designation of Shae E. Gitter complied with NRS  
11 286.6767.

12 35. Shae E. Gitter is entitled to survivor benefits as set forth in NRS 286.6767 – 286.6769,  
13 inclusive.

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III. ORDER

The Court, after reviewing the Parties' Motions; the memoranda, declarations, and exhibits related thereto; the pleadings and papers on file; hearing argument of counsel; and being fully advised of the premises, and good cause appearing:

A. HEREBY ORDERS that Plaintiffs' Motion for Partial Summary Judgment on their claim for declaratory relief is GRANTED.

B. IT IS FURTHER ORDERED that:

1. Chapter 41B of the Nevada Revised Statutes is applicable to PERS benefits for survivors of a deceased PERS member payable to a surviving spouse and/or a survivor beneficiary designated pursuant to NRS 286.6767;
2. Walter E. Freshman shall be treated as if he predeceased Kristine Jo Freshman for the purposes of determining entitlement to PERS benefits for survivors;
3. Kristine Jo Freshman shall be treated as being unmarried at the time of her death for the purposes of determining entitlement to PERS benefits for survivors; and
4. Shae E. Gitter, as the sole survivor beneficiary of Kristine Jo Freshman, is entitled to survivor benefits as set forth in NRS 286.6767 – NRS 286.6769, inclusive.

C. IT IS FURTHER ORDERED that Defendant PERS' Motion for Summary Judgment is DENIED in its entirety as to all claims.

DATED this 20<sup>th</sup> day of January, 2015.

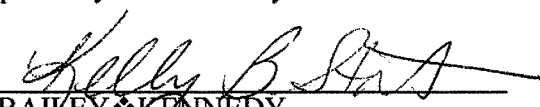
Judge David Barker

(P)

Respectfully Submitted By:

Approved as to Form and Content:

By:

  
BAILEY ♦ KENNEDY  
Dennis L. Kennedy  
Kelly B. Stout  
Mark Hesiak

By:

  
WOODBURN AND WEDGE  
Chris Wicker

Kimberly A. Okezie  
OFFICE OF THE ATTORNEY GENERAL

*Attorneys for Plaintiffs Shae E. Gitter and  
Jared Shafer as Special Administrator of the  
Estate of Kristine Jo Freshman*

*Attorneys for the Public Employees'  
Retirement System*

1 **ORDG**

2 DENNIS L. KENNEDY

3 Nevada Bar No. 1462

4 KELLY B. STOUT

5 Nevada Bar No. 12105

6 MARK HESIAK

7 Nevada Bar No. 12397

8 **BAILEY ♦ KENNEDY**

9 8984 Spanish Ridge Avenue

10 Las Vegas, Nevada 89148-1302

11 Telephone: 702.562.8820

12 Facsimile: 702.562.8821

13 DKennedy@BaileyKennedy.com

14 KStout@BaileyKennedy.com

15 MHesiak@BaileyKennedy.com

16 *Attorneys for Plaintiffs*

17 SHAE E. GITTER, and JARED SHAFER

18 as Special Administrator of the Estate of

19 Kristine Jo Freshman

20 DISTRICT COURT

21 CLARK COUNTY, NEVADA

22 SHAE E. GITTER, an individual, and JARED  
23 SHAFER, as Special Administrator of the  
24 Estate of Kristine Jo Freshman,

25 Plaintiffs,

26 vs.

27 PUBLIC EMPLOYEES' RETIREMENT  
28 SYSTEM OF NEVADA, a public entity and  
component unit of the State of Nevada,

Defendant.

Case No. A-14-697642-C

Dept. No. XXIV

29 **ORDER GRANTING PLAINTIFFS' MOTION FOR**  
30 **PRE-JUDGMENT AND POST-JUDGMENT INTEREST**

31 **AND**  
32 **FINAL JUDGMENT**

33 On September 1, 2015, at the hour of 9:00 a.m., Plaintiffs' Motion for Pre-Judgment and  
34 Post-Judgment Interest came before the Court. Plaintiffs, Shae E. Gitter ("Shae") and Jared Shafer,  
35 were represented by Dennis L. Kennedy and Kelly B. Stout of the law firm Bailey Kennedy.  
36 Defendant, Public Employees' Retirement System of Nevada ("PERS"), was represented by W.

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

*Alvin D. Quinn*

CLERK OF THE COURT

BAILEY ♦ KENNEDY  
8984 SPANISH RIDGE AVENUE  
LAS VEGAS, NEVADA 89148-1302  
702.562.8820

OCT 6 2015

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ENTERED  
10/16/15

1 Chris Wicker and Joshua M. Woodbury of the law firm Woodburn and Wedge, and Chris Nielsen,  
2 counsel for PERS (appearing telephonically).

3 **I. FINDINGS OF FACT**

4 1. Pursuant to the Court's January 29, 2015 Order Granting Plaintiffs' Motion for Partial  
5 Summary Judgment and Denying Defendant's Motion for Summary Judgment, which determined  
6 that Shae E. Gitter is the sole survivor beneficiary of Kristine Jo Freshman and is entitled to survivor  
7 benefits as set forth in NRS 286.6767 – NRS 286.6769, inclusive, the Parties have stipulated to the  
8 following facts regarding the survivor benefits for the sole purpose of calculating benefits based on  
9 the Court's Order:

- 10 a. Based on wages reported from January 2007 through December 2009, Kristine Jo  
11 Freshman's highest average monthly compensation was \$6,251.16.
- 12 b. Pursuant to NRS 286.6768(1), Kristine Jo Freshman is deemed to have retired on  
13 December 6, 2009, the date of her death.
- 14 c. Pursuant to NRS 286.541(2)(c), Kristine Jo Freshman's effective date of retirement  
15 was January 24, 2010, her last day of creditable service being January 23, 2010, when  
16 she had a total of 24.00 years of service credit (14.833 years of service credit earned  
17 prior to July 2001 and 9.167 years of service credit after July 2001).
- 18 d. Pursuant to NRS 286.6768(1)(b), Shae is entitled to receive a "Monthly Benefit"  
19 equivalent to that provided by option 2 of NRS 286.590 beginning on January 1,  
20 2010, in the amount of \$2,938.86, prorated to January 24, 2010.
- 21 e. Pursuant to NRS 286.5756(1)(b), Shae's Monthly Benefit was first eligible for a  
22 Postretirement Increase (as defined in NRS 286.065) on February 1, 2013.
- 23 f. Pursuant to NRS 286.5756, Shae's Monthly Benefit is subject to a "Postretirement  
24 Increase" once each year on the first day of the month immediately following the  
25 anniversary of the date Shae began receiving the Monthly Benefit.
- 26 g. As of September 1, 2015, PERS owes Shae the following 69 payments of survivor  
27 benefits, which are past due (the "Back Payments") and total \$203,231.76:

28 ///

Due Date	Amount	Due Date	Amount	Due Date	Amount
01.01.2010	\$758.40	01.01.2012	\$2,938.86	01.01.2014	\$2,997.64
02.01.2010	\$2,938.86	02.01.2012	\$2,938.86	02.01.2014	\$3,057.59
03.01.2010	\$2,938.86	03.01.2012	\$2,938.86	03.01.2014	\$3,057.59
04.01.2010	\$2,938.86	04.01.2012	\$2,938.86	04.01.2014	\$3,057.59
05.01.2010	\$2,938.86	05.01.2012	\$2,938.86	05.01.2014	\$3,057.59
06.01.2010	\$2,938.86	06.01.2012	\$2,938.86	06.01.2014	\$3,057.59
07.01.2010	\$2,938.86	07.01.2012	\$2,938.86	07.01.2014	\$3,057.59
08.01.2010	\$2,938.86	08.01.2012	\$2,938.86	08.01.2014	\$3,057.59
09.01.2010	\$2,938.86	09.01.2012	\$2,938.86	09.01.2014	\$3,057.59
10.01.2010	\$2,938.86	10.01.2012	\$2,938.86	10.01.2014	\$3,057.59
11.01.2010	\$2,938.86	11.01.2012	\$2,938.86	11.01.2014	\$3,057.59
12.01.2010	\$2,938.86	12.01.2012	\$2,938.86	12.01.2014	\$3,057.59
01.01.2011	\$2,938.86	01.01.2013	\$2,938.86	01.01.2015	\$3,057.59
02.01.2011	\$2,938.86	02.01.2013	\$2,997.64	02.01.2015	\$3,118.74
03.01.2011	\$2,938.86	03.01.2013	\$2,997.64	03.01.2015	\$3,118.74
04.01.2011	\$2,938.86	04.01.2013	\$2,997.64	04.01.2015	\$3,118.74
05.01.2011	\$2,938.86	05.01.2013	\$2,997.64	05.01.2015	\$3,118.74
06.01.2011	\$2,938.86	06.01.2013	\$2,997.64	06.01.2015	\$3,118.74
07.01.2011	\$2,938.86	07.01.2013	\$2,997.64	07.01.2015	\$3,118.74
08.01.2011	\$2,938.86	08.01.2013	\$2,997.64	08.01.2015	\$3,118.74
09.01.2011	\$2,938.86	09.01.2013	\$2,997.64	09.01.2015	\$3,118.74
10.01.2011	\$2,938.86	10.01.2013	\$2,997.64		
11.01.2011	\$2,938.86	11.01.2013	\$2,997.64		
12.01.2011	\$2,938.86	12.01.2013	\$2,997.64		

h. PERS will continue to owe Shae a Monthly Benefit, payable on the first day of each month, for the remainder of Shae's life (the "Future Payments").

2. Kristine Freshman was hired by a qualified employer and entered into an employment contract with that employer effective August 22, 1986 (the "Contract").

3. The Contract includes eligibility for PERS benefits (including survivor benefits) as part of its compensation package.

4. The Contract does not fix a rate of interest for any portion of the compensation due thereunder.

## II. CONCLUSIONS OF LAW

1. NRS 99.040(1)(a) provides that "[w]hen there is no express contract in writing fixing a different rate of interest, interest *must* be allowed . . . upon all money from the time it becomes due, in . . . cases [u]pon contracts, express or implied, other than book accounts" (emphasis added).

2. The interest rate applicable to obligations subject to NRS 99.040(1)(a) is the statutory rate that was in effect at the time Kristine Freshman entered into the Contract.

1           3.       PERS benefits are an element of compensation that is contained in the employment  
2 Contract.

3           4.       A claim for PERS benefits is a case “upon a contract” because an individual’s right to  
4 PERS benefits arises out of an employment contract with a qualified employee.

5           5.       Monthly Benefits owed to a survivor beneficiary of a PERS Member is subject to  
6 interest pursuant to 99.040(1)(a) if not paid when due.

7           6.       In 1986, the statutory rate of interest applicable to obligations subject to NRS  
8 99.040(1)(a) was 12%.

9  
10                               **III. ORDER GRANTING PLAINTIFFS’ MOTION FOR PRE-  
JUDGMENT AND POST-JUDGMENT INTEREST**

11           The Court, after reviewing Plaintiffs’ Motion and the Parties’ memoranda, declarations, and  
12 exhibits related thereto; reviewing the pleadings and papers on file; hearing argument of counsel;  
13 and being fully advised of the premises, and good cause appearing:

14           A.       HEREBY ORDERS that Plaintiffs’ Motion for Pre-Judgment and Post-Judgment Interest is  
15 GRANTED.

16           B.       IT IS FURTHER ORDERED that Defendant PERS shall pay pre-judgment and post-  
17 judgment interest at the rate of 12% per annum to Plaintiff Shae E. Gitter on all Monthly  
18 Benefits from the date each payment is due until it is paid in full.

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**IV. FINAL JUDGMENT**

WHEREAS the Court's January 29, 2015 Order Granting Plaintiffs' Motion for Partial Summary Judgment and Denying Defendant's Motion for Summary Judgment determined that Shae E. Gitter is the sole survivor beneficiary of Kristine Jo Freshman and is entitled to monthly payments of Survivor Benefits as set forth in NRS 286.6767 – NRS 286.6769; and

WHEREAS the Court has granted Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest and PERS is required to pay pre-judgment and post-judgment interest at the rate of 12% per annum to Plaintiff Shae E. Gitter on all overdue payments of survivors benefits from the date each payment was due until paid in full;

The Court, having fully considered the matter and having made findings of fact and conclusions of law, enters judgment as follows:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that judgment is entered in favor of the Plaintiff Shae Gitter and against PERS as follows:

1. Pursuant to NRS 286.6768(1)(b), PERS shall pay Shae survivor benefits in the form of a Monthly Benefit equivalent to that provided by option 2 of NRS 286.590 beginning on January 1, 2010, in the amount of \$2,938.86, prorated to January 24, 2010; and
2. Pursuant to NRS 286.5756, Shae's Monthly Benefit is subject to a Postretirement Increase once each year on the first day of the month immediately following the anniversary of the date Shae began receiving the Monthly Benefit.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as of September 1, 2015, PERS owes Shae as follows:

1. As of September 1, 2015, PERS owes Shae 69 payments of survivor benefits, which are past due, and total \$203,231.76; and
2. As of September 1, 2015, PERS owes Shae \$69,340.40 in pre-judgment interest.

///

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1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as of September 2,  
2 2015:

- 3 1. Plaintiff Shae Gitter is entitled to continue receiving Survivor Benefits as set forth in  
4 NRS 286.6767 – NRS 286.6769 (the Future Payments), including any statutory  
5 increases in such benefits, for the remainder of her life.  
6 2. PERS shall continue to pay interest on each of the Back Payments at the rate of 12%  
7 per annum until paid; and  
8 3. PERS shall pay interest on each of the Future Payments at the rate of 12% per annum  
9 from the date each payment is due until it is paid in full.

10 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that this is the final  
11 judgment in the matter, as there remain no matters or claims left for decision.

12 *TRIAL AND ALL RELATED HEARINGS TO BE VACATED.*

13 DATED this 7 day of October ~~September~~, 2015.

14   
15 District Court Judge

16  
17 Respectfully Submitted By:

18  
19 By: 

20 BAILEY ♦ KENNEDY  
21 DENNIS L. KENNEDY  
KELLY B. STOUT  
MARK HESIAK

22 *Attorneys for Plaintiffs*  
23 SHAE E. GITTER, and JARED SHAFER  
as Special Administrator of the Estate of  
24 Kristine Jo Freshman

25 Approved as to Form:

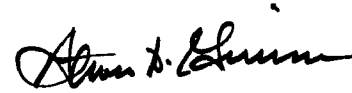
26 By: 

27 WOODBURN AND WEDGE  
28 W. CHRIS WICKER

AND

CHRIS NIELSEN

*Attorneys for Defendant*  
PUBLIC EMPLOYEES' RETIREMENT  
SYSTEM OF NEVADA



CLERK OF THE COURT

1 **NEOJ**

2 DENNIS L. KENNEDY, Nev. Bar No. 1462

3 KELLY B. STOUT, Nev. Bar No. 12105

4 MARK HESIAK, Nev. Bar No. 12397

5 Bailey ♦ Kennedy

6 8984 Spanish Ridge Avenue

7 Las Vegas, Nevada 89148-1302

8 Telephone: (702) 562-8820

9 Facsimile: (702) 562-8821

10 DKennedy@BaileyKennedy.com

11 KStout@BaileyKennedy.com

12 MHesiak@BaileyKennedy.com

13 *Attorneys for Plaintiffs Shae E. Gitter, and*  
14 *Jared Shafer as Special Administrator of the*  
15 *Estate of Kristine Jo Freshman*

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DISTRICT COURT  
CLARK COUNTY, NEVADA

28 SHAE E. GITTER, an individual, and JARED  
29 SHAFER, as Special Administrator of the  
30 Estate of Kristine Jo Freshman,

31 Plaintiffs,

32 v.

33 PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF  
34 NEVADA, a public entity and component unit  
35 of the State of Nevada,

36 Defendant.

Case No. A-14-697642-C

Dept. No. XVIII

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**NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION FOR PRE-JUDGMENT AND POST-JUDGMENT INTEREST AND FINAL JUDGMENT**

101 PLEASE TAKE NOTICE that an Order Granting Plaintiffs' Motion for Pre-Judgment and  
102 Post-Judgment Interest and Final Judgment was entered on the 16<sup>th</sup> day of October, 2015, in the

103 ///

104 ///

105 ///

1 above-captioned matter. A true and correct copy of the Order is attached hereto.

2 DATED this 16<sup>th</sup> day of October, 2015.

3 BAILEY ♦ KENNEDY

4  
5 By: /s/ Kelly B. Stout

6 DENNIS L. KENNEDY

7 KELLY B. STOUT

8 MARK HESIAK

9 8984 Spanish Ridge Avenue

10 Las Vegas, Nevada 89148

11  
12 *Attorneys for Petitioner Shae E. Gitter and*  
13 *Jared Shafer as Special Administrator of the*  
14 *Estate of Kristine Jo Freshman*  
15  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of Bailey ♦ Kennedy and that on the 16<sup>th</sup> day of October, 2015, service of the foregoing NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION FOR PRE-JUDGMENT AND POST-JUDGMENT INTEREST AND FINAL JUDGMENT was made by mandatory e-service through the Eighth Judicial District Court's e-filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, addressed to the following at their last known addresses:

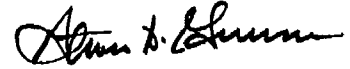
Kimberly A. Okezie  
Deputy Attorney General  
Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701  
Telephone: (775) 684-1270  
Facsimile: (775) 684-1108

W. Chris Wicker, Esq.  
WOODBURN AND WEDGE  
6100 Neil Road, Suite 500  
Reno, Nevada 89511  
Telephone: (775) 688-3000  
Facsimile: (775) 688-3088

*Attorneys for Defendant Public Employees'  
Retirement System of Nevada*

/s/ Josephine Baltazar  
Josephine Baltazar, an Employee of  
BAILEY ♦ KENNEDY

Electronically Filed  
10/16/2015 09:48:54 AM



CLERK OF THE COURT

**ORDC**  
DENNIS L. KENNEDY  
Nevada Bar No. 1462  
KELLY B. STOUT  
Nevada Bar No. 12105  
MARK HESIAK  
Nevada Bar No. 12397  
**BAILEY ♦ KENNEDY**  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
Telephone: 702.562.8820  
Facsimile: 702.562.8821  
DKennedy@BaileyKennedy.com  
KStout@BaileyKennedy.com  
MHesiak@BaileyKennedy.com

*Attorneys for Plaintiffs*  
SHAE E. GITTER, and JARED SHAFER  
as Special Administrator of the Estate of  
Kristine Jo Freshman

DISTRICT COURT  
CLARK COUNTY, NEVADA

SHAE E. GITTER, an individual, and JARED  
SHAFER, as Special Administrator of the  
Estate of Kristine Jo Freshman,

Plaintiffs,

vs.

PUBLIC EMPLOYEES' RETIREMENT  
SYSTEM OF NEVADA, a public entity and  
component unit of the State of Nevada,

Defendant.

Case No. A-14-697642-C

Dept. No. XXIV

**ORDER GRANTING PLAINTIFFS' MOTION FOR**  
**PRE-JUDGMENT AND POST-JUDGMENT INTEREST**  
**AND**  
**FINAL JUDGMENT**

On September 1, 2015, at the hour of 9:00 a.m., Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest came before the Court. Plaintiffs, Shae E. Gitter ("Shae") and Jared Shafer, were represented by Dennis L. Kennedy and Kelly B. Stout of the law firm Bailey Kennedy. Defendant, Public Employees' Retirement System of Nevada ("PERS"), was represented by W.

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

BAILEY ♦ KENNEDY  
8984 SPANISH RIDGE AVENUE  
LAS VEGAS, NEVADA 89148-1302  
702.562.8820

OCT 9 0 130

RECEIVED

ENTERED  
10/16/15

Chris Wicker and Joshua M. Woodbury of the law firm Woodburn and Wedge, and Chris Nielsen, counsel for PERS (appearing telephonically).

**I. FINDINGS OF FACT**

1. Pursuant to the Court's January 29, 2015 Order Granting Plaintiffs' Motion for Partial Summary Judgment and Denying Defendant's Motion for Summary Judgment, which determined that Shae E. Gitter is the sole survivor beneficiary of Kristine Jo Freshman and is entitled to survivor benefits as set forth in NRS 286.6767 – NRS 286.6769, inclusive, the Parties have stipulated to the following facts regarding the survivor benefits for the sole purpose of calculating benefits based on the Court's Order:

- a. Based on wages reported from January 2007 through December 2009, Kristine Jo Freshman's highest average monthly compensation was \$6,251.16.
- b. Pursuant to NRS 286.6768(1), Kristine Jo Freshman is deemed to have retired on December 6, 2009, the date of her death.
- c. Pursuant to NRS 286.541(2)(c), Kristine Jo Freshman's effective date of retirement was January 24, 2010, her last day of creditable service being January 23, 2010, when she had a total of 24.00 years of service credit (14.833 years of service credit earned prior to July 2001 and 9.167 years of service credit after July 2001).
- d. Pursuant to NRS 286.6768(1)(b), Shae is entitled to receive a "Monthly Benefit" equivalent to that provided by option 2 of NRS 286.590 beginning on January 1, 2010, in the amount of \$2,938.86, prorated to January 24, 2010.
- e. Pursuant to NRS 286.5756(1)(b), Shae's Monthly Benefit was first eligible for a Postretirement Increase (as defined in NRS 286.065) on February 1, 2013.
- f. Pursuant to NRS 286.5756, Shae's Monthly Benefit is subject to a "Postretirement Increase" once each year on the first day of the month immediately following the anniversary of the date Shae began receiving the Monthly Benefit.
- g. As of September 1, 2015, PERS owes Shae the following 69 payments of survivor benefits, which are past due (the "Back Payments") and total \$203,231.76:

///

Due Date	Amount	Due Date	Amount	Due Date	Amount
01.01.2010	\$758.40	01.01.2012	\$2,938.86	01.01.2014	\$2,997.64
02.01.2010	\$2,938.86	02.01.2012	\$2,938.86	02.01.2014	\$3,057.59
03.01.2010	\$2,938.86	03.01.2012	\$2,938.86	03.01.2014	\$3,057.59
04.01.2010	\$2,938.86	04.01.2012	\$2,938.86	04.01.2014	\$3,057.59
05.01.2010	\$2,938.86	05.01.2012	\$2,938.86	05.01.2014	\$3,057.59
06.01.2010	\$2,938.86	06.01.2012	\$2,938.86	06.01.2014	\$3,057.59
07.01.2010	\$2,938.86	07.01.2012	\$2,938.86	07.01.2014	\$3,057.59
08.01.2010	\$2,938.86	08.01.2012	\$2,938.86	08.01.2014	\$3,057.59
09.01.2010	\$2,938.86	09.01.2012	\$2,938.86	09.01.2014	\$3,057.59
10.01.2010	\$2,938.86	10.01.2012	\$2,938.86	10.01.2014	\$3,057.59
11.01.2010	\$2,938.86	11.01.2012	\$2,938.86	11.01.2014	\$3,057.59
12.01.2010	\$2,938.86	12.01.2012	\$2,938.86	12.01.2014	\$3,057.59
01.01.2011	\$2,938.86	01.01.2013	\$2,938.86	01.01.2015	\$3,057.59
02.01.2011	\$2,938.86	02.01.2013	\$2,997.64	02.01.2015	\$3,118.74
03.01.2011	\$2,938.86	03.01.2013	\$2,997.64	03.01.2015	\$3,118.74
04.01.2011	\$2,938.86	04.01.2013	\$2,997.64	04.01.2015	\$3,118.74
05.01.2011	\$2,938.86	05.01.2013	\$2,997.64	05.01.2015	\$3,118.74
06.01.2011	\$2,938.86	06.01.2013	\$2,997.64	06.01.2015	\$3,118.74
07.01.2011	\$2,938.86	07.01.2013	\$2,997.64	07.01.2015	\$3,118.74
08.01.2011	\$2,938.86	08.01.2013	\$2,997.64	08.01.2015	\$3,118.74
09.01.2011	\$2,938.86	09.01.2013	\$2,997.64	09.01.2015	\$3,118.74
10.01.2011	\$2,938.86	10.01.2013	\$2,997.64		
11.01.2011	\$2,938.86	11.01.2013	\$2,997.64		
12.01.2011	\$2,938.86	12.01.2013	\$2,997.64		

h. PERS will continue to owe Shae a Monthly Benefit, payable on the first day of each month, for the remainder of Shae's life (the "Future Payments").

2. Kristine Freshman was hired by a qualified employer and entered into an employment contract with that employer effective August 22, 1986 (the "Contract").

3. The Contract includes eligibility for PERS benefits (including survivor benefits) as part of its compensation package.

4. The Contract does not fix a rate of interest for any portion of the compensation due thereunder.

## II. CONCLUSIONS OF LAW

1. NRS 99.040(1)(a) provides that "[w]hen there is no express contract in writing fixing a different rate of interest, interest *must* be allowed . . . upon all money from the time it becomes due, in . . . cases [u]pon contracts, express or implied, other than book accounts" (emphasis added).

2. The interest rate applicable to obligations subject to NRS 99.040(1)(a) is the statutory rate that was in effect at the time Kristine Freshman entered into the Contract.

1           3.       PERS benefits are an element of compensation that is contained in the employment  
2 Contract.

3           4.       A claim for PERS benefits is a case "upon a contract" because an individual's right to  
4 PERS benefits arises out of an employment contract with a qualified employee.

5           5.       Monthly Benefits owed to a survivor beneficiary of a PERS Member is subject to  
6 interest pursuant to 99.040(1)(a) if not paid when due.

7           6.       In 1986, the statutory rate of interest applicable to obligations subject to NRS  
8 99.040(1)(a) was 12%.

9  
10                               **III. ORDER GRANTING PLAINTIFFS' MOTION FOR PRE-  
JUDGMENT AND POST-JUDGMENT INTEREST**

11           The Court, after reviewing Plaintiffs' Motion and the Parties' memoranda, declarations, and  
12 exhibits related thereto; reviewing the pleadings and papers on file; hearing argument of counsel;  
13 and being fully advised of the premises, and good cause appearing:

14           A. HEREBY ORDERS that Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest is  
15 GRANTED.

16           B. IT IS FURTHER ORDERED that Defendant PERS shall pay pre-judgment and post-  
17 judgment interest at the rate of 12% per annum to Plaintiff Shae E. Gitter on all Monthly  
18 Benefits from the date each payment is due until it is paid in full.

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**IV. FINAL JUDGMENT**

WHEREAS the Court's January 29, 2015 Order Granting Plaintiffs' Motion for Partial Summary Judgment and Denying Defendant's Motion for Summary Judgment determined that Shae E. Gitter is the sole survivor beneficiary of Kristine Jo Freshman and is entitled to monthly payments of Survivor Benefits as set forth in NRS 286.6767 – NRS 286.6769; and

WHEREAS the Court has granted Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest and PERS is required to pay pre-judgment and post-judgment interest at the rate of 12% per annum to Plaintiff Shae E. Gitter on all overdue payments of survivors benefits from the date each payment was due until paid in full;

The Court, having fully considered the matter and having made findings of fact and conclusions of law, enters judgment as follows:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that judgment is entered in favor of the Plaintiff Shae Gitter and against PERS as follows:

1. Pursuant to NRS 286.6768(1)(b), PERS shall pay Shae survivor benefits in the form of a Monthly Benefit equivalent to that provided by option 2 of NRS 286.590 beginning on January 1, 2010, in the amount of \$2,938.86, prorated to January 24, 2010; and
2. Pursuant to NRS 286.5756, Shae's Monthly Benefit is subject to a Postretirement Increase once each year on the first day of the month immediately following the anniversary of the date Shae began receiving the Monthly Benefit.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as of September 1, 2015, PERS owes Shae as follows:

1. As of September 1, 2015, PERS owes Shae 69 payments of survivor benefits, which are past due, and total \$203,231.76; and
2. As of September 1, 2015, PERS owes Shae \$69,340.40 in pre-judgment interest.

///

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1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as of September 2,  
2 2015:

- 3 1. Plaintiff Shae Gitter is entitled to continue receiving Survivor Benefits as set forth in  
4 NRS 286.6767 – NRS 286.6769 (the Future Payments), including any statutory  
5 increases in such benefits, for the remainder of her life.  
6 2. PERS shall continue to pay interest on each of the Back Payments at the rate of 12%  
7 per annum until paid; and  
8 3. PERS shall pay interest on each of the Future Payments at the rate of 12% per annum  
9 from the date each payment is due until it is paid in full.

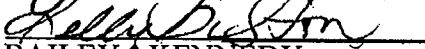
10 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this is the final  
11 judgment in the matter, as there remain no matters or claims left for decision.

12 TRIAL AND ALL RELATED HEARINGS TO BE VACATED. *October*

13 DATED this 7 day of ~~September~~, 2015.

14   
15 District Court Judge

16 Respectfully Submitted By:

17 By:   
18 BAILEY ♦ KENNEDY  
19 DENNIS L. KENNEDY  
20 KELLY B. STOUT  
21 MARK HESIAK

22 *Attorneys for Plaintiffs*  
23 SHAE E. GITTER, and JARED SHAFER  
24 as Special Administrator of the Estate of  
25 Kristine Jo Freshman

Approved as to Form:

26 By:   
27 WOODBURN AND WEDGE  
28 W. CHRIS WICKER

AND

CHRIS NIELSEN

*Attorneys for Defendant*  
PUBLIC EMPLOYEES' RETIREMENT  
SYSTEM OF NEVADA

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**July 15, 2014**

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A-14-697642-C      Shae Gitter, Plaintiff(s)  
vs.  
Public Employees Retirement System of Nevada, Defendant(s)

---

**July 15, 2014      9:00 AM      Discovery Conference**

**HEARD BY:** Bulla, Bonnie      **COURTROOM:** RJC Level 5 Hearing Room

**COURT CLERK:** Alan Castle

**RECORDER:** Richard Kangas

**REPORTER:**

**PARTIES**

**PRESENT:**      Stout, Kelly B,      Attorney  
Wicker, Walter C.      Attorney

**JOURNAL ENTRIES**

- Ms. Okezie, (#10705) Deputy Attorney General; and Mr. Wicker present via CourtCall. Counsel anticipate 2 - 3 days for trial re: Declaratory Relief / Breach of Contract. No settlement conference requested. COMMISSIONER RECOMMENDED, discovery cutoff is 9/26/14; adding parties, amended pleadings; initial expert disclosures; and, rebuttal expert disclosures are NOT APPLICABLE, FURTHER, parties will have the opportunity to reopen discovery should it be necessary at a later date; dispositive motions TO BE FILED BY 10/27/14. Scheduling Order will issue.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**December 02, 2014**

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A-14-697642-C	Shae Gitter, Plaintiff(s) vs. Public Employees Retirement System of Nevada, Defendant(s)
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<b>December 02, 2014</b>	<b>8:15 AM</b>	<b>All Pending Motions</b>	<b>Plaintiffs' Mtn for Partial Summary Judgment...Deft's Mtn for Summary Judgment</b>
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**HEARD BY:** Barker, David

**COURTROOM:** RJC Courtroom 11B

**COURT CLERK:** Sharon Chun

**RECORDER:** Cheryl Carpenter

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Gitter, Shae E Okezi, Kimberly A. Stout, Kelly B, Wicker, Walter C.	Plaintiff Attorney Attorney Attorney
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**JOURNAL ENTRIES**

- THIS MATTER having come before the Court for hearing on Plaintiffs' Motion for Partial Summary Judgment and Defendant's Motion for Summary Judgment, and the Court, having considered the papers submitted in connection with such items and heard the oral arguments as presented by Ms. Stout and Mr. Wicker, entered its decision as follows:

COURT ORDERED, Plaintiffs' Motion for Partial Summary Judgment, GRANTED. COURT FOUND that NRS Chapter 41B is applicable. The survivor benefits payable to the spouse and survivor beneficiary of the deceased PERS member, Walter Freshman, shall be treated as if he predeceased Christine Freshman for purposes of determining entitlement for survivor benefits from PERS. Christine Freshman is treated as being unmarried at the time of her death for purposes of determining entitlement to survivor benefits from PERS. Shae Gitter, as the sole survivor beneficiary

of Christine Freshman, is entitled to survivor benefits pursuant to NRS 286.6769 inclusive.

COURT DIRECTED Plaintiff's counsel to prepare the order and to allow Defense counsel to review prior to submission to the Court for signature.

CLERK'S NOTE: Following calendar the Law Clerk advised, COURT ORDERED, Deft's Motion for Summary Judgment DENIED, pursuant to Plaintiff's Motion being granted.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Breach of Contract

# COURT MINUTES

**June 11, 2015**

A-14-697642-C      Shae Gitter, Plaintiff(s)  
vs.  
Public Employees Retirement System of Nevada, Defendant(s)

**June 11, 2015**      **9:00 AM**      **Status Check**

**HEARD BY:** Crockett, Jim

**COURTROOM:** Phoenix Building Courtroom - 11th Floor

**COURT CLERK:** Theresa Lee

**RECORDER:**

**REPORTER:**

## PARTIES

**PRESENT:** Stout, Kelly B, Attorney  
Wicker, Walter C. Attorney

## JOURNAL ENTRIES

- Mr. Wicker informed the Court that he entered into this case with Summary Judgment being granted on the legal issue of statutory interpretation. Mr. Wicker advised that he spoke to Pltff's counsel and leaning in the direction of a stipulation regarding the amount of damages which is the only issue outstanding. They are asking that the Stipulated Judgment be entered with the right of PERS to determine the legal determination. Upon Court's inquiry as to the terms of the agreement, Mr. Wicker responded the parties are close to reaching an agreement on those. Mr. Stout advised if the case does go to trial he will be ready to proceed. Upon the Court's inquiry as to a time frame for the settlement, Mr. Wicker said because of the statutory calculations, the Pltff. will want to know how the figures were calculated by PERS and Mr. Stout wants to be sure how the figure was calculated before signing off. Further, counsel are working on the Lifetime Benefit if PERS loses on Appeal and are considering preparing a Judgment on that. Mr. Stout concurred. Mr. Stout stated Pltff's. Expert that he would like review any documents received from PERS before signing anything. Discussions by Court and counsel on the time required to gather all the information required. Mr. Wicker stated he feels they will have all of the information ready by the first of next week. The Court stated it would like to see the Stipulation filed by 07/16/15 so the trial date can be vacated, otherwise the case will proceed to trial. COURT ORDERED, Trial Date STANDS. Status Check SET.

07/16/15 9:00 A.M. STATUS CHECK: SETTLEMENT DOCUMENTS

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Breach of Contract

# COURT MINUTES

September 01, 2015

A-14-697642-C      Shae Gitter, Plaintiff(s)  
vs.  
Public Employees Retirement System of Nevada, Defendant(s)

**September 01, 2015      9:00 AM      Motion**

HEARD BY: Crockett, Jim

**COURTROOM:** Phoenix Building Courtroom -  
11th Floor

**COURT CLERK:** Theresa Lee

**RECORDER:**

**REPORTER:**

## PARTIES

**PRESENT:** Kennedy, Dennis L. Attorney  
Stout, Kelly B. Attorney  
Wicker, Walter C. Attorney

## JOURNAL ENTRIES

- APPEARANCES CONTINUED: Chris Nielsen, Esq. Bar #8206, Carson City, NV also appearing via Court Call along with Walter Wicker, Esq. appearing via Court Call.

Court noted that Judge Barker granted Pltf's Motion for Summary Judgment prior to this Court taking the Bench. The parties needed to determine if the benefits need to be calculated in a particular way. It appears that has been done. The Court is inclined to grant the motion for interest under NRS 99.040(1)(a) in the amount of \$69,340.40, but the Court has a question on page 3, 5 & 6, and comments on the breakdown and the discrepancy, i.e. one page has 67 payments, the other has 69 payments and the amounts differ. Court advised counsel that if the Court grants the motion, counsel will have to sort out the mathematical calculation of interest.

Argument by Mr. Nielson on behalf of PERS. Mr. Kennedy stated that he also tried to get the math correct, but agreed on the obligation due, and he will get back with PERS on that, and submitted the matter on the written briefs. Following further argument by Mr. Nielsen, COURT ORDERED, the motion is GRANTED, and counsel to work out the mathematical calculation of interest. Mr. Nielson

inquired if the Court is making no ruling on the pre-judgment interest. COURT ORDERED, the motion is GRANTED as to pre-judgment and post-judgment interest. Mr. Nielson stated this should resolve all matters before the Court and will submit a written Judgment to the Court, COURT SO ORDERED, however, the trial date STANDS until the Court receives the Stipulation and Order to Dismiss with Prejudice. FURTHER ORDERED, the Court will see counsel at the Status Check Trial Readiness on 9/17/15, however, if the documents have been filed their presence is WAIVED and the trial date will be VACATED.

9/17/15 @ 9:00 A.M. STATUS CHECK: TRIAL READINESS...STATUS CHECK: STIPULATION AND ORDER TO DISMISS

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Breach of Contract

# COURT MINUTES

September 17, 2015

A-14-697642-C      Shae Gitter, Plaintiff(s)  
vs.  
Public Employees Retirement System of Nevada, Defendant(s)

**September 17, 2015      9:00 AM      All Pending Motions**

**HEARD BY:** Crockett, Jim

**COURTROOM:** Phoenix Building Courtroom - 11th Floor

**COURT CLERK:** Theresa Lee

**RECORDER:**

**REPORTER:**

## PARTIES

**PRESENT:** Stout, Kelly B, Attorney

## JOURNAL ENTRIES

- STATUS CHECK: TRIAL READINESS...STATUS CHECK: STIPULATION AND ORDER TO DISMISS WITH PREJUDICE

Mr. Stout stated that he is present on behalf of Pltf, and opposing counsel has given her authorization to report that counsel have finalized the Order on the Motion for Post and Pre-Judgment Interest. If this Court will accept an electronic signature she has the Order ready to submit to the Court. Court requested counsel submit the hard copy of the Order with original signatures within one to two (1-2) days, and as soon as the Court receives the Order all pending dates will be vacated.

Ms. Stout stated that she has an Order and a Judgment to submit to the Court. Court advised Ms. Stout that the Supreme Court does not want Judges signing two separate Orders, an Order and a Judgment with the same dollar amounts . Ms. Stout will resubmit one Order. COURT ORDERED, trial date STANDS until the Order has been received by the Court.



**EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE**  
**NOTICE OF DEFICIENCY**  
**ON APPEAL TO NEVADA SUPREME COURT**

**W. CHRIS WICKER, ESQ.**  
**6100 NEIL ROAD, SUITE 500**  
**RENO, NV 89511**

**DATE: November 18, 2015**  
**CASE: A697642**

**RE CASE:** SHAE E. GITTER; JARED SHAFER, as Special Administrator of the Estate of Kristine Jo Freshman vs. PUBLIC EMPLOYEES RETIREMENT SYSTEM OF NEVADA

NOTICE OF APPEAL FILED: November 13, 2015

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

**PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:**

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)\*\*
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)\*\*
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)\*\*
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
  - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

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**NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:**

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

*Please refer to Rule 3 for an explanation of any possible deficiencies.*

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**\*\*Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.**

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; ORDER GRANTING PLAINTIFFS' MOTION FOR PRE-JUDGMENT AND POST-JUDGMENT INTEREST AND FINAL JUDGMENT; NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION FOR PRE-JUDGMENT AND POST-JUDGMENT INTEREST AND FINAL JUDGMENT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

SHAE E. GITTER; JARED SHAFER, as Special  
Administrator of the Estate of Kristine Jo  
Freshman,

Plaintiff(s),

vs.

PUBLIC EMPLOYEES RETIREMENT  
SYSTEM OF NEVADA,

Defendant(s),

Case No: A697642

Dept No: XXIV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 18 day of November 2015.

Steven D. Grierson, Clerk of the Court

*Mary Kielty*

Mary Kielty, Deputy Clerk