

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 PUBLIC EMPLOYEES RETIREMENT
4 SYSTEM, a public agency, a public entity and
5 component of the State of Nevada,

6 Appellant,

7 vs.

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

10 Respondents.

Electronically Filed
Dec 10 2015 11:23 a.m.
Appeal from the Eighth Judicial
District Court, Clark County
Clerk of Supreme Court
Case No. A697642

DOCKETING STATEMENT CIVIL
APPEALS

11
12 GENERAL INFORMATION

13 All appellants not in proper person must complete this docketing statement. NRAP
14 14(a). The purpose of the docketing statement is to assist the Supreme Court in
15 screening jurisdiction, classifying cases for en banc, panel, or expedited treatment,
16 compiling statistical information and information and indentifying parties and their
17 counsel.

18 WARNING

19 This statement must be completely fully, accurately and on time. NRAP 14(c). The
20 Supreme Court may impose sanctions on counsel or appellant if it appears that the
21 information provided is incomplete or inaccurate. *Id.* Failure to attach documents as
22 requested in this statement, completely fill out the statement, or to fail to file it in a
23 timely manner, will constitute grounds for the imposition of sanctions, including a fine
24 and/or dismissal of the appeal.

25 This court has noted that when attorneys do not take seriously their obligations under
26 NRAP 14 to complete the docketing statement properly and conscientiously, they waste
27 the valuable judicial resources of this court, making the imposition of sanctions
28 appropriate. *See Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 25 P.3d 898 (2001);
KDI Sivan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991). Please use tab dividers
to separate any attached documents.

1. Judicial District: Eighth
Judge: Jim Crockett

Department: XXIV County: Clark
District Ct. Docket No.: A-14-697642-C

2. Attorney filing this docket statement:

Attorney: W. Chris Wicker

Telephone: (775) 688-3000

1 Firm: Woodburn and Wedge

2 Address: 6100 Neil Rd., Ste. 500, Reno, NV 89511

3 Client(s): Public Employees Retirement System

4 If this is a joint statement completed on behalf of multiple appellants, add the
5 names and addresses of other counsel and the names of their clients on an
6 additional sheet accompanied by a certification that they concur in the filing of
7 this statement.

8 **3. Attorney(s) representing respondent(s):**

9 Attorney: Kelly B. Stout

Telephone: (702) 562-8820

10 Firm: Bailey Kennedy

11 Address: 8984 Spanish Ridge Avenue, Las Vegas, NV 89148

12 Client(s): Shae E. Gitter and Jared Shaefer

13 (List additional counsel on separate sheet if necessary)

14 **4. Nature of disposition below (check all that apply):**

15 ☐ Judgment after bench trial

☐ Grant/Denial of NRCP 60(b) relief

16 ☐ Judgment after jury verdict

☐ Grant/Denial of injunction

17 ☒ Summary judgment

☐ Grant/Denial of declaratory relief

18 ☐ Default judgment

☐ Review of agency determination

19 ☐ Dismissal

☐ Divorce decree:

20 ☐ Lack of jurisdiction

☐ Original ☐ Modification

21 ☐ Failure to state a claim

☐ Other disposition (specify) :

22 ☐ Failure to prosecute

23 ☐ Other (specify) _____

24 **5. Does this appeal raise issues concerning any of the following:**

25 ☐ Child custody

☐ Termination of parental rights

26 ☐ Venue

☐ Grant/Denial of injunction or TRO

27 ☐ Adoption

☐ Juvenile matters

28 **6. Pending and prior proceedings in this court.** List the case name and docket number
of all appeals or original proceedings presently or previously pending before this court
which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and
court of all pending and prior proceedings in other courts which are related this appeal
(e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of
disposition:

None.

8. Nature of the action. Briefly describe the nature of the action, including a list of the causes of action, pleaded and the result below:

Respondent Gitter was the child of deceased PERS member Kristine Jo Freshman. Respondents filed suit against Appellant asserting that as a result of Ms. Freshman's murder by her spouse, Walter Freshman, Appellant is required or authorized under Nevada's Slayer Statute, NRS Chapter 41B, to pay benefits to Respondents pursuant to a Survivor Beneficiary Designation made by Ms. Freshman. Appellant asserted it could not pay the survivor benefit because Ms. Freshman was married at the time of her death and applicable PERS statutes prohibited the payment of benefits to Respondents as a survivor beneficiary. Respondents asserted claims for breach of contract and breach of fiduciary duty. The Trial Court granted Respondents' Motion for Summary Judgment stating Respondents are entitled to receive Survivor Benefits as set forth in NRS 286.6767-NRS 286.6769 (the Future Payments), including any statutory increases in such benefits, for the remainder of her life; Appellant shall continue to pay interest on each of the Back Payments at the rate of 12% per annum until paid; and Appellants shall pay interest on each of the Future Payments at the rate of 12% per annum from the date each payment is due until it is paid in full.

9. Issues on appeal. State concisely the principal issue(s) in this appeal:

- a. Whether NRS 286.6767(1) providing for the designation of survivor beneficiaries if the member is unmarried on the date of the member's death precludes the payment of benefits to named survivor beneficiaries if the member is married at the time of her death, but murdered by his or her spouse.
- b. Whether the district court erred in finding that Chapter 41B of the Nevada Revised Statutes apply to NRS Chapter 286.
- c. Whether PERS' obligation to pay pension benefits pursuant to NRS Chapter 286 is a contractual obligation or merely statutory.
- d. Whether under NRS Chapter 286 PERS is obligated to pay pre-judgment and post-judgment interest.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A X Yes _____ No _____

If not, explain

1 **12. Other issues.** Does this appeal involve any of the following issues?

- 2 ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
3 ☐ An issue arising under the United States and/or Nevada Constitutions
4 ☐ A substantial issue of first-impression
5 ☒ An issue of public policy
6 ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
7 ☐ A ballot question
8 ☐ Divorce decree:

9 If so, explain: The district court's ruling affects Appellant's ability to administer the
10 PERS trust fund for the benefit of all public employees.

11 **13. Trial.** If this action proceeded to trial, how many days did the trial last? 0

12 Was it a bench or jury trial? N/A

13 **14. Judicial disqualification.** Do you intend to file a motion to disqualify or have a
14 justice recuse him/herself from participation in this appeal. If so, which Justice?

15 No.

16 **TIMELINESS OF NOTICE OF APPEAL**

17 **15. Date of entry of written judgment or order appealed from January 29, 2015 and**
18 **October 16, 2015. Attach a copy. If more than one judgment or order is appealed**
19 **form, attach copies of each judgment or order from which an appeal is taken.**

20 (a) If no written judgment or order was filed in the district court, explain the basis for
21 seeking appellate review:

22 **16. Date written notice of entry of judgment or order served January 29, 2015 and**
23 **October 16, 2015. Attach a copy, including proof of service, for each order or**
24 **judgment appealed from.**

25 (a) Was service by hand delivery or by mail First Class Mail (specify): The Court's e-
26 flex system.

27 **17. If the time for filing the notice of appeal was tolled by a post-judgment motion**
28 **(NRCP 50(b), 52(b), or 59),**

(a) Specify the type of motion, and the date and method of service of the motion, and
date of filing.

NRCP 50(b) _____ Date served _____ By delivery _____ or by mail _____ Date of filing _____
NRCP 52(b) _____ Date served _____ By delivery _____ or by mail _____ Date of filing _____
NRCP 59 _____ Date served _____ By delivery _____ or by mail _____ Date of filing _____

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(b) Date of entry of written order resolving tolling motion N/A. **Attach a copy.**

(c) Date written notice of entry of order resolving motion served N/A. **Attach a copy, including proof of service.**

(i) Was service by delivery _____ or by mail _____ (specify).

(a) If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal:
November 13, 2015 – PERS

NRAP 4(a)

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appeal from:

Explain how each authority provides a basis for appeal from the judgment or order:

21. List all parties involved in the action in the district court:

- a. PERS;
b. SHAE GITTER; and
c. JARED SHAFFER, as Special Administrator of the Estate of Kristine Jo Freshman.
- (a) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

1 22. Give a brief description (3 to 5 words) of each party's separate claims,
2 counterclaims, cross-claims or third-party claims, and the trial court's disposition
3 of each claim, and how each claim was resolved (i.e., order judgment,
4 stipulation), and the date of disposition of each claim. Attach a copy of each
5 disposition.

6 The Complaint (attached) filed by the Respondents alleged causes of action for
7 Declaratory Judgment; Breach of Contract; Contractual Breach of the Implied
8 Covenant of Good Faith and Fair Dealings; Breach of Fiduciary Duty; Attorney's
9 Fees. The Trial Court found Petitioner liable to pay Respondents Survivor Benefits.

10 23. Did the judgment or order appealed from adjudicate ALL the claims alleged
11 below and the rights and liabilities of ALL the parties to the action below:

12 Yes X No

13 24. If you answered "No" to question 23, complete the following:

14 (a) Specify the claims remaining pending below:

15 (b) Specify the parties remaining below:

16 (c) Did the district court certify the judgment or order appealed from as a final
17 judgment pursuant to NRCP 54(b):

18 Yes No If "Yes," attach a copy of the certification or order,
19 including any notice of entry and proof of service.

20 (d) Did the district court make an express determination, pursuant to NRCP 54(b), that
21 there is no just reason for delay and an express direction for the entry of judgment:

22 Yes No

23 25. If you answered "No" to any part of question 24, explain the basis for seeking
24 appellate review (e.g., order is independently appealable under NRAP 3A(b)):

25 26. Attach file-stamped copies of the following documents:

- 26 (a) The latest-filed complaint, counterclaims, cross-claims, and third-party claims
27 (b) Any tolling motion(s) and order(s) resolving tolling motion(s)
28 (c) Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims,
crossclaims and/or third-party claims asserted in the action or consolidated action
below, even if not at issue on appeal
(d) Any other order challenged on appeal
(e) Notices of entry for each attached order

VERIFICATION

27 I declare under penalty of perjury that I have read this docketing statement, that
28 the information provided in this docketing statement is true and complete to the best of

1 my knowledge, information and belief, and that I have attached all required documents
2 to this docketing statement.

3 PUBLIC EMPLOYEES RETIREMENT SYSTEM

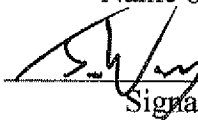
4 Name of appellant

W. Chris Wicker

Name of counsel of record

5 December 10, 2015

6 Date

 #11326 for

Signature of counsel

7 Washoe County, Nevada

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Woodburn and Wedge and that on this date, I
3 caused to be sent via electronic mail a true and correct copy of the DOCKETING
4 STATEMENT CIVIL APPEALS to:

5
6 Dennis L. Kennedy
7 Kelly B. Stout
8 Bailey Kennedy
8984 Spanish Ridge Avenue
Las Vegas, NV 89148

9 Chris Nielsen
10 Public Employees Retirement System
11 693 W. Nye Lane
Carson City, Nevada 89703

12 DATED this 10th day of December, 2015.

13
14 By: 
15 Kelly N. Weaver

- Exhibit A: Order Granting Plaintiffs' Motion for Partial Summary Judgment and Denying Defendant's Motion for Summary Judgment, January 29, 2015
- Exhibit B: Order Granting Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest and Final Judgment, October 16, 2015
- Exhibit C: Notice of Entry of Order Granting Plaintiffs' Motion for Partial Summary Judgment and Denying Defendant's Motion for Summary Judgment, January 29, 2015
- Exhibit D: Notice of Entry of Order Granting Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest and Final Judgment, October 16, 2015
- Exhibit E: Complaint, March 13, 2014

EXHIBIT A

EXHIBIT A

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

1 **ORDG**

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

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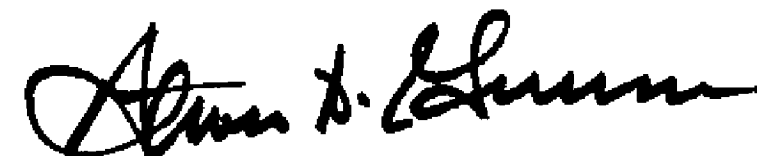
DKennedy@BaileyKennedy.com

6 KStout@BaileyKennedy.com

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

15 Plaintiffs,

16 v.

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

19 Defendant.

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

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

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

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

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 20th 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

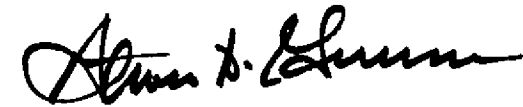
Kimberly A. Okezie
OFFICE OF THE ATTORNEY GENERAL

*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*

EXHIBIT B

EXHIBIT B



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

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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*

11 DISTRICT COURT
CLARK COUNTY, NEVADA

12
13 SHAE E. GITTER, an individual, and JARED
14 SHAFER, as Special Administrator of the
Estate of Kristine Jo Freshman,

15 Plaintiffs,

16 v.

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

19 Defendant.

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

20
21 **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION FOR PRE-JUDGMENT AND**
22 **POST-JUDGMENT INTEREST AND FINAL JUDGMENT**

23 PLEASE TAKE NOTICE that an Order Granting Plaintiffs' Motion for Pre-Judgment and
24 Post-Judgment Interest and Final Judgment was entered on the 16th day of October, 2015, in the

25 ///

26 ///

27 ///

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

2 DATED this 16th 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 16th 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:

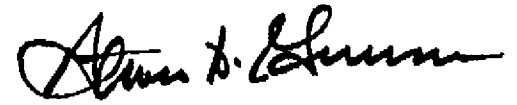
Kimberly A. Okezie
Deputy Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701
Telephone: (775) 684-1270
Facsimile: (775) 684-1108

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

1 **ORDG**

DENNIS L. KENNEDY

2 Nevada Bar No. 1462

KELLY B. STOUT

3 Nevada Bar No. 12105

MARK HESIAK

4 Nevada Bar No. 12397

BAILEY ♦ KENNEDY

5 8984 Spanish Ridge Avenue

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7 DKennedy@BaileyKennedy.com

KStout@BaileyKennedy.com

8 MHesiak@BaileyKennedy.com

9 *Attorneys for Plaintiffs*

SHAE E. GITTER, and JARED SHAFER

10 as Special Administrator of the Estate of

Kristine Jo Freshman

DISTRICT COURT

CLARK COUNTY, NEVADA

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

16 Plaintiffs,

17 vs.

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

20 Defendant.

Case No. A-14-697642-C

Dept. No. XXIV

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

24 **AND**
FINAL JUDGMENT

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

28 Defendant, Public Employees' Retirement System of Nevada ("PERS"), was represented by W

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

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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 ~~September~~ October, 2015.

14 
15 District Court Judge

17 Respectfully Submitted By:

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

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

Approved as to Form:

27 By: 
28 WOODBURN AND WEDGE
W. CHRIS WICKER

AND

CHRIS NIELSEN

Attorneys for Defendant
PUBLIC EMPLOYEES' RETIREMENT
SYSTEM OF NEVADA

EXHIBIT C

EXHIBIT C

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1 **NEOJ**

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

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6 KStout@BaileyKennedy.com

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

11 DISTRICT COURT
CLARK COUNTY, NEVADA

12
13 SHAE E. GITTER, an individual, and JARED
14 SHAFER, as Special Administrator of the
Estate of Kristine Jo Freshman,

15 Plaintiffs,

16 v.

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

19 Defendant.

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

20
21 **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY**
22 **JUDGMENT AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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

25 ///

26 ///

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

3 DATED this 29th day of January, 2015.

4 BAILEY❖KENNEDY

5
6 By: /s/ Kelly B. Stout

7 DENNIS L. KENNEDY

8 KELLY B. STOUT

9 MARK HESIAK

10 8984 Spanish Ridge Avenue

11 Las Vegas, Nevada 89148

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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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of Bailey❖Kennedy and that on the 29th 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

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

1 **ORDG**

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

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5 Facsimile: (702) 562-8821

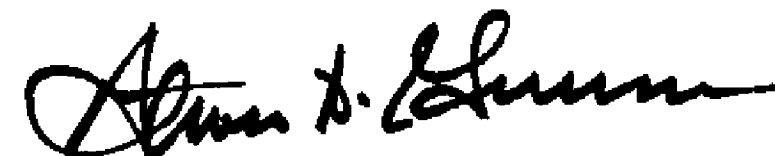
DKennedy@BaileyKennedy.com

6 KStout@BaileyKennedy.com

MHesiak@BaileyKennedy.com

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

15 Plaintiffs,

16 v.

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

19 Defendant.

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

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

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

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

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

I. FINDINGS OF FACT

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

The Death of Kristine Jo Freshman.

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

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

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

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

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

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

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

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

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

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

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

12. On or about April 25, 2011, Shae E. Gitter submitted a completed "Application for 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 20th 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

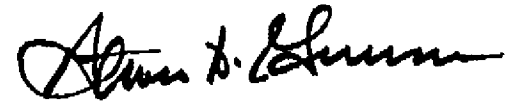
*Attorneys for Plaintiffs Shae E. Gitter and
Jared Shafer as Special Administrator of the
Estate of Kristine Jo Freshman*

*Attorneys for the Public Employees'
Retirement System*

EXHIBIT D

EXHIBIT D

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CLERK OF THE COURT

ORDG
DENNIS L. KENNEDY
Nevada Bar No. 1462
KELLY B. STOUT
Nevada Bar No. 12105
MARK HESIAK
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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 checked="" type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input checked="" 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

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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 7th day of ~~September~~ ^{October}, 2015.

14 
15 District Court Judge

17 Respectfully Submitted By:

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

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

Approved as to Form:

27 By: 
28 WOODBURN AND WEDGE
W. CHRIS WICKER

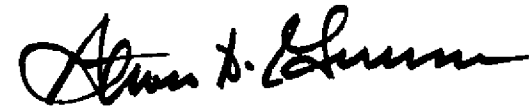
AND

CHRIS NIELSEN

Attorneys for Defendant
PUBLIC EMPLOYEES' RETIREMENT
SYSTEM OF NEVADA

EXHIBIT E

EXHIBIT E



CLERK OF THE COURT

COMP

DENNIS L. KENNEDY, Nev. Bar No. 1462
KELLY B. STOUT, Nev. Bar No. 12105
MARK HESIAK, Nev. Bar No. 12397
Bailey ♦ Kennedy
8984 Spanish Ridge Avenue
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Telephone Number: (702) 562-8820
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KStout@BaileyKennedy.com
MHesiak@BaileyKennedy.com

*Attorneys for Petitioners 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,

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. XVI I I

Exempt from Arbitration: NAR 3(A), 5

- Amount in Controversy in Excess of \$50,000.00;
- Action for declaratory relief;
- Action presenting a significant issue of public policy; and
- Action seeking equitable or extraordinary relief.

VERIFIED COMPLAINT

COME NOW Shae E. Gitter and Jared Shafer, as Special Administrator of the Estate of Kristine Jo Freshman, and complain against the Defendant, the Public Employees' Retirement System of Nevada ("PERS" or the "System") as follows:

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1 I. SUMMARY OF CASE

2 1. Kristine Freshman (“Kristine”) was a kindergarten teacher who taught in Nevada’s
3 public school system for more than 20 years and a member of PERS. On December 6, 2009,
4 Kristine was murdered by her husband, Walter E. Freshman (“Walter”). Pursuant to Chapter
5 41B of the Nevada Revised Statutes (Nevada’s “Slayer Statute”), Walter was disqualified from
6 benefiting from his crime and treated as if he predeceased Kristine. Therefore, Kristine’s
7 survivor benefits are payable to her designated secondary beneficiary – her daughter, Shae E.
8 Gitter (“Shae”). Shae is entitled to survivor benefits of approximately \$2,900.00 per month, or a
9 one-time, lump-sum payment of \$112,000.00. Notwithstanding the clear mandate of Nevada’s
10 Slayer Statute, and without any legal justification, PERS has refused to pay Shae any survivor
11 benefits.

12 II. THE PARTIES

13 2. Shae is currently, and at all times relevant hereto, was a resident of Clark County,
14 Nevada.

- 15 a. Shae is Kristine’s only child.
16 b. Shae is Kristine’s only heir.
17 c. Shae is the only beneficiary of the Estate of Kristine Jo Freshman (the “Estate”).

18 3. Plaintiff Jared Shafer (“Special Administrator”) is currently, and at all times relevant
19 hereto, was a resident of Clark County, Nevada.

- 20 a. Jared was appointed Special Administrator of the Estate on December 26, 2013.

21 4. PERS is a public entity and component unit of the State of Nevada.

- 22 a. PERS was established to advance the policy of the State of Nevada to provide “[a]
23 system which will make government employment attractive to qualified
24 employees in various categories of service and which will encourage these
25 employees to remain in government service for such periods of time as to give the
26 public employer full benefit of the training and experience gained by these
27 employees while employed by public employers.” NRS 286.015(c).

- b. The Public Employees Retirement Fund (the "Fund") is a trust fund. NRS 286.220(2); Nev. Const. art. 9, § 2.
- c. PERS is governed by the Public Employees' Retirement Board (the "Board").
- d. PERS and the Board are trustees of the Fund and owe a fiduciary duty to PERS members.

III. FACTS

KRISTINE JO FRESHMAN'S PERS ACCOUNT

5. Kristine was a kindergarten teacher who taught in Nevada's public school system from September 1986 until the time of her death in December 2009.

6. Prior to her death, Kristine was a PERS member who was employed by a participating public employer.

a. Upon information and belief, Kristine earned 24.01 years of service credit.

b. Upon information and belief, the total amount contributed to PERS on account of Kristine's employment was approximately \$225,767.94.

7. Prior to her death, Kristine completed a "Survivor Beneficiary Designation,"¹ which identified her daughter, Shae, as her secondary survivor beneficiary.

KRISTINE JO FRESHMAN'S MURDER

8. Walter murdered Kristine on December 6, 2009.

9. At the time of her death, Kristine was married to Walter.

10. On September 20, 2010, Walter pled guilty to murder in the second degree for causing Kristine's death.

11. On December 10, 2010, Walter was adjudicated a Killer for all purposes of NRS Chapter 41B.

12. Walter's conviction is final; judgment has been entered and the time for appeal has expired.

///

¹ A true and correct copy of the Survivor Beneficiary Designation is attached as Exhibit 1.

SHAE IS ENTITLED TO SURVIVOR BENEFITS

13. Nevada's Slayer Statute prohibits a person from receiving any benefits (such a life-insurance proceeds, trust funds, inheritance under a will, etc.) resulting from the death of a person he or she is convicted of murdering.

14. Nevada's Slayer Statute applies to all such benefits "[n]otwithstanding any other provision of law," NRS 41B.200(1), including a public plan or system that involves pension benefits, NRS 41B.090(9)(a).

15. Therefore, Nevada's Slayer Statute is applicable to survivor benefits payable to spouses or survivor beneficiaries of deceased PERS members.

16. As a "Killer," who was responsible for the Kristine's death, Walter is ineligible to receive any survivor benefits from Kristine's PERS account.

17. In order to facilitate inheritance and determine who should receive benefits, NRS 41B.310 provides that Walter "must be treated as if [he] had predeceased [Kristine]."

18. On or about January 10, 2010, PERS sent Shae a letter informing her that she may be eligible for survivor benefits in the amount of approximately \$2,900.00 per month, or as a one-time, lump-sum refund in the amount of \$112,000.00.²

19. On June 10, 2011, PERS sent Shae a follow-up letter stating that neither Shae nor the Estate were eligible to receive any benefits because Chapter 286 of the Nevada Revised Statutes does not authorize payment.

20. In order to investigate and evaluate PERS' determination, Shae and the Estate requested copies of documents related to Kristine's PERS account.

21. PERS took the position that neither Shae nor the Estate were entitled to copies of documents because PERS had determined that neither was a beneficiary.

22. In order to obtain copies of the documents related to Kristine's PERS account, Shae and the Estate petitioned the court for an Order instructing PERS to provide copies of the documents.

² A true and correct copy of the letter is attached as Exhibit 2.

23. Shae and the Estate obtained an Order on December 26, 2013, which compelled PERS to provide the Special Administrator with copies of all records maintained for Kristine.

24. PERS produced the documents to the Special Administrator on or about January 30, 2014.

25. Upon reviewing the documents, Plaintiffs determined that Shae had been designated a secondary beneficiary on Kristine's PERS Account.

26. Plaintiffs file suit in order to collect survivor benefits that PERS has wrongfully withheld from Shae.

IV. CLAIMS

FIRST CAUSE OF ACTION – DECLARATORY JUDGMENT

27. Plaintiffs reincorporate and reallege the allegations set forth in the preceding paragraphs as though fully set forth herein.

28. A justiciable controversy exists between Plaintiffs and PERS.

29. The Plaintiffs have a legally protectable interest in prosecuting this claim and their interests are adverse to PERS.

30. The issues involved in this action are ripe for judicial determination because the Court has the power to declare the construction or validity of a contract.

31. Plaintiffs request a declaratory judgment as follows:

- a. Chapter 41B of the Nevada Revised Statutes is applicable to survivor benefits payable to a beneficiary of a deceased PERS member;
- b. For the purposes of determining entitlement to survivor benefits from PERS, Walter E. Freshman shall be treated as if he predeceased Kristine Jo Freshman;
- c. For the purposes of determining entitlement to survivor benefits from PERS, Kristine Jo Freshman shall be treated as being unmarried at the time of her death; and
- d. Shae E. Gitter, as the survivor beneficiary of Kristine Jo Freshman, is entitled to survivor benefits under NRS 286.6767 – NRS 286.6769.

SECOND CAUSE OF ACTION – BREACH OF CONTRACT

32. Plaintiffs reincorporate and reallege the allegations set forth in the preceding paragraphs as though fully set forth herein.

33. Kristine and PERS were parties to a contract for pension benefits, which included survivor benefits.

34. Shae, as Kristine's designated survivor beneficiary, was an intended third-party beneficiary of the contract.

35. Kristine, Shae, and the Estate have fully and faithfully performed all of their respective obligations and duties under the contract, except for those obligations and duties that were excused and/or rendered impossible.

36. PERS has breached the contract by its failure to pay survivor benefits to Shae.

37. As a result of PERS' breach, Plaintiffs have been damaged in excess of \$10,000.00.

**THIRD CAUSE OF ACTION – CONTRACTUAL BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH & FAIR DEALING**

38. Plaintiffs reincorporate and reallege the allegations set forth in the preceding paragraphs as though fully set forth herein.

39. Kristine and PERS were parties to a contract for pension benefits, which included survivor benefits.

40. Shae, as Kristine's designated survivor beneficiary, was an intended third-party beneficiary of the contract.

41. PERS owed a duty of good faith and fair dealing to Plaintiffs arising out of the agreement.

42. PERS breached its duty of good faith and fair dealing by refusing to pay survivor benefits owed under the contract.

43. Plaintiffs' justified expectations were denied as a proximate result of PERS' breach of the duty of good faith and fair dealing.

44. As a result of PERS' breach, Plaintiffs have been damaged in excess of \$10,000.00.

FOURTH CAUSE OF ACTION – BREACH OF FIDUCIARY DUTY

45. Plaintiffs reincorporate and reallege the allegations set forth in the preceding paragraphs as though fully set forth herein.

46. The Fund contains money paid for the purpose of funding and administering PERS, which money is held in trust for the benefit of PERS members and intended third-party beneficiaries.

47. PERS is governed by the Public Employees' Retirement Board (the "Board").

48. PERS and the Board are trustees of the Fund and owe a fiduciary duty to PERS members and intended third-party beneficiaries, including Kristine and Shae.

49. PERS breached its fiduciary duty to Shae and the Estate by its failure to pay survivor benefits without any colorable legal justification.

50. As a result of PERS' breach, Plaintiffs have been damaged in excess of \$10,000.00.

FIFTH CAUSE OF ACTION – ATTORNEYS' FEES

51. Plaintiffs reincorporate and reallege the allegations set forth in the preceding paragraphs as though fully set forth herein.

52. PERS has failed to provide any colorable justification for its failure to pay survivor benefits to Shae.

53. Plaintiffs are entitled to recover attorneys' fees as special damages under *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n.*, 117 Nev. 948, 35 P.3d 964 (2001) because the defendants proximately and necessarily caused them to incur special damages in the form of costs and attorneys' fees as a reasonably foreseeable consequence of the defendants' conduct.

V. PRAYER FOR RELIEF

54. Plaintiffs request the following relief:

- a. A declaration stating that Chapter 41B of the Nevada Revised Statutes is applicable to survivor benefits payable to a spouse and/or survivor beneficiary of a deceased PERS member;
- b. A declaration stating that Walter E. Freshman shall be treated as if he predeceased Kristine Jo Freshman for the purposes of determining entitlement to survivor benefits from PERS;

- 1 c. A declaration stating that Kristine Jo Freshman shall be treated as being
2 unmarried at the time of her death for the purposes of determining entitlement to
3 survivor benefits from PERS;
4 d. A declaration stating that Shae E. Gitter, as the survivor beneficiary of Kristine Jo
5 Freshman, is entitled to survivor benefits under NRS 286.6767 – NRS 286.6769;
6 e. Damages against PERS on the second, third, and fourth causes of action in excess
7 of \$10,000.00, according to proof;
8 f. Interest as provided by law;
9 g. For attorneys' fees as special damages according to proof; and
10 h. For such other and further relief as the Court deems appropriate.

11 DATED this 13th day of March, 2014.

12 BAILEY ♦ KENNEDY

13 By: Kelly B. Stout
14 DENNIS L. KENNEDY
15 KELLY B. STOUT
16 MARK HESIAK
17 8984 Spanish Ridge Avenue
18 Las Vegas, Nevada 89148

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

2 Under penalties of perjury, the undersigned states as follows: That I am a Plaintiff in the
3 foregoing action; that I have read the above and foregoing VERIFIED COMPLAINT, and that the
4 same is true of my own knowledge, except matters stated therein on information and belief, and
5 as for those matters, I believe it to be true.

6 Dated the 11th day of ~~February~~
March, 2014.

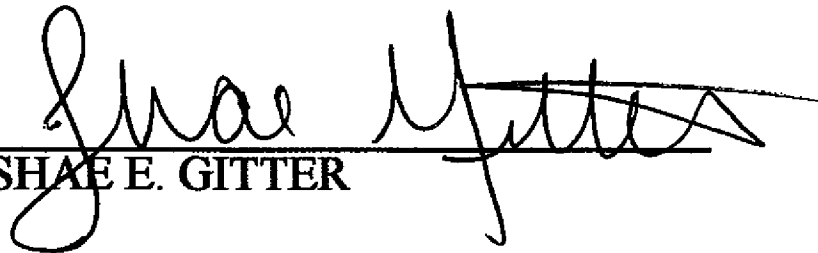
7 
8 SHAE E. GITTER
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Exhibit 1

Exhibit 1



SURVIVOR BENEFICIARY DESIGNATION

693 W. Nye Lane, Carson City, NV 89703 (775) 687-4200 Fax (775) 687-5131
5820 S. Eastern Ave. Suite 220, Las Vegas, NV 89119 (702) 486-3900 Fax (702) 678-6934
Toll Free: (866) 473-7768

****THIS FORM SUPERSEDES ALL PRIOR BENEFICIARY DESIGNATIONS****

Member Information

Name Change ☐ Yes ☒ No If Yes, Former Name: _____
Name: Kristine Freshman Social Security Number: _____ Employer: CCSD
Address: 1818 Oasis Ct. City, State, Zip: Laughlin, NV 89029
Home Phone: 702-298-3123 Work Phone: 702-298-3378 Birth Date: 02-12-52

Family Beneficiary Information. A spouse is a member's primary beneficiary under NRS 286.674 and may be eligible to receive a lifetime benefit in the event of the member's death prior to retirement. If a monthly benefit is not available, the spouse may be eligible to receive a one-time lump-sum payment of any existing member contributions in the System. Children under age 18 may be eligible to receive a limited benefit.

Spouse Name: Walter Freshman Social Security Number: _____ Birth Date: 7-10-39

List all unmarried children (biological or legally adopted) under age 18. (Attach separate sheet if necessary.)

Name: Shae Gitter Social Security Number: _____ Birth Date: 8-31-89 ☐ M ☐ F

Name: _____ Social Security Number: _____ Birth Date: _____ ☐ M ☐ F

Name: _____ Social Security Number: _____ Birth Date: _____ ☐ M ☐ F

Survivor Beneficiary Designation. This designation is valid only upon the member establishing eligibility for survivor benefits pursuant to NRS 286.672 and 286.677. All members of the System should list one person as the Survivor Beneficiary (not a spouse, trust or charitable organization) to receive a lifetime benefit in the event of the member's death or member and spouse's simultaneous death prior to retirement. Additional Payees may be designated to split the payment with the Survivor Beneficiary by percentage. Monthly payments to Additional Payees cease upon the death of the designated Survivor Beneficiary. If a monthly payment is not available and no spouse exists, then the Survivor Beneficiary and Additional Payees may be eligible to split, by percentage designated, a one-time, lump-sum payment of any existing member contributions in the System.

Survivor Beneficiary: (If you do not wish to provide a lifetime benefit for Survivor Beneficiary/Additional Payees, indicate NONE.)

Name: Shae Gitter SS# _____ Birth Date: 8-31-89 ☐ M ☐ F
Address: 1818 Oasis Ct. City, State, Zip: Laughlin, NV 89029

Percent*

Additional Payees: (Attach separate sheet, if necessary)

Name: _____ SS# _____ Birth Date: _____ ☐ M ☐ F

Address: _____ City, State, Zip: _____

Percent*

Name: _____ SS# _____ Birth Date: _____ ☐ M ☐ F

Address: _____ City, State, Zip: _____

Percent*

Name: _____ SS# _____ Birth Date: _____ ☐ M ☐ F

Address: _____ City, State, Zip: _____

Percent*

*Survivor Beneficiary & Additional Payee Percentages must be whole numbers and total 100% when added together

TOTAL PERCENTAGES FOR SURVIVOR BENEFICIARY + ALL ADDITIONAL PAYEES =

Total %

Tertiary Beneficiary Designation. The tertiary beneficiary may be eligible to receive a one-time lump-sum payment of any existing member contributions in the System when there is no spouse and no Survivor Beneficiary/Additional Payee designated or living and no minor children/student payments are being made by the System. If more than one person is listed, the payment will be split equally unless otherwise stated by the member. Attach a separate sheet if necessary.

Name: _____ SS# _____ Birth Date: _____ ☐ M ☐ F

Address: _____ City, State, Zip: _____

Name: _____ SS# _____ Birth Date: _____ ☐ M ☐ F

Address: _____ City, State, Zip: _____

I understand that the information designated on this form supercedes all prior Beneficiary Designations that I have submitted on other forms, and that this information only affects records with the Public Employees' Retirement System.

Member Signature: Kristine Freshman Date: 8-21-07

For PERS
Stamp Date Received

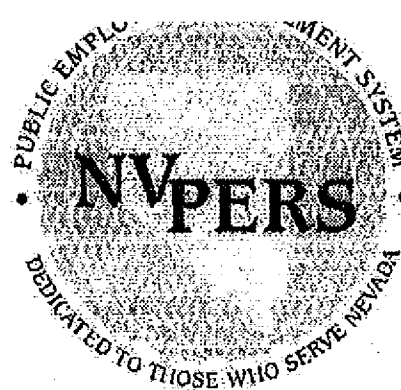
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Exhibit 2

Exhibit 2

George W. Stevens
Chairman
Mark R. Vincent
Vice Chairman

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Executive Officer

Tina M. Leiss
Operations Officer

Ken Lambert
Investment Officer

January 10, 2010

Shae Ellen Gitter
1818 Oasis Court
Laughlin, NV 89029

RE: Kristine Freshman
SSN: XXX-XX-1686

Dear Ms. Gitter:

We have been notified of the death of Kristine Freshman, please accept our sincere condolences. We have reviewed the account and determined that eligibility may exist for survivor benefits. Based on employment and personal information provided to date, it appears that you may be entitled to receive:

1. A monthly benefit in the approximate amount of \$2,900.00 payable for your lifetime. An application for survivor beneficiary benefits is enclosed. If you wish to receive a monthly benefit, please complete, sign in the presence of a notary public, and return the form to our office together with the appropriate documentation listed in our instruction sheet.

OR

2. A lump-sum refund of approximately 50% of the employer paid contributions in the approximate amount of \$112,000.00. There may be a tax liability on all or a portion of this amount. If you wish to receive a refund of mandated contributions, please sign and return the enclosed refund request form only.

Once we have received the complete documents based on your benefit selection, we will make a final determination of your eligibility to receive a survivor benefit.

Should you require further assistance, please contact us and ask to speak with a Counseling Services representative.

Sincerely,

Rayna Palazzolo
Production Services Division

5820 S. Eastern Avenue, Suite 220
Las Vegas, NV 89119
(702) 486-3900
Fax: (702) 678-6934

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