

1 IN THE SUPREME COURT OF THE STATE OF NEVADA
2

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

7 Appellant,

8 vs.

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

13 Respondents.

Electronically Filed
Mar 03 2016 10:47 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

No. 69208

Appeal from the Eighth Judicial
District Court, Clark County,
Case No. A697642

14 **ERRATUM TO THE STIPULATION FOR TIME TO EXTEND TIME TO**
15 **FILE OPENING BRIEF AND APPENDIX**

16 Appellant, PUBLIC EMPLOYEES RETIREMENT SYSTEM, by and
17
18 through their counsel of record, hereby provide its Erratum to the Stipulation for
19 Time to Extend Time to File Opening Brief and Appendix. Appellant's counsel
20 inadvertently failed to attach Exhibits A and B, which are attached hereto.
21
22 Exhibit A is the Notice of Entry of Order on the Respondent's Motion for
23 Attorney's

24 ///

25 ///

26 ///

27 ///

1 Fees, and Exhibit B is the Notice of Entry of Order on Appellant's Motion to
2 Retax Costs.

3
4 DATED this 3rd day of March, 2016.

5 WOODBURN AND WEDGE

6
7 By: /s/ W. Chris Wicker
8 W. Chris Wicker, Esq.
9 Nevada Bar No. 1037

10 Chris Nielsen, Esq.
11 Nevada Bar No. 8206
12 PUBLIC EMPLOYEES
13 RETIREMENT SYSTEM

14 Attorneys for Appellant
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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

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

DATED this 3rd day of March, 2016.

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

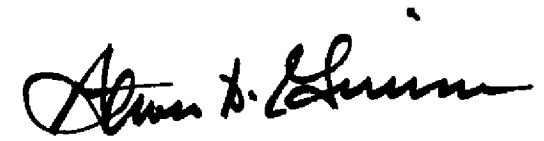
**EXHIBITS TO THE ERRATUM TO THE STIPULATION FOR TIME TO
EXTEND TIME TO FILE OPENING BRIEF AND APPENDIX**

Exhibit A: Notice of Entry of Order (Motion for Attorney's Fees)

Exhibit B: Notice of Entry of Order (Motion to Retax Costs)

EXHIBIT A

EXHIBIT A


CLERK OF THE COURT

NEOJ
DENNIS L. KENNEDY
Nevada Bar No. 1462
KELLY B. STOUT
Nevada Bar No. 12105
MARK HESIAK
Nevada Bar No. 12397
AMANDA L. STEVENS
Nevada Bar No. 13966
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
AStevens@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,

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

Plaintiffs,

vs.

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

Defendant.

**NOTICE OF ENTRY OF ORDER GRANTING
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES**

PLEASE TAKE NOTICE that an Order Granting Plaintiffs' Motion for Attorneys' Fees was
entered on the 9th day of February, 2016, in the above-captioned matter.

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A true and correct copy of the Order is attached.

DATED this 10th day of February, 2016.

BAILEY ♦ KENNEDY

By: /s/ Kelly B. Stout

DENNIS L. KENNEDY

KELLY B. STOUT

MARK HESIAK

AMANDA L. STEVENS

Attorneys for Plaintiffs

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

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 10th day of February, 2016, service of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

W. CHRIS WICKER
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, Nevada 89511

Email:
cwicker@woodburnandwedge.com

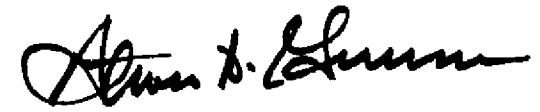
Attorney for Defendant
**PUBLIC EMPLOYEES'
RETIREMENT SYSTEM OF
NEVADA**

CHRIS NIELSEN
**PUBLIC EMPLOYEES'
RETIREMENT SYSTEM OF
NEVADA**
6693 West Nye Lane
Carson City, Nevada 89703

Email: cnielsen@nvpers.org

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

/s/ Jennifer Kennedy
Employee of BAILEY ♦ KENNEDY



CLERK OF THE COURT

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 AMANDA L. STEVENS

9 Nevada Bar No. 13966

10 **BAILEY ♦ KENNEDY**

11 8984 Spanish Ridge Avenue

12 Las Vegas, Nevada 89148-1302

13 Telephone: 702.562.8820

14 Facsimile: 702.562.8821

15 DKennedy@BaileyKennedy.com

16 KStout@BaileyKennedy.com

17 MHesiak@BaileyKennedy.com

18 AStevens@BaileyKennedy.com

19 *Attorneys for Plaintiffs*

20 SHAE E. GITTER and JARED SHAFER, as

21 Special Administrator of the Estate of Kristine Jo

22 Freshman

23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

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

28 **Plaintiffs,**

29 **vs.**

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

33 **Defendant.**

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

34 **ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES**

35 Date of Hearing: January 19, 2016

36 Time of Hearing: 9:00 a.m.

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

DEPT. XXIV

FEB 02 2016

RECEIVED

2/2/16

1 On January 19, 2016, at the hour of 9:00 a.m., Plaintiffs' Motion for Attorneys' Fees came
2 before the Court. Plaintiffs, Shae E. Gitter and Jared Shafer, were represented by Dennis L.
3 Kennedy and Kelly B. Stout of the law firm Bailey ♦ Kennedy. Defendant, Public Employees'
4 Retirement System of Nevada ("PERS"), was represented by Chris Nielsen of the Public Employees'
5 Retirement System of Nevada and W. Chris Wicker of the law firm Woodburn and Wedge.

6 **I. FINDINGS OF FACT.**

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

9 2. Ms. Freshman was murdered by her husband, Walter Freshman ("Walter"), on December
10 6, 2009.

11 3. On December 17, 2009, PERS notified Shae "that there may be benefits available."

12 4. By December 10, 2010, the criminal proceedings against Walter were fully resolved, and
13 Walter was adjudicated a "killer" for purposes of NRS Chapter 41B (Nevada's "Slayer Statute") and
14 was deemed to have predeceased Kristine.

15 5. Believing that she was eligible for survivor benefits, Shae submitted a completed
16 "Application for Survivor Benefits" on or about April 25, 2011.

17 6. On June 10, 2011, PERS denied Shae's application for survivor benefits contending that
18 Chapter 286 disqualifies Walter as a beneficiary but does not expressly authorize payment to any
19 other individual, whether or not designated as a secondary beneficiary.

20 7. In addition to denying benefits, PERS:

- 21 a. Refused to confirm whether Shae had been designated as a secondary
22 beneficiary, and
23 b. Refused to provide any documents or information related to Kristine's
24 account.

25 8. In particular, Plaintiffs requested a copy of Kristine's "Survivor Beneficiary Designation"
26 so that they could determine if Shae had been designated as Kristine's secondary beneficiary.

27 9. PERS admits that a survivor beneficiary is permitted access to a member's records.

28 ///

1 10. Based on its own determination that Shae was not a beneficiary, PERS refused to provide
2 Plaintiffs (who are Kristine's sole heir and the Special Administrator of her estate) with any
3 documentation regarding Kristine's PERS account.

4 11. Due to PERS' denial of benefits and refusal to produce any documents, Shae sought
5 counsel.¹

6 12. Following months of unsuccessful discussions and efforts at negotiation, Shae
7 determined that nothing short of litigation would be sufficient to resolve the dispute.

8 13. First, Shae petitioned the probate court to obtain an order permitting access to the
9 relevant documents.

10 14. The probate court issued an order requiring PERS to produce documentation regarding
11 Kristine's PERS account on December 26, 2013.

12 15. PERS finally produced the documents pertaining to Kristine's account on January 30,
13 2014—almost three years after they were first requested.

14 16. Upon reviewing Kristine's "Survivor Beneficiary Designation," which identified
15 Kristine's only child, Plaintiff Shae E. Gitter, as her survivor beneficiary, Plaintiffs filed this case on
16 March 13, 2014.

17 17. Since Kristine's death, PERS has done everything possible to prevent Shae from
18 collecting survivor benefits.

19 18. Once ordered by this Court to pay Shae survivor benefits—and having wrongfully
20 withheld them for almost five years—PERS maintained that it was not required to pay any interest
21 on the \$203,231.76 in past due survivor benefits.

22 19. Throughout this case, the conduct of PERS and its counsel has been unconscionable.

23 20. All of the foregoing conduct has been committed by PERS with the active assistance of
24 its prior counsel (the Office of the Nevada Attorney General²) and/or current counsel (Woodburn &

25 _____
26 ¹ Originally retained in April 2012 (as evidenced by Bailey Kennedy's billing statements), Bailey ♦ Kennedy
agreed to represent the Plaintiffs on a contingency fee basis in October 2012.

27 ² PERS was represented by the Office of the Nevada Attorney General until it filed a Substitution of Counsel on
28 August 25, 2015.

1 Wedge³).

2 **II. CONCLUSIONS OF LAW.**

3 21. Plaintiffs' Motion for Attorneys' Fees was timely filed on November 9, 2015.

4 22. From the time of Kristine's death, PERS and its counsel have acted unreasonably and
5 vexatiously in their dealings with Plaintiffs, which has significantly prolonged this case.

6 23. PERS' defense was maintained without reasonable grounds. NRS 18.010(2)(b).

7 24. PERS' counsel maintained a defense that was not well-grounded in fact or warranted
8 by existing law. NRS 7.085(1)(a).

9 25. Plaintiffs' attorneys' fees related to reopening the probate case were necessarily
10 incurred because Plaintiffs could not assess the merits of this case without determining if Shae was
11 designated as Kristine's survivor beneficiary.

12 26. When contesting Shae's entitlement to survivor benefits, PERS raised numerous
13 arguments that were unsupported by any legal authority, violated established canons of statutory
14 interpretation, and/or were completely devoid of merit.

15 27. In opposing Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest, PERS
16 again raised numerous arguments that were unsupported by any legal authority, violated established
17 canons of statutory interpretation, and/or were completely devoid of merit.

18 28. PERS and its counsel, at all times, acted in concert and under circumstances
19 justifying a joint and several award of attorneys' fees. NRS 7.085(1)(a); 18.015(b)(2).

20 29. The hourly rates charged by attorneys Dennis L. Kennedy, Joshua M. Dickey, Kelly
21 B. Stout, Mark Hesiak, Leon Gil, and Amanda Stevens are reasonable given each attorney's number
22 of years in practice and the average rates charged by Las Vegas attorneys.

23 30. The hourly rates charged by Linda Thomas and Bonnie O'Laughlin are reasonable
24 rates for paralegals in the Las Vegas market.

25 31. The billing descriptions provide sufficient detail to assess the difficulty, intricacy,
26 importance, and skill required to perform each task.

27 ³ Woodburn and Wedge first appeared on behalf of PERS on May 1, 2015.
28

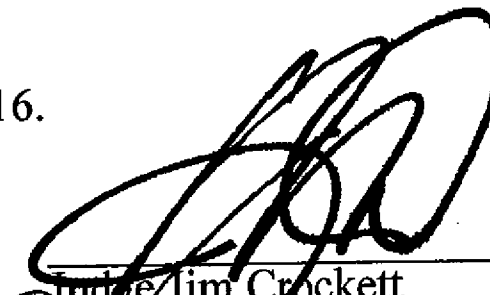
32. The number of hours billed is reasonable in light of the time this case has been pending, the difficulty of the case, and the quality of work performed by Plaintiffs' attorneys.

III. ORDER.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs are awarded attorneys' fees in the amount of \$96,272.50.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that PERS and its counsel, Walter C. Wicker and the law firm of Woodburn and Wedge, shall be jointly and severally liable to Plaintiffs for the award of attorney's fees.

DATED this 5 day of February 2016.


Judge Jim Crockett
(N/S)

DATED this 2nd day of February 2016.

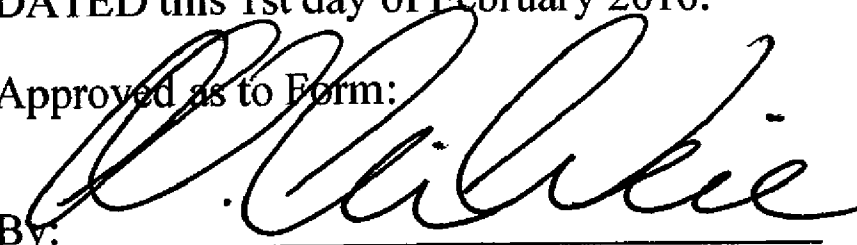
Respectfully Submitted By:

By: 
BAILEY ♦ KENNEDY
DENNIS L. KENNEDY
KELLY B. STOUT
MARK HESIAK
AMANDA L. STEVENS

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

DATED this 1st day of February 2016.

Approved as to Form:

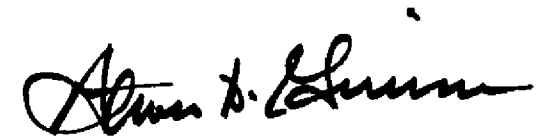

By: WOODBURN AND WEDGE
W. Chris Wicker

PUBLIC EMPLOYEES RETIREMENT
SYSTEM
Chris Nielsen

*Attorneys for the Public Employees'
Retirement System*

EXHIBIT B

EXHIBIT B



CLERK OF THE 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
Facsimile: (775) 688-3088

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.

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

**NOTICE OF ENTRY OF
ORDER**

Defendant.

TO: Plaintiffs, SHAE E. GITTER, an individual, and JARED, SHAFER, as Special
Administrator of the Estate of Kristine Jo Freshman, and their counsel of record:

PLEASE TAKE NOTICE that on the 10th day of February, 2016, the above-entitled
Court entered the Order Granting Defendant's Motion to Retax Costs, attached hereto as
Exhibit "1."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 10th day of February, 2016.

WOODBURN AND WEDGE

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

Chris Nielsen, Esq.
Nevada Bar No. 8206
PUBLIC EMPLOYEES RETIREMENT
SYSTEM

Attorneys for Public Employees'
Retirement System of Nevada

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of Woodburn and Wedge, and that on this 10th day of February, 2016, I caused to be sent via electronic mail, through the Court’s filing system, a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER, 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

EXHIBIT TO NOTICE OF ENTRY OF ORDER

Exhibit 1: Order Granting Defendant's Motion to Retax Costs, February 10, 2016.

EXHIBIT 1

EXHIBIT 1

1 **ORDR**

2 W. CHRIS WICKER

3 Nevada State Bar No. 1037

4 Woodburn and Wedge

5 6100 Neil Road, Suite 500

6 Reno, NV 89511

7 Telephone: (775) 688-3000

8 Facsimile: (775) 688-3088

9 Chris Nielsen, Esq.

10 Nevada Bar No. 8206

11 PUBLIC EMPLOYEES RETIREMENT SYSTEM

12 693 W. Nye Lane

13 Carson City, NV 89703

14 Telephone: (775) 687-4200

15 *Attorneys for the Public Employees'*

16 *Retirement System of Nevada*

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

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

Case No. A-14-697642-C

Dept. No. ~~XXI~~ 24

22 Plaintiffs,

23 vs.

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

27 Defendant.

28 **ORDER GRANTING MOTION TO RETAX COSTS**
(Hearing Date: 01/19/2016 - Hearing Time: 9:00 a.m.)

On January 19, 2016, Defendant, PUBLIC EMPLOYEES RETIREMENT SYSTEM OF NEVADA's ("PERS"), Motion to Retax Costs came before the Court. PERS was represented by W. Chris Wicker of Woodburn and Wedge and Chris Nielson General Counsel

1 for PERS. Plaintiffs, SHAE E. GITTER, an individual, and JARED SHAFER, as Special
2 Administrator of the Estate of Kristine Jo Freshman ("Gitter"), were represented by Dennis
3 Kennedy and Kelly Stout of Bailey Kennedy.

4 FINDINGS OF FACT

5 1. Gitter's Memorandum of Costs was filed on October 23, 2015. Pursuant to NRS
6 18.005(5), Gitter requested costs for expert witness fees in the amount of \$5,000.

7 2. Exhibit 26 of the Memorandum of Costs was presented as the backup for
8 Gitter's request, which included an invoice from financial consultant, JW Advisors, in the
9 amount of \$5,535, with time entries. Also included was the Curriculum Vitae of Kirk Jacobson.

10 3. It was reasonable for Gitter to retain a financial consultant to review amounts
11 calculated by PERS and calculate interest amounts. JW Advisors were qualified for the work
12 they did.

13 4. JW Advisors were not disclosed as expert witnesses, did not present any
14 testimony, did not present any reports or affidavits and were not deposed.

15 CONCLUSIONS OF LAW

16 1. The Nevada Supreme Court in *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560
17 (1993) was not clear whether expert witness fees in excess of \$1,500 can be recovered if the
18 witness did not testify at trial as the Supreme Court did not differentiate between expert and
19 non-expert witness fees.

20 2. Gitter's financial consultant did not testify at trial, present affidavits or reports
21 and was not deposed so the factors described in *Frazier v. Drake*, 131 Nev. Adv. Op. 64, 357,
22 P.3d 365 (Nev. App. 2015) to evaluate costs in excess of \$1,500 cannot be evaluated.

23 3. Gitter was not required to establish the expertise of any staff at JW Advisors
24 working under Mr. Jacobson.

25 4. Even though Gitter's expert was not disclosed, did not present reports or
26 affidavits and was not deposed, Gitter is entitled to recover \$1,500 in expert fees.

27 5. Pursuant to NRS 18.005(5), Gitter is not entitled to recover more than \$1,500 in
28 expert fees.

ORDER**IT IS HEREBY ORDERED:**

1. PERS' Motion to Retax is granted in part by limiting expert witness costs to \$1,500.
2. Gitter's cost recovery shall be reduced by the amount of \$3,500.

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

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

DATED this 5 day of February, 2016.

By: 

District Court Judge – Jim Crockett

DATED this 1 day of February, 2016.

SUBMITTED BY: 

By:

W. CHRIS WICKER
Nevada State Bar No. 1037
Woodburn and Wedge

Chris Nielsen, Esq.
Nevada Bar No. 8206
Public Employees
Retirement System
of Nevada

Attorneys for Defendant
Public Employees Retirement
System of Nevada

DATED this 20 day of February, 2016.

APPROVED AS TO FORM:

By: 

KELLY B. STOUT
Nevada State Bar No. 12105
Bailey Kennedy

Dennis L. Kennedy
Nevada State Bar No. 1462
Bailey Kennedy

Mark Hesiak
Nevada State Bar No. 12397

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