

CLERK OF THE COURT

Electronically Filed
Mar 11 2016 08:59 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

NOTC

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Case No. A-14-697642-C

Dept. No. XXIV

Plaintiffs,

vs.

NOTICE OF APPEAL

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

Defendant.

Notice is hereby given that PUBLIC EMPLOYEES RETIREMENT SYSTEM OF
NEVADA, above-named Defendant, hereby appeals to the Supreme Court of Nevada from the
Order Granting Plaintiff's Motion for Attorneys' Fees entered on February 9, 2016, and the
Order Granting Motion to Retax Costs entered on February 10, 2016, to the extent the motion
was not granted in full.

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DATED this 8th day of March, 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

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

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



CLERK OF THE COURT

ASTA
W. CHRIS WICKER
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*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.

CASE APPEAL STATEMENT

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

Defendant.

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

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

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

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

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

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

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

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

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

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

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

18 Attorneys for Appellant

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

23 Attorneys for Respondents

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

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

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

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

1 10. Plaintiff, Shae Gitter, was the child of deceased Kristine Jo Freshman.
2 Plaintiffs filed suit against PERS asserting that PERS is required to pay survivor beneficiary
3 benefits to Plaintiff, Shae Gitter, pursuant to the Survivor Beneficiary Designation by the
4 decedent, Kristine Jo Freshman, as a result of Ms. Freshman's murder by her spouse, Walter
5 Freshman. PERS asserted it could not pay the survivor benefit because Ms. Freshman was
6 married at the time of her death. The District Court, Department 18, granted Plaintiffs' Motion
7 for Summary Judgment stating Plaintiff Shae Gitter is entitled to receive Survivor Beneficiary
8 Benefits as set forth in NRS 286.6767-NRS 286.6769 (the Future Payments), including any
9 statutory increases in such benefits, for the remainder of her life, which amount is currently
10 \$2,938.86 per month; PERS shall pay interest on each of the Back Payments at the rate of
11 12% per annum until paid; and PERS shall pay interest on each of the Future Payments at the
12 rate of 12% per annum from the date each payment is due until it is paid in full. That
13 judgment has been appealed by notice filed on November 13, 2015. Further, the District
14 Court, Department 24, on February 10, 2016, entered an order granting Plaintiffs' Motion for
15 Attorneys' Fees in the amount of \$96,272.50. The District Court ordered that counsel for
16 Defendant, W. Chris Wicker and the firm Woodburn and Wedge, were jointly and severally
17 liable with PERS for the attorneys' fees pursuant to NRS 18.010(2)(b) and NRS 7.085. In
18 addition, the District Court entered an order on February 10, 2016, granting PERS Motion to
19 Retax Costs, in part, disallowing a portion of the expert fees claimed in Plaintiffs'
20 Memorandum of Costs pursuant to NRS 18.005(5), but allowing an award of \$1,500.

21 11 The Judgment granting summary judgment to Plaintiffs was appealed by PERS
22 on November 13, 2015, Case No. 69208. In addition, PERS' counsel will file a petition for writ
23 of mandamus challenging the award of attorney's fees.

24 12. No child custody or visitation is involved.

25 13. This appeal does not involve the possibility of settlement.

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

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

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

7 DATED this 8th day of March, 2016.

8 WOODBURN AND WEDGE

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

12 Chris Nielsen, Esq.
13 Nevada Bar No. 8206
14 PUBLIC EMPLOYEES RETIREMENT
15 SYSTEM

16 Attorneys for Public Employees'
17 Retirement System of Nevada
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Dennis L. Kennedy
Kelly B. Stout
Bailey Kennedy
8984 Spanish Ridge Avenue
Las Vegas, NV 89148

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

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

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

§
§
§
§
§
§

Location: **Department 24**
Judicial Officer: **Crockett, Jim**
Filed on: **03/13/2014**
Case Number History:
Cross-Reference Case Number: **A697642**
Supreme Court No.: **69208**

CASE INFORMATION

Statistical Closures

10/16/2015 Summary Judgment

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

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

DATE

CASE ASSIGNMENT

Current Case Assignment

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





PARTY INFORMATION

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

DATE











EVENTS & ORDERS OF THE COURT

INDEX











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

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









Defendant's Answer to Complaint

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

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

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

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


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


CASE SUMMARY


CASE NO. A-14-697642-C


Filed By: Plaintiff Gitter, Shae E
Order Granting Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest and Final Judgment

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


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


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

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


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


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


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


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

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

11/19/2015  Opposition to Motion
 Filed By: Plaintiff Gitter, Shae E
Plaintiffs' Opposition to PERS' Motion to Retax Costs









12/02/2015  Opposition to Motion
 Filed By: Defendant Public Employees Retirement System of Nevada
Opposition to Motion for Attorneys' Fees

01/06/2016  Notice
 Filed By: Defendant Public Employees Retirement System of Nevada
Notice of Requesting Transcript

01/11/2016  Reply in Support
 Filed By: Plaintiff Gitter, Shae E
Reply in Support of Motion for Attorneys' Fees

01/12/2016  Reply to Motion
 Filed By: Defendant Public Employees Retirement System of Nevada

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

	<i>Reply in Support of Motion to Retax Costs</i>
01/19/2016	Motion to Retax (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Defendant's Motion to Retax Costs</i>
01/19/2016	Motion for Attorney Fees (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Plaintiffs' Motion for Attorneys' Fees</i>
01/19/2016	 All Pending Motions (9:00 AM) (Judicial Officer: Crockett, Jim)
01/29/2016	 Recorders Transcript of Hearing <i>Transcript of Proceedings Plaintiffs' Motion for Partial Summary Judgment/Defendant's Motion for Summary Judgment December 2, 2014</i>
02/09/2016	 Order Granting Motion Filed By: Plaintiff Gitter, Shae E <i>Order Granting Plaintiffs' Motion for Attorneys' Fees</i>
02/09/2016	Order (Judicial Officer: Crockett, Jim) Debtors: Public Employees Retirement System of Nevada (Defendant) Creditors: Shae E Gitter (Plaintiff), Jared Shafer as Special Administrator of the Estate of Kristine Jo Freshman (Plaintiff) Judgment: 02/09/2016, Docketed: 02/18/2016 Total Judgment: 96,272.50
02/10/2016	 Order Granting Motion Filed By: Defendant Public Employees Retirement System of Nevada <i>Order Granting Defendant's Motion to Retax Costs</i>
02/10/2016	 Notice of Entry of Order Filed By: Defendant Public Employees Retirement System of Nevada <i>Notice of Entry of Order</i>
02/10/2016	 Notice of Entry of Order Filed By: Plaintiff Gitter, Shae E <i>Notice of Entry of Order Granting Plaintiffs' Motion for Attorneys' Fees</i>
03/08/2016	 Notice of Appeal Filed By: Defendant Public Employees Retirement System of Nevada <i>Notice of Appeal</i>
03/08/2016	 Case Appeal Statement Filed By: Defendant Public Employees Retirement System of Nevada <i>Case Appeal Statement</i>

DATE	FINANCIAL INFORMATION
	Defendant Public Employees Retirement System of Nevada
	Total Charges 248.00
	Total Payments and Credits 248.00
	Balance Due as of 3/9/2016 0.00
	Plaintiff Gitter, Shae E
	Total Charges 470.00
	Total Payments and Credits 470.00
	Balance Due as of 3/9/2016 0.00
	Plaintiff Jared Shafer as Special Administrator of the Estate of Kristine Jo

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

Freshman	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 3/9/2016	0.00

CIVIL COVER SHEET

Clark County, Nevada

A- 14- 697642- C

Case No. _____

XVI I I

(Assigned by Clerk's Office)

I. Party Information

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

Attorney (name/address/phone):

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

Telephone: (702) 562-8820

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

Attorney (name/address/phone): Unknown

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

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

Probate**Other Civil Filing Types**

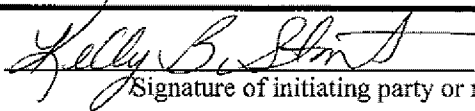
Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual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

<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt/Business <input type="checkbox"/> Other Business Court Matters
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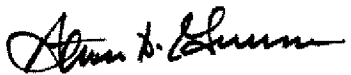
March 13, 2014

Date



Signature of initiating party or representative

See other side for family-related case filings.



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,

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

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.

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

On January 19, 2016, at the hour of 9:00 a.m., Plaintiffs' Motion for Attorneys' Fees came before the Court. Plaintiffs, Shae E. Gitter 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 Chris Nielsen of the Public Employees' Retirement System of Nevada and W. Chris Wicker of the law firm Woodburn and Wedge.

I. FINDINGS OF FACT.

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

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

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

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

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

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

7. In addition to denying benefits, PERS:

a. Refused to confirm whether Shae had been designated as a secondary beneficiary, and

b. Refused to provide any documents or information related to Kristine's account.

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

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

///

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

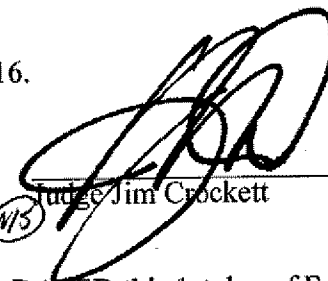
32. The number of hours billed is reasonable in light of the time this case has been pending, the difficulty of the case, and the quality of work performed by Plaintiffs' attorneys.

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

DATED this 2nd day of February 2016.

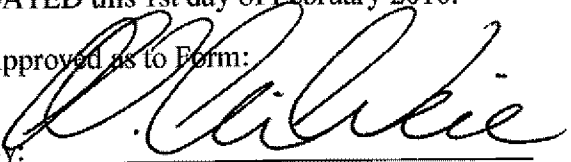
Respectfully Submitted By:

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*


CLERK OF THE COURT

1 **NEOJ**

DENNIS L. KENNEDY

2 Nevada Bar No. 1462

KELLY B. STOUT

3 Nevada Bar No. 12105

MARK HESIAK

4 Nevada Bar No. 12397

AMANDA L. STEVENS

5 Nevada Bar No. 13966

BAILEY ♦ KENNEDY

6 8984 Spanish Ridge Avenue

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9 MHesiak@BaileyKennedy.com

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10 Attorneys for Plaintiffs

11 SHAE E. GITTER and JARED SHAFER, as

Special Administrator of the Estate of Kristine Jo

12 Freshman

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

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

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

18 Plaintiffs,

19 vs.

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

22 Defendant.

23
24 **NOTICE OF ENTRY OF ORDER GRANTING
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES**

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

27 ///

28 ///

1 A true and correct copy of the Order is attached.

2 DATED this 10th day of February, 2016.

3 BAILEY ♦ KENNEDY

4
5 By: /s/ Kelly B. Stout

DENNIS L. KENNEDY

KELLY B. STOUT

6 MARK HESIAK

7 AMANDA L. STEVENS

8 Attorneys for Plaintiffs

9 SHAE E. GITTER and JARED SHAFER,

10 as Special Administrator of the Estate of
11 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

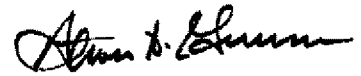
Attorney for Defendant
**PUBLIC EMPLOYEES'
RETIREMENT SYSTEM OF
NEVADA**

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**

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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,

Case No. A-14-697642-C

Dept. No. XXIV

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.**

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

2/4/16

On January 19, 2016, at the hour of 9:00 a.m., Plaintiffs' Motion for Attorneys' Fees came before the Court. Plaintiffs, Shae E. Gitter 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 Chris Nielsen of the Public Employees' Retirement System of Nevada and W. Chris Wicker of the law firm Woodburn and Wedge.

I. FINDINGS OF FACT.

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

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

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

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

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

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

7. In addition to denying benefits, PERS:

a. Refused to confirm whether Shae had been designated as a secondary beneficiary, and

b. Refused to provide any documents or information related to Kristine's account.

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

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

///

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

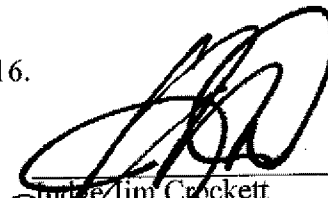
32. The number of hours billed is reasonable in light of the time this case has been pending, the difficulty of the case, and the quality of work performed by Plaintiffs' attorneys.

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

DATED this 2nd day of February 2016.

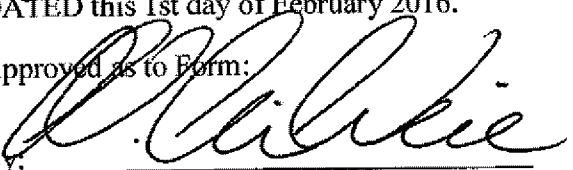
Respectfully Submitted By:

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

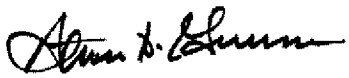
DATED this 1st day of February 2016.

Approved as to Form:

By: 
WOODBURN AND WEDGE
W. Chris Wicker

PUBLIC EMPLOYEES RETIREMENT
SYSTEM
Chris Nielsen

*Attorneys for the Public Employees'
Retirement System*


CLERK OF THE COURT

ORDR

W. CHRIS WICKER
Nevada State Bar No. 1037
Woodburn and Wedge
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Chris Nielsen, Esq.
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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
SHAFFER, as Special Administrator of the Estate
of Kristine Jo Freshman

Case No. A-14-697642-C

Dept. No. ~~XXI~~ 24

Plaintiffs,

vs.

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

Defendant.

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.DATED this 20 day of February, 2016.SUBMITTED BY: 

APPROVED AS TO FORM:

By: 

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

By: 

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

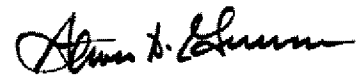
Chris Nielsen, Esq.
 Nevada Bar No. 8206
 Public Employees
 Retirement System
 of Nevada

Attorneys for Defendant
 Public Employees Retirement
 System of Nevada

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



CLERK OF THE COURT

NOTC

W. CHRIS WICKER
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*Attorneys for the Public Employees'
Retirement System of Nevada*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Case No. A-14-697642-C

Dept. No. XXIV

Plaintiffs,

vs.

**NOTICE OF ENTRY OF
ORDER**

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

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."

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

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

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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.DATED this 20 day of February, 2016.SUBMITTED BY: 

APPROVED AS TO FORM:

By: 

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

By: 

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

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

Attorneys for Defendant
 Public Employees Retirement
 System of Nevada

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

July 15, 2014

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

July 15, 2014 9:00 AM Discovery Conference

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

COURT CLERK: Alan Castle

RECORDER: Richard Kangas

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

December 02, 2014

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

**December 02, 2014 8:15 AM All Pending Motions Plaintiffs' Mtn for
Partial Summary
Judgment...Deft's
Mtn for Summary
Judgment**

HEARD BY: Barker, David

COURTROOM: RJC Courtroom 11B

COURT CLERK: Sharon Chun

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES

PRESENT: Gitter, Shae E Plaintiff
 Okezi, Kimberly A. Attorney
 Stout, Kelly B, Attorney
 Wicker, Walter C. Attorney

JOURNAL ENTRIES

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

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

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

June 11, 2015

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

June 11, 2015 9:00 AM Status Check

HEARD BY: Crockett, Jim COURTROOM: Phoenix Building Courtroom -
11th Floor

COURT CLERK: Theresa Lee

RECORDER:

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

September 01, 2015

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

September 01, 2015 9:00 AM Motion

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Theresa Lee

RECORDER:

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

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

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

September 17, 2015

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

September 17, 2015 9:00 AM All Pending Motions

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Theresa Lee

RECORDER:

REPORTER:

PARTIES

PRESENT: Stout, Kelly B, Attorney

JOURNAL ENTRIES

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

January 19, 2016

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

January 19, 2016 9:00 AM All Pending Motions

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Theresa Lee

RECORDER:

REPORTER: Robert Cangemi

PARTIES

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

JOURNAL ENTRIES

- DEFT'S MOTION TO RETAX COSTS...PLTFS' MOTION FOR ATTORNEY'S FEES

DEFT'S MOTION TO RETAX COSTS...

The Court read over everything and this is on for Deft's Motion to Retax Costs and Pltfs' Motion for Attorney's Fees. The Court's thoughts are that the only challenge here is as to the Expert witness fees on the costs. The Expert never wrote a report, gave a deposition or testified. The case that is cited is Bergmann vs Boyce 109 Nev 670, pages 679 and 680. It makes it clear, to recover witness fees its not necessary that the witness actually be called as a witness at trial, but the Court's commentary is vague and ambiguous whether that was intended to apply to Experts too. The Court clearly lumped Experts and non-Experts into the same sentence on whether they needed to appear at trial. The Court feels it would be error to allow more than \$1,500 in Expert fees because it is clear in the Frazier vs. Drake case, would require the conclusion that an Expert would have to testify to be awarded more than \$1,500 because NRS 18.110 clearly references the need to evaluate "the circumstances surrounding the Expert's testimony". The Court is inclined to limit Expert fees to \$1,500 which would

result in a reduction in the costs by \$3,500.

Argument by Mr. Wicker. This is a novel issue and in reviewing the cases where Expert fees were actually awarded, it has been where there have been Expert witnesses in the case, but in this person was basically a Consultant until it came down to doing a Memorandum of Costs he may not qualify under Chapter 18 to recover Expert witness fees. Further, whether the expert was needed to assist the Court in determining an issue of fact when determining whether to award more than \$1,500. Further argument by Mr. Wicker. In this case you have PERS making a calculation that it does for people every day and they have expertise in making the calculation. Pltf's have not put forth enough information that this Consultant was an Expert until they filed the Memorandum of costs. Further argument by Mr. Wicker. It is not the duty of Pltf to prove that their Expert witness is an Expert and can recover Expert fees.

Court queried deft if he would have defended the case without consulting an Expert. Mr. Wicker concurred that he would consult an Expert, but to recover those costs you have to make an Expert witness disclosure, and whether a Consultant is entitled to Expert fees under Chapter 118. Colloquy between Court and Mr. Wicker regarding this same issue.

Statement by the Court with regard to the Bergmann. THEREAFTER, COURT ORDERED, Deft's Motion to Retax is GRANTED and will AWARD the Expert fees in the amount of \$1,500 reducing the Pltf's Memorandum of Costs by \$3,500, even though they are with a Consultant in this particular case even though they are not someone that rendered a report or testified at a trial.

PLTFS' MOTION FOR ATTORNEY'S FEES...

The Court will allow ample argument, but Court stated that PERS at all times was acting unreasonably and vexatiously and doing everything that it could legally to throw bricks at the Pltf transferring to the resistance to payment as if it was the murdering husband seeking the benefits. and it is unconscionable that PERS tried to aggressively to retain these funds and not pay them to the Pltf, and feels the fees should be awarded joint and several among defts.

Following argument by Mr. Wicker. Matter submitted by Mr. Kennedy. Thereafter, COURT ORDERED, Pltf's Motion for Attorney's Fees is GRANTED in the amount of \$96,272.50. Court stated that it specifically FINDS that PERS and it's counsel at all times acted under circumstances that fees should be AWARDED JOINTLY AND SEVERALLY under 7.085 and 18.010(2)(b).

For clarity, Court directed counsel to prepare two Orders, one for each motion on calendar today. Counsel are to circulate the Orders to opposing counsel to approve as to form and content and submit to the Court for its signature within 10 days pursuant to EDCR 7.21.

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES; NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES; ORDER GRANTING MOTION TO RETAX COSTS; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES

SHAE E. GITTER; JARED SHAFER, as Special
Administrator of the Estate of KRISTINE JO
FRESHMAN,

Plaintiff(s),

vs.

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

Defendant(s),

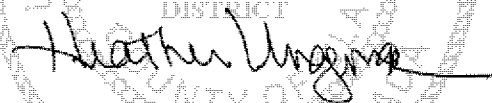
Case No: A697642

Dept No: XXIV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 9 day of March 2016.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk