

IN THE SUPREME COURT OF THE STATE OF NEVADA

PUBLIC EMPLOYEES RETIREMENT
SYSTEM, a public agency, a public entity and
component of the State of Nevada,

Appellant,

vs.

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

Respondents.

No. 69939
Electronically Filed
Mar 31 2016 03:11 p.m.
Appeal from the Eighth Judicial
District Court, Clark County
Trade K. Lindeman
Clerk of Supreme Court
Case No. A697642

**DOCKETING STATEMENT CIVIL
APPEALS**

GENERAL INFORMATION

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

WARNING

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

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See *Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 25 P.3d 898 (2001); *KDI Slvan 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

Firm: Woodburn and Wedge

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

Client(s): Public Employees Retirement System

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

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

Attorney: Dennis Kennedy, Kelly B. Stout, Mark Hesiak Telephone: (702) 562-8820

Firm: Bailey Kennedy

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

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

(List additional counsel on separate sheet if necessary)

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

☐ Judgment after bench trial

☐ Judgment after jury verdict

☒ Summary judgment

☐ Default judgment

☐ Dismissal

☐ Lack of jurisdiction

☐ Failure to state a claim

☐ Failure to prosecute

☐ Other (specify) _____

☐ Grant/Denial of NRCP 60(b) relief

☐ Grant/Denial of injunction

☐ Grant/Denial of declaratory relief

☐ Review of agency determination

☐ Divorce decree:

☐ Original ☐ Modification

☐ Other disposition (specify) :

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

☐ Child custody

☐ Venue

☐ Adoption

☐ Termination of parental rights

☐ Grant/Denial of injunction or TRO

☐ Juvenile matters

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:

PERS v. Gitter, et al., Docket No. 69208 – case is pending

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.

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

3 Plaintiff, Shae Gitter, was the child of deceased Kristine Jo Freshman. Plaintiffs filed
4 suit against PERS asserting that PERS is required to pay survivor beneficiary benefits
5 to Plaintiff, Shae Gitter, pursuant to the Survivor Beneficiary Designation by the
6 decedent, Kristine Jo Freshman, as a result of Ms. Freshman's murder by her spouse,
7 Walter Freshman. PERS asserted it could not pay the survivor benefit because Ms.
8 Freshman was married at the time of her death. The District Court, Department 18,
9 granted Plaintiffs' Motion for Summary Judgment stating Plaintiff Shae Gitter is
10 entitled to receive Survivor Beneficiary Benefits as set forth in NRS 286.6767-NRS
11 286.6769 (the Future Payments), including any statutory increases in such benefits, for
12 the remainder of her life, which amount is currently \$2,938.86 per month; PERS shall
13 pay interest on each of the Back Payments at the rate of 12% per annum until paid; and
14 PERS shall pay interest on each of the Future Payments at the rate of 12% per annum
15 from the date each payment is due until it is paid in full. That judgment has been
16 appealed by notice filed on November 13, 2015. Further, the District Court,
17 Department 24, on February 10, 2016, entered an order granting Plaintiffs' Motion for
18 Attorneys' Fees in the amount of \$96,272.50. The District Court ordered that counsel
19 for Defendant, W. Chris Wicker and the firm Woodburn and Wedge, were jointly and
20 severally liable with PERS for the attorneys' fees pursuant to NRS 18.010(2)(b) and
21 NRS 7.085, respectively. In addition, the District Court entered an order on February
22 10, 2016, granting PERS Motion to Retax Costs, in part, disallowing a portion of the
23 expert fees claimed in Plaintiffs' Memorandum of Costs pursuant to NRS 18.005(5).

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

- 25 a. The District Court erred by awarding attorney's fees, jointly and severally
26 against PERS and its counsel based on NRS 18.010 and NRS 7.085.
27 b. There was not substantial evidence to support the District Court's findings that
28 the conduct of PERS and its counsel was unconscionable.
c. The District Court erred by concluding that PERS and its counsel raised
arguments that were unsupported by legal authority, violated cannons of
statutory interpretation and were devoid of merit.
d. The District Court erred by finding Respondents' attorney's fees were
reasonable.
e. The District Court erred by allowing expert witness fees in the amount of \$1,500
as to an expert that was never disclosed, did not testify and did not present
reports or an affidavit.
f. The District Court erred by finding Respondents' witness was a qualified expert
to calculate PERS' benefits.

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

28 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 _____

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

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

If so, explain: The trial court found PERS liable for attorneys' fees under NRS 18.010(2)(b) even though PERS asserted a defense based on the explicit language of the PERS Act; NRS Chapter 286. The issue of public policy is whether PERS is entitled to rely on Chapter 286 in determining benefits.

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

Was it a bench or jury trial? N/A

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

No.

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from February 9 and 10, 2016. Attach a copy. If more than one judgment or order is appealed form, attach copies of each judgment or order from which an appeal is taken.

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

16. Date written notice of entry of judgment or order served February 10, 2016. Attach a copy, including proof of service, for each order or judgment appealed from.

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

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

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

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

8 **Attach copies of all post-trial tolling motions.**

9 **NOTE: Motion made pursuant to NRCP 60 or motions for rehearing or**
10 **reconsideration do not toll the time for filing a notice of appeal.**

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

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

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

15 **18. Date notice of appeal was filed**

16 (a) If more than one party has appealed from the judgment or order, list date each
17 notice of appeal was filed and identify by name the party filing the notice of
18 appeal:
19 _____

20 **19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g.,**
21 **NRAP 4(a), NRS 155.190, or other**

22 NRAP 4(a)

23 **SUBSTANTIVE APPEALABILITY**

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

26 NRAP 3A(b)(1) _____ NRS 155.190 _____ (specify subsection)
27 NRAP 3A(b)(2) _____ NRS 38.205 _____ (specify subsection)
28 NRAP 3A(b)(3) _____ NRS 703.376 _____
Other (specify) NRAP 3A(b)(8)

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

This is the appeal from a post judgment order granting attorneys' fees and a post judgment order only partially granting a motion to retax costs. They are special orders entered after final judgment.

1
2 **21. List all parties involved in the action in the district court:**

- 3 a. PERS;
4 b. SHAE GITTER; and
5 c. JARED SHAFFER, as Special Administrator of the Estate of Kristine Jo Freshman.

6 (a) If all parties in the district court are not parties to this appeal, explain in detail why
7 those parties are not involved in this appeal, *e.g.*, formally dismissed, not served,
8 or other: _____
9

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

15 After entry of judgment on the Respondents' substantive claims, Respondents filed a
16 motion for attorneys' fees against PERS based on NRS 18.010(2)(b) for an
17 unreasonable defense and against PERS' counsel based on NRS 7.085 for
18 unreasonably and vexatiously defending PERS. The District Court granted the amount
19 of \$96,272.50 in fees, jointly and severally against PERS, Woodburn and Wedge and
20 Walter Chris Wicker. Respondents filed a Memorandum of Costs claiming \$5,000 in
21 expert fees. PERS objected that no fees could be awarded because the witness was
22 never disclosed, never testified and never produced a report prior to the cost memo.
23 The District Court partially granted the motion, reducing the expert fees to \$1,500. A
24 copy of each order is attached.

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

27 Yes X No _____

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

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

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

Yes _____ No _____

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

- 26. Attach file-stamped copies of the following documents:**
- (a) The latest-filed complaint, counterclaims, cross-claims, and third-party claims
 - (b) Any tolling motion(s) and order(s) resolving tolling motion(s)
 - (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

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

<u>PUBLIC EMPLOYEES RETIREMENT SYSTEM</u>	<u>W. Chris Wicker</u>
Name of appellant	Name of counsel of record
<u>March 31, 2016</u>	<u>/s/ W. Chris Wicker</u>
Date	Signature of counsel
<u>Washoe County, Nevada</u>	

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

DATED this ____ day of February, 2016.

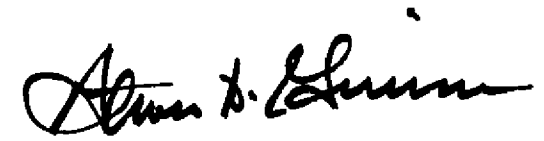
By: _____
Kelly N. Weaver

EXHIBITS TO DOCKETING STATEMENT

- EXHIBIT A: Notice of Entry of Order Granting Plaintiffs' Motion for Attorneys' Fees)
- EXHIBIT B: Notice of Entry of Order (Order Granting Motion to Retax)
- EXHIBIT C: Order Granting Plaintiffs' Motion for Attorneys' Fees
- EXHIBIT D: Order Granting Motion to Retax
- EXHIBIT E: Complaint

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.

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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

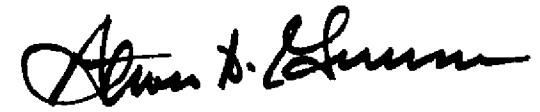
Attorney for Defendant
PUBLIC EMPLOYEES'
RETIREMENT SYSTEM OF
NEVADA

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

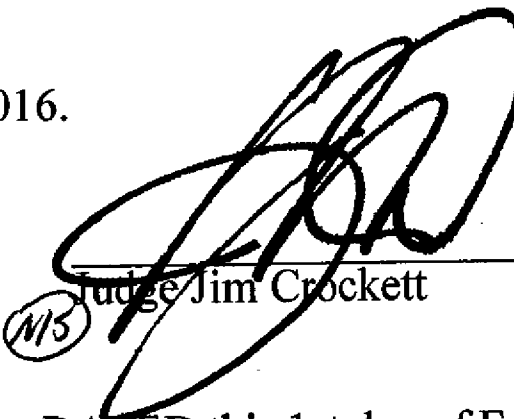
32. The number of hours billed is reasonable in light of the time this case has been pending, the difficulty of the case, and the quality of work performed by Plaintiffs' attorneys.

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

DATED this 2nd day of February 2016.

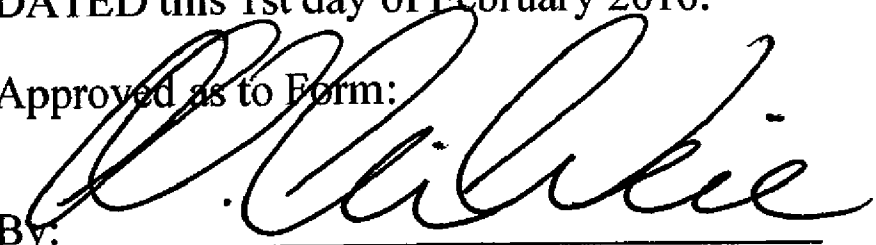
Respectfully Submitted By:

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:

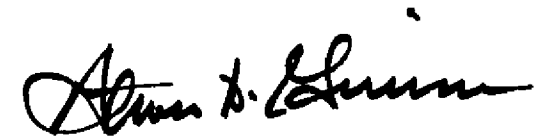

By: WOODBURN AND WEDGE
W. Chris Wicker

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."

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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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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:**

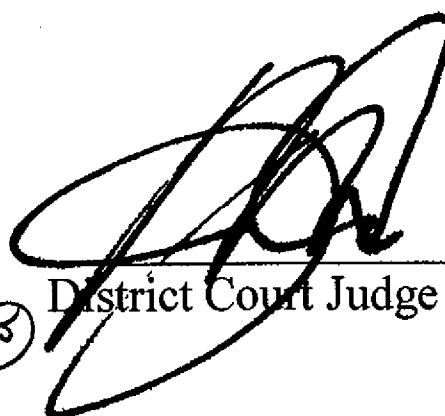
1. PERS' Motion to Retax is granted in part by limiting expert witness costs to \$1,500.
2. Gitter's cost recovery shall be reduced by the amount of \$3,500.

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:

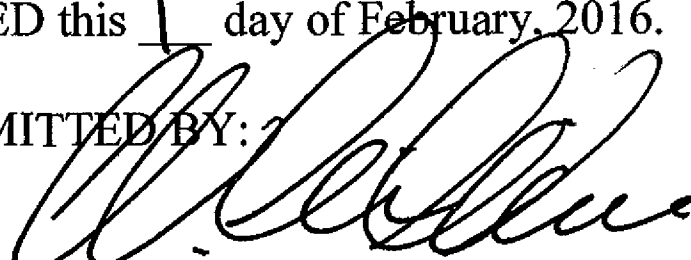


District Court Judge – Jim Crockett

DATED this 1 day of February, 2016.

SUBMITTED BY:

By:



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

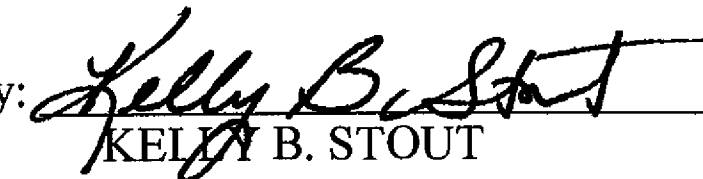
Chris Nielsen, Esq.
Nevada Bar No. 8206
Public Employees
Retirement System
of Nevada

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

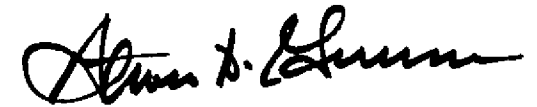
Dennis L. Kennedy
Nevada State Bar No. 1462
Bailey Kennedy

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

EXHIBIT C

EXHIBIT C



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

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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,

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

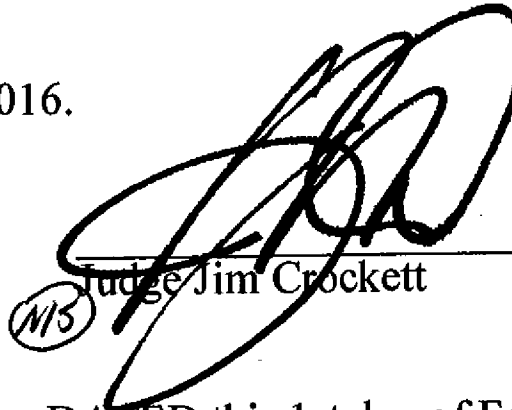
32. The number of hours billed is reasonable in light of the time this case has been pending, the difficulty of the case, and the quality of work performed by Plaintiffs' attorneys.

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

DATED this 2nd day of February 2016.

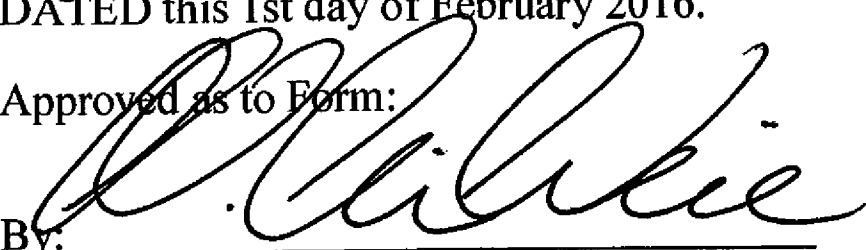
Respectfully Submitted By:

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:

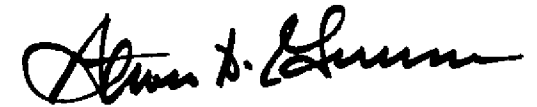
By: 
WOODBURN AND WEDGE
W. Chris Wicker

PUBLIC EMPLOYEES RETIREMENT
SYSTEM
Chris Nielsen

*Attorneys for the Public Employees'
Retirement System*

EXHIBIT D

EXHIBIT D



CLERK OF THE COURT

ORDR

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
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.

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

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
Las Vegas, Nevada 89148-1302
Telephone Number: (702) 562-8820
Fax Number: (702) 562-8821
DKennedy@BaileyKennedy.com
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:

///

///

///

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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26
27

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.

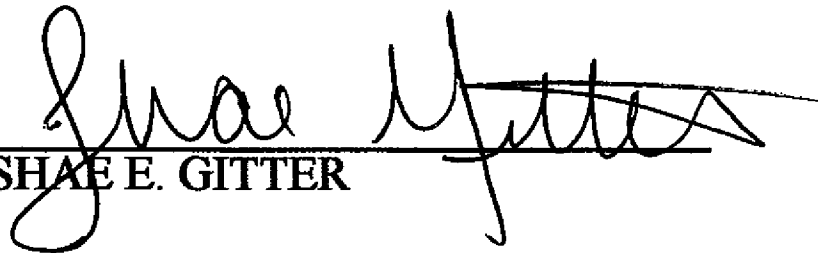
7 
8 SHAE E. GITTER
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Exhibit 1

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

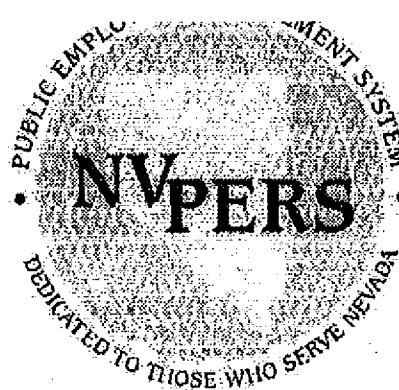
AUG 22 2007

Exhibit 2

Exhibit 2

George W. Stevens
Chairman
Mark R. Vincent
Vice Chairman

James Green
Bart T. Mangino
David Olsen
Paul C. Page
Charles A. Silvestri



Dana K. Bilyeu
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

693 W. Nye Lane
Carson City, NV 89703
(775) 687-4200
Fax: (775) 687-5131

7455 W. Washington Avenue, Suite 150
Las Vegas, NV 89128
(702) 486-3900
Fax: (702) 304-0697