

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

SUNRISE VILLAS IX HOMEOWNERS  
ASSOCIATION,  
Appellant,

vs.

SIMONE RUSSO,

Respondent.

No. 83115

Electronically Filed  
Jul 15 2021 03:38 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
DOCKETING STATEMENT  
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed 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 fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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 KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XVI  
County Clark Judge Hon. Timothy Williams  
District Ct. Case No. A-17-753606-C

**2. Attorney filing this docketing statement:**

Attorney Robert L. Eisenberg, Esq. Telephone 775-786-6868  
Firm Lemons, Grundy & Eisenberg  
Address 6005 Plumas Street, Third Floor  
Reno, Nevada 89519

***See attached sheet for additional counsel for appellant.***

Client(s) Appellant Sunrise Villas IX Homeowners Association

If this is a joint statement by 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 respondents(s):**

Attorney David F. Sampson, Esq. Telephone 702-605-1099  
Firm Law Office of David Sampson, LLC  
Address 630 S. 3rd Street  
Las Vegas, Nevada 89101

Client(s) Respondent Simone Russo

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

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

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial                   | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict                  | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                             | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                             | <input type="checkbox"/> Failure to prosecute                           |
| <input checked="" type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction                   | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief           | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination               | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following? Not applicable.**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal: **None.**

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

QBE INSURANCE CORPORATION, individually,  
Plaintiff,

vs.

SIMONE RUSSO, RICHARD DUSLAK and JUSTIN SESMAN,  
Defendants.

[And related cross-claims, counterclaims and third-party claims]

Case No.: 2:20-cv-02104-RFB-EJY  
United States District Court, District of Nevada  
Still pending.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

Trip-and-fall claim resulting in settlements with some defendants and \$25 million default judgment against two defendants; motion to set aside default judgment was denied.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

(1) Whether district court erred by not granting relief from default judgment; (2) Whether the district court erred by amending a settlement agreement without the consent of one of the parties.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised: **None.**

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

☐ Reversal of well-settled Nevada precedent (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

If so, explain:

This is a unique case with issues of first impression involving procedures leading to a \$25 million default judgment against two individual defendants, and regarding the district court's authority to amend a settlement agreement without the consent of one of the parties. Resolution of these issues involves public policy implications of fundamental fairness and integrity of the Nevada judiciary.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case should be retained to the Supreme Court pursuant to NRAP 17(a)(11) and (12), and NRAP 17(b)(5). The appeal involves questions of first impression relating to the judgment and denial of relief from the judgment, with implications of statewide public importance, as mentioned above. The judgment was in the amount of \$25 million in a trip-and-fall tort case.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? Not applicable.

Was it a bench or jury trial? \_\_\_\_\_

**15. 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?  
**Not applicable.**

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** May 26, 2021

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

**17. Date written notice of entry of judgment or order was served** May 26, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59):** Not applicable.

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

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed June 23, 2021**

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

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

NRAP 4(a)(1)

**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

**(a)**

- |  |                                       |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1)                                       | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)                                       | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)                                       | <input type="checkbox"/> NRS 703.376  |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3(A)(b) (8).</u> |                                       |

**(b) Explain how each authority provides a basis for appeal from the judgment or order:**

An order denying a motion for relief under NRCP 60(b) is appealable as a special order after final judgment under NRAP 3(A)(b)(8). *Holiday Inn Downtown v. Barnett*, 103 Nev. 60, 63, 732 P.2d 1376, 1379 (1987).



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Plaintiff:

SIMONE RUSSO

Defendants:

COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX COMMUNICATIONS;

IES RESIDENTIAL, INC.;

SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION;

J&G LAWN MAINTENANCE;

KEVIN BUSHBAKER;

PW JAMES MANAGEMENT & CONSULTING, LLC;

J. CHRIS SCARCELLI (deceased),

RICHARD DUSLAK, and

JUSTIN SESMAN.

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

The motion for relief under NRCP 60(b) was filed only by defendant Sunrise Villas (appellant) against plaintiff Simone Russo (respondent). No other parties were involved in the Rule 60(b) proceedings. This is an appeal from the denial of the motion. Consequently, there are no parties in this appeal other than Sunrise and Russo.

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

*See attached sheet.*

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☐ Yes

☐ No

*See attached sheet.*

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

(a) Specify the claims remaining pending below: **Not applicable.**

(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

(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

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

Not applicable.

**27. Attach file-stamped copies of the following documents:**

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

*See attached sheet for list of documents.*

## 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.

Seannise Villas  
Name of appellant

ROBERT L. EISENBERG (950)  
Name of counsel of record

July 15, 2021  
Date

Robert L. Eisenberg  
Signature of counsel of record

Washoe County, NV  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 15th day of July, 2021, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

David F. Sampson, Esq.  
Law Office of David Sampson, LLC  
630 S. 3rd St.  
Las Vegas, NV 89101

*Attorney for Respondent*

Shannon Splaine, Esq.  
Lincoln, Gustafson & Cercos, LLP  
3960 Howard Hughes Pkwy., Ste. 200  
Las Vegas, NV 89169

*Attorneys for Appellant*

Dated this 15th day of July, 2021

Julia Gappert  
Signature

**ATTACHMENT TO DOCKETING STATEMENT**

**Question No. 2: Attorney filing this docketing statement:**

Appellant is also represented by the following counsel:

Shannon Splaine, Esq.  
Lincoln, Gustafson & Cercos, LLP  
3960 Howard Hughes Parkway, Suite 200  
Las Vegas, Nevada 89169  
(702) 257-1997  
[ssplaine@lgclawoffice.com](mailto:ssplaine@lgclawoffice.com)

**Question No. 23:**

Plaintiff Russo asserted personal injury claims against all defendants, arising out of his alleged trip-and-fall accident. Some of the defendants had claims against each other for indemnity and contribution.

**Defendants Duslak and Sesman:**

Defendants Duslak and Sesman did not file answers. Plaintiff obtained a default judgment against them on December 17, 2019, in the amount of \$25 million.

**Defendant J&G Lawn Maintenance:**

Defendant J&G Lawn Maintenance was dismissed by a stipulation and order entered on January 25, 2018.

**Other defendants:**

The remaining defendants (other than J&G, Duslak, and Sesman) settled with plaintiff Russo. These defendants had claims for indemnity and contribution against

each other. Upon settling with Plaintiff, these defendants requested a determination that the settlement was in good faith, under NRS 17.245. On November 7, 2019, the district court entered an order granting the request, thereby approving the settlement and dismissing the indemnity and contribution claims, with prejudice. On May 14, 2020, the district court entered another order closing the case based upon a Stipulated Judgment. The orders of November 7, 2019 and May 14, 2020 had the effect of finally resolving all claims against all parties (other than J&G, Duslak and Sesman).

**Question No. 24:**

This is an appeal from an order denying Rule 60(b) relief from a judgment. As such, the appealed order did not adjudicate all claims and all parties. Claims and parties were adjudicated in the prior orders and judgments, as indicated above regarding Question No. 23.

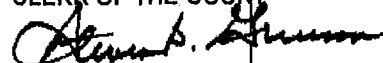
**Question No. 27**

1. Amended Complaint (1/16/2018)
2. Stipulation and Order for Dismissal of Defendant, J&G Lawn Maintenance (1/25/2018)
3. Defendant, IES Residential, Inc.'s Answer to Plaintiff's First Amended Complaint (2/2/2018)
4. Defendant, Cox Communications Las Vegas, Inc., d/b/a Cox Communications' Answer to Plaintiff's First Amended Complaint (2/6/2018)

5. Defendant Sunrise Villas IX Homeowners Association's Answer to Plaintiff's Amended Complaint (2/6/2018)
6. J.Chris Scarcelli's Answer to Amended Complaint (3/22/2018)
7. Defendant/Cross-Defendant J. Chris Scarcelli's Answer to Defendant/Cross-Claimant Kevin Bushbaker's Amended Cross-Claim and Cross-Claims against Cox Communications Las Vegas, Inc., d/b/a Cox Communications, Sunrise Villas IX Homeowners Association, J&G Lawn Maintenance and PWJames Management & Consulting, LLC (3/15/2019)
8. Cox Communications Las Vegas, Inc. d/b/a Cox Communications' and IES Residential, Inc.'s Answer to J. Chris Scarcelli's Cross-Claim (4/5/2019)
9. Court Minutes - Minute Order re: Sunrise Villas IX Homeowners Association's Motion to Dismiss Defendants Bushbaker's and Scarcelli's Cross Claims (8/7/2019)
10. Default Judgment (12/17/2019)
11. Notice of Entry of Order (12/17/2019)
12. Civil Order to Statistically Close Case (5/14/2020)
13. Order on Defendant's Motion to Set Aside Judgment, and Order on Plaintiff's Motion to Enforce Settlement (5/26/2021)
14. Notice of Entry of Order (5/26/2021)

**Question No. 27 – Document No. 1**

**Question No. 27 – Document No. 1**



1 **COMP**  
2 DAVID F. SAMPSON, ESQ.,  
3 Nevada Bar No. 6811  
4 LAW OFFICE OF DAVID SAMPSON  
5 630 S. 3<sup>rd</sup> Street  
6 Las Vegas, NV 89101  
7 Tel: 702-605-1099  
8 Fax: 888-209-4199  
9 Email: david@davidsampsonlaw.com  
10 *Attorney for Plaintiff*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 SIMONE RUSSO, )

14 Plaintiff, )

15 vs. )

CASE NO: A-17-753606-C  
DEPT. NO: XVI

16 COX COMMUNICATIONS LAS VEGAS, )  
17 INC., D/B/A COX COMMUNICATIONS, )  
18 IES RESIDENTIAL, INC., SUNRISE )  
19 VILLAS IX HOMEOWNERS )  
20 ASSOCIATION, J & G LAWN )  
21 MAINTENANCE, KEVIN BUSHBAKER, )  
22 PWJAMES MANAGEMENT & )  
23 CONSULTING, LLC., J. CHRIS )  
24 SCARCELLI, DOE LANDSCAPER, )  
25 RICHARD DUSLAK, JUSTIN SESMAN, )  
26 AND DOES I - V, and ROE )  
27 CORPORATIONS I - V, inclusive, )

28 Defendants. )

29 **AMENDED COMPLAINT**

30 COMES NOW Plaintiff, SIMONE RUSSO, by and through his attorneys, LAW  
31 OFFICE OF DAVID SAMPSON, LLC., and for his causes of action, complains of Defendants,  
32 and each of them, as follows:

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**FIRST CAUSE OF ACTION**

1. Upon information and belief, that at all times relevant to this action, the Defendant, COX COMMUNICATIONS LAS VEGAS, INC., doing business as COX COMMUNICATIONS ("COX") was a Nevada corporation duly licensed to conduct business in the State of Nevada.
2. Upon information and belief, that at all times relevant to this action, the Defendant, IES RESIDENTIAL, INC. was a Nevada corporation duly licensed to conduct business in the State of Nevada.
3. Upon information and belief, that at all times relevant to this action, the Defendant, J&G LAWN MAINTENANCE, was a Nevada corporation duly licensed to conduct business in the State of Nevada.
4. Upon information and belief, that at all times relevant to this action, the Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION was a Nevada corporation duly licensed to conduct business in the State of Nevada.
5. Upon information and belief, that at all times relevant to this action, the Defendant, PWJAMES MANAGEMENT & CONSULTING, LLC., was a Nevada corporation duly licensed to conduct business in the State of Nevada.
6. That Defendant, KEVIN BUSHBAKER, was at all times relevant to this action a resident of the State of Indiana.
7. That Plaintiff, SIMONE RUSSO, was at all times relevant to this action a resident of the State of Nevada.
8. That Defendant, J. CHRIS SCARCELLI, was at all times relevant to this action a resident of the State of Nevada

1 9. That Defendant, RICHARD DUSLAK, was at all times relevant to this action a resident of  
2 the State of Nevada

3 10. That Defendant, JUSTIN SESMAN, was at all times relevant to this action a resident of the  
4 State of Nevada

5  
6 11. That the true names and capacities, whether individual, corporate, partnership, associate  
7 or otherwise, of Defendants, DOES I through V, are unknown to Plaintiff, who therefore  
8 sues said Defendants by such fictitious names. Plaintiff is informed and believes and  
9 thereon alleges that each of the Defendants designated herein as DOE is responsible in  
10 some manner for the events and happenings referred to and caused damages proximately  
11 to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this  
12 Complaint to insert the true names and capacities of DOES I through V, when the same  
13 have been ascertained, and to join such Defendants in this action.  
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16 12. That upon information and belief, at all times relevant to this action, the Defendant,  
17 KEVIN BUSHBAKER was the owner and operated, maintained and controlled those  
18 premises located at 4617 Madreperla Street, Las Vegas, Nevada.

19  
20 13. That upon information and belief, at all times relevant to this action, the Defendants,  
21 RICHARD DUSLAK and JUSTIN SESMAN, maintained and controlled those premises  
22 located at 4617 Madreperla Street, Las Vegas, Nevada.

23 14. That upon information and belief, at all times relevant to this action, the Defendant, J.  
24 CHRIS SCARCELLI, operated, maintained and controlled those premises located at 4617  
25 Madreperla Street, Las Vegas, Nevada.

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27 15. That upon information and belief, at all times relevant to this action, the Defendant,  
28 PWJAMES MANAGEMENT & CONSULTING, LLC., was the management company

1 and operated, maintained and controlled those premises located at 4617 Madreperla Street,  
2 Las Vegas, Nevada.

3 16. IES RESIDENTIAL, INC., was and is a corporation doing business in the State of  
4 Nevada, and was and is the remover, installer, reinstaller and repairer of that certain cable  
5 line, and as such did transport, ship, introduce and/or cause said products to be installed  
6 and/or used at 4617 Madreperla Street, Las Vegas, Nevada.

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8 17. That at all times mentioned herein, Defendant, ROE IV, was and is a corporation doing  
9 business in the State of Nevada, with its principal place of business located within the  
10 State of Nevada and was and is the designer, manufacturer, producer, packager,  
11 distributor, retailer, remover, installer, reinstaller and repairer of that certain door and  
12 hinges, and as such did transport, ship, introduce and/or cause said products to be  
13 introduced into the State of Nevada for the purpose of their sale, distribution, installation  
14 and/or use within the State of Nevada.

15  
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17 18. The true names or capacities, whether individual, corporate, associate or otherwise, of  
18 Defendants DOE I through DOE V, and ROE CORPORATION III through ROE  
19 CORPORATION V, are unknown to Plaintiff, who therefore sues said Defendants by  
20 such fictitious names; Plaintiff is informed and believes and thereon alleges that each of  
21 the Defendants designated herein as DOE and ROE CORPORATION are responsible in  
22 some manner for the events and happenings referred to and caused damages proximately  
23 to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this  
24 complaint, to insert the true names and capacities of DOE I through DOE V and ROE  
25 CORPORATION III through ROE CORPORATION V, when the same have been  
26 ascertained and to join such Defendants in this action.  
27  
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1 19. That on or about the 27<sup>th</sup> day of August, 2016, and for some time prior thereto, the  
2 Defendants, and each of them (by and through their authorized agents, servants, and  
3 employees, acting within the course and scope of their employment), negligently and  
4 carelessly owned, maintained, operated, occupied, and controlled the said premises,  
5 located at 4617 Madreperla Street, Las Vegas, Nevada, so as to cause and allow a  
6 cable/wire to be installed by Defendant COX to come out of the front yard of the said  
7 premises, to remain above the ground and stretch from the yard of the said premises,  
8 across the driveway of the said premises, and to then be buried under the ground on the  
9 opposite side of the driveway adjacent from the yard of the said premises, making the  
10 driveway hazardous and dangerous. In that they allowed the area to remain in such a  
11 manner that it presented a dangerous and hazardous condition in an area intended for the  
12 use and commonly and regularly used by residents and invitees of the said premises. In so  
13 acting, the Defendants, and each of them, caused the driveway of the said premises to be  
14 hazardous and dangerous to persons walking in the area; and more particularly the  
15 Plaintiff, SIMONE RUSSO; and thereafter the Defendants, and each of them, permitted,  
16 allowed and caused said unsafe condition to remain even though Defendants knew or,  
17 through the exercise of ordinary care and diligence, should have known, that the wire  
18 stretched across the driveway and constituted a defective and dangerous condition; that  
19 Defendants, and each of them, failed to maintain the aforesaid premises in a reasonably  
20 safe condition; and that Defendant, and each of them, negligently, carelessly and  
21 recklessly failed to inspect, repair and remedy the said condition, or warn the Plaintiff,  
22 SIMONE RUSSO, of the defect therein.  
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1 20. At all times herein concerned or relevant to this action, the Defendants, and each of them,  
2 acted by and through their duly authorized agents, servants, workmen and/or employees then  
3 and there acting within the course of their employment and scope of their authority for the  
4 Defendants, and each of them.  
5

6 21. That the carelessness and negligence of the Defendants, and each of them, in breaching a  
7 duty owed to the Plaintiff, SIMONE RUSSO, which directly and proximately caused the  
8 injuries and damages to the Plaintiff; SIMONE RUSSO, consisting in and of, but not  
9 limited to, the following acts, to wit:  
10

- 11 a) Failure to provide a safe premises for the Plaintiff, SIMONE RUSSO, to walk on  
12 the driveway;
- 13 b) Failure to warn the Plaintiff, SIMONE RUSSO, of the dangerous and hazardous  
14 condition then and there existing in said premises;
- 15 c) Failure to properly and adequately inspect the said dangerous condition in the  
16 driveway to ascertain its hazardous and dangerous condition;
- 17 d) Failure to properly and adequately maintain the driveway;
- 18 e) Failure to properly warn the Plaintiff, SIMONE RUSSO, of said dangerous  
19 condition;
- 20 f) The Defendants, and each of them, had, or should have had, knowledge or notice  
21 of the existence of the said dangerous and defective condition which existed on  
22 said premises. At all times pertinent hereto, Defendants, and each of them,  
23 expressly and/or impliedly warranted that the certain driveway in question was in  
24 all respects fit for due purposes and uses for which it was intended and was of  
25 merchantable quality.  
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1 22. The Defendants, and each of them, may have violated certain Nevada Revised Statutes  
2 and Las Vegas, Nevada, ordinances and Las Vegas building codes, which the Plaintiff  
3 prays leave of Court to insert the exact statutes or ordinances or codes at the time of the  
4 trial. At all times mentioned herein, Defendants, and each of them, owed a duty to all  
5 persons who could reasonably be foreseen to be situated in and around the driveway in  
6 question, and such a duty was specifically owed to Plaintiff.  
7

8 23. That on or about the 27<sup>th</sup> day of August, 2016, the Plaintiff, SIMONE RUSSO, while  
9 lawfully upon the said premises, as a direct and proximate result of the said negligence and  
10 carelessness of the Defendants, and each of them, as alleged herein, was caused to suffer the  
11 injuries and damages hereinafter set forth when he caught his foot on the cable/wire, causing  
12 him to fall to the ground, proximately causing to him the injuries and damages as hereinafter  
13 more particularly alleged.  
14

15 24. By reason of the premises and as a direct and proximate result of the aforesaid negligence  
16 and carelessness of the Defendants, and each of them, the Plaintiff, SIMONE RUSSO, was  
17 caused to suffer cervical, thoracic, and lumbar contusions and strains, post-traumatic cervical  
18 herniated disc, aggravation of pre-existing cervical arthritis and cervical radiculitis and  
19 neurological injuries, and Plaintiff, SIMONE RUSSO, was otherwise injured in and about  
20 the head, neck, and back, appendages, and caused to suffer great pain of body and mind, all  
21 or some of the same are chronic and may result in permanent disability and are disabling, all  
22 to Plaintiff, SIMONE RUSSO, damage in an amount in excess of \$10,000.00 and indeed in  
23 excess of the Justice Court jurisdictional limit of \$15,000.00.  
24

25 25. By reason of the premises, and as a direct and proximate result of the aforesaid negligence  
26 and carelessness of the Defendants, and each of them, Plaintiff, SIMONE RUSSO, has been  
27  
28

1 caused to incur expenses in excess of \$50,000.00, and likely in the amount of hundreds of  
2 thousands of dollars, for medical expenses, and will in the future be caused to expend monies  
3 for medical expenses and additional monies for miscellaneous expenses incidental thereto, in  
4 a sum presently unascertainable. The Plaintiff, SIMONE RUSSO, will pray leave of Court  
5 to insert the total amount of the medical and miscellaneous expenses when the same have  
6 been fully determined at the time of the trial of this action.  
7

8 26. Prior to the injuries complained of herein, Plaintiff, SIMONE RUSSO, was an able-bodied  
9 male, capable of being gainfully employed and capable of engaging in all other activities for  
10 which he was otherwise suited, and at the time of the incident complained of herein, had no  
11 disabilities. By reason of the premises, and as a direct and proximate result of the negligence  
12 of the said Defendants, and each of them, Plaintiff, SIMONE RUSSO, was caused to be  
13 disabled and limited and restricted in Plaintiff's occupations and activities, which caused to  
14 Plaintiff a loss of wages in a presently unascertainable amount, the allegations of which  
15 Plaintiff prays leave of Court to insert herein when the same shall be fully determined.  
16  
17

18 27. Plaintiff has been required to retain the law firm of LAW OFFICE OF DAVID SAMPSON,  
19 LLC. to prosecute this action, and is entitled to a reasonable attorney's fee.  
20

21 WHEREFORE, Plaintiff, expressly reserving the right herein to include all items of  
22 damage, demands judgment against the Defendants, and each of them, as follows:

- 23 1. General damages in an amount in excess of \$10,000.00 and indeed in excess of the  
24 Justice Court jurisdictional limit of \$15,000.00;
- 25 2. Special damages for Plaintiff, SIMONE RUSSO'S medical and miscellaneous  
26 expenses, plus future medical expenses and the miscellaneous expenses incidental  
27 thereto in a presently unascertainable amount;  
28

- 1 3. Special damages for lost wages in a presently unascertainable amount, and/or  
2 diminution of Plaintiff's earning capacity, plus possible future loss of earnings  
3 and/or diminution of Plaintiff's earning capacity in a presently unascertainable  
4 amount.  
5  
6 4. Costs of this suit;  
7  
8 5. Attorney's fees; and  
9  
10 6. For such other and further relief as to the Court may seem just and proper in the  
11 premises.

12 DATED THIS 18 day of July, 2017.

13 LAW OFFICE OF DAVID SAMPSON, LLC

14 BY: 

15 DAVID F. SAMPSON, ESQ.,  
16 Nevada Bar No. 6811  
17 LAW OFFICE OF DAVID SAMPSON  
18 630 S. 3<sup>rd</sup> Street  
19 Las Vegas, NV 89101  
20 Tel: 702-605-1099  
21 *Attorney for Plaintiff*  
22  
23  
24  
25  
26  
27  
28



**Question No. 27 – Document No. 2**

**Question No. 27 – Document No. 2**

*Steven D. Grierson*

1 RICHARD J. PYATT, ESQ.  
Nevada Bar No. 2777  
2 PYATT SILVESTRI  
701 Bridger Avenue, Suite 600  
3 Las Vegas, Nevada 89101  
(702) 383-6000  
4 Attorney for Defendant,  
J & G LAWN MAINTENANCE  
5

6  
7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 SIMONE RUSSO,

10 Plaintiff,

CASE NO.: A-17-753606-C  
DEPT. NO.: XVI

11 vs.

12 COX COMMUNICATIONS LAS VEGAS,  
INC., d/b/a COX COMMUNICATIONS,  
13 IES RESIDENTIAL, INC., SUNRISE  
VILLAS IX HOMEOWNERS ASSOCIA-  
TION, J & G LAWN MAINTENANCE;  
14 KEVIN BUSHBAKER, PW JAMES  
MANAGEMENT & CONSULTING, LLC,  
15 AND DOES I-V, and ROE CORPORA-  
TIONS I-V, inclusive,  
16

17 Defendants.

18 STIPULATION AND ORDER FOR DISMISSAL OF  
19 DEFENDANT, J & G LAWN MAINTENANCE

20 IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto,  
21 through their respective counsel of record, that is: Richard J. Pyatt, Esq. of the law firm of Pyatt  
22 Silvestri on behalf of Defendant, J & G Lawn Maintenance; and Jonathan C. Pattillo, Esq. of the law  
23 firm of Springel & Fink, LLP, on behalf of Defendant, Sunrise Villas IX Homeowners Association,  
24 that J & G Lawn Maintenance, was not responsible for the maintenance of any portion of the  
25 common areas, landscaped areas, driveways or walkways at Sunrise Villas IX at any time prior to  
26 August 27, 2016, the date of the incident that forms the basis of Plaintiff's Complaint on file herein.

27 IT IS FURTHER STIPULATED AND AGREED that J & G Lawn Maintenance did not  
28 begin providing services to Sunrise Villas IX Homeowners Association, until on or after the second

PYATT SILVESTRI

A PROFESSIONAL LAW CORPORATION  
701 BRIDGER AVENUE SUITE 600  
LAS VEGAS, NEVADA 89101-8941  
PHONE (702) 383-6000 FAX (702) 477-0088


JAN 22 2018

PYATT SILVESTRI  
A PROFESSIONAL LAW CORPORATION  
701 BRIDGER AVENUE SUITE 600  
LAS VEGAS, NEVADA 89101-8941  
PHONE (702) 383-5000 FAX (702) 477-0088

1 week of September, 2016.


2 Dated this 22<sup>nd</sup> day of January, 2018

3 PYATT SILVESTRI

4 By:   
5 RICHARD J. PYATT, ESQ.  
6 Nevada Bar No. 2777  
7 701 Bridger Avenue, Suite 600  
8 Las Vegas, Nevada 89101  
9 Attorney for Defendant,  
10 J & G LAWN MAINTENANCE

Dated this 22<sup>nd</sup> day of January, 2018

SPRINGEL & FINK, LLP

By:   
JONATHAN C. PATTILLO, ESQ.  
Nevada Bar No. 013929  
10655 Park Run Drive #275  
Las Vegas, Nevada 89144  
Attorney for Defendant,  
SUNRISE VILLAS IX HOME-  
OWNERS ASSOCIATION

Based on the Stipulation between Sunrise Villas IX Homeowners Association and J & G Lawn Maintenance above,

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, through their counsel of record, that is: David F. Sampson, Esq., of the law offices of David Sampson, on behalf of Plaintiff, Simone Russo; Christopher Turtzo, Esq., of the law firm of Morris Sullivan Lemkul & Pitegoff, LLP, on behalf of Defendants, Cox Communications Las Vegas, Inc. and IES Residential, Inc.; Jonathan C. Pattillo, Esq. of the law firm of Springel & Fink, LLP, on behalf of Defendant, Sunrise Villas IX Homeowners Association; Richard J. Pyatt, Esq., of the law firm of Pyatt Silvestri, on behalf of Defendant, J & G Lawn Maintenance; and Roger Bailey, Esq.,

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PYATT SILVESTRI  
A PROFESSIONAL LAW CORPORATION  
701 BRIDGER AVENUE SUITE 600  
LAS VEGAS, NEVADA 89101-8941  
PHONE (702) 363-6000 FAX (702) 477-0088

1 of the law firm of Sgro & Roger, on behalf of Defendant, Kevin Bushbaker, that Plaintiff's claims  
2 against Defendant, J & G Lawn Maintenance be dismissed, with prejudice.

3 LAW OFFICES OF DAVID F. SAMPSON MORRIS SULLIVAN LEMKUL & PITEG OFF, LLP

4 By: DAVID F. SAMPSON, ESQ.  
5 Nevada Bar No. 006811  
6 630 South Third Street  
7 Las Vegas, Nevada 89101  
8 Attorney for Plaintiff,  
SIMONE RUSSO

By: CHRISTOPHER TURTZO, ESQ.  
Nevada Bar No. 010253  
3770 Howard Hughes Parkway #170  
Las Vegas, Nevada 89169  
Attorneys for Defendants,  
COX COMMUNICATIONS LAS VEGAS,  
INC./IES RESIDENTIAL, INC.

9 SPRINGEL & FINK, LLP

SGRO & ROGER

10 By: JONATHAN C. PATTILLO, ESQ.  
11 Nevada Bar No. 013929  
12 10655 Park Run Drive #175  
13 Las Vegas, Nevada 89144  
14 Attorney for Defendant,  
SUNRISE VILLAS IX HOMEOWNERS  
ASSOCIATION

By: ROGER BAILEY, ESQ.  
Nevada Bar No. 012552  
720 South 7<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89101  
Attorney for Defendant,  
KEVIN BUSHBAKER

15 **ORDER**

16 **IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2018.

17 DISTRICT COURT JUDGE

18 Submitted by:

19 PYATT SILVESTRI

20 By: RICHARD J. PYATT, ESQ.  
21 Nevada Bar No. 2777  
22 701 Bridger Avenue, Suite 600  
23 Las Vegas, Nevada 89101  
24 Attorney for Defendant,  
25 J & G LAWN MAINTENANCE

PYATT SILVESTRI  
A PROFESSIONAL LAW CORPORATION  
701 BRIDGER AVENUE, SUITE 600  
LAS VEGAS, NEVADA 89101-8941  
PHONE (702) 383-6000 FAX (702) 477-0088

1 of the law firm of Sgro & Roger, on behalf of Defendant, Kevin Bushbaker, that Plaintiff's claims  
2 against Defendant, J & G Lawn Maintenance be dismissed, with prejudice.

3 LAW OFFICES OF DAVID F. SAMPSON MORRIS SULLIVAN LEMKUL & PITEGOFF, LLP

4 By: \_\_\_\_\_  
5 DAVID F. SAMPSON, ESQ.  
6 Nevada Bar No. 006811  
7 630 South Third Street  
8 Las Vegas, Nevada 89101  
9 Attorney for Plaintiff,  
10 SIMONE RUSSO

By: \_\_\_\_\_  
CHRISTOPHER TURTZO, ESQ.  
Nevada Bar No. 010253  
3770 Howard Hughes Parkway #170  
Las Vegas, Nevada 89169  
Attorneys for Defendants,  
COX COMMUNICATIONS LAS VEGAS,  
INC./IES RESIDENTIAL, INC.

9 SPRINGEL & FINK, LLP

SGRO & ROGER

10 By: \_\_\_\_\_  
11 JONATHAN C. PATTILLO, ESQ.  
12 Nevada Bar No. 013929  
13 10655 Park Run Drive #175  
14 Las Vegas, Nevada 89144  
15 Attorney for Defendant,  
16 SUNRISE VILLAS IX HOMEOWNERS  
17 ASSOCIATION

By: \_\_\_\_\_  
ROGER BAILEY, ESQ.  
Nevada Bar No. 012552  
720 South 7<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89101  
Attorney for Defendant,  
KEVIN BUSHBAKER

15 **ORDER**

16 **IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2018.

17  
18 **DISTRICT COURT JUDGE**

19 Submitted by:

20 PYATT SILVESTRI

21  
22 By: \_\_\_\_\_  
23 RICHARD J. PYATT, ESQ.  
24 Nevada Bar No. 2777  
25 701 Bridger Avenue, Suite 600  
26 Las Vegas, Nevada 89101  
27 Attorney for Defendant,  
28 J & G LAWN MAINTENANCE

PYATT SILVESTRI  
A PROFESSIONAL LAW CORPORATION  
701 BRIDGER AVENUE SUITE 600  
LAS VEGAS, NEVADA 89101-3541  
PHONE (702) 388-6000 FAX (702) 477-0088

1 of the law firm of Sgro & Roger, on behalf of Defendant, Kevin Bushbaker, that Plaintiff's claims  
2 against Defendant, J & G Lawn Maintenance be dismissed, with prejudice.

3 LAW OFFICES OF DAVID F. SAMPSON MORRIS SULLIVAN LEMKUL & PITEGOFF, LLP

4  
5 By: DAVID F. SAMPSON, ESQ.  
6 Nevada Bar No. 006811  
7 630 South Third Street  
8 Las Vegas, Nevada 89101  
9 Attorney for Plaintiff,  
10 SIMONE RUSSO

By: CHRISTOPHER TURTZO, ESQ.  
Nevada Bar No. 010253  
3770 Howard Hughes Parkway #170  
Las Vegas, Nevada 89169  
Attorneys for Defendants,  
COX COMMUNICATIONS LAS VEGAS,  
INC./IBS RESIDENTIAL, INC.

9 SPRINGEL & FINK, LLP

SGRO & ROGER

10  
11 By: JONATHAN C. PATILLO, ESQ.  
12 Nevada Bar No. 013929  
13 10655 Park Run Drive #175  
14 Las Vegas, Nevada 89144  
15 Attorney for Defendant,  
16 SUNRISE VILLAS IX HOMEOWNERS  
17 ASSOCIATION

By: ROGER BAILEY, ESQ.  
Nevada Bar No. 012552  
720 South 7<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89101  
Attorney for Defendant,  
KEVIN BUSHBAKER

15 **ORDER**

16 **IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2018.

18 DISTRICT COURT JUDGE

19 Submitted by:

20 PYATT SILVESTRI

21  
22 By: RICHARD J. PYATT, ESQ.  
23 Nevada Bar No. 2777  
24 701 Bridger Avenue, Suite 600  
25 Las Vegas, Nevada 89101  
26 Attorney for Defendant,  
27 J & G LAWN MAINTENANCE  
28

PYATT SILVESTRI  
A PROFESSIONAL LAW CORPORATION  
701 BRIDGER AVENUE, SUITE 600  
LAS VEGAS, NEVADA 89101-5941  
PHONE (702) 383-6000 FAX (702) 477-0088

1 of the law firm of Sgro & Roger, on behalf of Defendant, Kevin Bushbaker, that Plaintiff's claims  
2 against Defendant, J & G Lawn Maintenance be dismissed, with prejudice.

3 LAW OFFICES OF DAVID F. SAMPSON MORRIS SULLIVAN LEMKUL & PITEGOFF, LLP

4 By: DAVID F. SAMPSON, ESQ.  
5 Nevada Bar No. 006811  
6 630 South Third Street  
7 Las Vegas, Nevada 89101  
8 Attorney for Plaintiff,  
SIMONE RUSSO

By: CHRISTOPHER TURTZO, ESQ.  
Nevada Bar No. 010253  
3770 Howard Hughes Parkway #170  
Las Vegas, Nevada 89169  
Attorneys for Defendants,  
COX COMMUNICATIONS LAS VEGAS,  
INC./IES RESIDENTIAL, INC.

9 SPRINGEL & RINK, LLP

SGRO & ROGER

10 By: JONATHAN C. PATTILLO, ESQ.  
11 Nevada Bar No. 013929  
12 10655 Park Run Drive #175  
13 Las Vegas, Nevada 89144  
14 Attorney for Defendant,  
SUNRISE VILLAS IX HOMEOWNERS  
ASSOCIATION

By: ROGER BAILEY, ESQ.  
Nevada Bar No. 012552  
720 South 7<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89101  
Attorney for Defendant,  
KEVIN BUSHBAKER

15 ORDER  
16 IT IS SO ORDERED this 23<sup>rd</sup> day of January, 2018.

17  
18 DISTRICT COURT JUDGE  
19  
20

Submitted by:

21 PYATT SILVESTRI

22 By: RICHARD J. PYATT, ESQ.  
23 Nevada Bar No. 2777  
24 701 Bridger Avenue, Suite 600  
25 Las Vegas, Nevada 89101  
26 Attorney for Defendant,  
27 J & G LAWN MAINTENANCE  
28

**Question No. 27 – Document No. 3**

**Question No. 27 – Document No. 3**





1 **ANSW**

2 Will Lemkul; NV Bar No. 6715  
3 Christopher A. Turtzo; NV Bar No. 10253  
4 MORRIS, SULLIVAN, LEMKUL & PITEGOFF, LLP  
5 3770 Howard Hughes Parkway, Suite 170  
6 Las Vegas, NV 89169  
7 Phone (702) 405-8100  
8 Fax (702) 405-8101  
9 *Attorneys for Defendant,*  
10 *IES Residential, Inc.*

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

10 SIMONE RUSSO,

11 Plaintiff,

12 Vs.

13 COX COMMUNICATIONS LAS VEGAS,  
14 INC., D/B/A/ COX COMMUNICATIONS,  
15 IES RESIDENTIAL, INC., SUNRISE  
16 VILLAS IX HOMEOWNERS  
17 ASSOCIATION, J & G LAWN  
18 MAINTENANCE, KEVIN BUSHBAKER,  
19 PWJAMES MANAGEMENT &  
20 CONSULTING, LLC., AND DOES I-V, and  
21 ROE CORPORATIONS I-V, inclusive,

18 Defendants.

Case No.: A-17-753606-C

Dept. No.: XVI

**DEFENDANT, IES RESIDENTIAL, INC.'S  
ANSWER TO PLAINTIFF'S FIRST  
AMENDED COMPLAINT**

20 On behalf of itself only, Defendant IES RESIDENTIAL, INC. ("IES" or "this Answering  
21 Defendant") by and through their counsel of record, CHRISTOPHER A. TURTZO, ESQ. of  
22 Morris, Sullivan, Lemkul & Pitegoff hereby responds to the allegations contained in the First  
23 Amended Complaint filed by Simone Russo ("Plaintiff") as follows.

24 **FIRST CAUSE OF ACTION**

25 1. IES lacks sufficient information on which to admit the truth, or falsity, of the  
26 allegations contained in paragraphs 1, 3, 4 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, and  
27 on that basis, denies the same.

1       2.     In answering paragraph 2 of the Complaint, IES admits in part and denies in part  
2 Plaintiff's allegations. IES admits that it is duly licensed to conduct business in the State of  
3 Nevada. However, IES denies that it is a Nevada corporation since IES is a foreign corporation.

4       3.     Paragraphs 19, 22, 23, 24, 25, 26 and 27 state legal conclusions to which no  
5 response is required. To the extent that Paragraphs 19, 22, 23, 24, 25, 26 and 27 contain factual  
6 claims that pertain to IES, IES denies the allegations contained therein.

7       4.     Paragraph 20 states legal conclusions to which no response is required. To the  
8 extent the allegations are determined to contained factual claims pertaining to IES, IES lacks  
9 sufficient information on which to admit the truth, or falsity, of the allegations contained in  
10 paragraph 20 and on that basis denies the same.

11       5.     In answering paragraph 21 of the Complaint, IES denies the allegations contained  
12 within.

13                   **AFFIRMATIVE DEFENSES**

14                   **FIRST AFFIRMATIVE DEFENSE**

15       Plaintiff has not and will not sustain any injury or damages as a result of this answering  
16 Defendant's alleged acts or omissions.

17                   **SECOND AFFIRMATIVE DEFENSE**

18       This answering Defendant did not breach any duty owed to Plaintiff.

19                   **THIRD AFFIRMATIVE DEFENSE**

20       Plaintiff has failed to mitigate her damages, if any, and any monetary recovery should  
21 therefore be reduced accordingly.

22                   **FOURTH AFFIRMATIVE DEFENSE**

23       The alleged damages and injuries sustained by Plaintiff, if any, were proximately caused or  
24 contributed to by Plaintiff's own negligence, and such negligence was equal to or greater than the  
25 negligence of this answering Defendant, if any.

26                   **FIFTH AFFIRMATIVE DEFENSE**

27       The alleged damages and injuries sustained by Plaintiff, if any, were proximately caused or  
28 contributed to by the negligence of a third party over which this answering Defendant had no

1 control.

2 **SIXTH AFFIRMATIVE DEFENSE**

3 Plaintiff is barred from recovering any special damages for failure to specifically allege the  
4 items of special damages pursuant to NRCP 9(g).

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 This answering Defendant alleges that Plaintiff is barred from bringing these claims as all  
7 consequences of the alleged incident were avoidable.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 This answering Defendant alleges that all risks and dangers, if any, involved in the factual  
10 situation described in the Complaint were open, obvious, and known to Plaintiff who voluntarily  
11 assumed said risks and dangers.

12 **NINTH AFFIRMATIVE DEFENSE**

13 The incident which is the subject matter of this action was avoidable and caused by  
14 circumstances over which these answering Defendant had no control and, therefore, Plaintiff is  
15 barred from any recovery against this answering Defendant.

16 **TENTH AFFIRMATIVE DEFENSE**

17 Plaintiff's alleged injuries and/or damages are barred by reason of being compensated by a  
18 collateral source.

19 **ELEVENTH AFFIRMATIVE DEFENSE**

20 The causes of action set forth in the Complaint are subject to dismissal for failure to join a  
21 necessary and indispensable party as required by the Nevada Rules of Civil Procedure.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 To the extent Plaintiff has been paid special damages by or on behalf of this answering  
24 Defendant or a third party, Plaintiff is not the real party in interest to prosecute this action under  
25 N.R.C.P. 17.

26 **THIRTEENTH AFFIRMATIVE DEFENSE**

27 This answering Defendant had no actual or constructive notice or knowledge of the  
28 allegedly dangerous condition Plaintiff complains of.

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1           WHEREFORE, Defendant IES RESIDENTIAL, INC. prays for relief as follows:

2           1.       Plaintiff takes nothing by way of their Complaint;

3           2.       Dismissal of Plaintiff's Complaint with prejudice;

4           3.       An award of reasonable attorney's fees and costs to IES RESIDNETIAL, INC. for  
5 the defense of this matter; and

6           4.       For such other relief as the Court deems reasonable and proper.

7 Dated: February 2, 2018

MORRIS, SULLIVAN, LEMKUL & PITEGOFF, LLP

8

9

By: /s/ Christopher A. Turtzo  
CHRISTOPHER A. TURTZO, ESQ.

10

NV Bar No. 10253

11

3770 Howard Hughes Parkway, Suite 170

12

Las Vegas, NV 89169

13

*Attorneys for Defendant*

14

*IES Residential, Inc.*

15

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that on this 2<sup>nd</sup> day of February, 2018, I served a true and  
3 correct copy of the foregoing: **IES RESIDENTIAL, INC.'S ANSWER TO PLAINTIFF'S**  
4 **FIRST AMENDED COMPLAINT** on all parties in this action by the Eighth Judicial District  
5 Court's CM/ECF Filing System to:

6  
7 *All Parties on the Service List*

8  
9  
10 /s/ Allyson Lodwick

11 An Employee of MORRIS, SULLIVAN, LEMKUL & PITEGOFF  
12  
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**Question No. 27 – Document No. 4**

**Question No. 27 – Document No. 4**



1 **ANSW**

Will Lemkul, Esq.; NV Bar No. 6715  
2 Christopher A. Turtzo; NV Bar No. 10253  
MORRIS, SULLIVAN & LEMKUL, LLP  
3 3770 Howard Hughes Parkway, Suite 170  
Las Vegas, NV 89169  
4 Phone (702) 405-8100  
Fax (702) 405-8101

5 Attorneys for Defendants, *IES Residential, Inc.* and  
6 *Cox Communications Las Vegas, Inc. D/B/A Cox Communications*

7  
8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 SIMONE RUSSO,

11 Plaintiff,

12 vs.

13 COX COMMUNICATIONS LAS VEGAS,  
INC., D/B/A/ COX COMMUNICATIONS,  
14 IES RESIDENTIAL, INC., SUNRISE  
VILLAS IX HOMEOWNERS  
15 ASSOCIATION, J & G LAWN  
MAINTENANCE, KEVIN BUSHBAKER,  
16 PWJAMES MANAGEMENT &  
CONSULTING, LLC., AND DOES I-V, and  
17 ROE CORPORATIONS I-V, inclusive,

18 Defendants.

19 KEVIN BUSHBAKER, an individual,

20 Cross-Claimant,

21 vs.

22  
23 COX COMMUNICATIONS LAS VEGAS  
INC., DBA COX COMMUNICATIONS; IES  
24 RESIDENTIAL, INC.,

25 Cross-Defendants.

Case No.: A-17-753606-C

Dept. No.: XVI

**DEFENDANT, COX COMMUNICATIONS  
LAS VEGAS, INC., D/B/A COX  
COMMUNICATIONS' ANSWER TO  
PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

26 On behalf of itself only, Defendant COX COMMUNICATIONS LAS VEGAS, INC.,  
27 D/B/A COX COMMUNICATIONS ("COX" or "this Answering Defendant") by and through their  
28



1 counsel of record, CHRISTOPHER A. TURTZO, ESQ. of Morris, Sullivan & Lemkul hereby  
2 responds to the allegations contained in the First Amended Complaint filed by Simone Russo  
3 ("Plaintiff") as follows.

4 **FIRST CAUSE OF ACTION**

5 1. In answering paragraph 1 of the Complaint, COX denies the allegations contained  
6 within.

7 2. COX lacks sufficient information on which to admit the truth, or falsity, of the  
8 allegations contained in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, and  
9 on that basis, denies the same.

10 3. Paragraphs 19, 22, 23, 24, 25, 26 and 27 state legal conclusions to which no  
11 response is required. To the extent that Paragraphs 19, 22, 23, 24, 25, 26 and 27 contain factual  
12 claims that pertain to COX, COX denies the allegations contained therein.

13 4. Paragraph 20 states legal conclusions to which no response is required. To the  
14 extent the allegations are determined to contained factual claims pertaining to COX, COX lacks  
15 sufficient information on which to admit the truth, or falsity, of the allegations contained in  
16 paragraph 20 and on that basis denies the same.

17 5. In answering paragraph 21 of the Complaint, COX denies the allegations contained  
18 within.

19 **AFFIRMATIVE DEFENSES**

20 **FIRST AFFIRMATIVE DEFENSE**

21 Plaintiff has not and will not sustain any injury or damages as a result of this answering  
22 Defendant's alleged acts or omissions.

23 **SECOND AFFIRMATIVE DEFENSE**

24 This answering Defendant did not breach any duty owed to Plaintiff.

25 **THIRD AFFIRMATIVE DEFENSE**

26 Plaintiff has failed to mitigate her damages, if any, and any monetary recovery should  
27 therefore be reduced accordingly.

28 ///

1                                   **FOURTH AFFIRMATIVE DEFENSE**

2           The alleged damages and injuries sustained by Plaintiff, if any, were proximately caused or  
3 contributed to by Plaintiff's own negligence, and such negligence was equal to or greater than the  
4 negligence of this answering Defendant, if any.

5                                   **FIFTH AFFIRMATIVE DEFENSE**

6           The alleged damages and injuries sustained by Plaintiff, if any, were proximately caused or  
7 contributed to by the negligence of a third party over which this answering Defendant had no  
8 control.

9                                   **SIXTH AFFIRMATIVE DEFENSE**

10          Plaintiff is barred from recovering any special damages for failure to specifically allege the  
11 items of special damages pursuant to NRCP 9(g).

12                                  **SEVENTH AFFIRMATIVE DEFENSE**

13          This answering Defendant alleges that Plaintiff is barred from bringing these claims as all  
14 consequences of the alleged incident were avoidable.

15                                  **EIGHTH AFFIRMATIVE DEFENSE**

16          This answering Defendant alleges that all risks and dangers, if any, involved in the factual  
17 situation described in the Complaint were open, obvious, and known to Plaintiff who voluntarily  
18 assumed said risks and dangers.

19                                  **NINTH AFFIRMATIVE DEFENSE**

20          The incident which is the subject matter of this action was avoidable and caused by  
21 circumstances over which these answering Defendant had no control and, therefore, Plaintiff is  
22 barred from any recovery against this answering Defendant.

23                                  **TENTH AFFIRMATIVE DEFENSE**

24          Plaintiff's alleged injuries and/or damages are barred by reason of being compensated by a  
25 collateral source.

26                                  **ELEVENTH AFFIRMATIVE DEFENSE**

27          The causes of action set forth in the Complaint are subject to dismissal for failure to join a  
28 necessary and indispensable party as required by the Nevada Rules of Civil Procedure.

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**TWELFTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff has been paid special damages by or on behalf of this answering Defendant or a third party, Plaintiff is not the real party in interest to prosecute this action under N.R.C.P. 17.

**THIRTEENTH AFFIRMATIVE DEFENSE**

This answering Defendant had no actual or constructive notice or knowledge of the allegedly dangerous condition Plaintiff complains of.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a claim for relief against Defendant.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrine of laches.

**SIXTEENTH AFFIRMATIVE DEFENSE**

The alleged damages and injuries sustained by Plaintiff, if any, were proximately caused or contributed to by Plaintiff's own negligence, and Plaintiff's recovery, if any, must be reduced by the proportion of Plaintiff's negligence.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

This answering Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, these answering Defendant asserts the right to seek leave of court to amend its Answer to specifically assert any such defense. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defense.

Pursuant to NRCP 11, this Answering Defendant reserves the right to amend its Answer to add additional affirmative defenses as discovery progresses in its case.

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1           WHEREFORE, Defendant COX COMMUNICATIONS LAS VEGAS, INC., D/B/A COX  
2 COMMUNICATIONS prays for relief as follows:

- 3           1.       Plaintiff takes nothing by way of their Complaint;  
4           2.       Dismissal of Plaintiff's Complaint with prejudice;  
5           3.       An award of reasonable attorney's fees and costs to COX COMMUNICATIONS  
6 LAS VEGAS, INC., D/B/A COX COMMUNICATIONS for the defense of this matter; and  
7           4.       For such other relief as the Court deems reasonable and proper.

8 Dated: February 5, 2018                   MORRIS, SULLIVAN & LEMKUL, LLP

9  
10   By: /s/ Christopher A. Turtzo  
11   CHRISTOPHER A. TURTZO, ESQ.  
12   NV Bar No. 10253  
13   3770 Howard Hughes Parkway, Suite 170  
14   Las Vegas, NV 89169  
15   Attorneys for Defendant  
16   IES Residential, Inc.  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of MORRIS, SULLIVAN & LEMKUL, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing

**DEFENDANT, COX COMMUNICATIONS LAS VEGAS, INC., D/B/A COX COMMUNICATIONS' ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT** to be submitted electronically for filing and/or service on all parties listed on the Eighth Judicial District Court's Electronic Filing System on this 5<sup>th</sup> day of February, 2018.

/s/ Allyson Lodwick

An Employee of MORRIS, SULLIVAN & LEMKUL, LLP

**Question No. 27 – Document No. 5**

**Question No. 27 – Document No. 5**



1 ANAC  
LEONARD T. FINK, ESQ.  
2 Nevada Bar No. 6296  
JONATHAN C. PATTILLO, ESQ.  
3 Nevada Bar No. 13929  
SPRINGEL & FINK LLP  
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5 Telephone: (702) 804-0706  
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6 E-Mail: lfink@springelfink.com  
jpattillo@springelfink.com  
7

8 Attorneys for Defendant,  
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION  
9

10 **DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

11 \*\*\*

12 SIMONE RUSSO,

13 Plaintiffs,

14 v.

15 COX COMMUNICATIONS LAS VEGAS, INC.)  
D/B/A COX COMMUNICATIONS; IES)  
16 RESIDENTIAL, INC.; SUNRISE VILLAS IX)  
17 HOMEOWNERS ASSOCIATION; J&G LAWN)  
MAINTENANCE; KEVIN BUSHBAKER; PW)  
18 JAMES MANAGEMENT & CONSULTING,)  
LLC; AND DOES 1-V, AND ROE)  
19 CORPORATIONS I-V, inclusive )  
20 )  
21 )

Defendants

) Case No.: A-17-753606-C  
) Dept. No.: XVI  
)

) **DEFENDANT SUNRISE VILLAS IX**  
) **HOMEOWNERS ASSOCIATION'S**  
**ANSWER TO PLAINTIFF'S AMENDED**  
**COMPLAINT**

22 **DEFENDANT SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S ANSWER TO**  
23 **PLAINTIFF'S AMENDED COMPLAINT**

24 COMES NOW, Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION,  
25 (hereinafter "SUNRISE VILLAS"), by and through its counsel of record, the law firm of Springel &  
26 Fink LLP, and hereby answers Plaintiff SIMONE RUSSO'S (hereinafter "PLAINTIFF") Amended  
27 Complaint as follows:

28 ///

I.

**FIRST CAUSE OF ACTION**

1. Answering Paragraphs 1 through 3 of PLAINTIFF'S Amended Complaint, SUNRISE VILLAS is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of the same, and upon said grounds, denies each and every allegation contained therein.

2. Answering Paragraphs 4 of PLAINTIFF'S Amended Complaint, SUNRISE VILLAS admits.

3. Answering Paragraphs 5 through 27 of PLAINTIFF'S Amended Complaint, SUNRISE VILLAS is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of the same, and upon said grounds, denies each and every allegation contained therein.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

4. Failure to State a Claim. PLAINTIFF'S Amended Complaint, and each and every purported cause of action therein, fails to state a claim for which relief can be granted against SUNRISE VILLAS.

**SECOND AFFIRMATIVE DEFENSE**

5. Statute of Limitations. SUNRISE VILLAS alleges that the causes of action set forth in PLAINTIFF'S Amended Complaint are barred by all applicable Nevada Statutes of Limitations and/or Repose.

**THIRD AFFIRMATIVE DEFENSE**

6. Failure to Mitigate. PLAINTIFF, though under a duty to do so, has failed and neglected to mitigate his alleged damage. Said failure was the direct and proximate cause of any and all alleged damages and, therefore, PLAINTIFF cannot recover against SUNRISE VILLAS, whether as alleged or otherwise.

**FOURTH AFFIRMATIVE DEFENSE**

7. Contribution. SUNRISE VILLAS alleges that the damage suffered by PLAINTIFF, if any, was the direct and proximate result of the negligence of parties, persons, corporations and/or



1 entities other than SUNRISE VILLAS, and that the liability of SUNRISE VILLAS, if any, is limited in  
2 direct proportion to the percentage of fault actually attributable to SUNRISE VILLAS.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 8. Contributory Negligence. SUNRISE VILLAS is informed and believes, and thereon  
5 alleges, that at all times mentioned herein, PLAINTIFF was negligent, careless, reckless, and unlawfully  
6 conducted himself as to directly and proximately contribute to the happening of the incident and the  
7 occurrence of the alleged damages. Said negligence bars either completely or partially the recovery  
8 sought by PLAINTIFF.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 9. Estoppel. SUNRISE VILLAS is informed and believes, and thereon alleges, that  
11 PLAINTIFF engaged in conduct and/or activities with respect to the subject of PLAINTIFF'S Amended  
12 Complaint, and by reason of said conduct and/or activities PLAINTIFF is estopped from asserting any  
13 claims for damages or seeking any other relief against SUNRISE VILLAS.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 10. Waiver. SUNRISE VILLAS is informed and believes, and thereon alleges, that  
16 PLAINTIFF and other Defendants (other than SUNRISE VILLAS) have engaged in conduct and  
17 activities sufficient to constitute a waiver of any alleged breach of duty, negligence, act, omission, or  
18 any other conduct, if any, as set forth in PLAINTIFF'S Amended Complaint.

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 11. Intervening and Superseding Causes. SUNRISE VILLAS is informed and believes, and  
21 thereon alleges, that the injuries and damages of which PLAINTIFF complains were proximately  
22 caused by or contributed to by the acts of other Defendants (other than SUNRISE VILLAS), persons  
23 and/or other entities, and that said acts were an intervening and superseding cause of the injuries and  
24 damages, if any, of which PLAINTIFF complains, thus barring PLAINTIFF from any recovery  
25 against SUNRISE VILLAS.

26 **NINTH AFFIRMATIVE DEFENSE**

27 12. Assumption of the Risk. SUNRISE VILLAS alleges that PLAINTIFF expressly,  
28 voluntarily and knowingly assumed all risks about which PLAINTIFF complains of in his Amended

1 Complaint and, therefore, is barred either totally or to the extent of said assumption from any  
2 damages.

3 **TENTH AFFIRMATIVE DEFENSE**

4 13. Active and Primary Liability. PLAINTIFF'S conduct, as alleged in the principal action,  
5 and as described in PLAINTIFF'S Amended Complaint, was such that any and all liability based  
6 thereon was active and primary in nature, so as to preclude any recovery sought in PLAINTIFF'S  
7 Amended Complaint.

8 **ELEVENTH AFFIRMATIVE DEFENSE**

9 14. Laches. PLAINTIFF waited an unreasonable period of time before asserting such  
10 claims under the doctrine of laches.

11 **TWELFTH AFFIRMATIVE DEFENSE**

12 15. Unclean Hands. PLAINTIFF is barred by the equitable doctrine of unclean hands from  
13 obtaining the relief requested.

14 **THIRTEENTH AFFIRMATIVE DEFENSE**

15 16. Costs. SUNRISE VILLAS is informed and believes, and thereon alleges, that  
16 PLAINTIFF'S Amended Complaint was brought without reasonable cause and without a good faith  
17 belief that there was a justifiable controversy under the facts or the law which warranted the filing of  
18 PLAINTIFF'S Amended Complaint against SUNRISE VILLAS. PLAINTIFF should therefore be  
19 responsible for all of SUNRISE VILLAS necessary and reasonable defense costs.

20 **FOURTEENTH AFFIRMATIVE DEFENSE**

21 17. Conduct Was Justified. The conduct of SUNRISE VILLAS in regard to the matters alleged  
22 in PLAINTIFF'S Amended Complaint was justified, and by reason of the foregoing, PLAINTIFF is  
23 barred from any recovery against SUNRISE VILLAS herein.

24 **FIFTEENTH AFFIRMATIVE DEFENSE**

25 18. Comparative Fault of Third-Parties. SUNRISE VILLAS is informed and believes, and  
26 thereon alleges, that the accident and the injuries, if any, allegedly suffered by PLAINTIFF were  
27 proximately caused and contributed to by the negligence of third-parties (not PLAINTIFF or SUNRISE  
28 VILLAS), and that said third-parties failed to exercise reasonable care at and prior to the time of said

1 damages, and by reason thereof any recovery by PLAINTIFF against SUNRISE VILLAS must be reduced  
2 by an amount equal to the proportionate fault of said third-parties.

3 **SIXTEENTH AFFIRMATIVE DEFENSE**

4 19. Several Liability for Non-Economic Damages. PLAINTIFF'S liability for the claims  
5 asserted is greater than the liability, if any, of SUNRISE VILLAS.

6 **SEVENTEENTH AFFIRMATIVE DEFENSE**

7 20. Comparative Negligence of Plaintiff. PLAINTIFF has failed to exercise ordinary care on  
8 his own behalf, which negligence and carelessness was a proximate cause of some portion, up to and  
9 including the whole thereof, of the injuries and damages complained of in this action. PLAINTIFF'S  
10 recovery, therefore, against SUNRISE VILLAS should be barred or reduced according to principles of  
11 comparative negligence.

12 **EIGHTEENTH AFFIRMATIVE DEFENSE**

13 21. Implied Assumption of Risk. Prior to the event in which PLAINTIFF was allegedly  
14 injured as a result of SUNRISE VILLAS' alleged negligence, PLAINTIFF, by his conduct, impliedly  
15 assumed the risk of a known and appreciated danger, and thus may not recover damages from SUNRISE  
16 VILLAS for his injury.

17 **NINETEENTH AFFIRMATIVE DEFENSE**

18 22. Lack of Standing. SUNRISE VILLAS is informed and believes, and thereon alleges, that  
19 PLAINTIFF herein lacks standing to bring said action against SUNRISE VILLAS.

20 **TWENTIETH AFFIRMATIVE DEFENSE**

21 23. Non-Joinder of Necessary Parties. PLAINTIFF has failed to join all parties necessary for  
22 full and final resolution of this lawsuit.

23 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

24 24. Standard of Care. SUNRISE VILLAS is informed and believes, and thereon alleges, that  
25 at no time prior to the filing of this action did PLAINTIFF, or any agent, representative or employee(s)  
26 thereof, notify SUNRISE VILLAS of any breach of any duty to PLAINTIFF. By failing to notify  
27 SUNRISE VILLAS, PLAINTIFF is barred from any alleged right of recovery from SUNRISE VILLAS.  
28 Furthermore, SUNRISE VILLAS alleges that PLAINTIFF is barred from any recovery against

1 SUNRISE VILLAS in this action, because at all times SUNRISE VILLAS complied with the applicable  
2 standard of care required at the time and location of the subject incident.

3 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

4 25. Reservation. SUNRISE VILLAS presently has insufficient knowledge or information on  
5 which to form a belief as to whether it may have any additional, as yet unstated, affirmative defenses  
6 available. SUNRISE VILLAS reserves the right to assert additional defenses in the event that discovery  
7 indicates that they would be appropriate.

8 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

9 26. Not Waiving Defenses. SUNRISE VILLAS hereby incorporates by reference those  
10 affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as is fully set forth herein.  
11 In the event further investigation and/or discovery reveals the applicability of any such defenses, SUNRISE  
12 VILLAS reserves the right to seek leave of Court to amend this Answer to specifically assert any such  
13 defenses. Such defenses are herein incorporated by reference for the specific purpose of not waiving any  
14 such defenses.

15 **WHEREFORE, DEFENDANT prays:**

- 16 1. That PLAINTIFF take nothing by way of his Amended Complaint;  
17 2. For costs and attorney fees incurred in the defense of this action;  
18 3. That if liability is assessed upon SUNRISE VILLAS, the liability attributed to SUNRISE  
19 VILLAS be limited in direct proportion to the percentage of fault actually attributable to  
20 SUNRISE VILLAS; and

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1           4.     For any such other and further relief as the Court deems just and proper.  
2

3                     DATED this 6<sup>th</sup> day of February, 2018.

4                                     SPRINGEL & FINK LLP

5                                     By:     /s/ Jonathan C. Pattillo  
6                                     LEONARD T. FINK, ESQ.  
7                                     Nevada Bar No. 6296  
8                                     JONATHAN C. PATTILLO, ESQ.  
9                                     Nevada Bar No. 13929  
                                   10655 Park Run Drive, Suite 275  
                                   Las Vegas, Nevada 89144

10                                    Attorneys for Defendant,  
11                                    SUNRISE VILLAS IX HOMEOWNERS  
12                                    ASSOCIATION  
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**CERTIFICATE OF SERVICE**  
**Simone Russo v. Cox Communications Las Vegas, Inc., et al.**  
**District Court Case No. A-17-753606-C**

STATE OF NEVADA       )  
                                  ) ss.  
COUNTY OF CLARK       )

I, Phaedra L. Calaway, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 10655 Park Run Drive, Suite 275, Las Vegas, Nevada, 89144.

On February 6, 2018, I served the document described as **DEFENDANT SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT** on the following parties:

*SERVED VIA DISTRICT COURT'S E-FILING VENDOR SYSTEM*

— VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business

— VIA FACSIMILE: by transmitting to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number at last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by facsimile transmission bears a notation of the date and place of transmission and the facsimile telephone number to which transmitted. A confirmation of the transmission containing the facsimile telephone numbers to which the document(s) was/were transmitted will be maintained with the document(s) served.

  X   VIA ELECTRONIC SERVICE: by submitting the foregoing to the Court's E-filing System for Electronic Service upon the Court's Service List pursuant to EDCR 8. The copy of the document electronically served bears a notation of the date and time of service. The original document will be maintained with the document(s) served and be made available, upon reasonable notice, for inspection by counsel or the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6<sup>th</sup> day of February, 2018 at Las Vegas Nevada

By:

  
Phaedra L. Calaway

**Question No. 27 – Document No. 6**

**Question No. 27 – Document No. 6**



LIPSON NEILSON P.C.  
DAVID A. CLARK (Bar No. 4443)  
9900 Covington Cross Dr., Suite 120  
Las Vegas, NV 89144  
(702) 382-1500 Phone  
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[lgarin@lipsonneilson.com](mailto:lgarin@lipsonneilson.com)  
[dclark@lipsonneilson.com](mailto:dclark@lipsonneilson.com)

*Attorneys for Defendant J. Chris Scarcelli*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SIMONE RUSSO,  
  
Plaintiff,

vs.

COX COMMUNICATIONS LAS VEGAS,  
INC., D/B/A COX COMMUNICATIONS,  
IES RESIDENTIAL, INC., SUNRISE  
VILLAS IX HOMEOWNERS  
ASSOCIATION, J & G LAWN  
MAINTENANCE, KEVIN BUSHBAKER,  
PWJAMES MANAGEMENT &  
CONSULTING, LLC, J. CHRIS  
SCARCELLI, DOE LANDSCAPER,  
RICHARD DUSLAK, JUSTIN SESMAN,  
AND DOES I-V, and ROE  
CORPORATIONS I-V, inclusive,  
  
Defendants.

**CASE NO.: A-17-753606-C  
DEPT. NO.: XVI**

**J. CHRIS SCARCELLI'S ANSWER  
TO AMENDED COMPLAINT**

Defendant J. CHRIS SCARCELLI ("Answering Defendant"), by and through his  
counsel of record, LIPSON NEILSON P.C., hereby responds to Plaintiff's Complaint as  
follows:

**FIRST CAUSE OF ACTION**

1. As to paragraphs 1, 2, 3, 4, 5, 6 and 7 of Plaintiff's Complaint, Answering  
Defendant is without sufficient knowledge or information sufficient to form a belief as to  
the truth of the allegations contained therein and therefore denies each and every  
allegation contained therein.



2. As to paragraph 8 of Plaintiff's Complaint, Answering Defendant admits the allegation contained therein.

3. As to paragraphs 9, 10, 11, 12 and 13, of Plaintiff's Complaint, Answering Defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every allegation contained therein.

4. As to paragraph 14 of Plaintiff's Complaint, Answering Defendant admits he was a Property Manager at said premises, and denies the remaining allegations contained therein for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

5. As to paragraphs 15, 16, 17 and 18 of Plaintiff's Complaint, Answering Defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every allegation contained therein.

6. As to paragraphs 19, 20, 21 and 22 of Plaintiff's Complaint, Answering Defendant denies each and every allegation contained therein as to Answering Defendant only.

7. As to paragraphs 23, 24, 25 and 26 of Plaintiff's Complaint, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every allegation contained therein which might be construed to apply to Answering Defendant.

8. As to paragraph 27 of Plaintiff's Complaint, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every allegation contained therein.

#### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to allege facts sufficient to state a claim against

1 Answering Defendant upon which relief can be granted.

2 **SECOND AFFIRMATIVE DEFENSE**

3 Plaintiff failed to mitigate damages, if any.

4 **THIRD AFFIRMATIVE DEFENSE**

5 Plaintiff's claims are barred by contributory and comparative negligence.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 Plaintiff is barred from asserting any claim against Answering Defendant because  
8 the alleged damages, if any, were the result of intervening, superseding conduct of  
9 others, over whom Answering Defendant had no control.

10 **FIFTH AFFIRMATIVE DEFENSE**

11 Plaintiff's alleged damages were not proximately caused by any act or omission  
12 of this Answering Defendant.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 Plaintiff's claims are barred on the grounds that this Answering Defendant's  
15 conduct referred to in the Complaint was not a substantial factor in bringing about the  
16 injuries and damages complained of by Plaintiff.

17 **SEVENTH AFFIRMATIVE DEFENSE**

18 Plaintiff's claims are barred by in whole or in part by the applicable statute(s) of  
19 limitations.

20 **EIGHTH AFFIRMATIVE DEFENSE**

21 Plaintiff is barred from recovery, in whole or in part, based on the fact that the  
22 alleged dangerous and defective condition which existed on said premises was open  
23 and obvious.

24 **NINTH AFFIRMATIVE DEFENSE**

25 Answering Defendant did not violate any statutes, ordinances or building codes.

26 **TENTH AFFIRMATIVE DEFENSE**

27 All possible affirmative defenses may not have been alleged herein insofar as  
28 sufficient facts were not available after reasonable inquiry upon filing of this Answer.

1 Therefore, Answering Defendant reserves the right to amend this Answer to allege  
2 additional affirmative defenses and claims, counter-claims, cross-claims, or third-party  
3 claims, as applicable, upon further investigation and discovery.

4 WHEREFORE, Defendant J. CHRIS SCARCELLI prays for judgment as follows:

- 5
- 6 1. That Plaintiff takes nothing by way of this Amended Complaint for this
- 7 Answering Defendant;
- 8 2. That Plaintiff's Amended Complaint be dismissed with prejudice and that
- 9 Answering Defendant be dismissed from this action;
- 10 3. That Answering Defendant be awarded costs of defense, including
- 11 reasonable attorneys' fees in defending against Plaintiff's Amended
- 12 Complaint; and
- 13 4. For such other reliefs as the Court may deem just and proper.
- 14

15 Dated this 22<sup>nd</sup> day of March, 2018.

16 LIPSON NEILSON P.C.

17 */s/ David A. Clark*

18 By: \_\_\_\_\_

19 DAVID A. CLARK (Bar No. 4443)

20 9900 Covington Cross Drive, Suite 120

21 Las Vegas, Nevada 89144

22 (702) 382-1500 - Telephone

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23 *Attorneys for J. Chris Scarcelli*

24

25

26

27

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 22<sup>nd</sup> day of March, 2018, I electronically transmitted the foregoing **J. CHRIS SCARCELLI'S ANSWER TO AMENDED COMPLAINT** to the Clerk's Office using the Odyssey E-File & Serve System for transmittal to the following Odyssey E-File & Serve registrants:

David F. Sampson, Esq.  
LAW OFFICE OF DAVID SAMPSON  
630 S. 3<sup>rd</sup> Street  
Las Vegas, NV 89101  
[david@davidsampsonlaw.com](mailto:david@davidsampsonlaw.com)  
Attorney for Plaintiff

*/s/ Debra Marquez*


\_\_\_\_\_  
An Employee of LIPSON NEILSON P.C.

**Question No. 27 – Document No. 7**

**Question No. 27 – Document No. 7**

Lipson Neilson P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
Phone: (702) 382-1500 - Fax: (702) 382-1512

Electronically Filed  
3/15/2019 12:40 PM  
Steven D. Grierson  
CLERK OF THE COURT



LIPSON NEILSON P.C.  
DAVID A. CLARK (Bar No. 4443)  
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*Attorneys for Defendant J. Chris Scarcelli*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiff,

vs.

COX COMMUNICATIONS LAS VEGAS,  
INC., D/B/A COX COMMUNICATIONS,  
IES RESIDENTIAL, INC., SUNRISE  
VILLAS IX HOMEOWNERS  
ASSOCIATION, J & G LAWN  
MAINTENANCE, KEVIN BUSHBAKER,  
PWJAMES MANAGEMENT &  
CONSULTING, LLC, J. CHRIS  
SCARCELLI, DOE LANDSCAPER,  
RICHARD DUSLAK, JUSTIN SESMAN,  
AND DOES I-V, and ROE  
CORPORATIONS I-V, inclusive,

Defendants.

KEVIN BUSHBAKER,

Cross-Claimant.

vs.

COX COMMUNICATIONS LAS VEGAS,  
INC., DBA COX COMMUNICATIONS; IES  
RESIDENTIAL INC.; SUNRISE VILLAS IX  
HOMEOWNERS ASSOCIATION; J. CHRIS  
SCARCELLI, DOES I-V, and ROE  
CORPORATIONS I-V,

Cross-Defendants.

CASE NO.: A-17-753606-C  
DEPT. NO.: XVI

**DEFENDANT/CROSS-DEFENDANT  
J. CHRIS SCARCELLI'S ANSWER  
TO DEFENDANT/CROSS-CLAIMANT  
KEVIN BUSHBAKER'S AMENDED  
CROSS-CLAIM**

and

**CROSS-CLAIMS AGAINST COX  
COMMUNICATIONS LAS VEGAS, INC.,  
D/B/A COX COMMUNICATIONS,  
SUNRISE VILLAS IX HOMEOWNERS  
ASSOCIATION, J&G LAWN  
MAINTENANCE AND PWJAMES  
MANAGEMENT & CONSULTING, LLC**

1 Defendant/Cross-Defendant J. CHRIS SCARCELLI (hereinafter "Scarcelli" or  
2 "Cross-Defendant"), by and through his counsel of record, LIPSON NEILSON P.C.,  
3 hereby respond to Defendant/Cross-Claimant Kevin Bushbaker's (hereinafter "Cross-  
4 Claimant") Amended Cross-Claim as follows:

5 1. As for paragraphs 1, 2, 3, 4 and 6, Cross-Defendant is without knowledge  
6 or information sufficient to form a belief as to the truth of the allegations contained  
7 therein and therefore denies the allegations.

8 2. As for paragraph 5, Cross-Defendant admits the allegation contained  
9 therein.

10 **FIRST CLAIM OF RELIEF**

11 **FULL OR PARTIAL INDEMNITY**

12 3. As for paragraph 7, Cross-Defendant repeats and incorporates by  
13 reference his responses to the preceding paragraphs as though fully set forth herein.

14 4. As for paragraphs 8 and 9, Cross-Defendant denies each and every  
15 allegation contained therein.

16 **SECOND CLAIM OF RELIEF**

17 **CONTRIBUTION**

18 5. As for paragraph 10, Cross-Defendant repeats and incorporates by  
19 reference his responses to the preceding paragraphs as though fully set forth herein.

20 6. As for paragraphs 11 and 12, Cross-Defendant denies each and every  
21 allegation contained therein.

22 **AFFIRMATIVE DEFENSES**

23 **FIRST AFFIRMATIVE DEFENSE**

24 The cross-claims on file herein fail to state a claim against Cross-Defendant upon  
25 which relief can be granted.  
26  
27  
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**SECOND AFFIRMATIVE DEFENSE**

Cross-Claimant is barred from asserting any claim against Cross-Defendant because the alleged injuries and damages, if any, were the result of intervening, superseding conduct of others, over whom Cross-Defendant had no control.

**THIRD AFFIRMATIVE DEFENSE**

Cross-Claimant's claims are barred by unclean hands, laches and / or waiver.

**FOURTH AFFIRMATIVE DEFENSE**

Cross-Claimant's injuries and damages are barred in whole or in part by the economic loss doctrine.

**FIFTH AFFIRMATIVE DEFENSE**

Cross-Claimant's injuries and damages, if any, are the result of its own comparative negligence and misconduct.

**SIXTH AFFIRMATIVE DEFENSE**

Cross-Defendant supplied the goods requested and did not warrant the suitability or accuracy of plans, drawings, specifications and calculations of others.

**SEVENTH AFFIRMATIVE DEFENSE**

Cross-Claimant's claims are barred in whole or in part by the *Spearin* doctrine. See *Halcrow v. Dist Ct.*, 129 Nev Adv Op 42, fn 3 (June 2013) (Court approved holding in *United States v. Spearin*, 248 U.S. 132 (1918)).

**EIGHTH AFFIRMATIVE DEFENSE**

The crossclaims on file herein are an abuse of process and Cross-Defendant reserves the right to file counterclaims or separate complaints for abuse of process to recover damages, attorneys' fees, costs and punitive damages as might be provided under the law, facts and circumstances of this case.

**NINTH AFFIRMATIVE DEFENSE**

Cross-Defendant is not a proximate or legal cause of Cross-Claimant's injuries or damages, if any.



**TENTH AFFIRMATIVE DEFENSE**

Cross-Defendant denies each and every allegation of the crossclaims not specifically admitted or otherwise plead to herein.

**ELEVENTH AFFIRMATIVE DEFENSE**

Cross-Claimant's claims are barred because Cross-Defendant's actions are privileged.

**TWELFTH AFFIRMATIVE DEFENSE**

Cross-Claimant's claims are barred as Cross-Defendant committed no fraudulent, wrongful, or otherwise intentional acts.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Cross-Claimant is not likely to succeed on the merits of the claims.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Cross-Claimant's crossclaims are pled with insufficient particularity.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Cross-Claimant's claims are barred by the applicable statute of limitations or repose.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Cross-Claimant and Cross-Defendant have no contractual or legal relationship.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Cross-Claimant failed to exhaust all mandatory remedies prior to bringing this action.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Cross-Defendant is not responsible for errors and omissions of others.

**NINETEENTH AFFIRMATIVE DEFENSE**

Cross-Claimant failed to sufficiently comply with NRS 11.258.

**TWENTIETH AFFIRMATIVE DEFENSE**

Cross-Claimant's cause of action for contribution fails because there are no tort claims alleged in the crossclaim.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Cross-Claimant's cause of action for full or partial indemnity/contribution fails because there was no relationship between the parties which would give rise to Cross-Defendant's vicarious liability for Cross-Claimant's actions.

**TWENTY- SECOND AFFIRMATIVE DEFENSE**

Cross-Claimant adopts those defenses set forth in NRCP 8 (c) to the extent not otherwise specifically alleged previously. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of the crossclaims, and therefore, Cross-Defendant reserves the right to amend this Answer and Affirmative Defenses if subsequent investigation so warrants.

WHEREFORE, Cross-Defendant requests judgment as follows:

1. That Cross-Claimant take nothing by virtue of the Crossclaim;
2. That Cross-Claimant's claims be dismissed with prejudice;
3. That Cross-Defendant be awarded costs of defense, including reasonable attorneys' fees in defending against the crossclaims; and,
4. For such other reliefs as the Court may deem just and proper.

**J. CHRIS SCARCELLI'S CROSSCLAIMS AGAINST DEFENDANTS/CROSS-DEFENDANTS COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX COMMUNICATIONS, IES RESIDENTIAL, INC., SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION, J&G LAWN MAINTENANCE, AND PWJAMES MANAGEMENT & CONSULTING, LLC**

Defendant/Cross-Defendant/Cross-Claimant, J. CHRIS SCARCELLI ("Cross-Claimant Scarcelli"), by and through his counsel of record, Lipson Neilson P.C., alleges as follows:

**PARTIES AND JURISDICTION**

1. All allegations contained herein are relevant as to all times mentioned herein.
2. J. CHRIS SCARCELLI was and is a resident of the State of Nevada.

1           3.     Cross-Defendant COX COMMUNICATIONS LAS VEGAS, INC., D/B/A  
2 COX COMMUNICATIONS ("Cox") was and is a foreign corporation duly licensed to  
3 conduct business and doing business in the State of Nevada.

4           4.     Cross-Defendant IES RESIDENTIAL, INC., ("IES") was and is a foreign  
5 corporation duly licensed to conduct business and doing business in the State of  
6 Nevada.

7           5.     Cross-Defendant SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION  
8 ("Sunrise Villas") was and is a Nevada domestic non-profit coop corporation duly  
9 licensed to conduct business and doing business in the State of Nevada.

10          6.     Cross-Defendant J&G LAWN MAINTENANCE ("J&G") was and is a  
11 Nevada corporation duly licensed to conduct business and doing business in the State  
12 of Nevada.

13          7.     Cross-Defendant PWJAMES MANAGEMENT & CONSULTING, LLC  
14 ("PWJames") was a Nevada limited liability company duly licensed to conduct business  
15 and doing business in the State of Nevada.

16          8.     DOES 1-10, inclusive, and ROE CORPORATIONS 1-10, inclusive, are  
17 other parties or entities which are liable to Cross-Claimant for the damages complained  
18 of herein. Cross-Claimant Scarcelli is ignorant of the true names and capacities of those  
19 defendants and therefore sues said defendants by such fictitious names. Cross-  
20 Claimant Scarcelli will amend his crossclaims to allege the true names and capacities of  
21 said defendants when they have been identified. Cross-Claimant Scarcelli is informed  
22 and believes and thereon alleges that DOES 1-10, inclusive, and ROE  
23 CORPORATIONS 1-10, inclusive, are responsible in some manner for the events and  
24 occurrences herein alleged, and that Cross-Claimant Scarcelli's damages were and are  
25 directly and proximately caused by the conduct, acts and omissions of said Cross-  
26 Defendants.

27          9.     Cross-Claimant Scarcelli incorporates by reference herein each and every  
28 allegation by Plaintiff which is contained in Plaintiff's Amended Complaint on file herein,

1 for the purpose of establishing the fact that Plaintiff has commenced suit against  
2 Defendant/Cross-Claimant Scarcelli, but without admitting, in whole or in part, any of the  
3 allegations contained therein.

4 **FIRST CAUSE OF ACTION**  
5 **(Indemnity as to All Cross-Defendants)**

6 10. Cross-Claimant Scarcelli incorporates by reference each and every  
7 allegation previously made in this Cross-Claim, as if fully set forth herein.

8 11. Cross-Claimant Scarcelli alleges that any damages claimed by Plaintiff in  
9 Plaintiff's Amended Complaint herein were caused solely by the acts and omissions of  
10 Cross-Defendants, and as such, Cross-Claimant Scarcelli bears no responsibility for the  
11 harm alleged in Plaintiff's Amended Complaint.

12 12. Cross-Claimant Scarcelli, alleges that in the event he is found to be liable  
13 to Plaintiff or to any other party for damages, or if payment is made by Cross-Claimant  
14 Scarcelli to Plaintiff or any other party as a result of the incident and occurrences  
15 described in Plaintiff's Amended Complaint, then Cross-Claimant Scarcelli's liability or  
16 payment is based upon an obligation imposed by law and not based upon the acts or  
17 omissions of Cross-Claimant Scarcelli, but is based upon the acts and/or omissions,  
18 including, without limitation, alleged negligence, negligence *per se*, *respondent superior*,  
19 and *res ipsa loquitur* of Cross-Defendants with regard to the occurrence described in  
20 Plaintiff's Amended Complaint, and therefore, Cross-Claimant Scarcelli is entitled to be  
21 fully indemnified by the Cross-Defendants for any liability he may incur towards, may  
22 have paid, or be required to pay, to Plaintiff or any other party.

23 13. It has been necessary for Cross-Claimant Scarcelli to retain the services  
24 of an attorney in this action. Accordingly, Cross-Claimant Scarcelli is entitled to recover  
25 reasonable attorneys' fees and costs incurred herein.

26 **SECOND CAUSE OF ACTION**  
27 **(Contribution as to all Cross-Defendants)**

28 14. Cross-Claimant Scarcelli incorporates by reference each and every  
allegation previously made in this Cross-Claim, as if fully set forth herein.

1           15.     Cross-Claimant Scarcelli is informed and believe, and hereon alleges that  
2 any damages claimed by Plaintiff in the action herein were caused by the acts and  
3 omissions of Cross-Defendants.

4           16.     That if the allegations of Plaintiff are found to be true, then such liability  
5 was caused by Cross-Defendants whereas any liability of Cross-Claimant Scarcelli was  
6 passive and derivative.

7           17.     If judgment should be entered against Cross-Claimant Scarcelli, and/or if  
8 Cross-Claimant Scarcelli should enter into a settlement or compromise, then Cross-  
9 Claimant Scarcelli should be entitled to judgment, in like amount in proportion to fault, for  
10 contribution over and against Cross-Defendants, and in addition, Cross-Claimant  
11 Scarcelli should be entitled to recover from Cross-Defendants all costs, expenses, and  
12 attorneys' fees that Cross-Claimant Scarcelli incurred in defense of Plaintiff's Amended  
13 Complaint in the preparation, presentation, and prosecution of the Cross-Claims.

14           18.     It has been necessary for Cross-Claimant Scarcelli to retain the services  
15 of an attorney in this action. Accordingly, Cross-Claimant Scarcelli is entitled to recover  
16 their reasonable attorneys' fees and costs incurred herein.

17           WHEREFORE, Cross-Claimant J. CHRIS SCARCELLI, requests judgment as  
18 follows:

- 19           1.     For judgment in favor of Cross-Claimant J. CHRIS SCARCELLI on his  
20 Cross-Claims against Cross-Defendants in amounts to be determined at  
21 time of trial;
- 22           2.     For an award of reasonable costs, disbursements, and attorneys' fees;  
23 and
- 24           3.     For such other and further relief as this Court may deem just and proper.
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28

**Lipson Neilson P.C.**  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
Phone: (702) 382-1500 - Fax: (702) 382-1512

Dated this 15<sup>th</sup> day of March, 2019.

LIPSON NEILSON P.C.

By: /s/ Julie A. Funai

DAVID A. CLARK (Bar No. 4443)  
JULIE A. FUNAI (Bar No. 8725)  
9900 Covington Cross Dr., Suite 120  
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*Attorneys for Defendant J. Chris Scarcelli*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 15<sup>th</sup> day of March, 2019, I electronically transmitted the foregoing **DEFENDANT/CROSS-DEFENDANT J. CHRIS SCARCELLI'S ANSWER TO DEFENDANT/CROSS-CLAIMANT KEVIN BUSHBAKER'S AMENDED CROSS-CLAIM and CROSS-CLAIMS AGAINST COX COMMUNICATIONS LAS VEGAS, INC., D/B/A COX COMMUNICATIONS, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION, J&G LAWN MAINTENANCE AND PWJAMES MANAGEMENT & CONSULTING, LLC** to the Clerk's Office using the Odyssey E-File & Serve System for transmittal to the following Odyssey E-File & Serve registrants:

David F. Sampson, Esq. LAW OFFICE OF DAVID SAMPSON 630 S. 3 <sup>rd</sup> Street Las Vegas, NV 89101 <a href="mailto:david@davidsampsonlaw.com">david@davidsampsonlaw.com</a> <i>Attorney for Plaintiff</i>	Will Lemkul, Esq. Christopher A. Turtzo, Esq. MORRIS, SULLIVAN & LEMKUL LLP 3960 Howard Hughes Pkwy., Suite 420 Las Vegas, NV 89169  <i>Attorneys for Defendants, IES Residential, Inc. and Cox Communications Las Vegas, Inc., d/b/a Cox Communications</i>
Leonard T. Fink, Esq. Jonathan C. Pattillo, Esq. SPRINGEL & FINK LLP 10655 Park Run Drive, Suite 275 Las Vegas, NV 89144 <a href="mailto:lfink@springel.com">lfink@springel.com</a> <a href="mailto:jpattillo@springelfink.com">jpattillo@springelfink.com</a>  <i>Attorneys for Defendant,</i>	Francis A. Arenas, Esq. SGRO & ROGER 720 South Seventh Street, 3 <sup>rd</sup> Floor Las Vegas, NV 89101 <a href="mailto:farenas@sgroandroger.com">farenas@sgroandroger.com</a>  <i>Attorney for Kevin Bushbaker</i>

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Sunrise Villa IX Homeowners Association

*/s/ Debra Marquez*

An Employee of LIPSON NEILSON P.C.

**Question No. 27 – Document No. 8**

**Question No. 27 – Document No. 8**





1 **XCAN**  
2 Will Lemkul, Esq.; NV Bar No. 6715  
3 Christopher A. Turtzo; NV Bar No. 10253  
4 MORRIS, SULLIVAN & LEMKUL, LLP  
5 3960 Howard Hughes Parkway, Suite 420  
6 Las Vegas, NV 89169  
7 Phone (702) 405-8100  
8 Fax (702) 405-8101

9 Attorneys for Defendants, *IES Residential, Inc.* and  
10 *Cox Communications Las Vegas, Inc. D/B/A Cox Communications*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 SIMONE RUSSO,

14 Plaintiff,

15 vs.

16 COX COMMUNICATIONS LAS VEGAS,  
17 INC., D/B/A/ COX COMMUNICATIONS, IES  
18 RESIDENTIAL, INC., SUNRISE VILLAS IX  
19 HOMEOWNERS ASSOCIATION, J & G  
20 LAWN MAINTENANCE, KEVIN  
21 BUSHBAKER, PWJAMES MANAGEMENT  
22 & CONSULTING, LLC., AND DOES I-V, and  
23 ROE CORPORATIONS I-V, inclusive,

24 Defendants.

25 J. CHRIS SCARCELLI,

26 Cross-Claimant.

27 vs.

28 COX COMMUNICATIONS LAS VEGAS,  
INC., D/B/A COX COMMUNICATIONS, IES  
RESIDENTIAL, INC., SUNRISE VILLAS IX  
HOMEOWNERS ASSOCIATION, J & G  
LAWN MAINTENANCE, PWJAMES  
MANAGEMENT & CONSULTING, LLC.,  
AND DOES I-10, and ROE CORPORATIONS  
I-10, inclusive,

Cross-Defendants.

Case No.: A-17-753606-C

Dept. No.: XVI

**COX COMMUNICATIONS LAS VEGAS,  
INC. D/B/A/ COX COMMUNICATIONS'  
AND IES RESIDENTIAL, INC.'S  
ANSWER TO J. CHRIS SCARCELLI'S  
CROSS-CLAIM**

On behalf of Defendant COX COMMUNICATIONS LAS VEGAS, INC., D/B/A COX  
COMMUNICATIONS ("COX") and Defendant IES RESIDENTIAL, INC. ("IES") (hereinafter

1 collectively referred to as "these Answering Cross-Defendants") only, by and through their  
2 counsel of record, CHRISTOPHER A. TURTZO, ESQ. of Morris, Sullivan & Lemkul, LLP  
3 hereby responds to the allegations contained in the Cross-Claim filed by J. Chris Scarcelli  
4 ("Defendant/Cross-Defendants") as follows.

5 **PARTIES AND JURISDICTION**

6 1. Paragraph 1 states legal conclusions to which no response is required. To the extent the  
7 allegations are determined to contained factual claims pertaining to COX or IES, COX and IES  
8 lack sufficient information on which to admit the truth, or falsity, of the allegations contained in  
9 paragraph 1 and on that basis deny the same.

10 2. COX lacks sufficient information on which to admit the truth, or falsity, of the allegations  
11 contained in paragraphs 2, 5, 6, and 7 and on that basis denies the same.

12 3. In answering paragraphs 3 and 4 of the Cross-Claim, COX and IES admit the allegations  
13 contained within.

14 4. Paragraphs 8 and 9 state legal conclusions to which no response is required. To the extent  
15 that Paragraphs 8 and 9 contain factual claims that pertain to these Answering Defendants, IES  
16 and COX denies the allegations contained therein.

17 **FIRST CAUSE OF ACTION**  
18 **(Indemnity as to All Cross-Defendants)**

19 5. Responding to paragraph 10 of the Cross-Claim, COX and IES repeats, realleges and  
20 incorporates by reference all of the preceding paragraphs as though fully set forth herein.

21 6. Paragraphs 11, 12, and 13 state legal conclusions to which no response is required. To the  
22 extent that Paragraphs 11, 12, and 13 contain factual claims that pertain to these Answering  
23 Defendants, IES and COX denies the allegations contained therein.

24 **SECOND CAUSE OF ACTION**  
25 **(Contribution as to All Cross-Defendants)**

26 7. Responding to paragraph 14 of the Cross-Claim, COX repeats, realleges and incorporates  
27 by reference all of the preceding paragraphs as though fully set forth herein.

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1 8. Paragraphs 15, 16, 17 and 18 state legal conclusions to which no response is required. To  
2 the extent that Paragraphs 15, 16, 17 and 18 contain factual claims that pertain to these Answering  
3 Defendants, IES and COX denies the allegations contained therein.

4 **AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6 (Failure to Status a Cause of Action)

7 That the Cross-Claim and each and every cause of action purported to be set forth therein,  
8 fails to allege facts sufficient to state a claim against these Answering Cross-Defendants upon  
9 which relief can be granted.

10 **SECOND AFFIRMATIVE DEFENSE**

11 (Failure to Mitigate Damages)

12 The answering Cross-Defendants allege that Cross-Claimant has failed and refused to take  
13 reasonable steps to remedy, cure or mitigate his damages as alleged in the Cross-Complaint, and is  
14 therefore now barred from any recovery in the present action as a result of and to the extent of  
15 such failure and refusal.

16 **THIRD AFFIRMATIVE DEFENSE**

17 (Contributory Negligence)

18 At the time and place alleged in Cross-Claimant's Cross-Complaint, Cross-Claimant so  
19 carelessly and negligently conducted himself in a way that he contributed directly to the proximity  
20 to his own alleged injuries and damages.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 (Negligence of Third Parties)

23 The incident involved herein and any resulting injuries or damages, if any, were caused or  
24 contributed by acts and/or omissions of third parties over whom Cross-Defendants have no  
25 control.

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1 **FIFTH AFFIRMATIVE DEFENSE**

2 (Proximate Cause)

3 Cross-Claimant's alleged damaged were not proximately caused by any act or omission of  
4 Cross-Defendant.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 (Not a Substantial Factor)

7 The Cross-Claim, and each cause of action thereof, is barred on the grounds that Cross-  
8 Defendant's materials and/or conduct referred to in the Cross-Claim were not a substantial factor  
9 in bringing about the injuries and damages complained of by Cross-Claimant.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 (Statute of Limitations)

12 Cross-Claimant's claims may be barred in whole or in part by the applicable statute(s) of  
13 limitations.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 (Assumption of Risk)

16 Cross-Claimant's alleged damages and injury were the result of risks and dangers  
17 voluntarily and knowingly assumed by the Cross-Claimant. Cross-Claimant's assumption of the  
18 risk reduced any recovery by Cross-Claimants against Cross-Defendants in an amount established  
19 at trial.

20 **NINTH AFFIRMATIVE DEFENSE**

21 (Laches)

22 Cross-Claimant waited an unreasonable period of time before asserting his claims, if any,  
23 against these Answering Cross-Defendants, and is barred from asserting such claims under the  
24 doctrine of laches.

25 **TENTH AFFIRMATIVE DEFENSE**

26 (Intervening and Superseding Causes)

27 The injuries and damages of which Cross-Claimant complains were proximately caused  
28 by, or contributed to, by the acts of other defendants, cross-defendants, persons and/or other

1 entities, and that said acts were an intervening and superseding cause of the injuries and damages,  
2 if any, of which Plaintiff complains, thus barring Plaintiff from any recovery against Defendant.

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 (Unclean Hands)

5 By virtue of Cross-Claimant's own careless, negligent and other wrongful conduct, Cross-  
6 Claimant should be barred from recovering against Cross-Defendants by the equitable doctrine of  
7 unclean hands.

8 **TWELFTH AFFIRMATIVE DEFENSE**

9 (No Privity)

10 There is no privity between Cross-Claimant and Cross-Defendant, and Cross-Claimant's  
11 recovery herein should be diminished or barred.

12 **THIRTEENTH AFFIRMATIVE DEFENSE**

13 (Special Damages)

14 Cross-Claimant is barred from recovering any special damages for failure to specifically  
15 allege the items of special damages pursuant to NRCP 9(g).

16 **FOURTEENTH AFFIRMATIVE DEFENSE**

17 (Special Damages)

18 Cross-Claimant is barred from bringing these claims as all consequences of the alleged  
19 incident were avoidable.

20 **FIFTEENTH AFFIRMATIVE DEFENSE**

21 (Special Damages)

22 All risks and dangers, if any, involved in the factual situation described in the Complaint  
23 were open, obvious, and known to Cross-Complainant who voluntarily assumed said risks and  
24 dangers.

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1                                    **SIXTEENTH AFFIRMATIVE DEFENSE**

2                                    (Open and Obvious)

3                    All risks and dangers, if any, involved in the factual situation described in the Complaint  
4 were open, obvious, and known to Cross-Complainant who voluntarily assumed said risks and  
5 dangers.

6                                    **SEVENTEENTH AFFIRMATIVE DEFENSE**

7                                    (Lack of Control)

8                    The incident which is the subject matter of this action was avoidable and caused by  
9 circumstances over which these answering Cross-Defendants had no control and, therefore, Cross-  
10 Complainant is barred from any recovery against these answering Cross-Defendants.

11                                   **EIGHTEENTH AFFIRMATIVE DEFENSE**

12                                   (Collateral Source)

13                   Cross-Complainant's alleged injuries and/or damages are barred by reason of being  
14 compensated by a collateral source.

15                                   **NINETEENTH AFFIRMATIVE DEFENSE**

16                                   (Failure to Join)

17                   The causes of action set forth in the Complaint are subject to dismissal for failure to join a  
18 necessary and indispensable party as required by the Nevada Rules of Civil Procedure.

19                                   **TWENTIETH AFFIRMATIVE DEFENSE**

20                                   (Lack of Knowledge)

21                   These answering Cross-Defendants had no actual or constructive notice or knowledge of  
22 the allegedly dangerous condition Cross-Complainant complains of.

23                                   **TWENTY-FIRST AFFIRMATIVE DEFENSE**

24                                   (Lack of Knowledge)

25                   To the extent Cross-Complainant has been paid special damages by or on behalf of these  
26 answering Cross-Defendants or a third party, Cross-Complainant is not the real party in interest to  
27 prosecute this action under N.R.C.P. 17.

28                   ///

1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 (Incorporation of Defenses)

3 These answering Cross-Defendants hereby incorporate by reference those affirmative  
4 defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein.  
5 In the event further investigation or discovery reveals the applicability of any such defenses, these  
6 answering Cross-Defendants assert the right to seek leave of court to amend their Answer to  
7 specifically assert any such defense. Such defenses are herein incorporated by reference for the  
8 specific purpose of not waiving any such defense.

9 Pursuant to NRCP 11, Cross-Defendants reserve the right to amend their Answer to assert  
10 further affirmative defenses that are not presently known but may become known and available  
11 through further investigation and discovery.

12 WHEREFORE, Defendant COX COMMUNICATIONS LAS VEGAS, INC., D/B/A COX  
13 COMMUNICATIONS and IES RESIDENTIAL, INC. prays for relief as follows:

- 14 1. Defendant/Cross-Defendants, Chris J. Scarcelli takes nothing by way of his cross-  
15 claim;  
16 2. Dismissal of Defendant/Cross-Defendant's Cross-Claim with prejudice;  
17 3. An award of reasonable attorney's fees and costs to COX COMMUNICATIONS  
18 LAS VEGAS, INC., D/B/A COX COMMUNICATIONS and IES RESIDENTIAL, INC. for the  
19 defense of this matter; and  
20 4. For such other relief as the Court deems reasonable and proper.

21 DATED this 5<sup>th</sup> day of April, 2019.

22 MORRIS, SULLIVAN, & LEMKUL, LLP

23  
24 By: /s/Christopher A. Turtzo

25 Will Lemkul, NV Bar No. 6715

26 Christopher A. Turtzo; NV Bar No. 10253

27 3960 Howard Hughes Parkway, Suite 420

28 Las Vegas, NV 89169

*Attorneys for Defendants, IES Residential, Inc. and  
Cox Communications Las Vegas, Inc. D/B/A Cox  
Communications*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that on this 5<sup>th</sup> day of April, 2019, I served a true and  
3 correct copy of the foregoing COX COMMUNICATIONS LAS VEGAS, INC. D/B/A/ COX  
4 COMMUNICATIONS' AND IES RESIDENTIAL, INC.'S ANSWER TO J. CHRIS  
5 SCARCELLI'S CROSS-CLAIM on all parties in this action by the Eighth Judicial District  
6 Court's Odyssey File & Serve System to:

7  
8 David S. Sampson, Esq.  
9 Law Offices of David Sampson  
630 S. 3<sup>rd</sup> Street  
10 Las Vegas, Nevada 89101  
888-209-4199  
11 *Attorney for Plaintiff, Simone Russo*

David A. Clark, Esq.  
Lipson Neilson P.C.  
9900 Covington Cross Dr., Suite 120  
Las Vegas, Nevada 89144  
702-382-1512  
*Attorney for Defendant, J. Chris Scarcelli*

12  
13 Anthony Sgro, Esq.  
14 Roger C. Bailey  
Sgro & Roger  
720 South 7<sup>th</sup> St., Suite 300  
15 Las Vegas, Nevada 89101  
702-665-4120  
16 *Attorney for Defendant, Kevin Bushbaker*

Leonard Fink, Esq.  
Jonathon Pattillo, Esq.  
Springel & Fink, LLP  
10688 Park Run Dr., Suite 275  
Las Vegas, Nevada 89144  
702-804-0798  
*Attorney for Defendant, Sunrise Villas IX HOA*

17  
18  
19 /s/ Allyson Lodwick  
20 An Employee of MORRIS, SULLIVAN & LEMKUL, LLP  
21  
22  
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**Question No. 27 – Document No. 9**

**Question No. 27 – Document No. 9**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**August 07, 2019**

---

A-17-753606-C	Simone Russo, Plaintiff(s)
	vs.
	Cox Communications Las Vegas, Inc., Defendant(s)

---

August 07, 2019	8:05 AM	Minute Order re: Sunrise Villas IX Homeowners Association's Motion to Dismiss Defendants Bushbaker's and Scarcelli's Cross Claims
-----------------	---------	---

**HEARD BY:** Williams, Timothy C.

**COURTROOM:** Chambers

**COURT CLERK:** Christopher Darling

**JOURNAL ENTRIES**

- After a review and consideration of the points and authorities on file herein and the argument of counsel, the Court determined as follows:

Defendant Bushbaker's Answer and Cross Claim was filed February 22, 2019, more than 13 months after Plaintiff's Amended Complaint was filed and the deadline to amend pleadings and add parties had run. In addition, the only amendment to Plaintiff's complaint was the addition of a party, there was no material change requiring an answer and Bushbaker answered all of the substantive claims in 2017. (Bushbaker Opp. 6:24-27). Considering the lack of material changes requiring response and the timing of Bushbaker's filing, Bushbaker's Answer is not substantively a responsive pleading to Plaintiff's Amended Complaint and shall not be used as a procedural mechanism to assert a cross claim without leave of the Court. Consequently the Cross Claims are dismissed.

Defendant Scarcelli answered Plaintiff's Amended Complaint on March 22, 2018, without asserting any cross claims against any party. Scarcelli's response to Bushbaker's February 22, 2019 Cross Claims contained no Cross Claims or Counter Claims against Defendant Bushbaker. Scarcelli's Answer and Cross Claims, filed nearly a year after filing its answer and after the deadline to amend pleadings had run, shall not be used as a procedural mechanism to assert a cross claim without leave of the Court. Furthermore, as Defendant Scarcelli's March 15, 2019 Answer and Cross Claims in response to Bushbaker's Cross Claim lack a valid triggering pleading, the Cross Claims are dismissed. Consequently, Sunrise Villas IX Homeowners Association's Motion to Dismiss Defendants Bushbaker's and Scarcelli's Cross Claims shall be GRANTED.

PRINT DATE: 08/07/2019

Page 1 of 2

Minutes Date: August 07, 2019

Counsel for Sunrise shall prepare a detailed Order, Findings of Fact, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature

CLERK'S NOTE: This Minute Order has been electronically served to the parties through Odyssey eFile.

**Question No. 27 – Document No. 10**

**Question No. 27 – Document No. 10**



1 **JMT**  
2 DAVID F. SAMPSON, ESQ.  
3 Nevada Bar No. 6811  
4 LAW OFFICE OF DAVID SAMPSON, LLC  
5 630 S. 3rd Street  
6 Las Vegas, NV 89101  
7 Tel: 702-605-1099  
8 Fax: 888-209-4199  
9 Email: david@davidsampsonlaw.com  
10 Attorney for Plaintiff

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 SIMONE RUSSO, )

11 Plaintiff, )

12 vs. )

CASE NO: A-17-753606-C

DEPT. NO: XVI

HEARING REQUESTED

13 COX COMMUNICATIONS LAS VEGAS, )  
14 INC., D/B/A COX COMMUNICATIONS, )  
15 IES RESIDENTIAL, INC., SUNRISE )  
16 VILLAS IX HOMEOWNERS )  
17 ASSOCIATION, J & G LAWN )  
18 MAINTENANCE, KEVIN BUSHBAKER, )  
19 PWJAMES MANAGEMENT & )  
20 CONSULTING, LLC., J. CHRIS )  
21 SCARCELLI, DOE LANDSCAPER, )  
22 RICHARD DUSLAK, JUSTIN SESMAN, )  
23 AND DOES I V, and ROE )  
24 CORPORATIONS I V, inclusive, )

25 Defendants. )

26 **DEFAULT JUDGMENT**

27 This matter having duly come before the Court and the matter being considered  
28 JUDGMENT IN FAVOR OF SIMONE RUSSO AND AGAINST DEFENDANTS RICHARD  
DUSLAK AND JUSTIN SESMAN AS FOLLOWS:

Past Medical Expenses: \$ 592,846.46

Future Medical Expenses: \$ 250,000.00

1 General Damages: \$ 24,157,153.54

2 TOTAL JUDGMENT: \$ 25,000,000.00

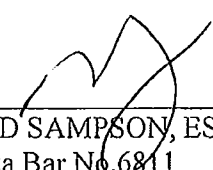
3 The said Judgment shall accrue interest accruing from the date of entry of each  
4 respective JUDGMENT until each respective JUDGMENT is paid in full, with an award of  
5 costs may follow upon the presentation of a memorandum of costs to the Court.  
6

7 DATED this 17<sup>th</sup> day of December, 2019.

8  
9   
10 DISTRICT JUDGE  
11

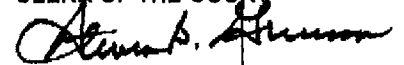
12 Submitted by:

13  
14 LAW OFFICE OF DAVID SAMPSON, LLC.  
15

16  
17 BY:   
18 DAVID SAMPSON, ESQ.  
19 Nevada Bar No. 6811  
20 LAW OFFICE OF DAVID SAMPSON  
21 630 S. 3<sup>rd</sup> Street  
22 Las Vegas, Nevada 89101  
23 Fax No: 888-209-4199  
24 Attorney for Plaintiff  
25  
26  
27  
28

**Question No. 27 – Document No. 11**

**Question No. 27 – Document No. 11**



**NOTC**  
DAVID F. SAMPSON, ESQ.,  
Nevada Bar No. 6811  
LAW OFFICE OF DAVID SAMPSON  
630 S. 3<sup>rd</sup> Street  
Las Vegas, NV 89101  
Tel: 702-605-1099  
Fax: 888-209-4199  
Email: david@davidsampsonlaw.com  
*Attorney for Plaintiff*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SIMONE RUSSO,	)	
	)	
Plaintiff,	)	
vs.	)	CASE NO: A-17-753606-C
	)	DEPT. NO: XVI
COX COMMUNICATIONS LAS VEGAS,	)	
INC., D/B/A COX COMMUNICATIONS,	)	
IES RESIDENTIAL, INC., SUNRISE	)	
VILLAS IX HOMEOWNERS	)	
ASSOCIATION, J & G LAWN	)	
MAINTENANCE, KEVIN BUSHBAKER,	)	
PWJAMES MANAGEMENT &	)	
CONSULTING, LLC., J. CHRIS	)	
SCARCELLI, DOE LANDSCAPER,	)	
RICHARD DUSLAK, JUSTIN SESMAN,	)	
AND DOES I - V, and ROE	)	
CORPORATIONS I - V,	)	
inclusive,	)	
Defendants.	)	

**NOTICE OF ENTRY**

TO: All Defendants

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a Default Judgment,  
was entered in the above entitled matter on the 17<sup>th</sup> day of December, 2019,

///

///



1 a copy of which is attached hereto.

2 DATED THIS 17th day of December, 2019.

3 LAW OFFICE OF DAVID SAMPSON, LLC.

4 BY: /s/ *David Sampson*

5 DAVID SAMPSON, ESQ.

6 Nevada Bar No.6811

7 LAW OFFICE OF DAVID SAMPSON

8 630 S. 3<sup>rd</sup> Street

9 Las Vegas, Nevada 89101

10 Fax No: 888-209-4199

11 Attorney for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 19<sup>th</sup> day of March, 2018, pursuant to NRCP 5(b), I served  
3 the foregoing **NOTICE OF ENTRY OF ORDER** as follows:  
4

5 X Electronic Service through the Court's online filing system.

6 ANTHONY SGRO, ESQ.  
7 720 S. Seventh St. 3<sup>rd</sup> Floor  
8 Las Vegas NV 89101  
9 Attorney for Defendant  
10 BUSHBAKER

WILL LEMKUL, ESQ.  
CHRISTOPHER A. TURTZO, ESQ.  
3770 Howard Hughes, Pkwy Suite 170  
Las Vegas NV 89169  
Attorney for Defendant  
IES RESIDENTIAL INC. and  
COX COMMUNICATIONS

11 LEONARD FINK, ESQ.  
12 SPRINGEL & FINK, LLP  
13 10655 Park Run Drive, Suite 275  
14 Las Vegas, Nevada 89144  
15 Attorney for Defendant  
16 SUNRISE VILLAS IX HOA

DAVID A. CLARK, ESQ.  
9900 Covington Cross Dr. Suite 120  
Las Vegas NV 89144  
Attorney for Defendant  
CHRIS SCARCELLI

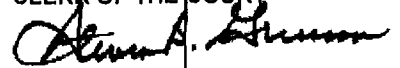
17 **Via U.S. Mail:**  
18 JUSTIN SESMAN  
19 4775 Topaz Street, Apt. 235  
20 Las Vegas, NV 89121

**Via U.S. Mail:**  
RICHARD DUSLAK  
4012 Abrams Ave.  
Las Vegas, NV 89110

21 /s/ Amanda Nalder  
22 An Employee of The LAW OFFICE OF DAVID SAMPSON, LLC  
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## EXHIBIT 1



1 JMT  
2 DAVID F. SAMPSON, ESQ.  
3 Nevada Bar No. 6811  
4 LAW OFFICE OF DAVID SAMPSON, LLC  
5 630 S. 3rd Street  
6 Las Vegas, NV 89101  
7 Tel: 702-605-1099  
8 Fax: 888-209-4199  
9 Email: david@davidsampsonlaw.com  
10 Attorney for Plaintiff

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DISTRICT COURT  
CLARK COUNTY, NEVADA

SIMONE RUSSO, )

Plaintiff, )

vs. )

CASE NO: A-17-753606-C  
DEPT. NO: XVI  
HEARING REQUESTED

COX COMMUNICATIONS LAS VEGAS, )  
INC., D/B/A COX COMMUNICATIONS, )  
IES RESIDENTIAL, INC., SUNRISE )  
VILLAS IX HOMEOWNERS )  
ASSOCIATION, J & G LAWN )  
MAINTENANCE, KEVIN BUSHBAKER, )  
PWJAMES MANAGEMENT & )  
CONSULTING, LLC., J. CHRIS )  
SCARCELLI, DOE LANDSCAPER, )  
RICHARD DUSLAK, JUSTIN SESMAN, )  
AND DOES I V, and ROE )  
CORPORATIONS I V, inclusive, )

Defendants. )

DEFAULT JUDGMENT

This matter having duly come before the Court and the matter being considered  
JUDGMENT IN FAVOR OF SIMONE RUSSO AND AGAINST DEFENDANTS RICHARD  
DUSLAK AND JUSTIN SESMAN AS FOLLOWS:

Past Medical Expenses: \$ 592,846.46

Future Medical Expenses: \$ 250,000.00

1 General Damages: \$ 24,157,153.54

2 TOTAL JUDGMENT: \$ 25,000,000.00

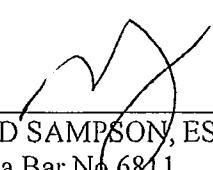
3 The said Judgment shall accrue interest accruing from the date of entry of each  
4 respective JUDGMENT until each respective JUDGMENT is paid in full, with an award of  
5 costs may follow upon the presentation of a memorandum of costs to the Court.  
6

7 DATED this 17<sup>th</sup> day of December, 2019.

9  
10   
11 DISTRICT JUDGE

12 Submitted by:

13  
14 LAW OFFICE OF DAVID SAMPSON, LLC.

15  
16  
17 BY:   
18 DAVID SAMPSON, ESQ.  
19 Nevada Bar No. 6811  
20 LAW OFFICE OF DAVID SAMPSON  
21 630 S. 3<sup>rd</sup> Street  
22 Las Vegas, Nevada 89101  
23 Fax No: 888-209-4199  
24 Attorney for Plaintiff  
25  
26  
27  
28

**Question No. 27 – Document No. 12**

**Question No. 27 – Document No. 12**



OSCC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*\*

SIMONE RUSSO, PLAINTIFF(S)  
VS.  
COX COMMUNICATIONS LAS  
VEGAS, INC., DEFENDANT(S)

CASE NO.: A-17-753606-C  
DEPARTMENT 16

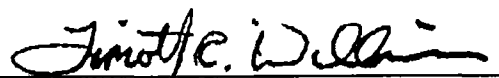
**CIVIL ORDER TO STATISTICALLY CLOSE CASE**

Upon review of this matter and good cause appearing,  
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to  
statistically close this case for the following reason:

**DISPOSITIONS:**

- ☐ Default Judgment
- ☐ Judgment on Arbitration
- ☒ Stipulated Judgment
- ☐ Summary Judgment
- ☐ Involuntary Dismissal
- ☐ Motion to Dismiss by Defendant(s)
- ☐ Stipulated Dismissal
- ☐ Voluntary Dismissal
- ☐ Transferred (before trial)
- ☐ Non-Jury – Disposed After Trial Starts
- ☐ Non-Jury – Judgment Reached
- ☐ Jury – Disposed After Trial Starts
- ☐ Jury – Verdict Reached
- ☐ Other Manner of Disposition

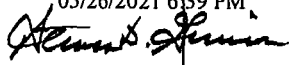
DATED this 14th day of May, 2020.

  
TIMOTHY C. WILLIAMS  
DISTRICT COURT JUDGE

**Question No. 27 – Document No. 13**

**Question No. 27 – Document No. 13**



  
CLERK OF THE COURT

1 **ORD**

2 DAVID F. SAMPSON, ESQ.

3 Nevada Bar No. 6811

4 LAW OFFICE OF DAVID SAMPSON, LLC.

5 630 S. 3rd Street

6 Las Vegas, NV 89101

7 Tel: 702-605-1099

8 Fax: 888-209-4199

9 Email: david@davidsampsonlaw.com

10 *Attorney for Plaintiff*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 SIMONE RUSSO, )

14 Plaintiff, )

15 vs. )

CASE NO: A-17-753606-C

DEPT. NO: XVI

16 COX COMMUNICATIONS LAS VEGAS, )

17 INC., D/B/A COX COMMUNICATIONS, )

18 IES RESIDENTIAL, INC., SUNRISE )

19 VILLAS IX HOMEOWNERS )

20 ASSOCIATION, J & G LAWN )

21 MAINTENANCE, KEVIN BUSHBAKER, )

22 PWJAMES MANAGEMENT & )

23 CONSULTING, LLC., J. CHRIS )

24 SCARCELLI, DOE LANDSCAPER, )

25 RICHARD DUSLAK, JUSTIN SESMAN, )

26 AND DOES I-V, and ROE )

27 CORPORATIONS I-V, inclusive, )

28 Defendants. )

**ORDER ON DEFENDANT'S MOTION  
TO SET ASIDE AND/OR AMEND  
JUDGMENT, AND ORDER ON  
PLAINTIFF'S MOTION TO ENFORCE  
SETTLEMENT**

**ORDER ON DEFENDANT'S MOTION TO SET ASIDE AND/OR AMEND JUDGMENT  
AND ORDER ON PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT**

Defendant SUNRISE's motion to set aside and/or amend judgment and Plaintiff's motion to enforce settlement, having come on for hearing the 3<sup>rd</sup> day of March, 2021, the parties appearing by and through their counsel of record, the Court having reviewed the papers submitted, having heard oral argument, and good cause appearing, the Court rules as follows:

1 The Court notes that the pleadings and records in this matter confirm the following  
2 **FINDINGS OF FACT:**

3 RUSSO filed the Complaint in this matter on April 6, 2017.

4 The Court GRANTED RUSSO's Motion to Amended the Complaint in this matter to add  
5 claims against Defendants RICHARD DUSLAK ("DUSLAK") and JUSTIN SESMAN  
6 ("SESMAN") on February 7, 2018.

7 RUSSO served the Amended Complaint on Defendant SESMAN on February 13, 2018.

8 RUSSO served the Amended Complaint on Defendant DUSLAK on February 14, 2018.

9 Neither DUSLAK nor SESMAN made any appearance in the instant litigation.

10 The Court Clerk entered a Default against Defendant DUSLAK on September 4, 2019.

11 The Court Clerk entered a Default against Defendant SESMAN on September 13, 2019.

12 Trial commenced in this matter on September 9, 2019, which trial resulted in a mistrial  
13 due to the conduct of one of the venire members. Trial again commenced on October 10, 2019.  
14 The October 10, 2019 trial concluded on October 18, 2019 when the active parties advised the  
15 Court that a settlement had been reached in this action as to certain parties. The transcript from  
16 October 18, 2019 confirms that the active parties in this matter advised the Court on that date  
17 that a settlement had been reached as to the active parties in this matter.

18 The October 18, 2019 transcript further confirms the settling parties agreed that "there are  
19 two other parties in this case who have been defaulted [DUSLAK and SESMAN]" and that "this  
20 settlement does not affect them." See, October 18, 2019 transcript at P. 6 L. 16-21. The  
21 October 18, 2019 transcript further confirms that the settling parties agreed the settlement only  
22 involved the parties that had "actively litigated and PW JAMES". See October 18, 2019  
23 transcript at P. 8 L. 2-3. The October 18, 2019 transcript also confirms the settling parties

1 agreed that "nothing in any of these releases or settlement . . . affects any rights Dr. Russo may  
2 have against any person or entity related to the claims of the two individuals who have been  
3 defaulted [DUSLAK and SESMAN]". See, October 18, 2019 transcript at P. 11 L. 3-9.

4  
5 Counsel for the settling parties then discussed reducing the settlement to writing,  
6 whereupon counsel for the Plaintiff confirmed that in drafting any release or the like related to  
7 the settlement:

8 the terms of whatever documents we sign or that my client has asked to sign  
9 comport with what was discussed Wednesday, and what's being discussed today,  
10 and no new terms, and those types of things. And, I guess, most of all that nothing  
11 in any of these releases or any of the settlement affects any rights Dr. Russo may  
12 have against any person or entity related to the claims of the two individuals who  
13 have been defaulted, and any claims that they may have against anybody would  
14 not be affected by this settlement. So as long as we're clear on all of that.

15 *Id* at P. 10 L. 24 – P. 11 L 12.

16 The settling parties agreed that nothing in any of the settlement documents would affect  
17 any rights Plaintiff may have against DUSLAK and/or SESMAN.

18 At a subsequent hearing on November 7, 2019 counsel for SUNRISE asked that  
19 DUSLAK and SESMAN be included as releasees if it was determined they were employees of  
20 Defendants. Counsel for RUSSO stated that there was no agreement to release DUSLAK and/or  
21 SESMAN when the settlement was placed on the record on October 18, 2019. Counsel for  
22 RUSSO stated, "this idea that if they're employees, then Sesman and Duslak are out. That was  
23 not agreed to." See, November 7, 2019 transcript at P. 23 L. 12-15. Counsel for RUSSO  
24 continued by noting that on October 18, 2019 "we put on the record -- we're not waiving,  
25 releasing, or otherwise affecting anything against Sesman or Duslak. I don't think anyone would  
26 dispute that . . . it was a pretty significant point that day." *Id* at P. 25 L. 6-16.

1 The Court then asked SUNRISE's counsel, "Mr. Fink, are we disputing that?" *Id* at P. 25  
2 L. 21-22. Counsel for SUNRISE answered, "My best recollection is that when Mr. Sampson  
3 said he was specifically retaining his rights to go against Mr. Sesman and Mr. Duslak, we all  
4 agreed to that." *Id* at P. 26 L. 2-5.

6 The Court then gave the settling parties an opportunity to reduce the terms of the  
7 settlement placed on the record on October 18, 2019 to writing. Counsel for RUSSO  
8 commented that, in reducing the settlement to writing, "along the lines of Sesman and Duslak,  
9 all rights against them, anybody who insures them, you know, all of those are preserved.  
10 They're not affected. I would like to make sure that is crystal clear in whatever iteration we end  
11 up with." *Id* at P. 40 L. 16-22.

13 In reducing the terms of the settlement placed on the record on October 18, 2019 to  
14 writing, the agreement the settling parties signed stated that RUSSO was preserving all rights to  
15 proceed against DUSLAK and SESMAN, and that neither DUSLAK and/or SESMAN were  
16 being released even in the event they were subsequently deemed SUNRISE employees. The  
17 agreement stated that "PLAINTIFF", "Dr. SIMONE RUSSO" was releasing SUNRISE  
18 "EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN". *See*, Settlement  
19 Agreement at P. 1 (emphasis in original). Each of the Defendants included in the agreement  
20 were identified as including the Defendants' respective employees, with the clear exception of  
21  
22

23 ///

24 ///

25 ///

1 SUNRISE. On page one of the agreement the parties are identified. Defendant IES  
2 RESIDENTIAL, INC., is identified as:

3 IES RESIDENTIAL, INC. (hereinafter "IES") and its affiliated companies, and  
4 each of their respective past, present and future officers, directors, members,  
5 managers, agents, representatives, shareholders, partners, associates, employees,  
6 attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees,  
7 transferees, successors, assigns, heirs, divisions, contractors, joint ventures,  
8 special purpose entities, legal and equitable owners and insurers;

9 *Id.*

10 Defendant COX is identified as:

11 COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX  
12 COMMUNICATIONS (hereinafter "COX") and its affiliated companies, and  
13 each of their respective past, present and future officers, directors, members,  
14 managers, agents, representatives, shareholders, partners, associates, employees,  
15 attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees,  
16 transferees, successors, assigns, heirs, divisions, contractors, joint ventures,  
17 special purpose entities, legal and equitable owners and insurers;

18 *Id.*

19 Defendant SUNRISE however is identified as:

20 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (hereinafter  
21 "SUNRISE") and its affiliated companies, and each of their respective past,  
22 present and future officers, directors, members, managers, agents, representatives,  
23 shareholders, partners, associates, insurers (Community Association  
24 Underwriters, Inc., QBE Insurance Corporation, Alliant Insurance Services, Inc.,  
25 DSCM, Inc. and Armour Risk Management, Inc. - but only as it relates to  
26 SUNRISE), **EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN  
27 OR ANYONE ASSOCIATED OR AFFILIATED WITH THEM,  
28 INCLUDING ANY ACTUAL OR POTENTIAL INSURER (per the  
stipulation attached in exhibit "A")**, attorneys, subsidiaries, predecessors,  
beneficiaries, grantors, grantees, vendees transferees, successors, assigns, heirs,  
divisions, contractors, joint ventures, special purpose entities, legal and equitable  
owners;

*Id* (emphasis in original).

The word "employees" is not used in the description of SURNISE as a Defendant.  
Additionally, on page 4 of the release, the description of the released parties includes all of

1 Defendants' "employees ***EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN . .***  
2 ***..***. *Id* at P. 4 (emphasis in original). When referencing the employees of any of the settling  
3 Defendants it was made more than clear that the term "employees" who were being released did  
4 not include DUSLAK or SESMAN as releasees.  
5

6 The settlement agreement further stated, "PLAINTIFF [RUSSO] shall retain all rights to  
7 pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN". *Id* at P. 4. The  
8 settlement agreement further confirmed, "ANY LANGUAGE IN THIS RELEASE THAT IS  
9 CONTRARY TO THE LANGUAGE OF THIS SPECIFIC PARAGRAPH, AND/OR ANY  
10 LANGUAGE THAT WOULD BE READ TO IN ANY WAY IMPACT PLAINTIFF'S  
11 RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN SESMAN . . . SHALL BE  
12 DEEMED NULL AND VOID." *Id* (emphasis in original).  
13

14 RUSSO filed an Application for Judgment by Default on October 31, 2019 which  
15 Application noted that defaults had previously been entered against Defendants DUSLAK and  
16 SESMAN, and which Application sought Judgment against DUSLAK and SESMAN in the  
17 amount of \$25,000,000.00. The Application for Judgment by Default was served on all parties  
18 in this matter on October 31, 2019.  
19

20 On October 31, 2019 Joshua Raak, the Deputy Clerk of the Court, sent Notice of Hearing  
21 to all active parties to this matter, including SUNRISE, which notified the said parties that  
22 RUSSO's Application for Judgment by Default would be heard by the Court on December 17,  
23 2019.  
24

25 There is no record of any of the parties filing any opposition(s) to RUSSO's Application  
26 for Judgement by Default. None of the Defendants in this matter appeared at the December 17,  
27 2019 hearing on RUSSO's Application for Judgment by Default, nor did any of the Defendants,  
28

1 or any other parties or non-parties, contest RUSSO's Application for Judgment by Default.  
2 Following the hearing on RUSSO's Application for Judgment by Default, the Court entered  
3 final Judgment in favor of RUSSO and against DUSLAK and SESMAN in the amount of  
4 \$25,000,000.00 with interest accruing from the date of entry until paid in full. Notice of Entry  
5 of the said final Judgment was served on all parties to this matter on December 17, 2019.  
6

7 There is no record of any motion being filed under NRCP 59 to alter or amend the  
8 Judgment within 28 days after service of written notice of entry of the said Judgment. Indeed,  
9 there is no record of any such motion being filed at any time in 2019 or in 2020. There is no  
10 record of any motion being filed under NRCP 60 for relief from the final Judgment in this  
11 matter within six months after the date of the proceeding or after the date of service of the  
12 written notice of entry of the duly entered December 17, 2019 Judgment. Indeed, there is no  
13 record of any such motion being filed at any time in 2019 or in 2020.  
14

15 With a final Judgment having been duly entered in this matter on December 17, 2019 and  
16 notice of entry of the same being served on the same day, and no request to set aside the same  
17 under NRCP 59, nor any request for relief under NRCP 60 being filed, the Court statistically  
18 closed this case on May 14, 2020.  
19

20 SUNRISE filed the instant motion to set aside and/or amend judgment on January 21,  
21 2021. Non-Party QBE filed a joinder to the said motion then subsequently withdrew its joinder  
22 to the same.  
23

24 The Court makes the following **CONCLUSIONS OF LAW**:

25 Regarding SUNRISE's motion to set aside and/or amend the Judgment entered in this  
26 matter, NRCP 59(e) states "a motion to alter or amend a judgment must be filed no later than 28  
27 days after service of written notice of entry of judgment." SUNRISE's motion to set aside  
28

1 and/or alter or amend the final Judgment in this matter was filed on January 21, 2021, which  
2 was over a year after Notice of Entry of Judgment was served on the parties in this matter.  
3 SUNRISE's motion to set aside or alter the Judgment was not filed within 28 days after Notice  
4 of Entry of Judgment was served as required under NRCP 59(e) and is therefore denied.  
5

6 Additionally, the Court finds that, in light of the procedural history of the case, there are  
7 no grounds to amend or set aside the Judgment pursuant to NRCP 60(a). The Court finds that  
8 there are no clerical mistakes, oversights or omissions in the duly entered Judgment. The Court  
9 further finds that the final Judgment in his matter was entered exactly as sought in Plaintiff's  
10 Application for Default judgment, which was provided to the active parties in this matter and  
11 which none of the active parties contested. The Court therefore denies SUNRISE's request for  
12 relief under NRCP 60(a).  
13

14 The Court further finds that SUNRISE failed to establish grounds pursuant to NRCP 60(b)  
15 (1)-(6) to amend or set aside the Default Judgment in this matter. The Court finds that relief is  
16 not warranted under NRCP 60(b)(1) as SUNRISE has not presented the Court with evidence of  
17 mistake, surprise, or excusable neglect that the Court in its discretion would find warranted any  
18 such relief. The Court further finds that relief is not warranted under NRCP 60(b)(2) as  
19 SUNRISE has not presented the Court with evidence of newly discovered evidence that, with  
20 reasonable diligence, could not have been discovered in time to move for a new trial under  
21 NRCP 59(b) that would cause the Court to exercise its discretion to grant such relief. The Court  
22 also finds that relief is not warranted under NRCP 60(b)(3) as SUNRISE has not presented the  
23 Court with evidence of fraud, misrepresentation, or misconduct by any opposing party that  
24 would cause the Court to exercise its discretion to grant such relief.  
25  
26  
27

28 ///



Additionally, under NRCP 60(c)(1),

A motion under Rule 60(b) must be made within a reasonable time-and for reasons (1), (2), and (3) no more than 6 months after the date of the proceeding or the date of service of written notice of entry of judgment or order, whichever date is later. The time for filing the motion cannot be extended under Rule 6(b).

SUNRISE's motion to set aside and/or alter or amend the Judgment in this matter was filed on January 21, 2021, which was over one year after Notice of Entry of Judgment was served on the parties in this matter on December 17, 2019. SUNRISE did not file a request for relief under NRCP 60(b) (1), (2), or (3) within 6 months after Notice of Entry of Judgment was served as required under NRCP 60(c)(1). SUNRISE's requests for relief under NRCP 60(b) (1), (2), and/or (3) are therefore also denied as untimely.

The Court also finds SUNRISE is not entitled to relief under NRCP 60(b)(4). The provisions of NRCP 60(b)(4) concerning void judgments “is normally invoked in a case where the court entering the challenged judgment did not have jurisdiction over the parties.” *Misty Management v. District Court*, 83 Nev. 180, 182, 426 P.2d 728, 729 (1967) (citing *LaPotin v. LaPotin* 75 Nev. 264, 339, P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372, P.2d 679 (1962)). Judgments are typically deemed “void” in cases where the court entering the challenged judgment was itself disqualified from acting, e.g., *Osman v. Cobb*, 77 Nev. 133, 360 P.2d 258 (1961), or did not have jurisdiction over the parties, e.g., *LaPotin v. LaPotin*, 75 Nev. 264, 339 P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372 P.2d 679 (1962), or did not have jurisdiction over the subject matter of the litigation. *Misty Management v. District Court*, 83 Nev. 180, 426 P.2d 728 (1967).

DUSLAK and SESMAN were residents of Clark County Nevada when the underlying incident occurred. DUSLAK and SESMAN were both served with this suit in Clark County Nevada. The Court has jurisdiction over DUSLAK and SESMAN as well as the subject matter

1 of this negligence action. SUNRISE's motion does not assert that there were any jurisdictional  
2 issues over the parties or the subject matter. SUNRISE did not present any evidence of any  
3 jurisdictional issues. Relief is therefore not warranted under NRCP 60(b)(4).  
4

5 NRCP 60(b)(5) allows a court to grant relief from a judgment if the judgment has been  
6 satisfied, released, or discharged. As noted above, SUNRISE did not present evidence that the  
7 duly entered Default Judgment against DUSLAK and SESMAN was satisfied, released, or  
8 discharged. The record is replete with examples of RUSSO confirming, and SUNRISE and the  
9 other active Defendants agreeing, that the settlement did not affect RUSSO's rights against  
10 DUSLAK or SESMAN in any way, that the settlement did not include SUNRISE employees,  
11 that the settlement did not include DUSLAK or SESMAN as employees of any of the  
12 Defendants, and that the settlement agreement specifically and completely excluded DUSLAK  
13 and SESMAN as releasees in all respects. The record further confirms that SUNRISE agreed  
14 RUSSO "shall retain all rights to pursue any claims against RICHARD DUSLAK and/or  
15 JUSTIN SESMAN". As the Judgment against DUSLAK and SESMAN was not satisfied,  
16 released, or discharged, relief is not warranted under NRCP 60(b)(5).  
17  
18

19 NRCP 60(b)(6) permits relief from a judgment for "any other reason that justifies  
20 relief". During the hearing on this matter counsel for RUSSO argued that a request for relief  
21 under NRCP 60(b)(6) must present grounds "other" than those enumerated elsewhere in NRCP  
22 60(b). In response counsel for SUNRISE stated, "Mr. Sampson says that, well, that's going to  
23 mean something different than the grounds that might be discussed in (1), (2), (3), (4), or (b) (1)  
24 (2) (3) (4), but I don't know if there's any law that says that." See Transcript of March 3, 2021  
25 hearing at P. 68 L. 25 – P. 69 L. 4. The Court finds that the plain language of NRCP 60(b)(6)  
26 which permits relief for "any other reason that justifies relief" requires that any relief sought  
27  
28

1 under NRCP 60(b)(6) be for grounds "other" than the grounds set forth elsewhere in NRCP  
2 60(b)(1-5). SUNRISE has not presented any authority indicating a party may seek relief under  
3 NRCP 60(b)(6) for reasons enumerated elsewhere in NRCP 60(b)(1-5). Indeed such a reading  
4 would be contrary to the purposes of NRCP 60(b)(1-5) as well as NRCP 60(c)(1). As  
5 SUNRISE has not provided the Court with "any other reason" that would justify relief from the  
6 Judgment, SUNRISE's request for relief under NRCP 60(b)(6) motion is denied.  
7

8         SUNRISE's motion requests relief under NRCP 60(d)(3). NRCP 60(d)(3) permits a  
9 court to set aside a judgment "for fraud upon the court." As the Nevada Supreme Court held in  
10 *NC-DSH Inc. v. Garner*, 218 P.3d 853, 858, 125 Nev. 647, 654 (2009):  
11

12         The problem lies in defining what constitutes "fraud upon the court." Obviously, it  
13 cannot mean any conduct of a party or lawyer of which the court disapproves;  
14 among other evils, such a formulation "would render meaningless the [time]  
15 limitation on motions under [Rule] 60(b)(3)." *Kupferman v. Consolidated*  
16 *Research Mfg. Corp.*, 459 F.2d 1072, 1078 (2d Cir. 1972) (Friendly, J.), cited with  
approval in *Occhiuto*, 97 Nev. at 146 n. 2, 625 P.2d at 570 n. 2, and *Murphy*, 103  
Nev. at 186, 734 P.2d at 739.

17         *Id.* at 858, 654.

18         The Court went on to state:

19         The most widely accepted definition, which we adopt, holds that the concept  
20 embrace[s] only that species of fraud which does, or attempts to, subvert the  
21 integrity of the court itself, or is a fraud perpetrated by officers of the court so that  
22 the judicial machinery cannot perform in the usual manner its impartial task of  
adjudging cases . . . and relief should be denied in the absence of such conduct.

23         *Id.*

24         For a judgment to be set aside for fraud on the court, "the moving party must show clear  
25 and convincing evidence establishing fraud. *U.S. v. Estate of Stonehill*, 660 F.3d 415, 443 (9<sup>th</sup>  
26 Cir. 2011) (as cited in *Hsu v. Ubs Fin. Servs.* 2014 U.S. Dist. LEXIS 29792 (2014)).  
27

28         ///

1 The *Stonehill* Court went on to note:

2 Fraud on the court should, we believe, embrace only that species of fraud which  
3 does, or attempts to, defile the court itself. . . . [Movant] must demonstrate, by  
4 clear and convincing evidence, an effort . . . to prevent the judicial process from  
5 functioning in the usual manner. They must show more than perjury or  
6 nondisclosure of evidence, unless that perjury or nondisclosure was so  
7 fundamental that it undermined the workings of the adversary process itself.

8 *Id* at 444-445.

9 SUNRISE's motion does not set forth any proof of wrongdoing by RUSSO, his counsel,  
10 or the Court, and certainly does not provide clear and convincing evidence of any fraud that  
11 would subvert the integrity of the Court itself. In its Reply filed February 25, 2021 SUNRISE  
12 expressly withdrew any intimation or accusation of RUSSO's counsel committing any fraud or  
13 misconduct in securing the Default Judgment in this matter. *See* Reply at P. 5 footnote 5. For  
14 these reasons, any request for relief under NRCP 60(d)(2) is denied.

15 Based on the foregoing IT IS HEREBY ORDERED ADJUDGED AND DECREED that  
16 Defendant Sunrise Villa IX Homeowners Association's Motion to Set Aside and/or Amend the  
17 Judgment in this matter be, and hereby is, DENIED.

18 Regarding RUSSO's motion to enforce the settlement, under EDCR 7.50 an agreement  
19 between parties is effective if the same is entered in the minutes and/or is in writing subscribed  
20 by the party against whom the same shall be alleged or the party's attorney. The agreement that  
21 was placed on the record on October 18, 2021, in which the active parties to this suit agreed: 1)  
22 that RUSSO's rights against DUSLAK and/or SESMAN are not affected by the settlement; 2)  
23 that the settlement did not include DUSLAK and/or SESMAN; and 3) that nothing in any  
24 subsequent writing confirming the settlement agreement would affect any rights RUSSO may  
25 have against DUSLAK and/or SESMAN, is enforceable. RUSSO's motion to enforce "requests  
26  
27  
28

1 this Court enforce the settlement agreement confirmed on the record on October 18, 2019 and  
2 hold that the settlement did not affect SIMONE's rights against DUSLAK and/or SESMAN."  
3 See Motion at P. 8 L. 2-5. It is hereby ORDERED ADJUDGED AND DECREED that  
4 RUSSO's motion to enforce settlement is GRANTED. It is further ORDERED ADJUDGED  
5 AND DECREED that the settlement entered into in this matter between the active parties and  
6 PW JAMES did not affect any of RUSSO's rights against DUSLAK and/or SESMAN to any  
7 degree.  
8

9         SUNRISE directs the Court to verbiage in the stipulation attached to the settlement  
10 agreement in which RUSSO and SUNRISE stipulated that for purposes of this litigation, in  
11 August 2016 DUSLAK and SESMAN were natural persons who were in the service of  
12 SUNRISE as independent contractors whom SUNRISE compensated and whom SUNRISE had  
13 the non-exclusive right to direct and control. See, SUNRISE's Consolidated Opposition to  
14 Plaintiff's Motions to Enforce Settlement and Reply to QBE's Motion to Enforce at P. 2 L. 12-  
15 27.  
16  
17

18         SUNRISE argues that the language "as independent contractors" found in the stipulation  
19 attached to the Agreement impacts RUSSO's rights against DUSLAK and/or SESMAN and  
20 releases DUSLAK and SESMAN if they are found to be employees of SUNRISE. SUNRISE's  
21 position is without merit as the plain language on page 4 of the settlement agreement states  
22 "PLAINTIFF [RUSSO] shall retain all rights to pursue any claims against RICHARD  
23 DUSLAK and/or JUSTIN SESMAN".  
24

25         The settlement agreement also states on page 4, "ANY LANGUAGE IN THIS  
26 RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC  
27 PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY  
28

1 IMPACT PLAINTIFF'S RIGHTS AGAINAST RICHARD DUSLAK and/or JUSTIN  
2 SESMAN . . . SHALL BE DEEMED NULL AND VOID." The stipulation attached to the  
3 settlement Agreement is referenced multiple times in the settlement Agreement itself and is  
4 incorporated into the Agreement. See, Bryan A. Garner, ed. (2001), *Black's Law*  
5 *Dictionary* (2nd pocket ed.). St. Paul, MN: West Group. p. 341. ISBN 0-314-25791-8.  
6 Incorporation by reference is the act of including a second document within another document  
7 by only mentioning the second document. When a document is mentioned in a main document,  
8 the entire second document is made a part of the main document. *Id.* When a document is  
9 referenced in a contract, the referenced document becomes a part of the contract for all  
10 purposes. *Lincoln Welding Works, Inc. v. Ramirez*, 98 Nev. 342, 647 P.2d 381 (1982).

11  
12 The Nevada Supreme Court has held that "where two instruments were executed  
13 together as one transaction they constituted but one instrument or contract, although written on  
14 different pieces of paper." *Haspray v. Pasarelli*, 79 Nev. 203, 207-208, 380 P.2d 919, (1963).

15  
16 The *Haspray* Court went on to say:

17  
18 They would have to be taken and construed together as if written on the same  
19 paper and signed by both parties. The law in such case deals with the matter as it  
20 really was – as one transaction – and therefore all the papers drawn up  
21 simultaneously bearing the same subject are held to be but one contract, although  
22 written on several papers.

23  
24 *Id.*

25 As SUNRISE argues that the language in the stipulation identifying DUSLAK and  
26 SESMAN "as independent contractors" impacts RUSSO's rights against DUSLAK and  
27 SESMAN, and as the Agreement states that "ANY LANGUAGE THAT WOULD BE READ  
28 TO IN ANY WAY IMPACT PLAINTIFF'S RIGHTS AGAINAST RICHARD DUSLAK  
and/or JUSTIN SESMAN . . . SHALL BE DEMED NULL AND VOID", IT IS HEREBY

1 ORDERED ADJUDGED AND DECREED that the language "as independent contractors" as  
2 found in the stipulation is deemed null and void pursuant to the plain language found on page 4  
3 of the settlement agreement.  
4

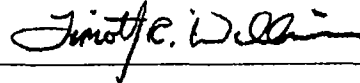
5 Paragraph 15 of the agreement, which is found on page 7 states:

6 If any provision of this Agreement is determined by a court of competent  
7 jurisdiction to be illegal, invalid, or unenforceable, such provision will be deemed  
8 to be severed and deleted from the Agreement as a whole, and neither such  
9 provision nor its severance and deletion shall in any way affect the validity of the  
10 remaining provisions of the Agreement.

11 As the language "as independent contractors" is deemed null and void, IT IS HEREBY  
12 ORDERED ADJUDGED AND DECREED that the words "as independent contractors" are  
13 severed and deleted from the Agreement as set forth in paragraph 15, and the remainder of the  
14 Agreement and stipulation, with the words "as independent contractors" deleted shall remain in  
15 full force and effect.

16 SO ORDERED.

17 Dated this 26th day of May, 2021

18   
19

ZJ

20 028 C04 6CB9 C18D  
21 Timothy C. Williams  
22 District Court Judge

23 Submitted by:  
24 LAW OFFICE OF DAVID SAMPSON, LLC.

25 BY: /s/ David Sampson

26 DAVID SAMPSON, ESQ.  
27 Nevada Bar No.6811  
28 LAW OFFICE OF DAVID SAMPSON, LLC.  
630 S. 3<sup>rd</sup> St.  
Las Vegas NV 89101  
Attorney for Plaintiff



Amanda Nalder <phoeny27@gmail.com>

---

**Fwd: Russo**

2 messages

---

**David Sampson** <davidsampsonlaw@gmail.com>

Fri, May 14, 2021 at 11:21 AM

To: Shannon Splaine <ssplaine@lgclawoffice.com>, Leonard Fink <lfink@springelfink.com>, Amanda Nalder <amanda@davidsampsonlaw.com>, Julie Funai <JFunai@lipsonnellson.com>, Jennifer Arledge <jarledge@sgroandroger.com>

On Tuesday I sent the proposed Order to all of you. On Wednesday I sent the proposed Order to you again after correcting two typographical errors. My Tuesday email asked you to please let me know if you have any proposed changes regarding the same.

Having heard nothing from any of you, I will be submitting the same to the Court.

Attached is yet another copy of the proposed Order.

Thank you,

----- Forwarded message -----

From: **David Sampson** <davidsampsonlaw@gmail.com>

Date: Tue, May 11, 2021 at 11:35 AM

Subject: Russo

To: Shannon Splaine <ssplaine@lgclawoffice.com>, Leonard Fink <lfink@springelfink.com>, Julie Funai <JFunai@lipsonnellson.com>, Jennifer Arledge <jarledge@sgroandroger.com>

Based on the May 3, 2021 Minute Order the Court and the comments from the Court at the hearing today, I have prepared the attached proposed Order on the matter. Please let me know if you have any proposed changes regarding the same.

Thank you,

--  
**David Sampson, Esq.**

**Certified Personal Injury Specialist** (Nevada Justice Association, State Bar of Nevada)

**Trial Lawyer of the Year** (Nevada Reptile Trial Lawyers 2017)

**The Law Office of David Sampson, LLC.**

630 S. 3rd St.

Las Vegas NV 89101

Phone: (702) 605-1099

Fax: (888) 209-4199

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This communication in no way constitutes an attorney/client agreement, and no such attorney/client relationship arises unless and until an attorney/client contract is signed by the attorney and client.

Thank you.

--  
**David Sampson, Esq.**

**Certified Personal Injury Specialist** (Nevada Justice Association, State Bar of Nevada)

**Trial Lawyer of the Year** (Nevada Reptile Trial Lawyers 2017)

**The Law Office of David Sampson, LLC.**



630 S. 3rd St.  
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This communication in no way constitutes an attorney/client agreement, and no such attorney/client relationship arises unless and until an attorney/client contract is signed by the attorney and client.

Thank you.

---

**2 attachments**



**656. Order on Motion to Set Aside.pdf**  
230K



**656. Order on Motion to Set Aside.pdf**  
202K

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Simone Russo, Plaintiff(s)

CASE NO: A-17-753606-C

7 vs.

DEPT. NO. Department 16

8 Cox Communications Las Vegas,  
9 Inc., Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order was served via the court's electronic eFile system to all  
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 5/26/2021

15 Michael Merritt

michael.merritt@mccormickbarstow.com

16 Tricia Dorner

tricia.dorner@mccormickbarstow.com

17 "David Sampson, Esq. " .

davidsampsonlaw@gmail.com

18 Amanda Nalder .

amanda@davidsampsonlaw.com

19 Chris Turtzo .

turtzo@morrisullivanlaw.com

20 Kristin Thomas .

kristin.thomas@mccormickbarstow.com

21 Michael R Merritt .

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22 Shannon Splaine

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23 Barbara Pederson

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24 David Clark

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25 Debra Marquez

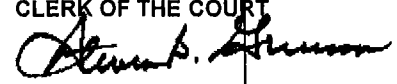
dmarquez@lipsonneilson.com

26  
27  
28

1	Jonathan Pattillo	JPattillo@springelfink.com
2	Ramiro Morales	rmorales@mfrlegal.com
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13	David Sampson	davidsampsonlaw@gmail.com
14	Ginger Bellamy	gbellamy@lgclawoffice.com

**Question No. 27 – Document No. 14**

**Question No. 27 – Document No. 14**



1 **NOE**  
2 DAVID F. SAMPSON, ESQ.,  
3 Nevada Bar No. 6811  
4 LAW OFFICE OF DAVID SAMPSON  
5 630 S. 3<sup>rd</sup> Street  
6 Las Vegas, NV 89101  
7 Tel: 702-605-1099  
8 Fax: 888-209-4199  
9 Email: david@davidsampsonlaw.com  
10 *Attorney for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

11 SIMONE RUSSO,  
12 )  
13 )  
14 Plaintiff, )  
15 )

16 vs. )

CASE NO: A-17-753606-C  
DEPT. NO: XVI

17 COX COMMUNICATIONS LAS VEGAS, )  
18 INC., D/B/A COX COMMUNICATIONS, )  
19 IES RESIDENTIAL, INC., SUNRISE )  
20 VILLAS IX HOMEOWNERS )  
21 ASSOCIATION, J & G LAWN )  
22 MAINTENANCE, KEVIN BUSHBAKER, )  
23 PWJAMES MANAGEMENT & )  
24 CONSULTING, LLC., AND DOES I - V, )  
25 and ROE CORPORATIONS I - V, )  
26 inclusive, )  
27 )  
28 )

Defendants. )

**NOTICE OF ENTRY**

TO: All Defendants  
TO: Counsel for Defendants

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order Denying  
SUNRISE's Motion to Set Aside and/or Amend Judgment, and Order on Plaintiff's Motion to  
Enforce Settlement was entered in the above entitled matter on the 26<sup>th</sup> day of May, 2021.

///

///

1 a copy of which is attached hereto.

2 DATED THIS 26<sup>th</sup> day of May, 2021

3 LAW OFFICE OF DAVID SAMPSON, LLC.

4  
5 BY: /s/ *David Sampson*

6 DAVID SAMPSON, ESQ.

7 Nevada Bar No. 6811

8 LAW OFFICE OF DAVID SAMPSON

9 630 S. 3<sup>rd</sup> Street

10 Las Vegas, NV 89101

11 Tel: 702-605-1099

12 Fax: 888-209-4199

13 Email: david@davidsampsonlaw.com

14 *Attorney for Plaintiff*

1  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICE OF DAVID SAMPSON, and that on this 26<sup>th</sup> day of May, 2021, I served a copy of the foregoing **NOTICE OF ENTRY** via Electronic Service through the Court's Online filing System to all parties on the eservice list.

/s/ Amanda Nalder  
An employee of The Law Office of David Sampson, LLC

1 **ORD**

2 DAVID F. SAMPSON, ESQ.  
3 Nevada Bar No. 6811  
4 LAW OFFICE OF DAVID SAMPSON, LLC.  
5 630 S. 3rd Street  
6 Las Vegas, NV 89101  
7 Tel: 702-605-1099  
8 Fax: 888-209-4199  
9 Email: david@davidsampsonlaw.com  
10 *Attorney for Plaintiff*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 SIMONE RUSSO, )  
14 )  
15 Plaintiff, )  
16 )  
17 vs. )  
18 )  
19 COX COMMUNICATIONS LAS VEGAS, )  
20 INC., D/B/A COX COMMUNICATIONS, )  
21 IES RESIDENTIAL, INC., SUNRISE )  
22 VILLAS IX HOMEOWNERS )  
23 ASSOCIATION, J & G LAWN )  
24 MAINTENANCE, KEVIN BUSHBAKER, )  
25 PWJAMES MANAGEMENT & )  
26 CONSULTING, LLC., J. CHRIS )  
27 SCARCELLI, DOE LANDSCAPER, )  
28 RICHARD DUSLAK, JUSTIN SESMAN, )  
AND DOES I-V, and ROE )  
CORPORATIONS I-V, inclusive, )  
Defendants. )

CASE NO: A-17-753606-C  
DEPT. NO: XVI

**ORDER ON DEFENDANT'S MOTION  
TO SET ASIDE AND/OR AMEND  
JUDGMENT, AND ORDER ON  
PLAINTIFF'S MOTION TO ENFORCE  
SETTLEMENT**

**ORDER ON DEFENDANT'S MOTION TO SET ASIDE AND/OR AMEND JUDGMENT  
AND ORDER ON PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT**

Defendant SUNRISE's motion to set aside and/or amend judgment and Plaintiff's motion to enforce settlement, having come on for hearing the 3<sup>rd</sup> day of March, 2021, the parties appearing by and through their counsel of record, the Court having reviewed the papers submitted, having heard oral argument, and good cause appearing, the Court rules as follows:



1 The Court notes that the pleadings and records in this matter confirm the following  
2 **FINDINGS OF FACT:**

3 RUSSO filed the Complaint in this matter on April 6, 2017.

4  
5 The Court GRANTED RUSSO's Motion to Amended the Complaint in this matter to add  
6 claims against Defendants RICHARD DUSLAK ("DUSLAK") and JUSTIN SESMAN  
7 ("SESMAN") on February 7, 2018.

8 RUSSO served the Amended Complaint on Defendant SESMAN on February 13, 2018.

9 RUSSO served the Amended Complaint on Defendant DUSLAK on February 14, 2018.

10 Neither DUSLAK nor SESMAN made any appearance in the instant litigation.

11 The Court Clerk entered a Default against Defendant DUSLAK on September 4, 2019.

12 The Court Clerk entered a Default against Defendant SESMAN on September 13, 2019.

13  
14 Trial commenced in this matter on September 9, 2019, which trial resulted in a mistrial  
15 due to the conduct of one of the venire members. Trial again commenced on October 10, 2019.  
16 The October 10, 2019 trial concluded on October 18, 2019 when the active parties advised the  
17 Court that a settlement had been reached in this action as to certain parties. The transcript from  
18 October 18, 2019 confirms that the active parties in this matter advised the Court on that date  
19 that a settlement had been reached as to the active parties in this matter.  
20

21 The October 18, 2019 transcript further confirms the settling parties agreed that "there are  
22 two other parties in this case who have been defaulted [DUSLAK and SESMAN]" and that "this  
23 settlement does not affect them." See, October 18, 2019 transcript at P. 6 L. 16-21. The  
24 October 18, 2019 transcript further confirms that the settling parties agreed the settlement only  
25 involved the parties that had "actively litigated and PW JAMES". See October 18, 2019  
26 transcript at P. 8 L. 2-3. The October 18, 2019 transcript also confirms the settling parties  
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1 agreed that “nothing in any of these releases or settlement . . . affects any rights Dr. Russo may  
2 have against any person or entity related to the claims of the two individuals who have been  
3 defaulted [DUSLAK and SESMAN]”. See, October 18, 2019 transcript at P. 11 L. 3-9.

4  
5 Counsel for the settling parties then discussed reducing the settlement to writing,  
6 whereupon counsel for the Plaintiff confirmed that in drafting any release or the like related to  
7 the settlement:

8 the terms of whatever documents we sign or that my client has asked to sign  
9 comport with what was discussed Wednesday, and what's being discussed today,  
10 and no new terms, and those types of things. And, I guess, most of all that nothing  
11 in any of these releases or any of the settlement affects any rights Dr. Russo may  
12 have against any person or entity related to the claims of the two individuals who  
13 have been defaulted, and any claims that they may have against anybody would  
14 not be affected by this settlement. So as long as we're clear on all of that.

15 *Id* at P. 10 L. 24 – P. 11 L. 12.

16 The settling parties agreed that nothing in any of the settlement documents would affect  
17 any rights Plaintiff may have against DUSLAK and/or SESMAN.

18 At a subsequent hearing on November 7, 2019 counsel for SUNRISE asked that  
19 DUSLAK and SESMAN be included as releasees if it was determined they were employees of  
20 Defendants. Counsel for RUSSO stated that there was no agreement to release DUSLAK and/or  
21 SESMAN when the settlement was placed on the record on October 18, 2019. Counsel for  
22 RUSSO stated, “this idea that if they're employees, then Sesman and Duslak are out. That was  
23 not agreed to.” See, November 7, 2019 transcript at P. 23 L. 12-15. Counsel for RUSSO  
24 continued by noting that on October 18, 2019 “we put on the record -- we're not waiving,  
25 releasing, or otherwise affecting anything against Sesman or Duslak. I don't think anyone would  
26 dispute that . . . it was a pretty significant point that day.” *Id* at P. 25 L. 6-16.

1 The Court then asked SUNRISE's counsel, "Mr. Fink, are we disputing that?" *Id* at P. 25  
2 L. 21-22. Counsel for SUNRISE answered, "My best recollection is that when Mr. Sampson  
3 said he was specifically retaining his rights to go against Mr. Sesman and Mr. Duslak, we all  
4 agreed to that." *Id* at P. 26 L. 2-5.

6 The Court then gave the settling parties an opportunity to reduce the terms of the  
7 settlement placed on the record on October 18, 2019 to writing. Counsel for RUSSO  
8 commented that, in reducing the settlement to writing, "along the lines of Sesman and Duslak,  
9 all rights against them, anybody who insures them, you know, all of those are preserved.  
10 They're not affected. I would like to make sure that is crystal clear in whatever iteration we end  
11 up with." *Id* at P. 40 L. 16-22.

13 In reducing the terms of the settlement placed on the record on October 18, 2019 to  
14 writing, the agreement the settling parties signed stated that RUSSO was preserving all rights to  
15 proceed against DUSLAK and SESMAN, and that neither DUSLAK and/or SESMAN were  
16 being released even in the event they were subsequently deemed SUNRISE employees. The  
17 agreement stated that "PLAINTIFF", "Dr. SIMONE RUSSO" was releasing SUNRISE  
18 "EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN". *See*, Settlement  
19 Agreement at P. 1 (emphasis in original). Each of the Defendants included in the agreement  
20 were identified as including the Defendants' respective employees, with the clear exception of  
21  
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1 SUNRISE. On page one of the agreement the parties are identified. Defendant IES  
2 RESIDENTIAL, INC., is identified as:

3 IES RESIDENTIAL, INC. (hereinafter "IES") and its affiliated companies, and  
4 each of their respective past, present and future officers, directors, members,  
5 managers, agents, representatives, shareholders, partners, associates, employees,  
6 attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees,  
7 transferees, successors, assigns, heirs, divisions, contractors, joint ventures,  
8 special purpose entities, legal and equitable owners and insurers;

9 *Id.*

10 Defendant COX is identified as:

11 COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX  
12 COMMUNICATIONS (hereinafter "COX") and its affiliated companies, and  
13 each of their respective past, present and future officers, directors, members,  
14 managers, agents, representatives, shareholders, partners, associates, employees,  
15 attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees,  
16 transferees, successors, assigns, heirs, divisions, contractors, joint ventures,  
17 special purpose entities, legal and equitable owners and insurers;

18 *Id.*

19 Defendant SUNRISE however is identified as:

20 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (hereinafter  
21 "SUNRISE") and its affiliated companies, and each of their respective past,  
22 present and future officers, directors, members, managers, agents, representatives,  
23 shareholders, partners, associates, insurers (Community Association  
24 Underwriters, Inc., QBE Insurance Corporation, Alliant Insurance Services, Inc.,  
25 DSCM, Inc. and Armour Risk Management, Inc. - but only as it relates to  
26 SUNRISE), **EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN  
27 OR ANYONE ASSOCIATED OR AFFILIATED WITH THEM,  
28 INCLUDING ANY ACTUAL OR POTENTIAL INSURER (per the  
stipulation attached in exhibit "A")**, attorneys, subsidiaries, predecessors,  
beneficiaries, grantors, grantees, vendees transferees, successors, assigns, heirs,  
divisions, contractors, joint ventures, special purpose entities, legal and equitable  
owners;

*Id* (emphasis in original).

The word "employees" is not used in the description of SURNISE as a Defendant.

Additionally, on page 4 of the release, the description of the released parties includes all of

1 Defendants' "employees *EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN* . .  
2 .". *Id* at P. 4 (emphasis in original). When referencing the employees of any of the settling  
3 Defendants it was made more than clear that the term "employees" who were being released did  
4 not include DUSLAK or SESMAN as releasees.  
5

6 The settlement agreement further stated, "PLAINTIFF [RUSSO] shall retain all rights to  
7 pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN". *Id* at P. 4. The  
8 settlement agreement further confirmed, "ANY LANGUAGE IN THIS RELEASE THAT IS  
9 CONTRARY TO THE LANGUAGE OF THIS SPECIFIC PARAGRAPH, AND/OR ANY  
10 LANGUAGE THAT WOULD BE READ TO IN ANY WAY IMPACT PLAINTIFF'S  
11 RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN SESMAN . . . SHALL BE  
12 DEEMED NULL AND VOID." *Id* (emphasis in original).  
13

14 RUSSO filed an Application for Judgment by Default on October 31, 2019 which  
15 Application noted that defaults had previously been entered against Defendants DUSLAK and  
16 SESMAN, and which Application sought Judgment against DUSLAK and SESMAN in the  
17 amount of \$25,000,000.00. The Application for Judgment by Default was served on all parties  
18 in this matter on October 31, 2019.  
19

20 On October 31, 2019 Joshua Raak, the Deputy Clerk of the Court, sent Notice of Hearing  
21 to all active parties to this matter, including SUNRISE, which notified the said parties that  
22 RUSSO's Application for Judgment by Default would be heard by the Court on December 17,  
23 2019.  
24

25 There is no record of any of the parties filing any opposition(s) to RUSSO's Application  
26 for Judgement by Default. None of the Defendants in this matter appeared at the December 17,  
27 2019 hearing on RUSSO's Application for Judgment by Default, nor did any of the Defendants,  
28

1 or any other parties or non-parties, contest RUSSO's Application for Judgment by Default.  
2 Following the hearing on RUSSO's Application for Judgment by Default, the Court entered  
3 final Judgment in favor of RUSSO and against DUSLAK and SESMAN in the amount of  
4 \$25,000,000.00 with interest accruing from the date of entry until paid in full. Notice of Entry  
5 of the said final Judgment was served on all parties to this matter on December 17, 2019.  
6

7 There is no record of any motion being filed under NRCP 59 to alter or amend the  
8 Judgment within 28 days after service of written notice of entry of the said Judgment. Indeed,  
9 there is no record of any such motion being filed at any time in 2019 or in 2020. There is no  
10 record of any motion being filed under NRCP 60 for relief from the final Judgment in this  
11 matter within six months after the date of the proceeding or after the date of service of the  
12 written notice of entry of the duly entered December 17, 2019 Judgment. Indeed, there is no  
13 record of any such motion being filed at any time in 2019 or in 2020.  
14

15 With a final Judgment having been duly entered in this matter on December 17, 2019 and  
16 notice of entry of the same being served on the same day, and no request to set aside the same  
17 under NRCP 59, nor any request for relief under NRCP 60 being filed, the Court statistically  
18 closed this case on May 14, 2020.  
19

20 SUNRISE filed the instant motion to set aside and/or amend judgment on January 21,  
21 2021. Non-Party QBE filed a joinder to the said motion then subsequently withdrew its joinder  
22 to the same.  
23

24 The Court makes the following **CONCLUSIONS OF LAW**:

25 Regarding SUNRISE's motion to set aside and/or amend the Judgment entered in this  
26 matter, NRCP 59(e) states "a motion to alter or amend a judgment must be filed no later than 28  
27 days after service of written notice of entry of judgment." SUNRISE's motion to set aside  
28

1 and/or alter or amend the final Judgment in this matter was filed on January 21, 2021, which  
2 was over a year after Notice of Entry of Judgment was served on the parties in this matter.  
3 SUNRISE's motion to set aside or alter the Judgment was not filed within 28 days after Notice  
4 of Entry of Judgment was served as required under NRCP 59(e) and is therefore denied.  
5

6 Additionally, the Court finds that, in light of the procedural history of the case, there are  
7 no grounds to amend or set aside the Judgment pursuant to NRCP 60(a). The Court finds that  
8 there are no clerical mistakes, oversights or omissions in the duly entered Judgment. The Court  
9 further finds that the final Judgment in his matter was entered exactly as sought in Plaintiff's  
10 Application for Default judgment, which was provided to the active parties in this matter and  
11 which none of the active parties contested. The Court therefore denies SUNRISE's request for  
12 relief under NRCP 60(a).  
13

14 The Court further finds that SUNRISE failed to establish grounds pursuant to NRCP 60(b)  
15 (1)-(6) to amend or set aside the Default Judgment in this matter. The Court finds that relief is  
16 not warranted under NRCP 60(b)(1) as SUNRISE has not presented the Court with evidence of  
17 mistake, surprise, or excusable neglect that the Court in its discretion would find warranted any  
18 such relief. The Court further finds that relief is not warranted under NRCP 60(b)(2) as  
19 SUNRISE has not presented the Court with evidence of newly discovered evidence that, with  
20 reasonable diligence, could not have been discovered in time to move for a new trial under  
21 NRCP 59(b) that would cause the Court to exercise its discretion to grant such relief. The Court  
22 also finds that relief is not warranted under NRCP 60(b)(3) as SUNRISE has not presented the  
23 Court with evidence of fraud, misrepresentation, or misconduct by any opposing party that  
24 would cause the Court to exercise its discretion to grant such relief.  
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1           Additionally, under NRCP 60(c)(1),

2           A motion under Rule 60(b) must be made within a reasonable time-and for  
3           reasons (1), (2), and (3) no more than 6 months after the date of the proceeding or  
4           the date of service of written notice of entry of judgment or order, whichever date  
5           is later. The time for filing the motion cannot be extended under Rule 6(b).

6           SUNRISE's motion to set aside and/or alter or amend the Judgment in this matter was  
7           filed on January 21, 2021, which was over one year after Notice of Entry of Judgment was  
8           served on the parties in this matter on December 17, 2019. SUNRISE did not file a request for  
9           relief under NRCP 60(b) (1), (2), or (3) within 6 months after Notice of Entry of Judgment was  
10          served as required under NRCP 60(c)(1). SUNRISE's requests for relief under NRCP 60(b) (1),  
11          (2), and/or (3) are therefore also denied as untimely.

12          The Court also finds SUNRISE is not entitled to relief under NRCP 60(b)(4). The  
13          provisions of NRCP 60(b)(4) concerning void judgments "is normally invoked in a case where  
14          the court entering the challenged judgment did not have jurisdiction over the parties." *Misty*  
15          *Management v. District Court*, 83 Nev. 180, 182, 426 P.2d 728, 729 (1967) (citing *LaPotin v.*  
16          *LaPotin* 75 Nev. 264, 339, P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372, P.2d 679  
17          (1962)). Judgments are typically deemed "void" in cases where the court entering the  
18          challenged judgment was itself disqualified from acting, e.g., *Osman v. Cobb*, 77 Nev. 133, 360  
19          P.2d 258 (1961), or did not have jurisdiction over the parties, e.g., *LaPotin v. LaPotin*, 75 Nev.  
20          264, 339 P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372 P.2d 679 (1962), or did not have  
21          jurisdiction over the subject matter of the litigation. *Misty Management v. District Court*, 83  
22          Nev. 180, 426 P.2d 728 (1967).

23          DUSLAK and SESMAN were residents of Clark County Nevada when the underlying  
24          incident occurred. DUSLAK and SESMAN were both served with this suit in Clark County  
25          Nevada. The Court has jurisdiction over DUSLAK and SESMAN as well as the subject matter  
26          incident occurred. DUSLAK and SESMAN were both served with this suit in Clark County  
27          Nevada. The Court has jurisdiction over DUSLAK and SESMAN as well as the subject matter  
28          incident occurred.



1 of this negligence action. SUNRISE's motion does not assert that there were any jurisdictional  
2 issues over the parties or the subject matter. SUNRISE did not present any evidence of any  
3 jurisdictional issues. Relief is therefore not warranted under NRCP 60(b)(4).  
4

5 NRCP 60(b)(5) allows a court to grant relief from a judgment if the judgment has been  
6 satisfied, released, or discharged. As noted above, SUNRISE did not present evidence that the  
7 duly entered Default Judgment against DUSLAK and SESMAN was satisfied, released, or  
8 discharged. The record is replete with examples of RUSSO confirming, and SUNRISE and the  
9 other active Defendants agreeing, that the settlement did not affect RUSSO's rights against  
10 DUSLAK or SESMAN in any way, that the settlement did not include SUNRISE employees,  
11 that the settlement did not include DUSLAK or SESMAN as employees of any of the  
12 Defendants, and that the settlement agreement specifically and completely excluded DUSLAK  
13 and SESMAN as releasees in all respects. The record further confirms that SUNRISE agreed  
14 RUSSO "shall retain all rights to pursue any claims against RICHARD DUSLAK and/or  
15 JUSTIN SESMAN". As the Judgment against DUSLAK and SESMAN was not satisfied,  
16 released, or discharged, relief is not warranted under NRCP 60(b)(5).  
17

18 NRCP 60(b)(6) permits relief from a judgment for "any other reason that justifies  
19 relief". During the hearing on this matter counsel for RUSSO argued that a request for relief  
20 under NRCP 60(b)(6) must present grounds "other" than those enumerated elsewhere in NRCP  
21 60(b). In response counsel for SUNRISE stated, "Mr. Sampson says that, well, that's going to  
22 mean something different than the grounds that might be discussed in (1), (2), (3), (4), or (b) (1)  
23 (2) (3) (4), but I don't know if there's any law that says that." See Transcript of March 3, 2021  
24 hearing at P. 68 L. 25 – P. 69 L. 4. The Court finds that the plain language of NRCP 60(b)(6)  
25 which permits relief for "any other reason that justifies relief" requires that any relief sought  
26  
27  
28

1 under NRCP 60(b)(6) be for grounds "other" than the grounds set forth elsewhere in NRCP  
2 60(b)(1-5). SUNRISE has not presented any authority indicating a party may seek relief under  
3 NRCP 60(b)(6) for reasons enumerated elsewhere in NRCP 60(b)(1-5). Indeed such a reading  
4 would be contrary to the purposes of NRCP 60(b)(1-5) as well as NRCP 60(c)(1). As  
5 SUNRISE has not provided the Court with "any other reason" that would justify relief from the  
6 Judgment, SUNRISE's request for relief under NRCP 60(b)(6) motion is denied.  
7

8         SUNRISE's motion requests relief under NRCP 60(d)(3). NRCP 60(d)(3) permits a  
9 court to set aside a judgment "for fraud upon the court." As the Nevada Supreme Court held in  
10 *NC-DSH Inc. v. Garner*, 218 P.3d 853, 858, 125 Nev. 647, 654 (2009):  
11

12         The problem lies in defining what constitutes "fraud upon the court." Obviously, it  
13 cannot mean any conduct of a party or lawyer of which the court disapproves;  
14 among other evils, such a formulation "would render meaningless the [time]  
15 limitation on motions under [Rule] 60(b)(3)." *Kupferman v. Consolidated*  
16 *Research Mfg. Corp.*, 459 F.2d 1072, 1078 (2d Cir. 1972) (Friendly, J.), cited with  
approval in *Occhiuto*, 97 Nev. at 146 n. 2, 625 P.2d at 570 n. 2, and *Murphy*, 103  
Nev. at 186, 734 P.2d at 739.

17         *Id.* at 858, 654.

18         The Court went on to state:

19         The most widely accepted definition, which we adopt, holds that the concept  
20 embrace[s] only that species of fraud which does, or attempts to, subvert the  
21 integrity of the court itself, or is a fraud perpetrated by officers of the court so that  
22 the judicial machinery cannot perform in the usual manner its impartial task of  
adjudging cases . . . and relief should be denied in the absence of such conduct.

23         *Id.*

24         For a judgment to be set aside for fraud on the court, "the moving party must show clear  
25 and convincing evidence establishing fraud. *U.S. v. Estate of Stonehill*, 660 F.3d 415, 443 (9<sup>th</sup>  
26 Cir. 2011) (as cited in *Hsu v. Ubs Fin. Servs.* 2014 U.S. Dist. LEXIS 29792 (2014)).  
27

28         ///

1 The *Stonehill* Court went on to note:

2 Fraud on the court should, we believe, embrace only that species of fraud which  
3 does, or attempts to, defile the court itself. . . . [Movant] must demonstrate, by  
4 clear and convincing evidence, an effort . . . to prevent the judicial process from  
5 functioning in the usual manner. They must show more than perjury or  
6 nondisclosure of evidence, unless that perjury or nondisclosure was so  
7 fundamental that it undermined the workings of the adversary process itself.

8 *Id* at 444-445.

9 SUNRISE's motion does not set forth any proof of wrongdoing by RUSSO, his counsel,  
10 or the Court, and certainly does not provide clear and convincing evidence of any fraud that  
11 would subvert the integrity of the Court itself. In its Reply filed February 25, 2021 SUNRISE  
12 expressly withdrew any intimation or accusation of RUSSO's counsel committing any fraud or  
13 misconduct in securing the Default Judgment in this matter. *See* Reply at P. 5 footnote 5. For  
14 these reasons, any request for relief under NRCP 60(d)(2) is denied.

15 Based on the foregoing IT IS HEREBY ORDERED ADJUDGED AND DECREED that  
16 Defendant Sunrise Villa IX Homeowners Association's Motion to Set Aside and/or Amend the  
17 Judgment in this matter be, and hereby is, DENIED.

18 Regarding RUSSO's motion to enforce the settlement, under EDCR 7.50 an agreement  
19 between parties is effective if the same is entered in the minutes and/or is in writing subscribed  
20 by the party against whom the same shall be alleged or the party's attorney. The agreement that  
21 was placed on the record on October 18, 2021, in which the active parties to this suit agreed: 1)  
22 that RUSSO's rights against DUSLAK and/or SESMAN are not affected by the settlement; 2)  
23 that the settlement did not include DUSLAK and/or SESMAN; and 3) that nothing in any  
24 subsequent writing confirming the settlement agreement would affect any rights RUSSO may  
25 have against DUSLAK and/or SESMAN, is enforceable. RUSSO's motion to enforce "requests  
26  
27  
28

1 this Court enforce the settlement agreement confirmed on the record on October 18, 2019 and  
2 hold that the settlement did not affect SIMONE's rights against DUSLAK and/or SESMAN."  
3 *See* Motion at P. 8 L. 2-5. It is hereby ORDERED ADJUDGED AND DECREED that  
4 RUSSO's motion to enforce settlement is GRANTED. It is further ORDERED ADJUDGED  
5 AND DECREED that the settlement entered into in this matter between the active parties and  
6 PW JAMES did not affect any of RUSSO's rights against DUSLAK and/or SESMAN to any  
7 degree.  
8

9  
10       SUNRISE directs the Court to verbiage in the stipulation attached to the settlement  
11 agreement in which RUSSO and SUNRISE stipulated that for purposes of this litigation, in  
12 August 2016 DUSLAK and SESMAN were natural persons who were in the service of  
13 SUNRISE as independent contractors whom SUNRISE compensated and whom SUNRISE had  
14 the non-exclusive right to direct and control. *See*, SUNRISE's Consolidated Opposition to  
15 Plaintiff's Motions to Enforce Settlement and Reply to QBE's Motion to Enforce at P. 2 L. 12-  
16 27.  
17

18       SUNRISE argues that the language "as independent contractors" found in the stipulation  
19 attached to the Agreement impacts RUSSO's rights against DUSLAK and/or SESMAN and  
20 releases DUSLAK and SESMAN if they are found to be employees of SUNRISE. SUNRISE's  
21 position is without merit as the plain language on page 4 of the settlement agreement states  
22 "PLAINTIFF [RUSSO] shall retain all rights to pursue any claims against RICHARD  
23 DUSLAK and/or JUSTIN SESMAN".  
24

25       The settlement agreement also states on page 4, "ANY LANGUAGE IN THIS  
26 RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC  
27 PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY  
28

1 IMPACT PLAINTIFF'S RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN  
2 SESMAN . . . SHALL BE DEEMED NULL AND VOID." The stipulation attached to the  
3 settlement Agreement is referenced multiple times in the settlement Agreement itself and is  
4 incorporated into the Agreement. See, Bryan A. Garner, ed. (2001), *Black's Law*  
5 *Dictionary* (2nd pocket ed.). St. Paul, MN: West Group. p. 341. ISBN 0-314-25791-8.  
6 Incorporation by reference is the act of including a second document within another document  
7 by only mentioning the second document. When a document is mentioned in a main document,  
8 the entire second document is made a part of the main document. *Id.* When a document is  
9 referenced in a contract, the referenced document becomes a part of the contract for all  
10 purposes. *Lincoln Welding Works, Inc. v. Ramirez*, 98 Nev. 342, 647 P.2d 381 (1982).

11  
12 The Nevada Supreme Court has held that "where two instruments were executed  
13 together as one transaction they constituted but one instrument or contract, although written on  
14 different pieces of paper." *Haspray v. Pasarelli*, 79 Nev. 203, 207-208, 380 P.2d 919, (1963).

15  
16 The *Haspray* Court went on to say:

17  
18 They would have to be taken and construed together as if written on the same  
19 paper and signed by both parties. The law in such case deals with the matter as it  
20 really was – as one transaction – and therefore all the papers drawn up  
21 simultaneously bearing the same subject are held to be but one contract, although  
22 written on several papers.

23  
24 *Id.*

25 As SUNRISE argues that the language in the stipulation identifying DUSLAK and  
26 SESMAN "as independent contractors" impacts RUSSO's rights against DUSLAK and  
27 SESMAN, and as the Agreement states that "ANY LANGUAGE THAT WOULD BE READ  
28 TO IN ANY WAY IMPACT PLAINTIFF'S RIGHTS AGAINST RICHARD DUSLAK  
and/or JUSTIN SESMAN . . . SHALL BE DEMED NULL AND VOID", IT IS HEREBY

1 ORDERED ADJUDGED AND DECREED that the language "as independent contractors" as  
2 found in the stipulation is deemed null and void pursuant to the plain language found on page 4  
3 of the settlement agreement.  
4

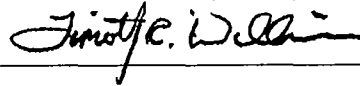
5 Paragraph 15 of the agreement, which is found on page 7 states:

6 If any provision of this Agreement is determined by a court of competent  
7 jurisdiction to be illegal, invalid, or unenforceable, such provision will be deemed  
8 to be severed and deleted from the Agreement as a whole, and neither such  
9 provision nor its severance and deletion shall in any way affect the validity of the  
10 remaining provisions of the Agreement.

11 As the language "as independent contractors" is deemed null and void, IT IS HEREBY  
12 ORDERED ADJUDGED AND DECREED that the words "as independent contractors" are  
13 severed and deleted from the Agreement as set forth in paragraph 15, and the remainder of the  
14 Agreement and stipulation, with the words "as independent contractors" deleted shall remain in  
15 full force and effect.

16 SO ORDERED.

17 Dated this 26th day of May, 2021

18   
19

ZJ

20 028 C04 6CB9 C18D  
21 Timothy C. Williams  
22 District Court Judge

23 Submitted by:  
24 LAW OFFICE OF DAVID SAMPSON, LLC.

25 BY: /s/ David Sampson

26 DAVID SAMPSON, ESQ.  
27 Nevada Bar No.6811  
28 LAW OFFICE OF DAVID SAMPSON, LLC.  
630 S. 3<sup>rd</sup> St.  
Las Vegas NV 89101  
Attorney for Plaintiff



Amanda Nalder <phoeny27@gmail.com>

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**Fwd: Russo**

2 messages

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**David Sampson** <davidsampsonlaw@gmail.com>

Fri, May 14, 2021 at 11:21 AM

To: Shannon Splaine <:ssplaine@lgclawoffice.com>, Leonard Fink <lfink@springelfink.com>, Amanda Nalder <amanda@davidsampsonlaw.com>, Julie Funai <JFunai@lipsonneilson.com>, Jennifer Arledge <jarledge@sgroandroger.com>

On Tuesday I sent the proposed Order to all of you. On Wednesday I sent the proposed Order to you again after correcting two typographical errors. My Tuesday email asked you to please let me know if you have any proposed changes regarding the same.

Having heard nothing from any of you, I will be submitting the same to the Court.

Attached is yet another copy of the proposed Order.

Thank you,

----- Forwarded message -----

From: **David Sampson** <davidsampsonlaw@gmail.com>

Date: Tue, May 11, 2021 at 11:35 AM

Subject: Russo

To: Shannon Splaine <:ssplaine@lgclawoffice.com>, Leonard Fink <lfink@springelfink.com>, Julie Funai <JFunai@lipsonneilson.com>, Jennifer Arledge <jarledge@sgroandroger.com>

Based on the May 3, 2021 Minute Order the Court and the comments from the Court at the hearing today, I have prepared the attached proposed Order on the matter. Please let me know if you have any proposed changes regarding the same.

Thank you,

--

David Sampson, Esq.

Certified Personal Injury Specialist (Nevada Justice Association, State Bar of Nevada)

Trial Lawyer of the Year (Nevada Reptile Trial Lawyers 2017)

**The Law Office of David Sampson, LLC.**

630 S. 3rd St.

Las Vegas NV 89101

Phone: (702) 605-1099

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This communication in no way constitutes an attorney/client agreement, and no such attorney/client relationship arises unless and until an attorney/client contract is signed by the attorney and client.

Thank you.

--

David Sampson, Esq.

Certified Personal Injury Specialist (Nevada Justice Association, State Bar of Nevada)

Trial Lawyer of the Year (Nevada Reptile Trial Lawyers 2017)

**The Law Office of David Sampson, LLC.**

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Thank you.

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**2 attachments**

 **656. Order on Motion to Set Aside.pdf**  
230K

 **656. Order on Motion to Set Aside.pdf**  
202K

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1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 Simone Russo, Plaintiff(s)

CASE NO: A-17-753606-C

7 vs.

DEPT. NO. Department 16

8 Cox Communications Las Vegas,  
9 Inc., Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order was served via the court's electronic eFile system to all  
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 5/26/2021

15 Michael Merritt

michael.merritt@mccormickbarstow.com

16 Tricia Dorner

tricia.dorner@mccormickbarstow.com

17 "David Sampson, Esq. "

davidsampsonlaw@gmail.com

18 Amanda Nalder .

amanda@davidsampsonlaw.com

19 Chris Turtzo .

turtzo@morrisullivanlaw.com

20 Kristin Thomas .

kristin.thomas@mccormickbarstow.com

21 Michael R Merritt .

Michael.Merritt@mccormickbarstow.com

22 Shannon Splaine

ssplaine@lgclawoffice.com

23 Barbara Pederson

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24 David Clark

dclark@lipsonneilson.com

25 Debra Marquez

dmarquez@lipsonneilson.com

26  
27  
28

1	Jonathan Pattillo	JPattillo@springelfink.com
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3	Ramiro Morales	rmorales@mfrlegal.com
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