

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUNRISE VILLAS IX HOMEOWNERS
ASSOCIATION,

Appellant,

vs.

SIMONE RUSSO,

Respondent.

Case No. 83115 Electronically Filed
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APPELLANT'S APPENDIX
VOLUME 2

ROBERT L. EISENBERG (SBN 950)
SARAH M. MOLLECK (SBN 13830)
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, NV 89519
775-786-6868
775-786-9716 fax
rle@lge.net
[smm@lge.net](mailto:mm@lge.net)
ATTORNEYS FOR APPELLANT

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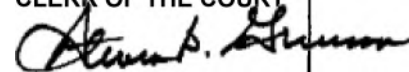
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MDGF

Will Lemkul; NV Bar No. 6715
Christopher A. Turtzo; NV Bar No. 10253
MORRIS, SULLIVAN & LEMKUL, LLP
3960 Howard Hughes Parkway, Suite 420
Las Vegas, NV 89169
Phone (702) 405-8100
Fax (702) 405-8101

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

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., AND DOES I-V, and ROE
CORPORATIONS I-V, inclusive,

Defendants.

J. CHRIS SCARCELLI,

Cross-Claimant.

vs.

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

HEARING DATE(S)
ENTERED IN
ODYSSEY
80

**DEFENDANTS/CROSS-DEFENDANTS COX
COMMUNICATIONS LAS VEGAS, INC. dba
COX COMMUNICATIONS and IES
RESIDENTIAL, INC.'S**

**(1) MOTION FOR DETERMINATION OF
GOOD FAITH SETTLEMENT**

and

**(2) MOTION FOR SUMMARY
JUDGMENT**

DEFENDANTS/CROSS-DEFENDANTS COX COMMUNICATIONS LAS VEGAS, INC. dba
COX COMMUNICATIONS and IES RESIDENTIAL, INC.'S
(1) MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT and
(2) MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendants/Cross-Defendants, COX COMMUNICATIONS LAS VEGAS, INC. dba COX COMMUNICATIONS and IES RESIDENTIAL, INC. (hereinafter "COX/IES"), by and through its attorneys of record, the law firm of Morris, Sullivan & Lemkul LLP, and hereby moves this Court for a determination of good faith settlement pursuant to NRS 17.245.

COX/IES further moves this Court for an Order dismissing all past, present and future claims for implied indemnity, equitable indemnity and contribution against settling defendants.

COX/IES further move for summary judgment of the pending cross-claims asserted by non-settling defendants Kevin Bushbaker and J. Chris Scarcelli based on NRS 17.245.

This Motion is made and based upon the attached Memorandum of Points and Authorities, the pleadings and papers on file herein, and any oral argument this Court may wish to entertain.

DATED this 16th day of October, 2019.

MORRIS, SULLIVAN & LEMKUL, LLP

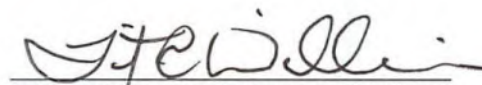
By: /s/ Christopher A. Turtzo

Will Lemkul; NV Bar No. 6715
Christopher A. Turtzo; NV Bar No. 10253
3960 Howard Hughes Parkway, Suite 420
Las Vegas, NV 89169
Attorneys for Defendants,
IES Residential, Inc., and
Cox Communications Las Vegas, Inc.,
d/b/a Cox Communications

ORDER SHORTENING TIME

Based on the declaration of Christopher A. Turtzo, Esq., and good cause appearing therefore, it is hereby ordered that Defendants' Cox Communications and IES Residential's motion for good faith settlement and summary judgment shall be heard on the 18th day of Oct, 2019, at 9:00 a.m. in Department 16 of the Eighth Judicial District Court, which is located at 200 Lewis Avenue, Las Vegas, Nevada 89155.

Dated: October 16th, 2019


THE HON. TIMOTHY WILLIAMS
DISTRICT COURT JUDGE

Submitted by:

MORRIS, SULLIVAN & LEMKUL, LLP

By: /s/ Christopher Turtzo
Will Lemkul; NBN 6715
Christopher Turtzo; NBN 10253
Christian Barton; NBN 14824
3960 Howard Hughes Parkway, Suite 420
Las Vegas, NV 89169
(702) 405-8100
Attorneys for IES Residential and Cox
Communications Las Vegas, Inc.

**DECLARATION OF CHRISTOPHER A. TURTZO, ESQ. IN SUPPORT OF REQUEST FOR
ORDER SHORTENING TIME**

I, Christopher A. Turtzo, Esq., depose and state as follows:

1. I am over the age of 18 and I have personal knowledge of all facts contained herein and, if called upon to testify with respect thereto, I could and would competently do so.

2. I am a partner with MORRIS, SULLIVAN, & LEMKUL counsel for Defendants IES RESIDENTIAL, INC. and COX COMMUNICATIONS LAS VEGAS, INC, d/b/a COX COMMUNICATIONS (collectively "Defendants") in the above-captioned case.

3. Several Defendants have reached a potential settlement with the Plaintiffs, the terms of which were placed on the record on October 16, 2019.

4. The settlement is contingent on a successful motion for good faith settlement and summary judgment of cross-claims asserted by non-settling Defendants Kevin Bushbaker J. Chris Scarcelli.

5. Trial is on-going.

6. In order to get a ruling on this motion and to determine whether the settlement can be finalized, Defendants request that this motion be set on shortened time.

7. During the October 16 hearing, the Court stated that the motions would be set for hearing on October 18, 2019.

8. Under penalty of perjury, I swear the foregoing is true and correct to the best of my knowledge and belief.

EXECUTED this 16th day of October, 2019, in Las Vegas, Clark County, Nevada.

/s/Christopher Turtzo

CHRISTOPHER A. TURTZO, ESQ.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff SIMONE RUSSO (hereinafter "Plaintiff") has reached a potential settlement with COX
3 COMMUNICATIONS LAS VEGAS, INC., D/B/A/ COX COMMUNICATIONS (hereinafter "COX"),
4 IES RESIDENTIAL, INC. (hereinafter "IES"), SUNRISE VILLAS IX HOMEOWNERS
5 ASSOCIATION (hereinafter "HOA"), PWJAMES MANAGEMENT & CONSULTING, LLC
6 (hereinafter "PWJ"). (collectively referred to as "SETTLING DEFENDANTS") in the total amount of
7 THREE HUNDRED FIFTY-FIVE THOUSAND DOLLARS (\$355,000.00), in exchange for Plaintiff's
8 full release of all claims SETTLING DEFENDANTS. IES/Cox's share of the settlement is \$215,000.

9 The settlement is contingent on a good faith settlement determination and summary judgment of
10 cross-claims alleged against IES/Cox by non-settling Defendants KEVIN BUSHBAKER and J. CHRIS
11 SCARCELLI.

12 The above and other terms of the settlement will be reduced to writing and signed by all of the
13 parties to the settlement. The agreement has been entered into on behalf of Plaintiff, SETTLING
14 DEFENDANTS, subject to the Court's determination that the settlement was reached in good faith. The
15 settlement reached in this matter was due to extensive arm's length negotiations between counsel for the
16 respective parties.

17 In entering into this settlement, all parties and their respective attorneys have given full and due
18 consideration to the financial conditions of the settling parties, all discovery conducted in this case, the
19 possible results of a trial, litigation costs and expenses that would be incurred absent this agreement, and
20 other financial benefits from settlement.

21 **I.**

22 **STATEMENT OF FACTS**

23 This case involves Plaintiff's claims for personal injuries from an alleged trip and fall incident
24 over a coaxial cable occurring on August 27, 2016 at Plaintiff's residence of 4617 Madreperla St., Las
25 Vegas, Nevada. The HOA was alleged to be the homeowners association inclusive of Plaintiff's
26 residence. COX/IES allegedly installed the subject coaxial cable wire, which connects to the house next
27 door to where Plaintiff lived. Mr. BUSHBAKER was alleged to be the owner of Plaintiff's residence.

1 PWJ was alleged to be the property management company for the HOA at the time of the incident. Mr.
2 Scarcelli served as property manager for Mr. Bushbaker's residence.

3 Plaintiff filed his Complaint on April 6, 2017 alleging a cause of action for premises liability.
4 Each of the named Defendants filed their respective answers to Plaintiff's complaint. Mr.
5 BUSHBAKER thereafter filed a cross-claim against COX/IES for indemnity relating to Plaintiff's
6 complaint. Mr. SCARCELLI also thereafter filed a cross-claim against COX/IES for indemnity relating
7 to Plaintiff's complaint. COX/IES answered each cross-claim as well.

8 Importantly, COX/IES did not have any contractual relationship with Mr. BUSHBAKER or Mr.
9 SCARCELLI.

10 Trial in this matter recommenced on October 7, 2019 and is presently ongoing.

11 Pursuant to arms-length negotiations, Plaintiff and the SETTLING PARTIES were able to reach
12 a settlement of all claims brought by Plaintiff in this matter, known or unknown, arising out of
13 Plaintiff's August 27, 2016 alleged incident, for THREE HUNDRED FIFTY-FIVE THOUSAND
14 DOLLARS and 00/100 (\$355,000.00). Cox/IES share of the settlement is \$215,000. This settlement is
15 contingent upon this Court's determination of good faith settlement pursuant to NRS 17.245. COX/IES
16 presently seek this Court's determination that the parties' settlement was entered into in good faith
17 pursuant to NRS 17.245.

18 The parties in this litigation have been participating in discovery and investigation regarding
19 alleged personal injury claims by Plaintiff and experts' analysis of the allegations and damages. The
20 parties have commenced trial but continued informal discussions directed towards reaching a settlement.

21 As a result of each party's efforts to evaluate which parties may be responsible for Plaintiff's
22 alleged incident, including Plaintiff's comparative negligence, Plaintiff has reached a settlement with the
23 SETTLING PARTIES. In entering into this settlement, no defendant or cross-defendant admits liability
24 of any kind relative to Plaintiff's claims, with said claims being expressly denied.

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II.

ARGUMENT

A. STANDARD OF REVIEW

Pursuant to NRS 17.245(1)(b), a defendant cannot be liable to co-defendants in a tort action for contribution or equitable indemnity if the defendant settles with the plaintiff in good faith. The Nevada Supreme Court has declined to define “good faith” under NRS 17.245(1)(b), leaving this determination “to the discretion of the trial court based upon all relevant facts available.”¹ However, the Supreme Court has recognized that the following factors may be relevant, though not exclusive or mandatory, criteria for this determination: “[t]he amount paid in settlement, the allocation of the settlement proceeds among plaintiffs, the insurance policy limits of settling defendants, the financial condition of settling defendants, and the existence of collusion, fraud or tortious conduct aimed to injure the interests of non-settling defendants.”²

The Parties continued to conduct good faith settlement negotiations as trial commenced in this matter. As a result, a direct arms-length settlement was reached between the Parties to settle Plaintiff’s claims in the amount of THREE HUNDRED FIFTY-FIVE THOUSAND DOLLARS 00/100 (\$355,000.00). Cox/IES’s share of this settlement is \$215,000.

B. SETTLEMENT

1. Amounts Paid in Settlement

In the interest of resolving this matter expeditiously, and after extensive and hard-fought litigation and negotiations between the Parties, a direct arms-length settlement of all claims was reached between the Parties in the amount of THREE HUNDRED FIFTY-FIVE THOUSAND DOLLARS 00/100 (\$355,000.00). Cox/IES’s share of this settlement is \$215,000.

2. Allocation of the Settlement Proceeds

All of the settlement funds will be paid to Plaintiff. No allocation is required.

3. Insurance Policy Limits of Settling Parties

¹ *Velsicol Chemical Corp. v. Davidson*, 107 Nev. 356, 360 (1991).

² *Doctors Co. v. Vincent*, 120 Nev. 644, 651–52 (2004) (quoting *In re MGM Grand Hotel Fire Litig.*, 570 F.Supp. 913, 927 (D.Nev.1983)).

1 COX/IES' insurance policy limits were never an issue at any point during negotiations or
2 settlement discussions. Therefore, COX/IES' insurance policy limits should not be relevant to this
3 Motion.

4 4. Financial Condition of Settling Defendants

5 COX/IES' financial condition was never an issue at any point during negotiations or settlement
6 discussions. Therefore, COX/IES' financial condition should not be relevant to this Motion.

7 5. Existence of Collusion, Fraud or Tortuous Conduct Aimed to Injure the Interests of Non-
8 Settling Defendants

9 Settlement discussions between the attorneys of record for the Parties were conducted in good
10 faith, and the settlement was the product of direct arms-length negotiations. Furthermore, no collusion,
11 fraud or tortuous conduct was involved. The Parties have reached a settlement as a result of direct arms-
12 length negotiations based upon all of the relevant facts following long, hard-fought litigation. Further,
13 the settlement represents a reasonable apportionment of COX/IES' alleged liability. Otherwise, the
14 Parties would not have agreed to the settlement amount. Based upon the foregoing, COX/IES
15 respectfully request this Court determine that the settlement between the Parties was entered into in
16 good faith.

17
18 **C. IF THIS COURT FINDS THE PARTIES' SETTLEMENT TO BE IN GOOD FAITH,**
19 **ALL PENDING COMPLAINTS, CROSS-CLAIMS AND ANY FUTURE THIRD-**
20 **PARTY CLAIMS FOR EQUITABLE INDEMNITY AND/OR CONTRIBUTION**
21 **SHOULD BE BARRED**

22 According to NRS 17.245(b), a determination of good faith settlement discharges COX/IES from
23 liability for contribution and for equitable indemnity to any other party. NRS 17.245 applies with
24 regard to any other claim, and defines equitable indemnity to mean "a right of indemnity is created by
25 the court rather than expressly provided for in a written agreement." If this Court determines that the
26 settlement reached between the Parties was in good faith, all causes of action by all parties and all future
27 claims against COX/OES regarding equitable indemnity and contribution are barred.

28 Mr. BUSHBAKER and Mr. SCARCELLI have asserted cross-claims against IES and Cox for
equitable indemnity and contribution. (See cross-claims, attached as Exs. 1 and 2.) Further, there is no
contract alleged to have existed as between Mr. BUSHBAKER and COX/IES. Likewise, there is no

1 contract alleged to have existed as between Mr. SCARCELLI and COX/IES. As a matter of fact, Cox
2 and IES are ware of no such contract.

3 The Nevada Supreme Court recently addressed the applicability of NRS 17.245 to claims other
4 than the indemnity and contribution in *Otak Nevada, L.L.C. v. Eight Jud. Dist. Ct.*, 129 Nev. Adv. Op.
5 86, --- P.3d ---- (2013). In noting the importance of “analyz[ing] a claim according to its substance,
6 rather than its label,” the Court held that “once a trial court determines that a defendant has settled in
7 good faith, NRS 17.245(1)(b) bars all claims against the settling defendant that in effect seek
8 contribution and equitable indemnity, regardless of the claim's title.”³ In order to determine if a claim
9 effectively seeks contribution or equitable indemnity in contravention of NRS 17.245(1)(b), the Court
10 directed trial courts to consider whether (1) the claim arose from the same basis on which the settling
11 defendant would be liable to the plaintiff, and (2) the claim seeks damages comparable to those
12 recoverable in contribution or indemnity actions.⁴

13 All of Mr. BUSHBAKER's and Mr. SCARCELLI's claims against COX/IES arise out of
14 Plaintiff's personal injury claims. But for Plaintiff's claims, neither Mr. BUSHBAKER nor Mr.
15 SCARCELLI would have brought a cross-action against COX/IES. These are hornbook equitable and
16 contribution claims. As there is no contract between either of the cross-complainants and COX/IES,
17 there is no contractual grounds for recovery on the cross-claims. Thus, the only causes of action Mr.
18 BUSHBAKER or Mr. SCARCELLI can properly bring against COX/IES are based on equitable
19 indemnity and/or contribution.

20 The purpose of NRS 17.245 is to bar claims against the settling party and thereby encourage
21 settlement. “[A]llowing the nonsettling defendants to seek contribution or equitable indemnity damages
22 under the guise of a differently named cause of action would defeat the legislative intent behind NRS
23
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25 ³ *Otak Nevada, L.L.C. v. Eight Jud. Dist. Ct.*, 129 Nev. Adv. Op. 86, --- P.3d ---- (2013).

26 ⁴ *Id.* (citing *Cal-Jones Props. v. Evans Pac. Corp.*, 216 Cal.App.3d 324, 264 Cal.Rptr. 737, 739
27 (Ct.App.1989); *Grant Thornton, L.L.P. v. Kutak Rock, L .L.P.*, 228 W.Va. 226, 719 S.E.2d 394, 405
28 (W.Va.2011)); See also *Rolf Jensen & Assocs. v. Eighth Judicial Dist. Court*, 128 Nev. Adv. Op. 42,
282 P.3d 743, 751 (2012) (analyzing claims for breach of contract, breach of warranty, and negligent
misrepresentation, and concluding that these claims were pre-empted by the American Disability Act
because they were “de facto claims for indemnification”).

1 17.245—to promote and encourage settlements among joint defendants.”⁵ Because NRS 17.245(1)(b)
 2 bars all contribution and equitable indemnity claims where there has been a good faith settlement, Mr.
 3 BUSHBAKER’s and Mr. SCARCELLI’s cross-claims against IES/Cox fail as matter of law. IES/Cox

4 III.

5 CONCLUSION

6 Based on the foregoing, COX/IES respectfully requests that this Court enter an Order:

- 7 1. Certifying that the settlement, as set forth above, reached between the Parties is just, fair,
 8 reasonable, and was entered into in good faith;
- 9 2. That all cross-claims for equitable indemnity and contribution against SETTLING PARTIES
 10 whether current or prospective are extinguished and forever barred; and
- 11 3. Granting summary judgment in favor of Cox and IES on the current cross-claims alleged by
 12 Mr. Bushbaker and Scarcelli.

13 Dated this 16th day of October, 2019.

15 **MORRIS, SULLIVAN & LEMKUL, LLP**

17 By: /s/ Christopher A. Turtzo

18 Will Lemkul; NV Bar No. 6715
 19 Christopher A. Turtzo; NV Bar No. 10253
 20 3960 Howard Hughes Parkway, Suite 420
 21 Las Vegas, NV 89169
 22 *Attorneys for Defendants,*
IES Residential, Inc., and
Cox Communications Las Vegas, Inc.,
d/b/a Cox Communications

28 _____
⁵ *Otak Nevada, L.L.C. v. Eight Jud. Dist. Ct.*, 129 Nev. Adv. Op. 86, --- P.3d ---- (2013).

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 1st day of October, 2019, I served a true and correct copy of the foregoing DEFENDANTS/CROSS-DEFENDANTS COX COMMUNICATIONS LAS VEGAS, INC. dba COX COMMUNICATIONS and IES RESIDENTIAL, INC.'S on all parties in this action by the Eighth Judicial District Court's Odyssey File & Serve System to:

David S. Sampson, Esq.
Law Offices of David Sampson
630 S. 3rd Street
Las Vegas, Nevada 89101
888-209-4199
Attorney for Plaintiff, Simone Russo

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

Joseph S. Meloro, Esq.
Sgro & Roger
720 South 7th St., Suite 300
Las Vegas, Nevada 89101
702-665-4120
Attorney for Defendant, Kevin Bushbaker

Leonard Fink, Esq.
Jonathon Pattillo, Esq.
Springel & Fink, LLP
10655 Park Run Dr., Suite 275
Las Vegas, Nevada 89144
702-804-0798
Attorney for Defendant, Sunrise Villas IX HOA




An Employee of MORRIS, SULLIVAN & LEMKUL, LLP

Exhibit 1

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Steven D. Grierson
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1 **ANS**

2 **ANTHONY P. SGRO, ESQ.**

3 Nevada Bar No. 3811

4 **ADRIAN A. KARIMI, ESQ.**

5 Nevada State Bar No. 13514

6 **SGRO & ROGER**

7 720 S. Seventh Street, 3rd Floor

8 Las Vegas, Nevada 89101

9 ASgro@psrlegal.com

10 Akarimi@psrlegal.com

11 Telephone: (702) 385-9595

12 Facsimile: (702) 386-2737

13 *Attorneys for Defendant Bushbaker*

9 **DISTRICT COURT**

10 **CLARK COUNTY NEVADA**

12 **SIMONE RUSSO,**

13 **Plaintiff,**

14 **vs.**

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

23 **Defendants.**

24 **KEVIN BUSHBAKER, an individual**

25 **Cross-Claimant,**

26 **vs.**

27 **COX COMMUNICATIONS LAS VEGAS**
28 **INC., DBA COX COMMUNICATIONS, IES**
29 **RESIDENTIAL INC.,**

30 **Cross-Defendant.**

CASE NO.: A753606

DEFENDANT BUSHBAKER'S
ANSWER, AND CROSS-CLAIM
AGAINST COX COMMUNICATIONS

1 COMES NOW, Defendant KEVIN BUSHBAKER (hereinafter referred to as
2 "Defendant"), by and through its attorney of record, ANTHONY P. SGRO, ESQ, of SGRO &
3 ROGER, and hereby answers Plaintiff's Complaint as follows:

4 1. Answering Paragraphs 1, 2, 3, 4, and 5 of Plaintiff's Complaint, Defendant is
5 without sufficient information to form a basis as to the truth or falsity of the allegations
6 contained in said paragraphs, and based on said grounds, denies the allegations therein.

7 2. Answering Paragraph 6 of Plaintiff's Complaint, Defendant admits that
8 responding Defendant is a resident of the State of Indiana.

9 3. Answering Paragraph 7 of Plaintiff's Complaint, Defendant admits that
10 responding Defendant is a resident of Clark County, Nevada.

11 4. Answering Paragraph 8 of Plaintiff's Complaint, Defendant is without sufficient
12 information to form a basis as to the truth or falsity of the allegations contained in said
13 paragraphs, and based on said grounds, denies the allegations therein.

14 5. Answering Paragraph 9 of Plaintiff's Complaint, Defendant denies the
15 allegations contained therein.

16 6. Answering Paragraphs 10, 11, 12, 13, 14, and 15 of Plaintiff's Complaint,
17 Defendant is without sufficient information to form a basis as to the truth or falsity of the
18 allegations contained in said paragraphs, and based on said grounds, denies the allegations
19 therein.

20 7. Answering Paragraph 16, and 17 of Plaintiff's Complaint, Defendant denies the
21 allegations contained therein.

22 8. Answering Paragraph 18, 19, 20, 21, and 22 of Plaintiff's Complaint, Defendant
23 is without sufficient information to form a basis as to the truth or falsity of the allegations
24 contained in said paragraphs, and based on said grounds, denies the allegations therein.

25 //

26 //

1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**

3 The allegations contained in Plaintiff's Complaint fails to state a cause of action against
4 this Defendant upon which relief can be granted.

5 **SECOND AFFIRMATIVE DEFENSE**

6 Plaintiff has failed to mitigate damages, if any, and to the extent of such failure of such
7 mitigation, is precluded from recovery herein.

8 **THIRD AFFIRMATIVE DEFENSE**

9 Plaintiff's claims for recovery, if any, are subject to mandatory arbitration.

10 **FOURTH AFFIRMATIVE DEFENSE**

11 The Plaintiff's Complaint is barred by the applicable statute of limitations.

12 **FIFTH AFFIRMATIVE DEFENSE**

13 The Plaintiff's Complaint is barred by the applicable statute of repose.

14 **SIXTH AFFIRMATIVE DEFENSE**

15 The Plaintiff's Complaint is barred by the doctrine of laches.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 The damages, if any, were caused or contributed by Plaintiff's own negligence and such
18 negligence was primary in nature, which negligence is the direct and proximate cause of all, if
19 any, of the alleged damages.

20 **EIGHTH AFFIRMATIVE DEFENSE**

21 The damages and injuries, if any, suffered by Plaintiff as set forth in the Complaint were
22 caused in whole or in part by the negligence of a third-party or other fourth-parties over whom
23 this Answering Defendant has no control.

24 **NINTH AFFIRMATIVE DEFENSE**

25 The injuries or claims of damages suffered by Plaintiff, if any, were directly and
26 proximately caused by forces of nature or acts of God over which this Answering Defendant has
27 no control.
28

1 **TENTH AFFIRMATIVE DEFENSE**

2 Plaintiff's Complaint is barred by the equitable doctrines of waiver, release, unclean
3 hands, and equitable estoppel.

4 **ELEVENTH AFFIRMATIVE DEFENSE**

5 The damages, if any, sustained or suffered by Plaintiff were proximately caused and
6 contributed to by the negligence and/or affirmative wrongful conduct of Plaintiff's agents,
7 successors in interest, or predecessors in interest in that they failed to exercise ordinary and
8 reasonable care and caution in carrying out their duties relative to the construction of the alleged
9 improvements.

10 **TWELFTH AFFIRMATIVE DEFENSE**

11 Plaintiff and each of its successors in interests failed to use reasonable care to reduce
12 and minimize, as much as reasonably possible, the damages, if any, and that said failure was the
13 direct and proximate cause of any and all damages, if any, sustained by Plaintiff.

14 **THIRTEENTH AFFIRMATIVE DEFENSE**

15 Plaintiff assumed whatever risks or hazards existed at the time of the events alleged in
16 the Complaint, making it responsible for the alleged damages and injuries suffered, if any, and
17 therefore, this answering Defendant is not liable to Plaintiff for any damages.

18 **FOURTEENTH AFFIRMATIVE DEFENSE**

19 The damages, if any, suffered or sustained by Plaintiff were proximately caused and
20 contributed by persons other than this answering Defendant and liability of all responsible
21 parties, named or unnamed, should be apportioned according to the relative degrees of fault and
22 the liability of this Defendant, if any, should be reduced accordingly.

23 **FIFTEENTH AFFIRMATIVE DEFENSE**

24 Any action taken by Defendant was proper, legal and was not motivated by malice, ill
25 will or intent to injure Plaintiffs.

26
27 //

28

1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 Plaintiff failed to use ordinary care, caution, or prudence to avoid the incidents alleged
3 in the Complaint and the damages, if any, were directly and proximately contributed by the
4 fault, negligence and carelessness of the Plaintiff.

5 **SEVENTEENTH AFFIRMATIVE DEFENSE**

6 Plaintiff's acts or omissions constitute the sole proximate cause of its alleged damages, if
7 any, and therefore this answering Defendant is not liable to the Plaintiff for any damages, if any.

8 **EIGHTEENTH AFFIRMATIVE DEFENSE**

9 Plaintiff failed to set forth facts sufficient to support an award for attorneys' fees and
10 associated costs.

11 **NINETEENTH AFFIRMATIVE DEFENSE**

12 Plaintiff is estopped from bringing the causes of action alleged in his Complaint.

13 **TWENTIETH AFFIRMATIVE DEFENSE**

14 This answering Defendant is entitled to a set off.

15 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

16 There has been insufficiency of process.

17 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

18 Plaintiff has waived the claims against this answering Defendant.

19 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

20 Plaintiff was actively negligent in its conduct and has therefore proximately caused the
21 damages, if any, it sustained.

22 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

23 The injuries and damages sustained by Plaintiff, if any, were proximately caused by the
24 intervening or superseding actions of others, which intervening or superseding actions bar
25 and/or diminish Plaintiff's recovery, if any, against Answering Defendant.

26 //

1 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

2 Answering Defendant hereby incorporates by reference those affirmative defenses
3 enumerated in Rule 8 of the Nevada and Federal Rules of Civil Procedure as if fully set forth
4 herein. In the event further investigation or discovery reveals the applicability of any such
5 defenses, this Answering Defendant reserves the right to seek leave of Court to amend its
6 Answer to specifically assert same. Such defenses are herein incorporated by reference for the
7 specific purpose of not waiving the same.

8 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

9 Pursuant to Rule 11 of the Nevada and Federal Rules of Civil Procedure, other
10 affirmative defenses that may ultimately be available to this Answering Defendant have not
11 been alleged herein because sufficient facts are not available after reasonable inquiry to support
12 such defenses at the time of the filing of this pleading. Nevertheless, this Answering Defendant
13 reserves the right to allege additional affirmative defenses as warranted by additional
14 investigation and/or discovery.

15 **KEVIN BUSHBAKER'S CROSS-CLAIM AGAINST COX COMMUNICATIONS**

16 Defendant/Cross-Claimant, KEVIN BUSHBAKER ("BUSHBAKER"), by and through
17 their attorney of record, SGRO & ROGER, hereby complain and allege as follows:
18

19 1. Defendant/Cross-Claimant BUSHBAKER at all times relevant hereto was a
20 resident of Indiana.

21 2. Defendant/Cross-Defendant COX COMMUNICATIONS, upon information and
22 belief, was at all times relevant hereto a Nevada corporation duly licensed to conduct business
23 in the State of Nevada.

24 3. Plaintiff SIMONE RUSSO, upon information and belief, was at all times
25 relevant, a resident of Clark County, Nevada.

26 4. DOES I-V, and ROE CORPORATIONS I-V, inclusive, are other parties or
27 entities which are liable to Cross-claimant for the damages complained of herein, whose names
28 will be supplied specifically in these proceedings when they are discovered by Cross-claimant,

1 and Cross-claimant will seek leave of court to amend its Cross-claim when the identity of these
2 Cross-defendants is determined. Cross-claimant is informed and believes that DOES I-V and
3 ROE CORPORATIONS I-V, inclusive, are responsible in some manner for the events and
4 occurrences herein alleged, and that cross-claimants' damages were and are directly and
5 proximately caused by the conduct, acts, and omissions of said Cross-defendants.

6 **FIRST CLAIM OF RELIEF**

7 **FULL OR PARTIAL INDEMNITY AS TO COX COMMUNICATIONS**

8 5. Defendant/Cross-Claimant BUSHBAKER repeats and realleges Paragraphs 1-4,
9 inclusively, as though fully set forth here and incorporates them herein by reference.

10 6. BUSHBAKER alleges that the damages, if any, alleged in Plaintiff's Complaint
11 were solely the result of the negligence, acts, and omissions of COX COMMUNICATIONS,
12 and as such, BUSHBAKER bears no responsibility for the harms alleged in Plaintiff's
13 Complaint.

14 7. BUSHBAKER alleges that in the event it is found to be liable to Plaintiff or to
15 any other party for damages, or if payment is made by BUSHBAKER to Plaintiff or any other
16 party as a result of the incidents and occurrences described in Plaintiff's Complaint, then
17 BUSHBAKER's liability or payment is based upon an obligation imposed by law and not based
18 upon the acts or omissions of BUSHBAKER, but is based upon the acts and/or omissions
19 including, without limitation, alleged negligence, negligence per se, respondeat superior, and res
20 ipsa loquitor of COX COMMUNICATIONS with regard to the occurrence described in
21 Plaintiff's Complaint, and therefore, BUSHBAKER is entitled to be fully indemnified by COX
22 COMMUNICATIONS for any liability it may incur towards, may have paid, or be required to
23 pay, to Plaintiff or any other party.

24 **SECOND CLAIM FOR RELIEF**

25 **CONTRIBUTION AS TO COX COMMUNICATIONS**

26 8. Defendant/Cross-Claimant BUSHBAKER repeats and realleges Paragraphs 1-7,
27 inclusively, as though fully set forth here and incorporates them herein by reference.
28

1 9. BUSHBAKER alleges that in the event it is found to be liable to Plaintiff or to
2 any other party for damages, or if payment is made by BUSHBAKER to Plaintiff or any other
3 party as a result of the incidents and occurrences described in Plaintiff's Complaint, then
4 BUSHBAKER's liability or payment is based upon acts and/or omissions including, without
5 limitation, alleged negligence, negligence per se, respondeat superior, and res ipsa loquitor of
6 COX COMMUNICATIONS with regard to the occurrence described in Plaintiff's Complaint,
7 and therefore, BUSHBAKER is entitled to contribution from COX COMMUNICATIONS.

8 10. As a direct and proximate result of all of the foregoing, Defendant/Cross-
9 claimant BUSHBAKER has been caused to retain the services of an attorney in order to defend
10 itself in this action, and to prosecute this cross-claim in this action, and BUSHBAKER is
11 therefore entitled to reasonable attorney's fees and costs.

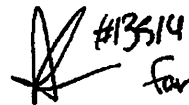
12
13 WHEREFORE, Defendant/Cross-Claimant BUSHBAKER prays for Judgment against
14 cross-defendants as follows:

15 1. For judgment in favor of BUSHBAKER on its cross-claim against COX
16 COMMUNICATION in amounts to be determined at time of trial;

17 2. For an award of reasonable attorneys' fees and costs of suit incurred in this
18 action; and
19

20 3. For such other and further relief as the Court may deem just and proper.

21
22 DATED this 17 day of May, 2017.

23
24 

25 ANTHONY P. SGRO, ESQ.
26 SGRO & ROGER
27 720 S. Seventh Street, 3rd Floor
28 Las Vegas, Nevada 89101
 ASgro@psrlegal.com
 Telephone: (702) 385-9595
 Facsimile: (702) 386-2737

CERTIFICATE OF SERVICE

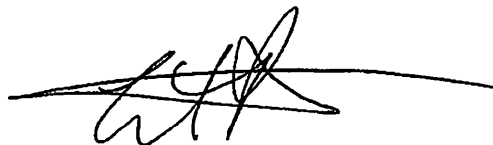
Pursuant to NRCP 5(b), I hereby certify that I am an employee of SGRO & ROGER and that on the 17 day of May, 2017, I served a true and correct copy of the foregoing **DEFENDANT BUSHBAKER'S ANSWER, AND CROSS-CLAIM AGAINST COX COMMUNICATIONS**, via electronically for filing and/or service within the District Court

Pursuant to Administrative Order 14-02 for e-service to the following:

Michael Merritt, Esq.
McCormick Barstow LLP
8337 W. Sunset Road, Suite 350
Las Vegas, NV 89113

William A. Lemkul
MORRIS, SULLIVAN, LEMKUL & PITEGOFF
3770 Howard Hughes Parkway, Suite 170
Las Vegas, NV 89169

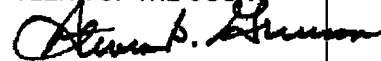
David F. Sampson
DAVID SAMPSON, LLC
630 S 3rd St.
Las Vegas, NV. 89101
Attorneys for Defendants



An employee of LAW OFFICES OF ANTHONY P. SGRO

Exhibit 2

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LIPSON NEILSON P.C.
DAVID A. CLARK (Bar No. 4443)
JULIE A. FUNAI (Bar No. 8725)
9900 Covington Cross Dr., Suite 120
Las Vegas, NV 89144
(702) 382-1500 Phone
(702) 382-1512 Fax
dclark@lipsonneilson.com
jfunai@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.

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**

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

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

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
28

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

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.

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

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.

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

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.

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

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,

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

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.

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

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.
- 25
26
27
28

Dated this 15th 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
Las Vegas, NV 89144
dclark@lipsonneilson.com
jfunai@lipsonneilson.com

Attorneys for Defendant J. Chris Scarcelli

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 15th 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:

<p>David F. Sampson, Esq. LAW OFFICE OF DAVID SAMPSON 630 S. 3rd Street Las Vegas, NV 89101 david@davidsampsonlaw.com <i>Attorney for Plaintiff</i></p>	<p>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></p>
<p>Leonard T. Fink, Esq. Jonathan C. Pattillo, Esq. SPRINGEL & FINK LLP 10655 Park Run Drive, Suite 275 Las Vegas, NV 89144 lfink@springel.com jpattillo@springelfink.com <i>Attorneys for Defendant,</i></p>	<p>Francis A. Arenas, Esq. SGRO & ROGER 720 South Seventh Street, 3rd Floor Las Vegas, NV 89101 farenas@sgroandroger.com <i>Attorney for Kevin Bushbaker</i></p>

1 **Sunrise Villa IX Homeowners Association**

2

3 */s/ Debra Marquez*

4 An Employee of LIPSON NEILSON P.C.

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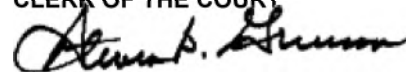
Lipson Neilson P.C.

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

Phone: (702) 382-1500 - Fax: (702) 382-1512

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Steven D. Grierson
CLERK OF THE COURT


JOIN

LEONARD T. FINK, ESQ.
Nevada Bar No. 6296
THOMAS G. LEVINE, ESQ.
Nevada Bar No. 14230
RAVEN M. YIM, ESQ.
Nevada Bar No. 14972

SPRINGEL & FINK LLP

10655 Park Run Drive, Suite 275
Las Vegas, Nevada 89144
Telephone: (702) 804-0706
Facsimile: (702) 804-0798
E-Mail: lfink@springelfink.com
tlevine@springelfink.com
ryim@springelfink.com

Attorneys for Defendant,
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiff,

v.

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; AND DOES 1-V, AND ROE
CORPORATIONS I-V, inclusive,

Defendants.

Case No.: A-17-753606-C

Dept. No.: XVI

**DEFENDANT, SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION'S
JOINDER TO DEFENDANTS, IES
RESIDENTIAL, INC. AND COX
COMMUNICATIONS LAS VEGAS, INC.
D/B/A COX COMMUNICATIONS' MOTION
FOR DETERMINATION OF GOOD FAITH
SETTLEMENT**

COMES NOW, Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (hereinafter "SUNRISE VILLAS"), by and through its counsel of record, the law firm of Springel & Fink LLP, hereby joins Defendants, IES RESIDENTIAL, INC. and COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX COMMUNICATIONS' Motion for Determination of Good Faith Settlement.

This Joinder is based upon the pleadings and papers on file herein, the Memorandum of Points and Authorities annexed thereto, and any oral argument that may be presented at the hearing set for this matter.

DATED this 17th day of October, 2019.

SPRINGEL & FINK LLP

/s/ Leonard T. Fink, Esq.

By: _____

LEONARD T. FINK, ESQ.

Nevada Bar No. 6296

THOMAS G. LEVINE, ESQ.

Nevada Bar No. 14230

RAVEN M. YIM, ESQ.

Nevada Bar No. 14972

10655 Park Run Drive, Suite 275

Las Vegas, NV 89144

Attorneys for Defendant,

SUNRISE VILLAS IX HOMEOWNERS

ASSOCIATION

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, Alma Duarte, 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 **October 17, 2019**, I served the document described as **DEFENDANT, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S JOINDER TO DEFENDANTS, IES RESIDENTIAL, INC. AND COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX COMMUNICATIONS' MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT** on the following parties:

*****SEE ELECTRONIC SERVICE LIST*****

- _____ 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.

/s/ Alma Duarte

 An employee of Springel & Fink LLP

A-17-753606-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

October 18, 2019

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

October 18, 2019 09:00 AM Defendants/Cross-Defendants Cox Communications Las Vegas, Inc. dba Cox Communications and IES Residential, Inc's 1) Motion for Determination of Good Faith Settlement, and 2) Motion for Summary Judgment

HEARD BY: Williams, Timothy C. COURTROOM: RJC Courtroom 03F

COURT CLERK: Darling, Christopher

RECORDER:

REPORTER: Isom, Peggy

PARTIES PRESENT:

Christopher Turtzo Attorney for Cross Defendant, Defendant

David F. Sampson Attorney for Plaintiff

David A. Clark Attorney for Cross Defendant, Defendant

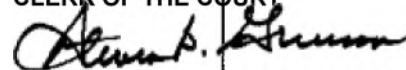
Leonard T. Fink Attorney for Cross Defendant, Defendant

JOURNAL ENTRIES

APPEARANCES CONTINUED: Julie Funai, Esq. present for Chris Scarcelli. Joseph Meloro, Esq. present for Kevin Bushbaker.

Mr. Fink advised global settlement reached. Mr. Turtzo placed settlement terms on the record pertaining to all answering parties, a release, and dismissal of claims and cross-claims. Mr. Clark and Mr. Meloro advised they join the good faith settlement. Mr. Sampson advised no objection. Matter submitted. COURT ORDERED, Motion for Good Faith Settlement GRANTED. Mr. Turtzo requested the order reflect joinder of parties, summary judgment not included, and will be a standard good faith settlement. Court stated the proposed order would be acceptable. Colloquy regarding time for executing settlement and perfecting default on remaining parties.

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10/31/2019 11:53 AM
Steven D. Grierson
CLERK OF THE COURT



AFDJ

DAVID F. SAMPSON, ESQ.

Nevada Bar No. 6811

LAW OFFICE OF DAVID SAMPSON, LLC

630 S. 3rd 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.

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

HEARING REQUESTED

APPLICATION FOR JUDGMENT BY DEFAULT

In this action the Defendants, RICHARD DUSLAK and JUSTIN SESMAN, having been regularly served with Summons and the Original Complaint, and having not appeared in this action, and a default having duly been entered against Defendants, RICHARD DUSLAK and JUSTIN SESMAN, Judgment is hereby requested to be entered against said Defendants.

1 This action arose from an incident that occurred on 27th day of August, 2016. In August,
2 2016, Plaintiff, Dr. Simone Russo, M.D., and his wife moved into 4617 Madreperla and rented
3 the property. A few days after moving in, Simone and his wife flew to New York to visit
4 Simone's daughter who had recently given birth to Simone's grandchild. Simone and his wife
5 spent approximately two weeks in New York before returning to their home in Las Vegas.
6

7 On August 27, 2016 Simone and his wife landed in Las Vegas at approximately 10:00
8 p.m., retrieved their luggage from baggage claim, and took a taxi to their home. Sometime
9 before 11:00 p.m. the taxi pulled up at 4617 Mardeperla. Simone's wife got out of the taxi and
10 took some of the luggage into the garage. Simone got out of the cab and took a step or two up
11 his driveway when he felt his foot simply stop moving. At the time Simone would use a walker
12 now and then for balance when he was exerting significant energy or had a particularly long
13 day. At the time, Simone did not know that the cable had caught his foot. Simone fell forward,
14 over the top of his walker, and crashed onto the cement driveway.
15
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17 After Simone's fall, Simone's wife examined the cable and found that landscapers,
18 Duslak and Sesman had dug a trench and caused the cable to be dislodged from the expansion
19 joint the cable was placed in by Cox Communications. Defendants, Duslak and Sesman were
20 aware of the tripping hazard they had created by dislodging the cable from the expansion joint.
21 Duslak and Sesman did nothing to rectify the hazard Sesman and Duslak created.
22

23 As a result of the cable being in his driveway, Simone Russo was very seriously injured.
24 Simone suffered injuries to his cervical spine, which have required multiple surgeries to address.
25 Simone also aggravated prior injuries to his lumbar spine as well as his neurological systems.
26 Treatment for these injuries resulted in \$592,846.46 in medical expenses. *See* Exhibit "101".
27
28

1 Additionally, Dr. Russo has been advised he needs an additional surgery that will cost
2 \$250,000.00. *See* Exhibit "119".

3 As a result of his injuries Dr. Russo went from a walker to a wheelchair. He can hardly
4 get around the house, much less go anywhere. Indeed, the Court saw Dr. Russo's disability
5 firsthand and instructed him during trial to not even attempt to stand when the Judge or jury
6 entered the room because of the difficulties Dr. Russo was having. Dr. Russo went from being
7 able to travel to New York to visit family, to needing a wheelchair and a full time assistant to
8 even leave the house.
9

10
11 Based on the foregoing and on all the pleadings on file herein, it is hereby requested
12 THAT PLAINTIFF DR. SIMONE RUSSO HAVE JUDGMENT AGAINST DEFENDANTS
13 RICHARD DUSLAK AND JUSTIN SESMAN, in the sum of Twenty-Five Million Dollars
14 (\$25,000,000.00), with interest thereon at the legal rate to accrue until paid in full.

15
16 DATED THIS 31st day of October, 2019.

17
18 LAW OFFICE OF DAVID SAMPSON, LLC.

19
20 BY: 

21 DAVID SAMPSON, ESQ.
22 Nevada Bar No. 6811
23 LAW OFFICE OF DAVID SAMPSON
24 630 S. 3rd Street
25 Las Vegas, NV 89101
26 Tel: 702-605-1099
27 Fax: 888-209-4199
28 Email: david@davidsampsonlaw.com
Attorney for Plaintiff

AFFIDAVIT OF SIMONE RUSSO

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

SIMONE RUSSO, being first duly sworn, deposes and says:

1. I am over the age of eighteen and am competent to testify as to the matters set forth herein if necessary, and that I am the Plaintiff in the Court action.
2. That RICHARD DUSLAK and JUSTIN SESMAN, through their negligence, caused my injuries, when my foot caught on the cable that RICHARD DUSLAK caused to come free from the expansion joint and become a tripping hazard on August 27, 2016.
3. That because of the actions of RICHARD DUSLAK and JUSTIN SESMAN, I have suffered injuries to my cervical spine, which have required multiple surgeries to repair. The fall also aggravated prior injuries to my lumbar spine and caused damage to my neurological systems. I have incurred in excess of \$592,846.46 in medical expenses and I am entitled to damages for such, as well as an award for pain and suffering.
4. That I am entitled to damages for medical expenses associated costs, pain, suffering, inconvenience, and the like in the total amount of \$25,000,000.00.

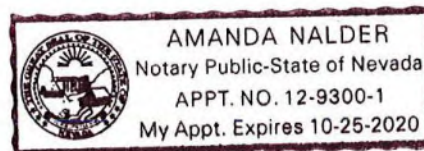
Further Affiant sayeth naught.

DATED this 31 day of Oct, 2019.

Simone Russo, MD
SIMONE RUSSO

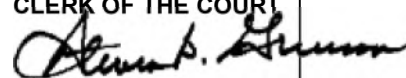
SUBSCRIBED and SWORN to before me
this 31 day of October, 2019.

[Signature]
NOTARY PUBLIC in and for said
County and State



Pursuant to NRCp 5(b), I certify that I am an employee of the LAW OFFICE OF DAVID SAMPSON, and that on this 31st day of October, 2019, I served a copy of the foregoing **APPLICATION FOR DEFAULT JUDGMENT** as follows:

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10/31/2019 4:17 PM
Steven D. Grierson
CLERK OF THE COURT



**DISTRICT COURT
CLARK COUNTY, NEVADA**

Simone Russo, Plaintiff(s)

Case No.: A-17-753606-C

vs.

Cox Communications Las Vegas, Inc.,

Department 16

Defendant(s)

NOTICE OF HEARING

Please be advised that the Plaintiff's Application for Judgment by Default in the above-entitled matter is set for hearing as follows:

Date: December 17, 2019

Time: 9:00 AM

Location: RJC Courtroom 03H
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Joshua Raak
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Joshua Raak
Deputy Clerk of the Court

**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

NOTICE OF HEARING

Please be advised that the Plaintiff's Application for Judgment by Default in the above-entitled matter is set for hearing as follows:

Date: December 17, 2019

Time: 9:00 AM

Location: RJC Courtroom 03H
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

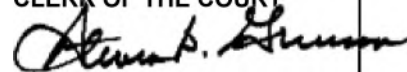
By: /s/ Joshua Raak
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Joshua Raak
Deputy Clerk of the Court

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11/7/2019 2:16 PM
Steven D. Grierson
CLERK OF THE COURT



1 **OGM**

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,
18 IES RESIDENTIAL, INC., SUNRISE
19 VILLAS IX HOMEOWNERS
20 ASSOCIATION, J & G LAWN
21 MAINTENANCE, KEVIN BUSHBAKER,
22 PWJAMES MANAGEMENT &
23 CONSULTING, LLC., AND DOES I-V, and
24 ROE CORPORATIONS I-V, inclusive,

25 Defendants.

26 KEVIN BUSHBAKER, an individual,

27 Cross-Claimant,

28 vs.

COX COMMUNICATIONS LAS VEGAS
INC., DBA COX COMMUNICATIONS; IES
RESIDENTIAL, INC.,

Cross-Defendants

Case No.: A-17-753606-C

Dept. No.: XVI

**ORDER GRANTING
DEFENDANT/CROSS-DEFENDANTS
COX COMMUNICATIONS LAS VEGAS,
INC. dba COX COMMUNICATIONS AND
IES RESIDENTIAL, INC.'S MOTION
FOR DETERMINATION OF GOOD
FAITH SETTLEMENT**

Defendants, IES RESIDENTIAL, INC. (hereinafter "IES"), and COX
COMMUNICATIONS LAS VEGAS, INC. D/B/A COX COMMUNICATIONS (hereinafter
"COX"), by and through their counsel of record, CHRISTOPHER A. TURTZO, ESQ. and WILL
LEMKUL, ESQ. of Morris, Sullivan & Lemkul, LLP, brought their Motion for Determination of

1 Good Faith Settlement and Motion for Summary Judgment on Order Shortening Time for hearing
2 on October 18, 2019, at 9:00 a.m.

3 Defendant Sunrise HOA filed a written joinder prior to the hearing. At the hearing,
4 Defendants J. Chris Scarcelli and Kevin Bushbaker submitted oral joinders to the motion.

5 This Court has considered the motion, and the pleadings and papers submitted on file, and
6 the representations of counsel during the hearing. The Court has also considered the factors set
7 forth in *Velsicol Chemical Corp. v. Davidson*, 107 Nev. 356, 360 (1991) and *Doctors Co. v.*
8 *Vincent*, 120 Nev. 644, 651–52 (2004) (quoting *In re MGM Grand Hotel Fire Litig.*, 570 F.Supp.
9 913, 927 (D.Nev.1983)). With good cause appearing,

10 **IT IS HEREBY ORDERED** that settlement between Plaintiff, IES, Cox, Sunrise Villas
11 IX Homeowners Association, PW James Management & Consulting, J. Chris Scarcelli, and Kevin
12 Bushbaker as set forth in the motion for determination of good faith settlement, joinders, and as
13 stated on the record on at the October 16 and October 18, 2019 hearings is just, fair, reasonable,
14 and was entered into in good faith within the meaning of NRS 17.245.

15 **IT IS FURTHER ORDERED** that all claims for equitable indemnity and contribution
16 against IES, Cox, Sunrise Villas IX Homeowners Association, PW James Management &
17 Consulting, J. Chris Scarcelli, and Kevin Bushbaker, whether current or prospective, are
18 extinguished, dismissed with prejudice, and forever barred.

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1 **IT IS FURTHER ORDERED** that IES and Cox's motion for summary judgment, which
2 was also contained in the motion, is withdrawn as moot.

3
4 DATED this 4th day of ^{NOV.}~~October~~, 2019.

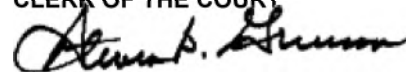
5 
6 DISTRICT COURT JUDGE *cg*

7 **RESPECTFULLY SUBMITTED BY:**

8 MORRIS, SULLIVAN & LEMKUL, LLP

9  **FOR**
10 WILL LEMKUL, ESQ. **Bar#14773**
11 Nevada Bar No. 006715
12 CHRISTOPHER A. TURTZO, ESQ.
13 Nevada Bar No. 010253
14 3960 Howard Hughes Parkway, Suite 420
15 Las Vegas, NV 89169
16 *Attorneys for Defendants, IES Residential, Inc. and*
17 *Cox Communications Las Vegas, Inc. D/B/A Cox Communications*
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11/8/2019 10:32 AM
Steven D. Grierson
CLERK OF THE COURT


NEOJ

Will Lemkul, Esq.; NV Bar No. 6715
Christopher A. Turtzo; NV Bar No. 10253
Christian W. Barton; NV Bar No. 14824
MORRIS, SULLIVAN & LEMKUL, LLP
3960 Howard Hughes Parkway, Suite 420
Las Vegas, NV 89169
Phone (702) 405-8100
Fax (702) 405-8101
Attorneys for Defendants, *IES Residential, Inc.* and
Cox Communications Las Vegas, Inc. D/B/A Cox Communications

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., AND DOES I-V, and
ROE CORPORATIONS I-V, inclusive,

Defendants.

KEVIN BUSHBAKER, an individual,

Cross-Claimant,

vs.

COX COMMUNICATIONS LAS VEGAS
INC., DBA COX COMMUNICATIONS; IES
RESIDENTIAL, INC.,

Cross-Defendants

Case No.: A-17-753606-C

Dept. No.: XVI

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANT.CROSS-
DEFENDANTS, COX
COMMUNICATIONS LAS VEGAS, INC.
dba COX COMMUNICATIONS AND IES
RESIDENTIAL, INC.'S MOTION FOR
DETERMINATION OF GOOD FAITH
SETTLEMENT**

///

///

///

PLEASE TAKE NOTICE that the attached **ORDER GRANTING DEFENDANT.CROSS-DEFENDANTS, COX COMMUNICATIONS LAS VEGAS, INC. dba COX COMMUNICATIONS AND IES RESIDENTIAL, INC.'S MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT** was entered on the 7th day of November, 2019, a true and correct file-stamped copy of which is attached hereto.

DATED this 8th day of November, 2019.

MORRIS, SULLIVAN & LEMKUL, LLP

By: /s/ Christopher Turtzo

WILL LEMKUL, ESQ.
Nevada Bar No. 6715
CHRISTOPHER A. TURTZO, ESQ.
Nevada Bar No. 10253
3960 Howard Hughes Parkway, Suite 420
Las Vegas, NV 89169
*Attorneys for Defendants, IES Residential, Inc. and
Cox Communications Las Vegas, Inc. D/B/A Cox
Communications*

CERTIFICATE OF SERVICE

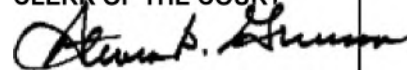
Pursuant to NRCP 5(b), I certify that on this 8th day of November, 2019, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT.CROSS-DEFENDANTS, COX COMMUNICATIONS LAS VEGAS, INC. dba COX COMMUNICATIONS AND IES RESIDENTIAL, INC.’S MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT** on all parties in this action through the Eighth Judicial District Court’s Odyssey File & Serve Filing System to:

All Parties on the Service List

/s/ Allyson Lodwick

An Employee of MORRIS, SULLIVAN, & LEMKUL, LLP

Electronically Filed
11/7/2019 2:16 PM
Steven D. Grierson
CLERK OF THE COURT


OGM

Will Lemkul, Esq.; NV Bar No. 6715
Christopher A. Turtzo; NV Bar No. 10253
MORRIS, SULLIVAN & LEMKUL, LLP
3960 Howard Hughes Parkway, Suite 420
Las Vegas, NV 89169
Phone (702) 405-8100
Fax (702) 405-8101

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

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., AND DOES I-V, and
ROE CORPORATIONS I-V, inclusive,

Defendants.

KEVIN BUSHBAKER, an individual,

Cross-Claimant,

vs.

COX COMMUNICATIONS LAS VEGAS
INC., DBA COX COMMUNICATIONS; IES
RESIDENTIAL, INC.,

Cross-Defendants

Case No.: A-17-753606-C

Dept. No.: XVI

**ORDER GRANTING
DEFENDANT/CROSS-DEFENDANTS
COX COMMUNICATIONS LAS VEGAS,
INC. dba COX COMMUNICATIONS AND
IES RESIDENTIAL, INC.'S MOTION
FOR DETERMINATION OF GOOD
FAITH SETTLEMENT**

Defendants, IES RESIDENTIAL, INC. (hereinafter "IES"), and COX
COMMUNICATIONS LAS VEGAS, INC. D/B/A COX COMMUNICATIONS (hereinafter
"COX"), by and through their counsel of record, CHRISTOPHER A. TURTZO, ESQ. and WILL
LEMKUL, ESQ. of Morris, Sullivan & Lemkul, LLP, brought their Motion for Determination of

1 Good Faith Settlement and Motion for Summary Judgment on Order Shortening Time for hearing
2 on October 18, 2019, at 9:00 a.m.

3 Defendant Sunrise HOA filed a written joinder prior to the hearing. At the hearing,
4 Defendants J. Chris Scarcelli and Kevin Bushbaker submitted oral joinders to the motion.

5 This Court has considered the motion, and the pleadings and papers submitted on file, and
6 the representations of counsel during the hearing. The Court has also considered the factors set
7 forth in *Velsicol Chemical Corp. v. Davidson*, 107 Nev. 356, 360 (1991) and *Doctors Co. v.*
8 *Vincent*, 120 Nev. 644, 651–52 (2004) (*quoting In re MGM Grand Hotel Fire Litig.*, 570 F.Supp.
9 913, 927 (D.Nev.1983)). With good cause appearing,

10 **IT IS HEREBY ORDERED** that settlement between Plaintiff, IES, Cox, Sunrise Villas
11 IX Homeowners Association, PW James Management & Consulting, J. Chris Scarcelli, and Kevin
12 Bushbaker as set forth in the motion for determination of good faith settlement, joinders, and as
13 stated on the record on at the October 16 and October 18, 2019 hearings is just, fair, reasonable,
14 and was entered into in good faith within the meaning of NRS 17.245.

15 **IT IS FURTHER ORDERED** that all claims for equitable indemnity and contribution
16 against IES, Cox, Sunrise Villas IX Homeowners Association, PW James Management &
17 Consulting, J. Chris Scarcelli, and Kevin Bushbaker, whether current or prospective, are
18 extinguished, dismissed with prejudice, and forever barred.

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28 ///


1 **IT IS FURTHER ORDERED** that IES and Cox's motion for summary judgment, which
2 was also contained in the motion, is withdrawn as moot.

3
4 DATED this 4th day of ^{NOV.}~~October~~, 2019.

5 
6 DISTRICT COURT JUDGE *cg*

7 **RESPECTFULLY SUBMITTED BY:**

8 MORRIS, SULLIVAN & LEMKUL, LLP

9  *FOR*
10 WILL LEMKUL, ESQ. *Bar#14773*
11 Nevada Bar No. 006715
12 CHRISTOPHER A. TURTZO, ESQ.
13 Nevada Bar No. 010253
14 3960 Howard Hughes Parkway, Suite 420
15 Las Vegas, NV 89169
16 *Attorneys for Defendants, IES Residential, Inc. and*
17 *Cox Communications Las Vegas, Inc. D/B/A Cox Communications*
18
19
20
21
22
23
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25
26
27
28

A-17-753606-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

December 17, 2019

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

December 17, 2019 09:00 AM Plaintiff's Application for Judgment by Default

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 03H

COURT CLERK: Darling, Christopher

RECORDER:

REPORTER: Isom, Peggy

PARTIES PRESENT:

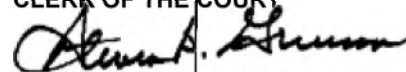
David F. Sampson

Attorney for Plaintiff

JOURNAL ENTRIES

Simone Russo sworn and testified. Exhibits presented (see worksheets). Matter submitted. COURT ORDERED, Plaintiff's Application for Judgment by Default Against Richard Duslak and Justin Sesman GRANTED. Order presented to Court and same signed IN OPEN COURT.

Electronically Filed
12/17/2019 9:48 AM
Steven D. Grierson
CLERK OF THE COURT



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

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

13 SIMONE RUSSO,)

14 Plaintiff,)

15 vs.)

CASE NO: A-17-753606-C

DEPT. NO: XVI

HEARING REQUESTED

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.)

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

General Damages: \$ 24,157,153.54

TOTAL JUDGMENT: \$ 25,000,000.00

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

DATED this 17th day of December, 2019.

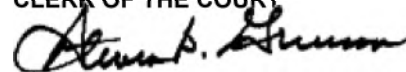

DISTRICT JUDGE

Submitted by:

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: 
DAVID SAMPSON, ESQ.
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON
630 S. 3rd Street
Las Vegas, Nevada 89101
Fax No: 888-209-4199
Attorney for Plaintiff

Electronically Filed
12/17/2019 10:05 AM
Steven D. Grierson
CLERK OF THE COURT


NOTC

DAVID F. SAMPSON, ESQ.,
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON
630 S. 3rd 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.)
)
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

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 17th day of December, 2019,

///

///

a copy of which is attached hereto.

DATED THIS 17th day of December, 2019.

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ *David Sampson*

DAVID SAMPSON, ESQ.

Nevada Bar No.6811

LAW OFFICE OF DAVID SAMPSON

630 S. 3rd Street

Las Vegas, Nevada 89101

Fax No: 888-209-4199

Attorney for Plaintiff

CERTIFICATE OF SERVICE

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

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

ANTHONY SGRO, ESQ.
720 S. Seventh St. 3rd Floor
Las Vegas NV 89101
Attorney for Defendant
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

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

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

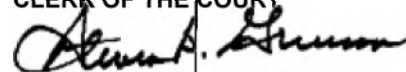
Via U.S. Mail:
JUSTIN SESMAN
4775 Topaz Street, Apt. 235
Las Vegas, NV 89121

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

/s/ Amanda Nalder
An Employee of The LAW OFFICE OF DAVID SAMPSON, LLC

EXHIBIT 1

Electronically Filed
12/17/2019 9:48 AM
Steven D. Grierson
CLERK OF THE COURT



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

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

13 SIMONE RUSSO,)

14 Plaintiff,)

15 vs.)

CASE NO: A-17-753606-C

DEPT. NO: XVI

HEARING REQUESTED

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.)

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

General Damages: \$ 24,157,153.54

TOTAL JUDGMENT: \$ 25,000,000.00

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

DATED this 17th day of December, 2019.


DISTRICT JUDGE

Submitted by:

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: 
DAVID SAMPSON, ESQ.
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON
630 S. 3rd Street
Las Vegas, Nevada 89101
Fax No: 888-209-4199
Attorney for Plaintiff

Skip to Main Content Logout My Account Search Menu New District Civil/Criminal Search Refine Search Close

Location : District Court Civil/Criminal Help

REGISTER OF ACTIONS

CASE NO. A-17-753606-C

Simone Russo, Plaintiff(s) vs. Cox Communications Las Vegas, Inc.,
Defendant(s)

Case Type: **Negligence - Premises Liability**
Date Filed: **04/06/2017**
Location: **Department 16**
Cross-Reference Case Number: **A753606**

PARTY INFORMATION

Lead Attorneys

Cross Claimant Bushbaker, Kevin

Anthony P. Sgro
Retained
702-384-9800(W)

Cross Defendant Cox Communications Las Vegas, Inc. *Doing Business As* Cox Communications

William A. Lemkul
Retained
702-405-8100(W)

Cross Defendant IES Residential Inc

William A. Lemkul
Retained
702-405-8100(W)

Cross Defendant Scarcelli, J Chris

David A. Clark
Retained
7023822200(W)

Cross Defendant Sunrise Villas IX Homeowners Association

Leonard T. Fink
Retained
7028040706(W)

Defendant Bushbaker, Kevin

Anthony P. Sgro
Retained
702-384-9800(W)

Defendant Cox Communications Las Vegas, Inc. *Doing Business As* Cox Communications

William A. Lemkul
Retained
702-405-8100(W)

Defendant Duslak, Richard

Defendant IES Residential Inc

William A. Lemkul
Retained
702-405-8100(W)

Defendant PWJames Management & Consulting LLC

Defendant Scarcelli, J Chris

David A. Clark
Retained
7023822200(W)

Defendant Sesman, Justin

Defendant Sunrise Villas IX Homeowners Association

Leonard T. Fink
Retained
7028040706(W)

Intervenor QBE Insurance Corporation

William C. Reeves
Retained
7026997822(W)

Plaintiff

Russo, Simone

David F. Sampson

Retained
702-605-1099(W)

EVENTS & ORDERS OF THE COURT

12/17/2019 **Motion for Default Judgment** (9:00 AM) (Judicial Officer Williams, Timothy C.)
Plaintiff's Application for Judgment by Default

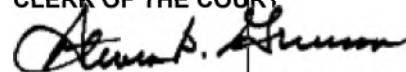
Minutes

12/17/2019 9:00 AM

- Simone Russo sworn and testified. Exhibits presented (see worksheets). Matter submitted. COURT ORDERED, Plaintiff's Application for Judgment by Default Against Richard Duslak and Justin Sesman GRANTED. Order presented to Court and same signed IN OPEN COURT.

[Parties Present](#)[Return to Register of Actions](#)

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5/14/2020 1:41 PM
Steven D. Grierson
CLERK OF THE COURT



OSCC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

* * * *

SIMONE RUSSO, PLAINTIFF(S)
VS.

CASE NO.: A-17-753606-C

COX COMMUNICATIONS LAS
VEGAS, INC., DEFENDANT(S)

DEPARTMENT 16

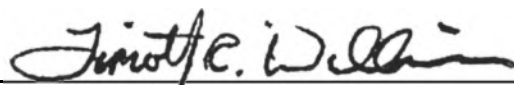
CIVIL ORDER TO STATISTICALLY CLOSE CASE

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:

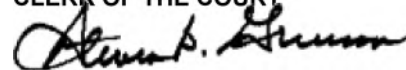
- ☐ Default Judgment
- ☐ Judgment on Arbitration
- ☒ Stipulated Judgment
- ☐ Summary Judgment
- ☐ Involuntary Dismissal
- ☐ Motion to Dismiss by Defendant(s)
- ☐ Stipulated Dismissal
- ☐ Voluntary Dismissal
- ☐ Transferred (before trial)
- ☐ Non-Jury – Disposed After Trial Starts
- ☐ Non-Jury – Judgment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

Electronically Filed
11/2/2020 12:39 PM
Steven D. Grierson
CLERK OF THE COURT


MOT

DAVID F. SAMPSON, ESQ.
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON, LLC.
630 S. 3rd 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.)
)
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
HEARING REQUESTED

PLAINTIFF'S MOTION FOR JUDICIAL ASSIGNMENT OF CAUSE OF ACTION

COMES NOW, Plaintiff, SIMONE RUSSO, by and through his attorney of record, and moves for an order judicially assigning all rights of action held by the Defendants RICHARD DUSLAK and JUSTIN SESMAN against any and all individuals and/or entities, including all claims against any and all insurance carriers, including but not limited to QBE INSURANCE

CORPORATION, COMMUNITY ASSOCIATION UNDERWRITERS, or any other insurance carrier(s).

This motion is made and based upon the pleadings and papers filed herein, the attached Points and Authorities, and upon oral argument at the time of hearing.

DATED this 27th day of October, 2020.

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ David Sampson

DAVID SAMPSON, ESQ.

Nevada Bar No.6811

LAW OFFICE OF DAVID SAMPSON, LLC.

630 S. 3rd St.

Las Vegas NV 89101

Fax No: 888-209-4199

Attorney for Plaintiff

POINTS AND AUTHORITIES

The court entered a Default Judgment against Defendants RICHARD DUSLAK and JUSTIN SESMAN in the amount of \$25,000,000.00 on December 17, 2019. Defendants were insured with QBE INSURANCE CORPORATION and/or COMMUNITY ASSOCIATION UNDERWRITERS, at the time the subject loss occurred. Neither QBE INSURANCE CORPORATION nor COMMUNITY ASSOCIATION UNDERWRITERS, have paid anything towards the judgment. DUSLAK and SESMAN have rights against QBE INSURANCE CORPORATION and/or COMMUNITY ASSOCIATION UNDERWRITERS, under the insurance agreement for indemnification of the Judgment. Under prevailing authority from the Nevada Supreme Court, “rights of action held by a judgment debtor are personal property subject to execution in satisfaction of a judgment.” *Gallegos v. Malco Ent.*, 255 P.3d 1287,

1289 (2011). The Nevada Supreme Court has specifically authorized district court judges to judicially assign claims held by judgment debtors against any insurance carriers “for breach of contract, breach of fiduciary duties, and breach of duty of good faith and fair dealing.” *Id.*, at 1288.

In the instant matter SIMONE RUSSO has a judgment against the said Defendants in the amount of at least \$25,000,000.00. A judicial assignment of the Defendants’ claims against QBE INSURANCE CORPORATION and/or COMMUNITY ASSOCIATION UNDERWRITERS and any other entities against whom Defendants have actions, would allow SIMONE to pursue a breach of contract action against QBE INSURANCE CORPORATION and/or COMMUNITY ASSOCIATION UNDERWRITERS and any other entities for the funds necessary to satisfy the judgment.

Additionally, pursuant to *Century Surety Co., v. Andrew*, 432 P.3d 180 (Nev. 2018), insureds may recover any damages consequential to the insurer’s breach of its duty to defend. Under Nevada law the Defendants currently hold these claims. However, as established in *Gallegos*, SIMONE as the judgment creditor has the right to have Defendants’ claims judicially assigned to him by the district court. A judicial assignment of the Defendants’ claims against QBE INSURANCE CORPORATION and/or COMMUNITY ASSOCIATION UNDERWRITERS and any other entities against whom Defendants have a claim would allow SIMONE to pursue the Defendants’ claims for breach of fiduciary duties and breach of the covenant of good faith and fair dealing and would permit SIMONE to recover funds to potentially fully satisfy the judgment. The instant motion seeks such relief.

///

///

CONCLUSION

For the foregoing reasons SIMONE respectfully requests this Court judicially assign all rights of action held by the Defendants RICHARD DUSLAK and JUSTIN SESMAN against any and all individuals and/or entities, including all claims against any and all insurance carriers, including but not limited to QBE INSURANCE CORPORATION, COMMUNITY ASSOCIATION UNDERWRITERS, or any other insurance carrier(s), and any other entities against whom Defendants have actions, to SIMONE.

DATED this 27th day of October, 2020.

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ *David Sampson*

DAVID SAMPSON, ESQ.

Nevada Bar No.6811

LAW OFFICE OF DAVID SAMPSON, LLC.

630 S. 3rd St.

Las Vegas NV 89101

Fax No: 888-209-4199

Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICE OF DAVID SAMPSON, LLC., and that on this 2nd day of November, 2020, I served a copy of the foregoing **MOTION** on all the remaining parties in this matter via the court's electronic online filing system and as follows:

Via U.S. Mail:

JUSTIN SESMAN
4775 Topaz Street, Apt. 235
Las Vegas, NV 89121

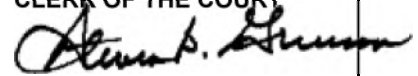
Via U.S. Mail:

RICHARD DUSLAK
4012 Abrams Ave.
Las Vegas, NV 89110

/s/ *Amanda Nalder*

An Employee of The LAW OFFICE OF DAVID SAMPSON, LLC.

Electronically Filed
11/16/2020 4:03 PM
Steven D. Grierson
CLERK OF THE COURT


MINV

RAMIRO MORALES [Bar No.: 7101]

E-mail: rmorales@mfrlegal.com

MORALES, FIERRO & REEVES

600 South Tonopah Drive, Suite 300

Las Vegas, Nevada 89106

Telephone: (702) 699-7822

Facsimile: (702) 699-9455

Attorneys for Proposed Intervenor
QBE INSURANCE CORPORATION

DISTRICT COURT

CLARK COUNTY, NEVADA

SIMONE RUSSO,

Plaintiff,

vs.

COX COMMUNICATIONS LAS VEGAS,
INC., dba COX COMMUNICATIONS; IES
RESIDENTIAL, INC.; SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION; J&G
LAWN MAINTENANCE; KEVIN
BUSHBAKER; PW JAMES MANAGEMENT
& CONSULTING, LLC; J. CHRIS
SCARCELLI, DOE LANDSCAPER;
RICHARD DUSLAK; JUSTIN SESMAN; and
DOES I-IV; and ROE CORPORATIONS I-V,
inclusive,

Defendants.

CASE NO.: A-17-753606-C

DEPT. NO.: XVI

**QBE INSURANCE CORPORATION'S
MOTION TO INTERVENE and
OPPOSITION TO MOTION TO ASSIGN
RIGHTS AGAINST QBE**

Date: December 10, 2020

Time: 9:00 AM

Pursuant to Nevada Rule of Civil Procedure 24, QBE Insurance Corporation ("QBE") moves to intervene for the limited purpose of opposing Plaintiff's motion to assign rights against QBE and to seek a stay of this action until a federal court rules on QBE's obligations under a general liability insurance policy. As explained more fully in the following Memorandum of Points and Authorities and the Declaration of Duane Butler (attached hereto as Exhibit B), QBE meets all four criteria for intervention as of right: (1) it has a sufficient interest in the litigation's subject matter, (2) it could suffer an impairment of its ability to protect that interest if it does not intervene,

1 (3) its interest is not adequately represented by existing parties, and (4) its application is timely.
2 Rule 24(a).

3 In the alternative, QBE invokes the Court's discretion to grant permissive intervention
4 pursuant to Rule 24(b). QBE's defenses to claims involve common questions of fact and law to the
5 claims in this action, and QBE's intervention will not unduly delay or prejudice the adjudication of
6 the existing parties' rights. Rule 24(b).

7 Accompanying this Motion to Intervene and Opposition to Plaintiff's Motion to Assign
8 Rights, is an Index of Exhibits, and Exhibit A, a copy of QBE's complaint for declaratory relief
9 filed in the United States District Court of Nevada, and Exhibit B, a Declaration of Duane Butler in
10 support of QBE's Motion to Intervene and Opposition to Plaintiff's Motion for an Assignment of
11 Rights.

12 DATED: November 16, 2020

MORALES, FIERRO & REEVES

14 By: /s/ Ramiro Morales

15 Ramiro Morales, #7101
16 600 South Tonopah Dr., Suite 300
17 Las Vegas, NV 89106
18 Tel: (702) 699-7822

19 Attorneys for Plaintiff QBE INSURANCE
20 CORPORATION
21
22
23
24
25
26
27
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through this limited intervention, QBE Insurance Corporation (“QBE”) seeks to stay further action on Simone Russo’s motion for judicial assignment of a cause of action. Stated briefly, Simone Russo has obtained a void default judgment against Richard Duslak and Justin Sesman and now seeks to have this Court assign to him rights of Duslak and Sesman as against QBE. QBE seeks to intervene to stay this assignment because Duslak and Sesman have no rights against QBE and the judgment obtained in this action by Dr. Russo is void. QBE is seeking a judicial determination of its rights and obligations under the policy at issue in a separate action, which QBE has filed in the United States District Court. Should the court in the coverage action find any obligation to Duslak and Sesman is owed, QBE will defend Duslak and Sesman and will seek relief from the judgment against these two in this action. In the meantime, Dr. Russo should be stayed from moving forward with the assignment, under which he seeks an unfair advantage against QBE to which he is not entitled under the law.

First, QBE vigorously asserts that Duslak and Sesman have no rights against it. Neither Duslak nor Sesman ever requested policy benefits (including the duty to defend); in fact, neither has ever contacted QBE. Moreover, no other person or entity tendered the defense of these two to QBE. Notably, the policy was issued to another party in the case, Sunrise Villas IX Homeowners Association and QBE settled this case subject to a full and complete release. Immediately, when QBE learned of plaintiff’s contentions here, it reached out to plaintiff’s counsel and filed a declaratory relief action in the United States District Court of Nevada, seeking an adjudication of QBE’s rights and obligations under the policy at issue (a copy of the declaratory relief complaint filed by QBE in the federal court is attached hereto as Exhibit A). Dr. Russo is a party to that action.

Second, plaintiff is seeking this assignment based upon a judgment which is void. There is no evidence that plaintiff served the complaint on Sesman or that plaintiff sought to have a default entered as against Duslak. Accordingly, plaintiff is seeking to gain a strategic advantage against QBE based upon a void judgment. QBE contends that this flawed assignment should not proceed. QBE has filed a declaratory relief action against Duslak, Sesman and Dr. Russo in order to

1 have a determination of coverage under the policy made by a court. It will obtain a ruling regarding
2 its coverage rights and obligations and should Duslak and Sesman have rights under the policy, QBE
3 will take action on their behalf to obtain relief from the judgment in this action.

4 Case law has not addressed the unique situation presented here, where plaintiff seeks an
5 assignment of rights expressly against QBE. Again, QBE seeks only to have that assignment stayed
6 until it can be determined whether such rights exist – a determination which will be made in a
7 separate action, already on file. If QBE is adjudged to have a duty to defend Duslak and Sesman, it
8 will immediately do so and seek relief from the judgment in this action under NRCP 60(b)(4).
9 Plaintiff will not be prejudiced by the requested stay. He will simply be placed in the position he
10 should be in – namely, litigating the issue of whether the QBE policy apply to Duslak and Sesman in
11 relation to this action and, if the policy applies, properly seeking a judgment against Duslak and
12 Sesman with the involvement of QBE.

13 **II. LEGAL AND FACTUAL BACKGROUND**

14 This is a personal injury action in which plaintiff, Simone Russo, alleges that he tripped and
15 fell over a coaxial cable while walking up the driveway of the home he rented in Las Vegas Nevada.
16 The property at which the events giving rise to the suit took place, is located within the Sunrise
17 Villas IX Homeowners Association (“Sunrise”). See, Complaint, filed 4/6/17. Russo initially named
18 Sunrise, Cox Communications, IES Residential, Inc., and Kevin Bushbaker (the owner of the home),
19 in the action. *Ibid.* He later filed a motion to amend and amended the action to add as defendants,
20 among others, the landscaping contractors, Richard Duslak and Justin Sesman. See, Supplement to
21 Motion to Amend Complaint, filed 12/22/17, and Amended Complaint, filed 1/16/18. All of the
22 defendants which answered the complaint, including Sunrise, fully and finally settled Dr. Russo’s
23 claims against them and this Court ruled that the settlement was in good faith. See, Court Minutes,
24 10/18/19.

25 Richard Duslak and Justin Sesman did not appear in the action and plaintiff obtained a
26 default judgment against them, filed on December 16, 2019. However, plaintiff did not provide
27 evidence that Justin Sesman was ever served with the complaint naming him in this action. An
28 Affidavit of Service, filed with the Court as proof of service, attests to the service of the amended

complaint on J. Chris Scarcelli. See, Summons and attached Affidavit, filed 2/15/18. **No proof of service was filed with respect to Mr. Sesman. Plaintiff filed a summons with respect to Sesman, to which was attached an “Affidavit of Service” stating that service was effected on J. Chris Scarcelli, a different defendant, also named in the suit.¹ As plaintiff did not establish that Mr. Sesman was ever served with the complaint, the default judgment is void.**

Further, plaintiff **failed to enter a default against Mr. Duslak.** In his application for judgment by default against both Duslak and Sesman, plaintiff states:

In this action, the Defendants, Richard Duslak and Justin Sesman, having been regularly served with Summons and the Original Complaint, and having not appeared in this action, and a default having duly been entered against Defendants, Richard Duslak and Justin Sesman, Judgment is hereby requested to be entered against said Defendants.

However, the docket reflects that a default was entered as against Sesman only. See, Default, filed 9/13/19. **There is no record that a default was entered as against Duslak. Accordingly, the default judgment is void.**

Currently pending before this court is plaintiff’s motion for judicial assignment of “all rights of action held by the Defendants Richard Duslak and Justin Sesman against any and all individuals and/or entities, including all claims against any and all insurance carriers, including but not limited to QBE Insurance Corporation, Community Association Underwriters, or any other insurance Carrier(s).” In his points and authorities, plaintiff states:

defendants were insured with QBE Insurance Corporation . . . at the time the subject loss occurred. Neither QBE Insurance Corporation nor Community Association Underwriters have paid anything toward the judgment. Duslak and Sesman have rights against QBE Insurance Corporation . . . under the insurance agreement for indemnification of the Judgment.

QBE issued a condominium association policy, with a policy period of February 1, 2016, to February 1, 2017, to Sunrise Villas HOA. Declaration of Duane Butler, attached hereto as Exhibit B, ¶2. It defended its insured, Sunrise, in response to a tender from Sunrise, and paid for the settlement of any and all claims that could be asserted against or through them in this action. *Ibid.* In exchange for payment, Dr. Russo gave a full and complete release. *Ibid.*

¹ Plaintiff also filed a summons regarding Scarcelli to which it correctly attached the same affidavit

Neither Duslak nor Sesman requested a defense from QBE. Dec. of D. Butler, Ex. B ¶3. Neither Duslak nor Sesman ever contacted QBE about this suit. *Ibid.* Plaintiff presents no evidence that “defendants were insured with QBE Insurance Corporation” or that “Duslak and Sesman have rights against QBE Insurance Corporation.”

III. ARGUMENT

QBE seeks to intervene to protect its interest and oppose against having non-existent rights against it assigned to plaintiff based on a void judgment. Specifically, it seeks to intervene to stay the assignment of rights until there is a determination of whether Duslak and Sesman have rights against QBE to assign. QBE has filed an action in federal court in which it seeks a declaration that it did not owe a duty to defend or indemnify Duslak and Sesman in relation to this action because neither Duslak nor Sesman ever contacted QBE requesting policy benefits or seeking a defense. A stay of this action prior to an assignment is particularly justified here where, in fact, the default judgment obtained by plaintiff is void, as there is no evidence that plaintiff ever served Sesman with the complaint and there is no evidence that plaintiff ever had a default entered against Duslak. If there is a determination in the federal coverage action that Duslak and Sesman are owed any obligation under the QBE policy, QBE will appear on behalf of Duslak and Sesman and seek relief from the judgment, because the judgment is void under Rule 60(b)(4).

A. QBE is Entitled to Intervene as of Right.

QBE meets the criteria for intervention as of right under Rule 24(a) because (1) it has a sufficient interest in the litigation’s subject matter, (2) it could suffer an impairment of its ability to protect that interest if it does not intervene, (3) its interest is not adequately represented by existing parties, and (4) its application is timely. *See e.g. Hairr v. First Jud. Dist. Court*, 132 Nev. 180, 183 (2016).

1. QBE has sufficient interest in the litigation’s subject matter.

QBE meets the first criteria for intervention as of right under Rule 24(a) because it has a sufficient interest in the litigation’s subject matter. *Hairr*, 132 Nev. at 183. The federal courts have found that the interests test under Federal Rule Civ. P. 24(a), which is analogous to Nevada Rule

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24(a)², is not a rigid standard, but rather “a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967); see also *Friends of Animals v. Kempthorne*, 452 F. Supp. 2d 64, 69 (D.D.C. 2006) (“proposed intervenors of right need only an interest in the litigation—not a cause of action or permission to sue”) (quotation marks and internal citation omitted); *Smith v. Pangilinan*, 651 F.2d 1320, 1324 (9th Cir. 1981) (holding that a proposed intervenor need not have a specific legal or equitable interest in jeopardy but simply a “protectable interest of sufficient magnitude to warrant inclusion in the action”).

In this case, QBE seeks to intervene to prevent plaintiff from wrongly taking an assignment of rights against QBE. Its interests are clear, as plaintiff is seeking to obtain the right to bring claims against QBE for breach of the covenant of good faith and fair dealing against QBE – a right which QBE strongly contends does not exist.

2. Without intervention, the assignment of rights would impair QBE’s ability to protect its interests.

QBE meets the second criteria for intervention as of right under Rule 24(a) because it could suffer an impairment of its ability to protect its interest if it does not intervene. *Hairr*, 132 Nev. at 183. Rule 24(a) requires applicants to demonstrate they will “either gain or lose by the direct legal operation and effect of the judgment which might be rendered in the suit between the original parties.” *Stephens v. First Nat’l Bank of Nev.*, 64 Nev. 292, 304–05, 182 P.2d 146, 151–52 (1947) (quoting *Harlan v. Eureka Mining Co.*, 10 Nev. 92, 94–95 (1875)).

In this action, neither Duslak nor Sesman ever tendered their defense to QBE. An insurer's

² It is appropriate to supplement the Nevada caselaw with relevant federal precedent because “[f]ederal cases interpreting the Federal Rules of Civil Procedure ‘are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.’” *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53 (2002) (quoting *Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 119 (1990)). Furthermore, the Nevada Supreme Court has specifically looked to federal interpretations of Federal Rule 24 when construing intervention under Nevada Rule 24. See e.g. *Am. Home Assurance Co. v. Eighth Judicial Dist. Court*, 122 Nev. 1229, 1241–42, 147 P.3d 1120, 1128 (2006) (citing *Dairy Maid Dairy, Inc. v. U.S.*, 147 F.R.D. 109, 112 (E.D. Va. 1993)) (just like Federal Rule 24, Nevada Rule 24 requires only a minimal showing to establish that the existing parties do not adequately protect an applicant’s interest). It is important to note that the federal courts construe the intervention rules “broadly in favor of proposed intervenors [because] a liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts.” *Wilderness Society v. U.S. Forest Service*, 630 F.3d 1173, 1179 (9th Cir. 2011) (quoting *U.S. v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002)).

right and duty to defend attaches when the insured tenders defense of the lawsuit to the insurer. *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 309 (2009). While this principle is expressed clearly in the policy itself, it is also a reflection of contract law:

To succeed on a claim for breach of contract, the plaintiff must show that a contractual relationship existed between it and the defendant, and that the defendant materially breached a duty owed to the plaintiff under the contract. Generally, when one party prevents performance of a contractual duty, the other party is excused from performing. For example, in a purchase and sale agreement, a buyer must be “ready, willing, and able” to purchase the property. Further, “[a]s a general rule, a party cannot recover damages for loss that he could have avoided by reasonable efforts.”

Chamani v. Mackay, 124 Nev. 1457 (2008); *Cladianos v. Friedhoff*, 69 Nev. 41, 45 (1952) [“The law is clear . . . that any affirmative tender of performance is excused when performance has in effect been prevented by the other party to the contract.” (citing Sec: 3 Williston on Contracts, Rev. Ed., 1952, §46 677, 2325, §832; 17 C.J.S., Contracts, §481, p. 986; 12 Am.Jur. 889, Contracts, §333)]. “As is stated by Mr. Williston . . . : ‘It is a principle of fundamental justice that if a promisor is himself the cause of the failure of performance, either of an obligation due him or of a condition upon which his own liability depends, he cannot take advantage of the failure.’” *Cladianos*, 69 Nev. at 45.

Here, neither Duslak nor Sesman contacted QBE at all in relation to this suit.³ They did not request policy benefits or even claim to be insured under the policy at any time. Nor did any other entity tender the defense of Duslak and Sesman to QBE in relation to this action. Neither Duslak nor Sesman have appeared in this action and QBE cannot simply appear in an action in the name of two people who never asked for a defense and with whom QBE has no contact. Because QBE had no notice that Duslak and Sesman sought policy benefits, or even contended that they were insured under the QBE policy issued to Sunrise, Duslak and Sesman cannot now claim that QBE breached any provision of the insurance policy.

Yet, plaintiff has presented to this court that Duslak and Sesman “were insured with QBE Insurance Corporation . . . at the time the subject loss occurred” and that “Duslak and Sesman

³ In fact, neither Duslak nor Sesman are parties to the QBE policy issued to Sunrise.

1 have rights against QBE Insurance Corporation . . . under the insurance agreement for
 2 indemnification of the Judgment.” Plaintiff seeks to obtain a strategic advantage by obtaining
 3 rights in a circumstance where no one can oppose the assignment sought.

4 Indeed, not only does plaintiff seek an assignment of rights that do not exist, he is seeking
 5 to obtain an assignment based on a void default judgment. “For a judgment to be void, there must
 6 be a defect in the court's authority to enter judgment through either lack of personal jurisdiction or
 7 jurisdiction over subject matter in the suit.” *Gossett v. Snappy Car Rental*, 111 Nev. 1416, 1419,
 8 (1995), superseded on other grounds by rule, as stated in *In Re Estate of Black*, 132 Nev. 73, 367
 9 P.3d 416 (2016); *Bo Yang v. Haiming Pan*, 445 P.3d 220 (Nev. 2019). A defective service renders
 10 the district court's personal jurisdiction over a defendant invalid and the judgment against her void.
 11 *Gossett*, 111 Nev. at 1419. Under NRCP 60(b)(4), a defendant may seek relief from a judgment
 12 which is void. Moreover, under NRCP 60(b) a motion to set aside a void judgment is not
 13 restricted to the six months' period specified in the rule. NRCP 60(c); *Foster v. Lewis*, 78 Nev.
 14 330, 337 (1962).

15 **Here, there is no evidence that Mr. Sesman was served with the complaint in this**
 16 **matter. Further, there is no evidence that a default was ever entered against Mr. Duslak.**
 17 **Accordingly, the default judgment which serves as the basis for plaintiff's request for an**
 18 **assignment of rights is void. Yet, because Duslak and Sesman have not appeared in this**
 19 **action (and may be unaware of the actions taken by Dr. Russo), plaintiff will be unopposed**
 20 **in seeking to obtain rights against QBE.**

21 QBE has filed a declaratory relief action to seek judicial clarification of its rights and
 22 obligations under the policy issued to Sunrise with respect to this action. QBE seeks to intervene
 23 to prevent and oppose any assignment until there is clarification of whether Duslak or Sesman
 24 have rights to assign. Should a court find that Duslak and Sesman are insured under the QBE
 25 policy and entitled to a defense in this action, QBE will defend them and seek relief from the
 26 judgment. QBE should be permitted to intervene to prevent the unfair strategic advantage plaintiff
 27 is seeking to obtain through a void judgment.

3. QBE's interests are not adequately represented by existing parties.

The Nevada Supreme Court has held that intervention requires only a minimal showing to establish that the existing parties do not adequately protect an applicant's interest. *Am. Home Assur. Co. v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 122 Nev. 1229, 1241-42 (2006). As stated above, QBE's interests are not represented in this action. First, neither Duslak nor Sesman have appeared. Second, even if they had appeared, neither are necessarily aligned with QBE, as QBE is seeking to prevent the assignment of Duslak and Sesman's rights against QBE. As discussed above, QBE contends that these two do not have rights under the QBE policy. Notably, as neither Duslak nor Sesman sought policy benefits from QBE at any time, QBE does not know whether they contend that they have assignable rights at all. However, it is anticipated that no party will oppose plaintiff's motion to obtain the alleged rights against QBE unless QBE itself is allowed to stay the current motion and seek a judicial determination of its rights and obligations under the policy.

4. QBE's application to intervene is timely.

The Nevada Supreme Court has identified potential prejudice to the existing parties as a key factor in determining the timeliness of intervention: "The most important question to be resolved in the determination of the timeliness of an application for intervention is not the length of the delay by the intervenor but the extent of prejudice to the rights of existing parties resulting from the delay." *Lawler v. Ginocchio*, 94 Nev. 623, 584 P.2d 667, 669 (1978) (citations omitted). This leads to a pragmatic inquiry: can the intervenor protect its interests without prejudicing the existing parties? As the Nevada Supreme Court has found, "[o]ur cases generally reflect that intervention is timely if the procedural posture of the action allows the intervenor to protect its interest." *Estate of LoMastro v. American Family Ins. Group*, 124 Nev. 1060, 195 P. 3d 339, 347 n.29 (2008).

Undoubtedly, plaintiff will argue that intervention is not timely here because judgment has already been entered. However, in this action, QBE is seeking to intervene for the limited purpose of seeking a stay of an assignment of the rights of Duslak and Sesman explicitly against QBE – an issue that has not been addressed before with respect to Nev. Rev. Stat. Ann. § 12.130. QBE is separately seeking an adjudication of its rights and obligations under the policy at issue with respect to Duslak and Sesman in relation to this action. If the court rules that QBE has any obligation to

Duslak and Sesman under the Sunrise policy in relation to this action, QBE will assume their defense and seek relief from the void default judgment pursuant to NRCP60(b)(4).

QBE did not seek to intervene earlier because neither Duslak nor Sesman had ever contacted it seeking policy benefits and QBE was unaware until plaintiff's filing of the motion seeking an assignment that any entity contended that Duslak and Sesman had any rights with respect to the QBE policy.

Further, a stay would protect the interests of QBE without prejudicing the existing parties. Neither Duslak nor Sesman has appeared in this action. Plaintiff has settled all claims against the other parties. He seeks the right to pursue policy benefits under the QBE policy, which will necessitate that he litigate the coverage issues raised in the pending QBE declaratory relief action (in which he is a named party). If the federal court holds that a duty to defend exists, QBE will seek relief from the void judgment taken against Duslak and Sesman in this action. Plaintiff will not be prejudiced by the delay in obtaining the assignment until after a determination of whether the assignment is of value. In fact, it is apparent from the record that the judgement under which plaintiff seeks an assignment is void so plaintiff loses nothing by the by a stay.

B. In the Alternative, QBE Requests Permissive Intervention.

Because QBE'S proposed Motion to Stay (attached hereto) includes defenses and legal arguments that rely on the same facts and legal claims set forth in the Complaint, permissive intervention is appropriate here.

NRCP 24(b) permits intervention as follows:

(b) Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Although provision Rule 24(b)(1) does not apply here, the remaining provisions of the rule support permissive intervention.

QBE is seeking to stay the assignment of rights regarding this case. As noted above, the default judgment against Duslak and Sesman is void. If the federal court, ruling on the pending

1 declaratory relief suit, finds that QBE owes a duty to defend, QBE will defend Duslak and Sesman
2 and seek relief from the judgment as prescribed under NRCP 60(b)(4).

3 Finally, as noted above, there would be no undue delay or prejudice to the existing parties
4 given that Duslak and Sesman can seek relief from the void judgment, which was not properly taken
5 in this case and QBE will seek that relief if it is determined that Duslak and Sesman are owed any
6 policy benefits. In that case, plaintiff will simply be in the legal position he should be in, seeking a
7 proper judgment against Duslak and Sesman, with QBE involved in the action having had a
8 determination that its policy is implicated in this action, vis a vis Duslak and Sesman. Thus,
9 permissive intervention would be appropriate.

10 **IV. CONCLUSION**

11 Given the unusual nature of this case, in which plaintiff seeks an assignment of rights against
12 QBE based on allegations made for the first time in the motion seeking the assignment (i.e., that
13 Duslak and Sesman have rights against QBE), QBE seeks to intervene simply to stay the
14 assignment. QBE has filed a separate action in which the issue of coverage under the QBE policy
15 will be litigated as between QBE, Dr. Russo, Duslak and Sesman. QBE has a right to intervene
16 under Rule 24(a), to stay plaintiff's attempts to gain a strategic advantage against it through this
17 assignment or, in the alternative, this Court should permit QBE to intervene pursuant to Rule 24(b).
18 Respectfully submitted,

19
20 DATED: November 16, 2020

MORALES, FIERRO & REEVES

21 By: /s/ Ramiro Morales

22 Ramiro Morales, #7101
23 600 South Tonopah Dr., Suite 300
24 Las Vegas, NV 89106
25 Tel: (702) 699-7822

26 Attorneys for Plaintiff QBE INSURANCE
27 CORPORATION
28

OPPOSITION TO MOTION TO ASSIGN RIGHTS AND MOTION TO STAY

I. INTRODUCTION

QBE Insurance Corporation (“QBE”) opposes plaintiff’s request for an assignment of the rights of Richard Duslak and Justin Sesman against QBE and requests that further action regarding an assignment of rights be stayed until it can be determined whether such rights exist. Stated briefly, Simone Russo has obtained a void default judgment against Duslak and Sesman and now seeks to have this Court assign to him rights of Duslak and Sesman as against QBE. QBE contends that neither Duslak nor Sesman have rights against QBE, and, indeed, neither sought benefits under the QBE policy issued to Sunrise in relation to this action. Moreover, QBE contends that the judgment obtained by plaintiff in this action is void and, therefore, could be challenged at any time. QBE seeks to stay the assignment sought by plaintiff while it litigates the issue of coverage under its policy in a federal declaratory relief action QBE has filed (and to which, Simone Russo has been named a party). If QBE is adjudged to have a duty to defend Duslak and Sesman, it will immediately do so and it will seek relief from the judgment in this action under NRCP 60(b)(4) (which provides for relief from judgments which are void).

A stay would be both efficient and fair. Plaintiff will not be prejudiced by the requested stay. He will simply be placed in the position he should be in – namely, litigating the issue of whether the QBE policy apply to Duslak and Sesman in relation to this action and, if the policy applies, properly seeking a judgment against Duslak and Sesman with the involvement of QBE.

II. ARGUMENT

A court has discretionary power to stay proceedings in its own court. See *Landis v. N.A. Co.*, 299 U.S. 248, 254-255 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”); see also *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979) (“A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it ...”); 7C Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure*, §

1838 (3d ed. 2010) (“[W]hether to grant a stay in a particular case is a matter addressed to the sound discretion of the district court.”).

When evaluating a motion to stay, the Court may consider the goal of Federal Rule of Civil Procedure 1: The Rules “should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.” See Fed. R. Civ. P. 1; see also 4 Wright et al., *supra*, § 1029 (“There probably is no provision in the federal rules that is more important than this mandate. It reflects the spirit in which the rules were conceived and written, and in which they should be interpreted.”). Courts have a duty to resolve civil matters fairly, but without undue cost or delay. See Fed. R. Civ. P. 1 advisory committee notes, 1993 Amendments (explaining that the purpose of the 1993 amendment “is to recognize the affirmative duty of the court to exercise the authority conferred by these rules to ensure that civil litigation is resolved not only fairly, but also without undue cost or delay.”); see also 4 Wright et al., *supra*, § 1011.1.

Here, fairness and efficiency dictate that a stay is warranted. First, QBE vigorously asserts that Duslak and Sesman have no rights against it. An insurer's right and duty to defend attaches when the insured tenders defense of the lawsuit to the insurer. *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 309 (2009). While this principle is expressed clearly in the policy itself, it is also a reflection of contract law:

To succeed on a claim for breach of contract, the plaintiff must show that a contractual relationship existed between it and the defendant, and that the defendant materially breached a duty owed to the plaintiff under the contract. Generally, when one party prevents performance of a contractual duty, the other party is excused from performing. For example, in a purchase and sale agreement, a buyer must be “ready, willing, and able” to purchase the property. Further, “[a]s a general rule, a party cannot recover damages for loss that he could have avoided by reasonable efforts.”

Chamani v. Mackay, 124 Nev. 1457 (2008); *Cladianos v. Friedhoff*, 69 Nev. 41, 45 (1952) [“The law is clear . . . that any affirmative tender of performance is excused when performance has in effect been prevented by the other party to the contract.” (citing Sec: 3 Williston on Contracts, Rev. Ed., 1952, §46 677, 2325, §832; 17 C.J.S., Contracts, §481, p. 986; 12 Am.Jur. 889, Contracts, §333)]. “As is stated by Mr. Williston . . . : ‘It is a principle of fundamental justice that if a promisor is himself the cause of the failure of performance, either of an obligation due him or of a condition

1 upon which his own liability depends, he cannot take advantage of the failure.” *Cladianos*, 69
2 Nev. at 45.

3 Here, neither Duslak nor Sesman contacted QBE at all in relation to this suit.⁴ They did
4 not request policy benefits or even claim to be insured under the policy at any time. Nor did any
5 other entity tender the defense of Duslak and Sesman to QBE in relation to this action. Neither
6 Duslak nor Sesman have appeared in this action and QBE cannot simply appear in an action in the
7 name of two people who never asked for a defense and with whom QBE has no contact. Because
8 QBE had no notice that Duslak and Sesman sought policy benefits, or even contended that they
9 were insured under the QBE policy issued to Sunrise, Duslak and Sesman cannot now claim that
10 QBE breached any provision of the insurance policy.

11 Yet, plaintiff has presented to this court that Duslak and Sesman “were insured with QBE
12 Insurance Corporation . . . at the time the subject loss occurred” and that “Duslak and Sesman
13 have rights against QBE Insurance Corporation . . . under the insurance agreement for
14 indemnification of the Judgment.” Plaintiff seeks to obtain a strategic advantage by obtaining
15 rights in a circumstance where no one can oppose the assignment sought. In fact, Duslak and
16 Sesman have no rights under the QBE policy and QBE is seeking to have that established through
17 a declaratory relief action filed in federal court.

18 Indeed, not only does plaintiff seek an assignment of rights that do not exist, he is seeking
19 to obtain an assignment based on a void default judgment. “For a judgment to be void, there must
20 be a defect in the court's authority to enter judgment through either lack of personal jurisdiction or
21 jurisdiction over subject matter in the suit.” *Gossett v. Snappy Car Rental*, 111 Nev. 1416, 1419,
22 (1995), superseded on other grounds by rule, as stated in *In Re Estate of Black*, 132 Nev. 73, 367
23 P.3d 416 (2016); *Bo Yang v. Haiming Pan*, 445 P.3d 220 (Nev. 2019). A defective service renders
24 the district court's personal jurisdiction over a defendant invalid and the judgment against her void.
25 *Gossett*, 111 Nev. at 1419. Under NRCP 60(b)(4), a defendant may seek relief from a judgment
26 which is void. Moreover, under NRCP 60(b) a motion to set aside a void judgment is not
27

28 _____
⁴ In fact, neither Duslak nor Sesman are parties to the QBE policy issued to Sunrise.

1 restricted to the six months' period specified in the rule. NRCP 60(c); *Foster v. Lewis*, 78 Nev.
2 330, 337 (1962).

3 Here, there is no evidence that plaintiff served the complaint on Sesman or that plaintiff
4 sought to have a default entered as against Duslak. No proof of service was filed with respect to Mr.
5 Sesman. Plaintiff filed a summons with respect to Sesman, to which was attached an "Affidavit of
6 Service" stating that service was effected on J. Chris Scarcelli, a different defendant, also named in
7 the suit.⁵ As plaintiff did not establish that Mr. Sesman was ever served with the complaint, the
8 default judgment is void. Further, there is no evidence that a default was ever entered against Mr.
9 Duslak. The Court's docket reflects no entry of default with respect to Duslak, although a default
10 was entered with respect to Sesman.

11 QBE is seeking a stay of an assignment of the rights of Duslak and Sesman explicitly against
12 QBE. QBE is separately seeking an adjudication of its rights and obligations under the policy at
13 issue with respect to Duslak and Sesman in relation to this action in a federal declaratory relief
14 action. If the federal court rules that QBE has any obligation to Duslak and Sesman under the
15 Sunrise policy in relation to this action, QBE will assume their defense and seek relief from the void
16 default judgment pursuant to NRCP60(b)(4).

17 A stay would protect the interests of QBE without prejudicing the existing parties. Neither
18 Duslak nor Sesman has appeared in this action. Plaintiff has settled all claims against the other
19 parties. He seeks the right to pursue policy benefits under the QBE policy, which will necessitate
20 that he litigate the coverage issues raised in the pending QBE declaratory relief action (in which he
21 is a named party). If the federal court holds that a duty to defend exists, QBE will seek relief from
22 the void judgment taken against Duslak and Sesman in this action. Plaintiff will not be prejudiced
23 by the delay in obtaining the assignment until after a determination of whether the assignment is of
24 value. In fact, it is apparent from the record that the judgement under which plaintiff seeks an
25 assignment is void so plaintiff loses nothing by the by a stay.

26
27
28 _____
⁵ Plaintiff also filed a summons regarding Scarcelli to which it correctly attached the same affidavit

1 **III. CONCLUSION**

2 For the reasons set forth herein, QBE opposes the motion of plaintiff seeking an assignment
3 of the rights of Duslak and Sesman as against QBE. QBE requests that any such assignment be
4 stayed until after litigation of the issues regarding coverage under the QBE policy with respect to
5 these two defendants.

6
7 DATED: November 16, 2020

MORALES, FIERRO & REEVES

8
9 By: /s/ Ramiro Morales

10 Ramiro Morales, #7101
11 600 South Tonopah Dr., Suite 300
12 Las Vegas, NV 89106
13 Tel: (702) 699-7822

14 Attorneys for Plaintiff QBE INSURANCE
15 CORPORATION
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EXHIBIT A

RAMIRO MORALES [Bar No.: 7101]
E-mail: rmorales@mfrlegal.com
MORALES, FIERRO & REEVES
600 South Tonopah Drive, Suite 300
Las Vegas, Nevada 89106
Telephone: (702) 699-7822
Facsimile: (702) 699-9455

Attorneys for Plaintiffs
QBE INSURANCE CORPORATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

QBE INSURANCE CORPORATION,

Plaintiff,

vs.

SIMONE RUSSO, RICHARD DUSLAK and
JUSTIN SESMAN

Defendants.

CASE NO.:

**COMPLAINT FOR DECLARATORY
RELIEF**

Plaintiff QBE INSURANCE CORPORATION (“QBE” or “Plaintiff”) alleges as follows:

PARTIES

1. At all relevant times herein, Plaintiff QBE was a corporation existing under the laws of the State of Pennsylvania with its principle place of business in Wisconsin. Plaintiff QBE is, and at all relevant times was, an insurance company eligible to do business as an insurer in the State of Nevada.

2. Plaintiff is informed and believes and thereon alleges that, at all times relevant, defendant Simone Russo (“RUSSO”) was and is an individual residing in Clark County, Nevada.

3. Plaintiff is informed and believes and thereon alleges that, at all times relevant, defendant Richard Duslak (“DUSLAK”) was and is an individual residing in Clark County, Nevada.

4. Plaintiff is informed and believes and thereon alleges that, at all times relevant,

1 defendant Justin Sesman (“SESMAN”) was and is an individual residing in Clark County, Nevada.

2 **JURISDICTION AND VENUE**

3 5. This Court has jurisdiction under 28 U.S.C. Section 1332 in that this matter is a civil
4 dispute between citizens of different States in which the amount in controversy, exclusive of costs
5 and interest, exceeds seventy-five thousand dollars (\$75,000.00).

6 6. Venue is proper in the United States District Court for Nevada in that all of the
7 defendants are subject to personal jurisdiction in this district at the time this action is commenced
8 and there is no district in which the action may be otherwise brought. All Defendants are, and were
9 at all relevant times, doing business in or residents of the State of Nevada. Next, the subject matter
10 of this action arose in this district, specifically, this dispute arises from an underlying action *Simone*
11 *Russo v. Cox Communications Las Vegas Inc., et al.* Clark County District Court Case No.: A-17-
12 753606-C (hereinafter, “UNDERLYING MATTER”). Further, the acts and/or omissions at issue in
13 this litigation took place in this judicial district within the State of Nevada. Venue, therefore, lies
14 with this Court, as a substantial part of the events which are the subject of the claims asserted herein
15 are located and/or took place in this judicial district.

16 **GENERAL ALLEGATIONS**

17 7. This insurance coverage related declaratory relief action arises from a dispute
18 regarding RUSSO’s contention that defendants DUSLAK and SESMAN are covered under an
19 insurance policy issued by Plaintiff regarding the UNDERLYING MATTER.

20 8. In the original complaint in the UNDERLYING MATTER, filed on April 16, 2017,
21 (a copy of which is attached hereto as exhibit 1), Defendant RUSSO alleged damages from a trip
22 and fall accident that occurred on August 27, 2016, outside a home he was renting in Las Vegas,
23 Nevada. RUSSO alleged that he tripped and fell over a cable or wire that was exposed as it ran up
24 from one side of the front yard, across the driveway of the home he was renting and back under the
25 other side of the yard. The defendants in that action included Sunrise Villas IX Homeowners
26 Association (“SUNRISE VILLAS HOA”) – the HOA for the home RUSSO rented. Defendants
27 DUSLAK and SESMAN are not named in this initial complaint. Instead, RUSSO names a third-
28 party landscaper, J&G Lawn Maintenance, with no alleged connection to SUNRISE VILLAS HOA.

1 9. On November 29, 2017, RUSSO moved to amend his complaint in the
2 UNDERLYING MATTER. In a supplement to the motion to amend the complaint, filed on
3 December 22, 2017, RUSSO requested to add a “Doe Landscaper” because the original J&G
4 Landscape defendant did not contract with SUNRISE VILLAS HOA. (RUSSO’S motion to amend
5 complaint and supplement to motion to amend complaint are attached at exhibit 2.)

6 10. When RUSSO filed his amended complaint on January 16, 2018, he named
7 DUSLAK and SESMAN as the landscape contractors alleging that DUSLAK and SESMAN
8 “maintained and controlled [the subject] premises....” (RUSSO’s amended complaint is attached
9 hereto as exhibit 3.)

10 11. Plaintiff QBE issued condominium association policy no. CAU234378-1, effective
11 February 1, 2016, through February 1, 2017, to SUNRISE VILLAS HOA as the named insured.
12 Community Association Underwriters managed this policy as an agent for QBE. Under this policy
13 Plaintiff QBE provided SUNRISE VILLAS HOA with defense and indemnification in the
14 UNDERLYING MATTER. Plaintiff settled the UNDERLYING MATTER on behalf of its insured
15 SUNRISE VILLAS HOA paying \$140,000 for a full and complete release.

16 12. At no time did DUSLAK and/or SESMAN seek defense and/or indemnification from
17 Plaintiff QBE for the UNDERLYING MATTER.

18 13. DUSLAK and/or SESMAN have never claimed to be insured by QBE.

19 14. In the UNDERLYING MATTER, RUSSO obtained a default judgment against
20 DUSLAK and/or SESMAN in the amount of at least \$25,000.000.00.

21 15. On November 2, 2020, RUSSO filed a motion for judicial assignment of all rights of
22 action held by DUSLAK and SESMAN against any and all insurance carriers, including QBE. (A
23 copy of RUSSO’s motion for judicial assignment and notice of motion are attached hereto as exhibit
24 4.) For the first time, RUSSO now claims that DUSLAK and SESMAN were insured by QBE.

25 16. RUSSO now alleges that QBE owed DUSLAK and/or SESMAN a duty of defense
26 and/or indemnification, fiduciary duties, and a duty of good faith and fair dealing in connection with
27 the UNDERLYING MATTER. RUSSO also alleges that QBE breached said duties, and that
28 DUSLAK and/or SESMAN possess an actionable claim against QBE, a claim which he now

1 possesses by virtue of assignment.

2 17. Plaintiff QBE disputes and denies that DUSLAK and/or SESMAN ever claimed an
3 entitlement to defense and/or indemnification under the QBE policy. Plaintiff QBE then further
4 disputes and denies that it owes DUSLAK and/or SESMAN a duty of defense and/or
5 indemnification, fiduciary duties, or a duty of good faith and fair dealing in connection with the
6 UNDERLYING MATTER. As such, Plaintiff QBE also disputes and denies that it has breached
7 any such duties to DUSLAK and/or SESMAN.

8 18. RUSSO now seeks, by virtue of his default judgment against DUSLAK and/or
9 SESMAN and assignment of claims, to recover damages from QBE under the policies issued to
10 SUNRISE VILLAS HOA.

11 19. Plaintiff QBE denies that RUSSO has any basis or grounds to recover damages from
12 QBE under the policies issued to SUNRISE VILLAS HOA.

13 **CAUSE OF ACTION - Declaratory Relief**

14 **As Against All Defendants**

15 20. Plaintiff incorporates by reference as though fully set forth herein the allegations in
16 all of the preceding paragraphs.

17 21. Plaintiff is informed and believes and on that basis alleges that RUSSO claims that
18 DUSLAK and/or SESMAN have claims against Plaintiff. Plaintiff is further is informed and
19 believe and on that basis allege that RUSSO claims that Plaintiff owes RUSSO (by assignment) a
20 duty to defend or indemnify in connection with the UNDERLYING MATTER. Plaintiff is
21 informed and believes and on that basis alleges that RUSSO claims to be entitled to recover funds
22 from Plaintiff QBE to satisfy the judgment against DUSLAK and/or SESMAN in the
23 UNDERLYING MATTER. Plaintiff denies all of these claims.

24 22. Plaintiff contends, pursuant to the terms of any insurance policies issued to
25 SUNRISE VILLAS HOA that it does not owe DUSLAK, SESMAN and/or RUSSO (by
26 assignment) a duty to defend or indemnify, any fiduciary duty, or any duty of good faith and fair
27 dealing in connection with the UNDERLYING MATTER. Plaintiff further contends RUSSO is not
28 entitled to recover funds from Plaintiff QBE to satisfy the judgment against DUSLAK and/or

1 SESMAN in the UNDERLYING MATTER.

2 23. By reason of the foregoing, an actual controversy exists between the parties,
3 requiring a declaratory judgment of this Court.

4 24. A judicial determination of this controversy is necessary and appropriate in order for
5 the parties to ascertain their rights, duties and obligations under the insurance policies.

6 Wherefore, Plaintiff pray for judgment against Defendants as hereinafter set forth.

7 **Prayer**

8 AS TO THE FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF:

9 1. For a declaration and determination that DUSLAK and/or SESMAN are not insured
10 by Plaintiff, and in fact never even tendered the UNDERLYING MATTER to Plaintiff, that
11 Plaintiff did not owe DUSLAK, SESMAN, and/or RUSSO a defense, indemnification, any
12 fiduciary duty, or any duty of good faith and fair dealing for claims arising out of the
13 UNDERLYING MATTER. For a declaration and determination that RUSSO is not entitled to
14 recover funds from Plaintiff QBE to satisfy the judgment against DUSLAK and/or SESMAN in the
15 UNDERLYING MATTER.

16 2. For attorneys' fees;

17 3. For costs of suit;

18 4. For interest;

19 5. For all other relief the Court deems just and proper.

20
21 DATED: November 16, 2020

MORALES, FIERRO & REEVES

22 By: /s/ Ramiro Morales
23 Ramiro Morales, #7101
24 600 South Tonopah Dr., Suite 300
25 Las Vegas, NV 89106
26 Tel: (702) 699-7822

27 Attorneys for Plaintiff QBE INSURANCE
28 CORPORATION

EXHIBIT B

RAMIRO MORALES [Bar No.: 7101]
 E-mail: rmorales@mfrlegal.com
 MORALES, FIERRO & REEVES
 600 South Tonopah Drive, Suite 300
 Las Vegas, Nevada 89106
 Telephone: (702) 699-7822
 Facsimile: (702) 699-9455

Attorneys for Proposed Intervenor
 QBE INSURANCE CORPORATION

DISTRICT COURT
 CLARK COUNTY, NEVADA

SIMONE RUSSO,

Plaintiff,

vs.

COX COMMUNICATIONS LAS VEGAS,
 INC., dba COX COMMUNICATIONS; IES
 RESIDENTIAL, INC.; SUNRISE VILLAS IX
 HOMEOWNERS ASSOCIATION; J&G
 LAWN MAINTENANCE; KEVIN
 BUSHBAKER; PW JAMES MANAGEMENT
 & CONSULTING, LLC; J. CHRIS
 SCARCELLI, DOE LANDSCAPER;
 RICHARD DUSLAK; JUSTIN SESMAN; and
 DOES I-IV; and ROE CORPORATIONS I-V,
 inclusive,

Defendants.

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

**DECLARATION OF DUANE BUTLER IN
 SUPPORT OF QBE INSURANCE
 CORPORATION'S MOTION TO
 INTERVENE and OPPOSITION TO
 MOTION TO ASSIGN RIGHTS AGAINST
 QBE**

I, Duane Butler, under penalty of perjury, declare as follows:

1. I am a Senior Claims Adjuster for Armour Risk Management, Inc., which administers claims for QBE Insurance Corporation. In my capacity as a Senior Claim Adjuster, I have access to copies of all documents generated or maintained by Armor in handling claims for QBE, including copies of policy forms issued by QBE.
2. On behalf of QBE, I adjusted the claim of Sunrise Villas IX Homeowners Association ("Sunrise") with respect to this suit. I was involved with the settlement of the claims against Sunrise, which was funded by QBE. QBE issued a condominium association policy, with a policy period of

1 February 1, 2016, to February 1, 2017, to Sunrise. QBE agreed to defend and defended its insured,
2 Sunrise, in response to a tender from Sunrise, and paid for the settlement of claims against Sunrise in
3 this action. In exchange for payment, Russo gave a full and complete release of claims against
4 Sunrise.

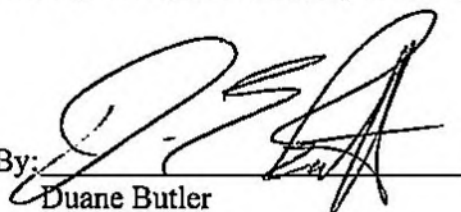
5 3. Neither Richard Duslak ("Duslak") nor Justin Sesman ("Sesman") requested a defense from
6 QBE related to this suit. Neither Duslak nor Sesman ever contacted QBE about this suit.

7 4. QBE did not receive a tender of the defense of Duslak or Sesman in relation to this suit from
8 anyone.

9 5. QBE vigorously contends that Duslak and Sesman are not insured for liability alleged in this
10 action under the QBE policy issued to Sunrise. QBE has filed a declaratory relief action, seeking an
11 adjudication of what rights and obligations exist under the QBE policy issued to Sunrise with respect
12 to Duslak and Sesman in relation to this action. (A true and correct copy of the complaint filed by
13 QBE in the United States District Court, District of Nevada, is attached as Exhibit A.)

14 I declare that the foregoing is true and correct based on my own personal knowledge under
15 penalty of perjury. Executed in Philadelphia, Pennsylvania, on the date specified below.

16 DATED: November 16, 2020

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18 By: 
19 Duane Butler
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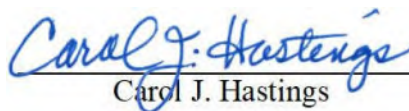
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 16th day of November 2020, I served a true and correct copy of the foregoing:

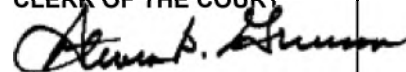
QBE INSURANCE CORPORATION'S MOTION TO INTERVENE and OPPOSITION TO MOTION TO ASSIGN RIGHTS AGAINST QBE

on all parties in this action by the Eighth Judicial District Court's CM/ECF Filing System.

DATED: November 16, 2020.


Carol J. Hastings

Electronically Filed
11/17/2020 3:24 PM
Steven D. Grierson
CLERK OF THE COURT



AMEN

RAMIRO MORALES [Bar No.: 7101]

E-mail: rmorales@mfrlegal.com

MORALES, FIERRO & REEVES

600 South Tonopah Drive, Suite 300

Las Vegas, Nevada 89106

Telephone: (702) 699-7822

Facsimile: (702) 699-9455

Attorneys for Proposed Intervenor

QBE INSURANCE CORPORATION

DISTRICT COURT

CLARK COUNTY, NEVADA

SIMONE RUSSO,

Plaintiff,

vs.

COX COMMUNICATIONS LAS VEGAS,
INC., dba COX COMMUNICATIONS; IES
RESIDENTIAL, INC.; SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION; J&G
LAWN MAINTENANCE; KEVIN
BUSHBAKER; PW JAMES MANAGEMENT
& CONSULTING, LLC; J. CHRIS
SCARCELLI, DOE LANDSCAPER;
RICHARD DUSLAK; JUSTIN SESMAN; and
DOES I-IV; and ROE CORPORATIONS I-V,
inclusive,

Defendants.

CASE NO.: A-17-753606-C

DEPT. NO.: XVI

**QBE INSURANCE CORPORATION'S
AMENDED MOTION TO INTERVENE
and OPPOSITION TO MOTION TO
ASSIGN RIGHTS AGAINST QBE**

Date: December 10, 2020

Time: 9:00 AM

Pursuant to Nevada Rule of Civil Procedure 24, QBE Insurance Corporation ("QBE") moves to intervene for the limited purpose of opposing Plaintiff's motion to assign rights against QBE and to seek a stay of this action until a federal court rules on QBE's obligations under a general liability insurance policy. As explained more fully in the following Memorandum of Points and Authorities and the Declaration of Duane Butler (attached hereto as Exhibit B), QBE meets all four criteria for intervention as of right: (1) it has a sufficient interest in the litigation's subject matter, (2) it could suffer an impairment of its ability to protect that interest if it does not intervene, (3) its interest is not adequately represented by existing parties, and (4) its application is timely.

1 Rule 24(a).

2 In the alternative, QBE invokes the Court's discretion to grant permissive intervention
3 pursuant to Rule 24(b). QBE's defenses to claims involve common questions of fact and law to the
4 claims in this action, and QBE's intervention will not unduly delay or prejudice the adjudication of
5 the existing parties' rights. Rule 24(b).

6 Accompanying this Motion to Intervene and Opposition to Plaintiff's Motion to Assign
7 Rights, is an Index of Exhibits, and Exhibit A, a copy of QBE's complaint for declaratory relief
8 filed in the United States District Court of Nevada, Exhibit B, a Declaration of Duane Butler in
9 support of QBE's Motion to Intervene and Opposition to Plaintiff's Motion for an Assignment of
10 Rights, and Exhibit C, a copy of the settlement agreement in this action.

11 DATED: November 17, 2020

MORALES, FIERRO & REEVES

12
13 By: /s/ Ramiro Morales

14 Ramiro Morales, #7101
15 600 South Tonopah Dr., Suite 300
16 Las Vegas, NV 89106
17 Tel: (702) 699-7822

18 Attorneys for Plaintiff QBE INSURANCE
19 CORPORATION
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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Through this limited intervention, QBE Insurance Corporation (“QBE”) seeks to stay further action on Simone Russo’s motion for judicial assignment of a cause of action. Stated briefly, Simone Russo has obtained a default judgment against Richard Duslak and Justin Sesman and now seeks to have this Court assign to him rights of Duslak and Sesman as against QBE. QBE seeks to intervene to stay this assignment because Duslak and Sesman have no rights against QBE. QBE is seeking a judicial determination of its rights and obligations under the policy at issue in a separate action, which QBE has filed in the United States District Court. Should the court in the coverage action find any obligation to Duslak and Sesman is owed, QBE will challenge the scope of the settlement agreement and the judgment on the record in this case. In the meantime, Dr. Russo should be stayed from moving forward with the assignment, under which he seeks an assignment of rights which do not exist.

Stated briefly, QBE vigorously asserts that Duslak and Sesman have no rights against it. Neither Duslak nor Sesman ever requested policy benefits (including the duty to defend); in fact, neither has ever contacted QBE. Moreover, no other person or entity tendered the defense of these two to QBE. Notably, the policy was issued to another party in the case, Sunrise Villas IX Homeowners Association and QBE settled this case subject to a full and complete release. In settling the claims against Sunrise, plaintiff agreed that all “managers, agents, representatives . . . associates . . . [and] contractors” of Sunrise were also released and agreed that Duslak and Sesman were independent contractors via a stipulation attached as an exhibit to the settlement agreement. Given those agreements, QBE will challenge the scope of any rights which can be assigned, based on the agreement, should it be determined that QBE had any obligation at all with respect to Duslak and Sesman. (A true and correct copy of the settlement agreement between Russo and Sunrise, among others, is attached hereto as Exhibit C.) Immediately, when QBE learned of plaintiff’s contentions here, it reached out to plaintiff’s counsel and filed a declaratory relief action in the United States District Court of Nevada, seeking an adjudication of QBE’s rights and obligations under the policy at issue (a copy of the declaratory relief complaint filed by QBE in the federal court is attached hereto

as Exhibit A). Dr. Russo is a party to that action.

Case law has not addressed the unique situation presented here, where plaintiff seeks an assignment of rights expressly against QBE. Again, QBE seeks only to have that assignment stayed until it can be determined whether such rights exist – a determination which will be made in a separate action, already on file. If QBE is adjudged to have a duty to defend Duslak and Sesman, it will immediately do so.. Plaintiff will not be prejudiced by the requested stay. He will simply be placed in the position he should be in – namely, litigating the issue of whether the QBE policy apply to Duslak and Sesman in relation to this action and, if the policy applies, properly seeking an assignment of rights from Duslak and Sesman with the involvement of QBE.

II. LEGAL AND FACTUAL BACKGROUND

This is a personal injury action in which plaintiff, Simone Russo, alleges that he tripped and fell over a coaxial cable while walking up the driveway of the home he rented in Las Vegas Nevada. The property at which the events giving rise to the suit took place, is located within the Sunrise Villas IX Homeowners Association (“Sunrise”). See, Complaint, filed 4/6/17. Russo initially named Sunrise, Cox Communications, IES Residential, Inc., and Kevin Bushbaker (the owner of the home), in the action. *Ibid*. He later filed a motion to amend and amended the action to add as defendants, among others, the landscaping contractors, Richard Duslak and Justin Sesman. See, Supplement to Motion to Amend Complaint, filed 12/22/17, and Amended Complaint, filed 1/16/18. All of the defendants which answered the complaint, including Sunrise, fully and finally settled Dr. Russo’s claims against them and this Court ruled that the settlement was in good faith. See, Court Minutes, 10/18/19.

In the settlement agreement between Plaintiff and Sunrise, Sunrise is defined to include:

Its affiliated companies and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, insurers (Community Association Underwriters, Inc., QBE Insurance Corporation, . . . and Armour Risk Management, Inc. – but only as it relates to Sunrise), EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN OR ANYONE ASSOCIATED OR AFFILIATED WITH THEM, INCLUDING ANY ACTUAL OR POTENTIAL INSURER (per the stipulation attached as exhibit “A”), attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, . . . contractors . . . and equitable owners;

In the stipulation attached to the agreement, Plaintiff agreed: “IT IS HEREBY STIPULATED

1 THAT FOR THE PURPOSES OF THIS LITIGATION AND FOR ANY AND ALL ISSUED
 2 RELATED TO SIMONE RUSSO’S CLAIMS AND SETTLEMENT, THAT IN AUGUST 2016,
 3 BOTH DEFENDANT RICHARD DUSLAK AND JUSTIN SESMAN . . . WERE IN THE
 4 SERVICE OF SUNRISE . . . AS INDEPENDENT CONTRACTORS . . .” In the agreement,
 5 plaintiff releases all rights in relation to the subject matter of this suit, against the defined term,
 6 “Sunrise.” While the release excludes a release of Duslak and Sesman, the stipulation attached to the
 7 agreement, which is an agreement only as between Russo and Sunrise, agrees that Duslak and
 8 Sesman were “independent contractors.” See Exhibit C, attached hereto.

9 Currently pending before this court is plaintiff’s motion for judicial assignment of “all rights
 10 of action held by the Defendants Richard Duslak and Justin Sesman against any and all individuals
 11 and/or entities, including all claims against any and all insurance carriers, including but not limited to
 12 QBE Insurance Corporation, Community Association Underwriters, or any other insurance
 13 Carrier(s).” In his points and authorities, plaintiff states:

14 defendants were insured with QBE Insurance Corporation . . . at the time the subject
 15 loss occurred. Neither QBE Insurance Corporation nor Community Association
 16 Underwriters have paid anything toward the judgment. Duslak and Sesman have
 17 rights against QBE Insurance Corporation . . . under the insurance agreement for
 18 indemnification of the Judgment.

19 QBE issued a condominium association policy, with a policy period of February 1, 2016, to
 20 February 1, 2017, to Sunrise Villas HOA. Declaration of Duane Butler, attached hereto as Exhibit B,
 21 ¶2. It defended its insured, Sunrise, in response to a tender from Sunrise, and paid for the settlement
 22 of any and all claims that could be asserted against or through them in this action. *Ibid.* In exchange
 23 for payment, Dr. Russo gave a full and complete release. *Ibid.*

24 Neither Duslak nor Sesman requested a defense from QBE. Dec. of D. Butler, Ex. B ¶3.
 25 Neither Duslak nor Sesman ever contacted QBE about this suit. *Ibid.* Plaintiff presents no evidence
 26 that “defendants were insured with QBE Insurance Corporation” or that “Duslak and Sesman have
 27 rights against QBE Insurance Corporation.”

28 **III. ARGUMENT**

QBE seeks to intervene to protect its interest and oppose against having non-existent rights
 against it assigned to plaintiff. Specifically, it seeks to intervene to stay the assignment of rights until

there is a determination of whether Duslak and Sesman have rights against QBE to assign. QBE has filed an action in federal court in which it seeks a declaration that it did not owe a duty to defend or indemnify Duslak and Sesman in relation to this action because neither Duslak nor Sesman ever contacted QBE requesting policy benefits or seeking a defense. If there is a determination in the federal coverage action that Duslak and Sesman are owed any obligation under the QBE policy, QBE will appear on behalf of Duslak and Sesman and will challenge the scope of any assignment given the record in this case and the settlement agreement.

A. QBE is Entitled to Intervene as of Right.

QBE meets the criteria for intervention as of right under Rule 24(a) because (1) it has a sufficient interest in the litigation's subject matter, (2) it could suffer an impairment of its ability to protect that interest if it does not intervene, (3) its interest is not adequately represented by existing parties, and (4) its application is timely. *See e.g. Hairr v. First Jud. Dist. Court*, 132 Nev. 180, 183 (2016).

1. QBE has sufficient interest in the litigation's subject matter.

QBE meets the first criteria for intervention as of right under Rule 24(a) because it has a sufficient interest in the litigation's subject matter. *Hairr*, 132 Nev. at 183. The federal courts have found that the interests test under Federal Rule Civ. P. 24(a), which is analogous to Nevada Rule 24(a)¹, is not a rigid standard, but rather "a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967); see also *Friends of Animals v. Kempthorne*, 452 F. Supp. 2d 64, 69 (D.D.C. 2006) ("proposed intervenors of right need only an interest in the

¹ It is appropriate to supplement the Nevada caselaw with relevant federal precedent because "[f]ederal cases interpreting the Federal Rules of Civil Procedure 'are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.'" *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53 (2002) (*quoting Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 119 (1990)). Furthermore, the Nevada Supreme Court has specifically looked to federal interpretations of Federal Rule 24 when construing intervention under Nevada Rule 24. *See e.g. Am. Home Assurance Co. v. Eighth Judicial Dist. Court*, 122 Nev. 1229, 1241–42, 147 P.3d 1120, 1128 (2006) (*citing Dairy Maid Dairy, Inc. v. U.S.*, 147 F.R.D. 109, 112 (E.D. Va. 1993)) (just like Federal Rule 24, Nevada Rule 24 requires only a minimal showing to establish that the existing parties do not adequately protect an applicant's interest). It is important to note that the federal courts construe the intervention rules "broadly in favor of proposed intervenors [because] a liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts." *Wilderness Society v. U.S. Forest Service*, 630 F.3d 1173, 1179 (9th Cir. 2011) (*quoting U.S. v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002)).

litigation—not a cause of action or permission to sue”) (quotation marks and internal citation omitted); *Smith v. Pangilinan*, 651 F.2d 1320, 1324 (9th Cir. 1981) (holding that a proposed intervenor need not have a specific legal or equitable interest in jeopardy but simply a “protectable interest of sufficient magnitude to warrant inclusion in the action”).

In this case, QBE seeks to intervene to prevent plaintiff from wrongly taking an assignment of rights against QBE. Its interests are clear, as plaintiff is seeking to obtain the right to bring claims against QBE for breach of the covenant of good faith and fair dealing against QBE – a right which QBE strongly contends does not exist.

2. Without intervention, the assignment of rights would impair QBE’s ability to protect its interests.

QBE meets the second criteria for intervention as of right under Rule 24(a) because it could suffer an impairment of its ability to protect its interest if it does not intervene. *Hairr*, 132 Nev. at 183. Rule 24(a) requires applicants to demonstrate they will “either gain or lose by the direct legal operation and effect of the judgment which might be rendered in the suit between the original parties.” *Stephens v. First Nat’l Bank of Nev.*, 64 Nev. 292, 304–05, 182 P.2d 146, 151–52 (1947) (quoting *Harlan v. Eureka Mining Co.*, 10 Nev. 92, 94–95 (1875)).

In this action, neither Duslak nor Sesman ever tendered their defense to QBE. An insurer’s right and duty to defend attaches when the insured tenders defense of the lawsuit to the insurer. *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 309 (2009). While this principle is expressed clearly in the policy itself, it is also a reflection of contract law:

To succeed on a claim for breach of contract, the plaintiff must show that a contractual relationship existed between it and the defendant, and that the defendant materially breached a duty owed to the plaintiff under the contract. Generally, when one party prevents performance of a contractual duty, the other party is excused from performing. For example, in a purchase and sale agreement, a buyer must be “ready, willing, and able” to purchase the property. Further, “[a]s a general rule, a party cannot recover damages for loss that he could have avoided by reasonable efforts.”

Chamani v. Mackay, 124 Nev. 1457 (2008); *Cladianos v. Friedhoff*, 69 Nev. 41, 45 (1952) [“The law is clear . . . that any affirmative tender of performance is excused when performance has in effect been prevented by the other party to the contract.” (citing Sec: 3 Williston on Contracts, Rev.

1 Ed., 1952, §46 677, 2325, §832; 17 C.J.S., Contracts, §481, p. 986; 12 Am.Jur. 889, Contracts,
2 §333)]. “As is stated by Mr. Williston . . . : ‘It is a principle of fundamental justice that if a promisor
3 is himself the cause of the failure of performance, either of an obligation due him or of a condition
4 upon which his own liability depends, he cannot take advantage of the failure.’” *Cladianos*, 69
5 Nev. at 45.

6 Here, neither Duslak nor Sesman contacted QBE at all in relation to this suit.² They did
7 not request policy benefits or even claim to be insured under the policy at any time. Nor did any
8 other entity tender the defense of Duslak and Sesman to QBE in relation to this action. Neither
9 Duslak nor Sesman have appeared in this action and QBE cannot simply appear in an action in the
10 name of two people who never asked for a defense and with whom QBE has no contact. Because
11 QBE had no notice that Duslak and Sesman sought policy benefits, or even contended that they
12 were insured under the QBE policy issued to Sunrise, Duslak and Sesman cannot now claim that
13 QBE breached any provision of the insurance policy.

14 Moreover, Plaintiff released Sunrise and QBE, excepting Duslak and Sesman, but
15 conditioning that exception through a stipulation in which Plaintiff agreed that Duslak and Sesman
16 were independent contractors of Sunrise. Should the federal court determine that any obligation
17 was owed to Duslak and Sesman under the QBE policy issued to Sunrise, QBE will challenge the
18 scope of the rights assigned in light of the terms of the settlement agreement and the record.

19 Yet, plaintiff has presented to this court that Duslak and Sesman “were insured with QBE
20 Insurance Corporation . . . at the time the subject loss occurred” and that “Duslak and Sesman
21 have rights against QBE Insurance Corporation . . . under the insurance agreement for
22 indemnification of the Judgment.” Plaintiff seeks to obtain a strategic advantage by obtaining
23 rights in a circumstance where no one can oppose the assignment sought.

24 QBE has filed a declaratory relief action to seek judicial clarification of its rights and
25 obligations under the policy issued to Sunrise with respect to this action. QBE seeks to intervene
26 to prevent and oppose any assignment until there is clarification of whether Duslak or Sesman
27

28 _____
² In fact, neither Duslak nor Sesman are parties to the QBE policy issued to Sunrise.

1 have rights to assign. Should the federal court determine that any obligation was owed to Duslak
 2 and Sesman under the QBE policy issued to Sunrise, QBE will challenge the scope of the rights
 3 assigned in light of the terms of the settlement agreement and the record. QBE should be
 4 permitted to intervene to prevent the unfair strategic advantage plaintiff is seeking to obtain
 5 through an assignment which is contradicted by the settlement agreement in this action.

6 **3. QBE's interests are not adequately represented by existing parties.**

7 The Nevada Supreme Court has held that intervention requires only a minimal showing to
 8 establish that the existing parties do not adequately protect an applicant's interest. *Am. Home Assur.*
 9 *Co. v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 122 Nev. 1229, 1241-42 (2006). As stated
 10 above, QBE's interests are not represented in this action. First, neither Duslak nor Sesman have
 11 appeared. Second, even if they had appeared, neither are necessarily aligned with QBE, as QBE is
 12 seeking to prevent the assignment of Duslak and Sesman's rights against QBE. As discussed above,
 13 QBE contends that these two do not have rights under the QBE policy. Notably, as neither Duslak
 14 nor Sesman sought policy benefits from QBE at any time, QBE does not know whether they contend
 15 that they have assignable rights at all. However, it is anticipated that no party will oppose plaintiff's
 16 motion to obtain the alleged rights against QBE unless QBE itself is allowed to stay the current
 17 motion and seek a judicial determination of its rights and obligations under the policy.

18 **4. QBE's application to intervene is timely.**

19 The Nevada Supreme Court has identified potential prejudice to the existing parties as a key
 20 factor in determining the timeliness of intervention: "The most important question to be resolved in
 21 the determination of the timeliness of an application for intervention is not the length of the delay
 22 by the intervenor but the extent of prejudice to the rights of existing parties resulting from the
 23 delay." *Lawler v. Ginochio*, 94 Nev. 623, 584 P.2d 667, 669 (1978) (citations omitted). This leads
 24 to a pragmatic inquiry: can the intervenor protect its interests without prejudicing the existing
 25 parties? As the Nevada Supreme Court has found, "[o]ur cases generally reflect that intervention is
 26 timely if the procedural posture of the action allows the intervenor to protect its interest." *Estate of*
 27 *LoMastro v. American Family Ins. Group*, 124 Nev. 1060, 195 P. 3d 339, 347 n.29 (2008).

28 Undoubtedly, plaintiff will argue that intervention is not timely here because judgment has

1 already been entered. However, in this action, QBE is seeking to intervene for the limited purpose
 2 of seeking a stay of an assignment of the rights of Duslak and Sesman explicitly against QBE – an
 3 issue that has not been addressed before with respect to Nev. Rev. Stat. Ann. § 12.130. QBE is
 4 separately seeking an adjudication of its rights and obligations under the policy at issue with respect
 5 to Duslak and Sesman in relation to this action. As discussed above, should the federal court
 6 determine that any obligation was owed to Duslak and Sesman under the QBE policy issued to
 7 Sunrise, QBE will challenge the scope of the rights assigned. QBE did not seek to intervene earlier
 8 because neither Duslak nor Sesman had ever contacted it seeking policy benefits and QBE was
 9 unaware until plaintiff's filing of the motion seeking an assignment that any entity contended that
 10 Duslak and Sesman had any rights with respect to the QBE policy.

11 Further, a stay would protect the interests of QBE without prejudicing the existing parties.
 12 Neither Duslak nor Sesman has appeared in this action. Plaintiff has settled all claims against the
 13 other parties. He seeks the right to pursue policy benefits under the QBE policy, which will
 14 necessitate that he litigate the coverage issues raised in the pending QBE declaratory relief action
 15 (in which he is a named party). Plaintiff will not be prejudiced by the delay in obtaining the
 16 assignment until after a determination of whether the assignment is of value.

17 **B. In the Alternative, QBE Requests Permissive Intervention.**

18 Because QBE'S proposed Motion to Stay (attached hereto) includes defenses and
 19 legal arguments that rely on the same facts and legal claims set forth in the Complaint, permissive
 20 intervention is appropriate here.

21 NRCP 24(b) permits intervention as follows:

22 (b) Permissive intervention. Upon timely application anyone may be permitted to
 23 intervene in an action: (1) when a statute confers a conditional right to intervene; or
 24 (2) when an applicant's claim or defense and the main action have a question of law
 25 or fact in common. In exercising its discretion the court shall consider whether the
 intervention will unduly delay or prejudice the adjudication of the rights of the
 original parties.

26 Although provision Rule 24(b)(1) does not apply here, the remaining provisions of the rule support
 27 permissive intervention.

28 QBE is seeking to stay the assignment of rights regarding this case. As noted above, QBE

1 contends that there are no rights to assign as against ABE. Should the federal court determine that
2 any obligation was owed to Duslak and Sesman under the QBE policy issued to Sunrise, QBE will
3 challenge the scope of the rights assigned in light of the terms of the settlement agreement and the
4 record. Finally, as noted above, there would be no undue delay or prejudice to the existing parties.
5 . In that case, plaintiff will simply be in the legal position he should be in, seeking an assignment of
6 the rights of Duslak and Sesman, with QBE involved in the action having had a determination that
7 its policy is implicated in this action, vis a vis Duslak and Sesman. Thus, permissive intervention
8 would be appropriate.

9 **IV. CONCLUSION**

10 Given the unusual nature of this case, in which plaintiff seeks as assignment of rights against
11 QBE based on allegations made for the first time in the motion seeking the assignment (i.e., that
12 Duslak and Sesman have rights against QBE), QBE seeks to intervene simply to stay the
13 assignment. QBE has filed a separate action in which the issue of coverage under the QBE policy
14 will be litigated as between QBE, Dr. Russo, Duslak and Sesman. QBE has a right to intervene
15 under Rule 24(a), to stay plaintiff's attempts to gain a strategic advantage against it through this
16 assignment or, in the alternative, this Court should permit QBE to intervene pursuant to Rule 24(b).
17 Respectfully submitted,

18
19 DATED: November 17, 2020

MORALES, FIERRO & REEVES

20 By: /s/ Ramiro Morales

21 Ramiro Morales, #7101
22 600 South Tonopah Dr., Suite 300
23 Las Vegas, NV 89106
24 Tel: (702) 699-7822

25 Attorneys for Plaintiff QBE INSURANCE
26 CORPORATION
27
28

OPPOSITION TO MOTION TO ASSIGN RIGHTS AND MOTION TO STAY

I. INTRODUCTION

QBE Insurance Corporation (“QBE”) opposes plaintiff’s request for an assignment of the rights of Richard Duslak and Justin Sesman against QBE and requests that further action regarding an assignment of rights be stayed until it can be determined whether such rights exist. Stated briefly, Simone Russo contends he has obtained a default judgment against Duslak and Sesman and now seeks to have this Court assign to him rights of Duslak and Sesman as against QBE. QBE contends that neither Duslak nor Sesman have rights against QBE, and, indeed, neither sought benefits under the QBE policy issued to Sunrise in relation to this action. QBE seeks to stay the assignment sought by plaintiff while it litigates the issue of coverage under its policy in a federal declaratory relief action QBE has filed (and to which, Simone Russo has been named a party). Should the federal court determine that any obligation was owed to Duslak and Sesman under the QBE policy issued to Sunrise, QBE will challenge the scope of the rights assigned in light of the terms of the settlement agreement and the record. A stay would be both efficient and fair. Plaintiff will not be prejudiced by the requested stay. He will simply be placed in the position he should be in – namely, litigating the issue of whether the QBE policy apply to Duslak and Sesman in relation to this action and, if the policy applies, properly seeking an assignment of the rights of t Duslak and Sesman against QBE with the involvement of QBE.

II. ARGUMENT

A court has discretionary power to stay proceedings in its own court. See *Landis v. N.A. Co.*, 299 U.S. 248, 254-255 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”); see also *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979) (“A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it ...”); 7C Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure*, § 1838 (3d ed. 2010) (“[W]hether to grant a stay in a particular case is a matter addressed to the sound discretion of the district court.”).

When evaluating a motion to stay, the Court may consider the goal of Federal Rule of Civil Procedure 1: The Rules “should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.” See Fed. R. Civ. P. 1; see also 4 Wright et al., *supra*, § 1029 (“There probably is no provision in the federal rules that is more important than this mandate. It reflects the spirit in which the rules were conceived and written, and in which they should be interpreted.”). Courts have a duty to resolve civil matters fairly, but without undue cost or delay. See Fed. R. Civ. P. 1 advisory committee notes, 1993 Amendments (explaining that the purpose of the 1993 amendment “is to recognize the affirmative duty of the court to exercise the authority conferred by these rules to ensure that civil litigation is resolved not only fairly, but also without undue cost or delay.”).

Here, fairness and efficiency dictate that a stay is warranted. QBE vigorously asserts that Duslak and Sesman have no rights against it. An insurer's right and duty to defend attaches when the insured tenders defense of the lawsuit to the insurer. *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 309 (2009). This principle is expressed in the policy itself; it is also a reflection of contract law:

To succeed on a claim for breach of contract, the plaintiff must show that a contractual relationship existed between it and the defendant, and that the defendant materially breached a duty owed to the plaintiff under the contract. Generally, when one party prevents performance of a contractual duty, the other party is excused from performing. For example, in a purchase and sale agreement, a buyer must be “ready, willing, and able” to purchase the property. Further, “[a]s a general rule, a party cannot recover damages for loss that he could have avoided by reasonable efforts.”

Chamani v. Mackay, 124 Nev. 1457 (2008); *Cladianos v. Friedhoff*, 69 Nev. 41, 45 (1952) [“The law is clear . . . that any affirmative tender of performance is excused when performance has in effect been prevented by the other party to the contract.” (citing Sec: 3 Williston on Contracts, Rev. Ed., 1952, §46 677, 2325, §832; 17 C.J.S., Contracts, §481, p. 986; 12 Am.Jur. 889, Contracts, §333)]. “As is stated by Mr. Williston . . . : ‘It is a principle of fundamental justice that if a promisor is himself the cause of the failure of performance, either of an obligation due him or of a condition upon which his own liability depends, he cannot take advantage of the failure.’” *Cladianos*, 69 Nev. at 45.

Here, neither Duslak nor Sesman contacted QBE at all in relation to this suit. They did not request policy benefits or even claim to be insured under the policy at any time. Nor did any other

entity tender the defense of Duslak and Sesman to QBE in relation to this action. Neither Duslak nor Sesman have appeared in this action and QBE cannot simply appear in an action in the name of two people who never asked for a defense and with whom QBE has no contact. Because QBE had no notice that Duslak and Sesman sought policy benefits, or even contended that they were insured under the QBE policy issued to Sunrise, Duslak and Sesman cannot now claim that QBE breached any provision of the insurance policy.

Yet, plaintiff has presented to this court that Duslak and Sesman “were insured with QBE Insurance Corporation . . . at the time the subject loss occurred” and that “Duslak and Sesman have rights against QBE Insurance Corporation . . . under the insurance agreement for indemnification of the Judgment.” Plaintiff seeks to obtain a strategic advantage by obtaining rights in a circumstance where no one can oppose the assignment sought. In fact, Duslak and Sesman have no rights under the QBE policy and QBE is seeking to have that established through a declaratory relief action filed in federal court.

Indeed, not only does plaintiff seek an assignment of rights that do not exist, he is seeking to obtain an assignment of rights after agreeing to a settlement agreement in which Sunrise, including its contractors, and QBE were released. In the settlement agreement between Plaintiff and Sunrise, Sunrise is defined to include:

Its affiliated companies and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, insurers (Community Association Underwriters, Inc., QBE Insurance Corporation, . . . and Armour Risk Management, Inc. – but only as it relates to Sunrise), EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN OR ANYONE ASSOCIATED OR AFFILIATED WITH THEM, INCLUDING ANY ACTUAL OR POTENTIAL INSURER (per the stipulation attached as exhibit “A”), attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, . . . contractors . . . and equitable owners;

In the stipulation attached to the agreement, Plaintiff agreed: “IT IS HEREBY STIPULATED THAT FOR THE PURPOSES OF THIS LITIGATION AND FOR ANY AND ALL ISSUED RELATED TO SIMONE RUSSO’S CLAIMS AND SETTLEMENT, THAT IN AUGUST 2016, BOTH DEFENDANT RICHARD DUSLAK AND JUSTIN SESMAN . . . WERE IN THE SERVICE OF SUNRISE . . . AS INDEPENDENT CONTRACTORS” In the agreement, plaintiff releases all rights in relation to the subject matter of this suit, against the defined term,

1 “Sunrise.”

2 QBE is seeking a stay of an assignment of the rights of Duslak and Sesman explicitly against
3 QBE. QBE is separately seeking an adjudication of its rights and obligations under the policy at
4 issue with respect to Duslak and Sesman in relation to this action in a federal declaratory relief
5 action. If there is a determination in the federal coverage action that Duslak and Sesman are owed
6 any obligation under the QBE policy, QBE will appear on behalf of Duslak and Sesman and will
7 challenge the scope of any assignment given the record in this case and the terms of the settlement
8 agreement.

9 A stay would protect the interests of QBE without prejudicing the existing parties. Neither
10 Duslak nor Sesman has appeared in this action. Plaintiff has settled all claims against the other
11 parties. He seeks the right to pursue policy benefits under the QBE policy, which will necessitate
12 that he litigate the coverage issues raised in the pending QBE declaratory relief action (in which he
13 is a named party). If the federal court holds that a duty to defend exists, QBE will step into the
14 shoes of Duslak and Sesman in this action and challenge the scope of any assignment based on the
15 record and the terms of the settlement agreement. Plaintiff will not be prejudiced by the delay in
16 obtaining the assignment until after a determination of whether the assignment is of value.

17 **III. CONCLUSION**

18 For the reasons set forth herein, QBE opposes the motion of plaintiff seeking an assignment
19 of the rights of Duslak and Sesman as against QBE. QBE requests that any such assignment be
20 stayed until after litigation of the issues regarding coverage under the QBE policy with respect to
21 these two defendants.

22 DATED: November 17, 2020

MORALES, FIERRO & REEVES

24 By: /s/ Ramiro Morales

25 Ramiro Morales, #7101
26 600 South Tonopah Dr., Suite 300
Las Vegas, NV 89106
Tel: (702) 699-7822

27 Attorneys for Plaintiff QBE INSURANCE
28 CORPORATION

EXHIBIT A

RAMIRO MORALES [Bar No.: 7101]
E-mail: rmorales@mfrlegal.com
MORALES, FIERRO & REEVES
600 South Tonopah Drive, Suite 300
Las Vegas, Nevada 89106
Telephone: (702) 699-7822
Facsimile: (702) 699-9455

Attorneys for Plaintiffs
QBE INSURANCE CORPORATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

QBE INSURANCE CORPORATION,

Plaintiff,

vs.

SIMONE RUSSO, RICHARD DUSLAK and
JUSTIN SESMAN

Defendants.

CASE NO.:

**COMPLAINT FOR DECLARATORY
RELIEF**

Plaintiff QBE INSURANCE CORPORATION (“QBE” or “Plaintiff”) alleges as follows:

PARTIES

1. At all relevant times herein, Plaintiff QBE was a corporation existing under the laws of the State of Pennsylvania with its principle place of business in Wisconsin. Plaintiff QBE is, and at all relevant times was, an insurance company eligible to do business as an insurer in the State of Nevada.

2. Plaintiff is informed and believes and thereon alleges that, at all times relevant, defendant Simone Russo (“RUSSO”) was and is an individual residing in Clark County, Nevada.

3. Plaintiff is informed and believes and thereon alleges that, at all times relevant, defendant Richard Duslak (“DUSLAK”) was and is an individual residing in Clark County, Nevada.

4. Plaintiff is informed and believes and thereon alleges that, at all times relevant,

1 defendant Justin Sesman (“SESMAN”) was and is an individual residing in Clark County, Nevada.

2 **JURISDICTION AND VENUE**

3 5. This Court has jurisdiction under 28 U.S.C. Section 1332 in that this matter is a civil
4 dispute between citizens of different States in which the amount in controversy, exclusive of costs
5 and interest, exceeds seventy-five thousand dollars (\$75,000.00).

6 6. Venue is proper in the United States District Court for Nevada in that all of the
7 defendants are subject to personal jurisdiction in this district at the time this action is commenced
8 and there is no district in which the action may be otherwise brought. All Defendants are, and were
9 at all relevant times, doing business in or residents of the State of Nevada. Next, the subject matter
10 of this action arose in this district, specifically, this dispute arises from an underlying action *Simone*
11 *Russo v. Cox Communications Las Vegas Inc., et al.* Clark County District Court Case No.: A-17-
12 753606-C (hereinafter, “UNDERLYING MATTER”). Further, the acts and/or omissions at issue in
13 this litigation took place in this judicial district within the State of Nevada. Venue, therefore, lies
14 with this Court, as a substantial part of the events which are the subject of the claims asserted herein
15 are located and/or took place in this judicial district.

16 **GENERAL ALLEGATIONS**

17 7. This insurance coverage related declaratory relief action arises from a dispute
18 regarding RUSSO’s contention that defendants DUSLAK and SESMAN are covered under an
19 insurance policy issued by Plaintiff regarding the UNDERLYING MATTER.

20 8. In the original complaint in the UNDERLYING MATTER, filed on April 16, 2017,
21 (a copy of which is attached hereto as exhibit 1), Defendant RUSSO alleged damages from a trip
22 and fall accident that occurred on August 27, 2016, outside a home he was renting in Las Vegas,
23 Nevada. RUSSO alleged that he tripped and fell over a cable or wire that was exposed as it ran up
24 from one side of the front yard, across the driveway of the home he was renting and back under the
25 other side of the yard. The defendants in that action included Sunrise Villas IX Homeowners
26 Association (“SUNRISE VILLAS HOA”) – the HOA for the home RUSSO rented. Defendants
27 DUSLAK and SESMAN are not named in this initial complaint. Instead, RUSSO names a third-
28 party landscaper, J&G Lawn Maintenance, with no alleged connection to SUNRISE VILLAS HOA.

1 9. On November 29, 2017, RUSSO moved to amend his complaint in the
2 UNDERLYING MATTER. In a supplement to the motion to amend the complaint, filed on
3 December 22, 2017, RUSSO requested to add a “Doe Landscaper” because the original J&G
4 Landscape defendant did not contract with SUNRISE VILLAS HOA. (RUSSO’S motion to amend
5 complaint and supplement to motion to amend complaint are attached at exhibit 2.)

6 10. When RUSSO filed his amended complaint on January 16, 2018, he named
7 DUSLAK and SESMAN as the landscape contractors alleging that DUSLAK and SESMAN
8 “maintained and controlled [the subject] premises....” (RUSSO’s amended complaint is attached
9 hereto as exhibit 3.)

10 11. Plaintiff QBE issued condominium association policy no. CAU234378-1, effective
11 February 1, 2016, through February 1, 2017, to SUNRISE VILLAS HOA as the named insured.
12 Community Association Underwriters managed this policy as an agent for QBE. Under this policy
13 Plaintiff QBE provided SUNRISE VILLAS HOA with defense and indemnification in the
14 UNDERLYING MATTER. Plaintiff settled the UNDERLYING MATTER on behalf of its insured
15 SUNRISE VILLAS HOA paying \$140,000 for a full and complete release.

16 12. At no time did DUSLAK and/or SESMAN seek defense and/or indemnification from
17 Plaintiff QBE for the UNDERLYING MATTER.

18 13. DUSLAK and/or SESMAN have never claimed to be insured by QBE.

19 14. In the UNDERLYING MATTER, RUSSO obtained a default judgment against
20 DUSLAK and/or SESMAN in the amount of at least \$25,000.000.00.

21 15. On November 2, 2020, RUSSO filed a motion for judicial assignment of all rights of
22 action held by DUSLAK and SESMAN against any and all insurance carriers, including QBE. (A
23 copy of RUSSO’s motion for judicial assignment and notice of motion are attached hereto as exhibit
24 4.) For the first time, RUSSO now claims that DUSLAK and SESMAN were insured by QBE.

25 16. RUSSO now alleges that QBE owed DUSLAK and/or SESMAN a duty of defense
26 and/or indemnification, fiduciary duties, and a duty of good faith and fair dealing in connection with
27 the UNDERLYING MATTER. RUSSO also alleges that QBE breached said duties, and that
28 DUSLAK and/or SESMAN possess an actionable claim against QBE, a claim which he now

1 possesses by virtue of assignment.

2 17. Plaintiff QBE disputes and denies that DUSLAK and/or SESMAN ever claimed an
3 entitlement to defense and/or indemnification under the QBE policy. Plaintiff QBE then further
4 disputes and denies that it owes DUSLAK and/or SESMAN a duty of defense and/or
5 indemnification, fiduciary duties, or a duty of good faith and fair dealing in connection with the
6 UNDERLYING MATTER. As such, Plaintiff QBE also disputes and denies that it has breached
7 any such duties to DUSLAK and/or SESMAN.

8 18. RUSSO now seeks, by virtue of his default judgment against DUSLAK and/or
9 SESMAN and assignment of claims, to recover damages from QBE under the policies issued to
10 SUNRISE VILLAS HOA.

11 19. Plaintiff QBE denies that RUSSO has any basis or grounds to recover damages from
12 QBE under the policies issued to SUNRISE VILLAS HOA.

13 **CAUSE OF ACTION - Declaratory Relief**

14 **As Against All Defendants**

15 20. Plaintiff incorporates by reference as though fully set forth herein the allegations in
16 all of the preceding paragraphs.

17 21. Plaintiff is informed and believes and on that basis alleges that RUSSO claims that
18 DUSLAK and/or SESMAN have claims against Plaintiff. Plaintiff is further is informed and
19 believe and on that basis allege that RUSSO claims that Plaintiff owes RUSSO (by assignment) a
20 duty to defend or indemnify in connection with the UNDERLYING MATTER. Plaintiff is
21 informed and believes and on that basis alleges that RUSSO claims to be entitled to recover funds
22 from Plaintiff QBE to satisfy the judgment against DUSLAK and/or SESMAN in the
23 UNDERLYING MATTER. Plaintiff denies all of these claims.

24 22. Plaintiff contends, pursuant to the terms of any insurance policies issued to
25 SUNRISE VILLAS HOA that it does not owe DUSLAK, SESMAN and/or RUSSO (by
26 assignment) a duty to defend or indemnify, any fiduciary duty, or any duty of good faith and fair
27 dealing in connection with the UNDERLYING MATTER. Plaintiff further contends RUSSO is not
28 entitled to recover funds from Plaintiff QBE to satisfy the judgment against DUSLAK and/or

1 SESMAN in the UNDERLYING MATTER.

2 23. By reason of the foregoing, an actual controversy exists between the parties,
3 requiring a declaratory judgment of this Court.

4 24. A judicial determination of this controversy is necessary and appropriate in order for
5 the parties to ascertain their rights, duties and obligations under the insurance policies.

6 Wherefore, Plaintiff pray for judgment against Defendants as hereinafter set forth.

7 **Prayer**

8 AS TO THE FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF:

9 1. For a declaration and determination that DUSLAK and/or SESMAN are not insured
10 by Plaintiff, and in fact never even tendered the UNDERLYING MATTER to Plaintiff, that
11 Plaintiff did not owe DUSLAK, SESMAN, and/or RUSSO a defense, indemnification, any
12 fiduciary duty, or any duty of good faith and fair dealing for claims arising out of the
13 UNDERLYING MATTER. For a declaration and determination that RUSSO is not entitled to
14 recover funds from Plaintiff QBE to satisfy the judgment against DUSLAK and/or SESMAN in the
15 UNDERLYING MATTER.

16 2. For attorneys' fees;

17 3. For costs of suit;

18 4. For interest;

19 5. For all other relief the Court deems just and proper.

20
21 DATED: November 16, 2020

MORALES, FIERRO & REEVES

22 By: /s/ Ramiro Morales
23 Ramiro Morales, #7101
24 600 South Tonopah Dr., Suite 300
25 Las Vegas, NV 89106
26 Tel: (702) 699-7822

27 Attorneys for Plaintiff QBE INSURANCE
28 CORPORATION

EXHIBIT B

RAMIRO MORALES [Bar No.: 7101]
 E-mail: rmorales@mfrlegal.com
 MORALES, FIERRO & REEVES
 600 South Tonopah Drive, Suite 300
 Las Vegas, Nevada 89106
 Telephone: (702) 699-7822
 Facsimile: (702) 699-9455

Attorneys for Proposed Intervenor
 QBE INSURANCE CORPORATION

DISTRICT COURT
 CLARK COUNTY, NEVADA

SIMONE RUSSO,

Plaintiff,

vs.

COX COMMUNICATIONS LAS VEGAS,
 INC., dba COX COMMUNICATIONS; IES
 RESIDENTIAL, INC.; SUNRISE VILLAS IX
 HOMEOWNERS ASSOCIATION; J&G
 LAWN MAINTENANCE; KEVIN
 BUSHBAKER; PW JAMES MANAGEMENT
 & CONSULTING, LLC; J. CHRIS
 SCARCELLI, DOE LANDSCAPER;
 RICHARD DUSLAK; JUSTIN SESMAN; and
 DOES I-IV; and ROE CORPORATIONS I-V,
 inclusive,

Defendants.

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

**DECLARATION OF DUANE BUTLER IN
 SUPPORT OF QBE INSURANCE
 CORPORATION'S MOTION TO
 INTERVENE and OPPOSITION TO
 MOTION TO ASSIGN RIGHTS AGAINST
 QBE**

I, Duane Butler, under penalty of perjury, declare as follows:

1. I am a Senior Claims Adjuster for Armour Risk Management, Inc., which administers claims for QBE Insurance Corporation. In my capacity as a Senior Claim Adjuster, I have access to copies of all documents generated or maintained by Armor in handling claims for QBE, including copies of policy forms issued by QBE.
2. On behalf of QBE, I adjusted the claim of Sunrise Villas IX Homeowners Association ("Sunrise") with respect to this suit. I was involved with the settlement of the claims against Sunrise, which was funded by QBE. QBE issued a condominium association policy, with a policy period of

1 February 1, 2016, to February 1, 2017, to Sunrise. QBE agreed to defend and defended its insured,
2 Sunrise, in response to a tender from Sunrise, and paid for the settlement of claims against Sunrise in
3 this action. In exchange for payment, Russo gave a full and complete release of claims against
4 Sunrise.

5 3. Neither Richard Duslak ("Duslak") nor Justin Sesman ("Sesman") requested a defense from
6 QBE related to this suit. Neither Duslak nor Sesman ever contacted QBE about this suit.

7 4. QBE did not receive a tender of the defense of Duslak or Sesman in relation to this suit from
8 anyone.

9 5. QBE vigorously contends that Duslak and Sesman are not insured for liability alleged in this
10 action under the QBE policy issued to Sunrise. QBE has filed a declaratory relief action, seeking an
11 adjudication of what rights and obligations exist under the QBE policy issued to Sunrise with respect
12 to Duslak and Sesman in relation to this action. (A true and correct copy of the complaint filed by
13 QBE in the United States District Court, District of Nevada, is attached as Exhibit A.)

14 I declare that the foregoing is true and correct based on my own personal knowledge under
15 penalty of perjury. Executed in Philadelphia, Pennsylvania, on the date specified below.

16 DATED: November 16, 2020

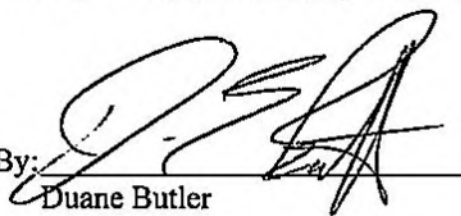
17
18 By: 
19 Duane Butler
20
21
22
23
24
25
26
27
28

EXHIBIT C

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "Agreement") is entered into by and between:

1. Dr. SIMONE RUSSO (hereinafter "PLAINTIFF");
2. SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (hereinafter "SUNRISE") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, insurers (Community Association Underwriters, Inc., QBE Insurance Corporation, Alliant Insurance Services, Inc., DSCM, Inc. and Armour Risk Management, Inc. – but only as it relates to SUNRISE), **EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN OR ANYONE ASSOCIATED OR AFFILIATED WITH THEM, 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;
3. IES RESIDENTIAL, INC. (hereinafter "IES") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, employees, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers;
4. COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX COMMUNICATIONS (hereinafter "COX") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, employees, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers;
5. PW JAMES MANAGEMENT & CONSULTING, LLC (hereinafter "PW JAMES") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, employees, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers (potentially Community Association Underwriters, Inc., QBE Insurance Corporation, Alliant Insurance Services, Inc., DSCM, Inc. and Armour Risk Management, Inc.);
6. KEVIN BUSHBAKER (hereinafter "BUSHBAKER") and his successors, assigns, heirs, and insurers; and
7. CHRIS SCARCELLI (hereinafter "SCARCELLI") and his successors, assigns, heirs, and insurers.



Any of the above-named entities may be referred to as a "PARTY" herein or all of the above-named entities may collectively be referred to as the "PARTIES" herein and/or "SETTLING PARTIES." SUNRISE, IES, COX, PW JAMES, BUSHBAKER and SCARCELLI will also be referred to as "DEFENDANTS."

This Agreement shall be effective as of the date the Agreement is fully executed.

RECITALS

This Agreement is entered into with reference to the following facts:

PLAINTIFF asserts that on or about August 20, 2015 he tripped and fell when exiting a cab in front of the home that he rented from BUSHBAKER. PLAINTIFF subsequently filed a lawsuit entitled *Russo v. Cox Communications Las Vegas, Inc. D/B/A Cox Communications, et al.*, Eighth Judicial District Court Case No. A-17-753606-C, alleging that his injuries were caused by DEFENDANTS' negligence and seeking damages. This action shall be referred to as the "SUBJECT ACTION".

The PARTIES have conducted settlement discussions and direct arms-length negotiations and now wish to settle, dismiss, release, discharge, and terminate any and all claims, demands, controversies, causes of action, damages, rights, liabilities, and obligations between them relating to the SUBJECT ACTION.

The PARTIES hereby acknowledge the following: Under the Medicare Secondary Payer ("MSP") statute, 42 U.S.C. §1395y(b), and its accompanying regulations ("the MSP Provisions"), the Centers for Medicare and Medicaid Services (the "CMS"), in certain circumstances, have an obligation to seek reimbursement of conditional payments made by the Medicare program (Title XVIII of the Social Security Act) (the "Medicare Program") for the claim, items, and services relating to injuries allegedly sustained by PLAINTIFF as a consequence of the SUBJECT ACTION. The PARTIES seek to fully comply with all MSP Provisions as further detailed throughout this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, and subject to District Court's approval, the PARTIES hereto agree to enter into this settlement as follows:

1. SETTLEMENT PAYMENT TERMS AND CONDITIONS.

THE PARTIES hereby agree that in full and complete settlement of the claims in the SUBJECT ACTION, SUNRISE'S insurer will pay PLAINTIFF the total sum of ONE-HUNDRED-FORTY THOUSAND DOLLARS (\$140,000.00) for itself and PW JAMES. IES' insurer, on behalf of IES and COX, will pay PLAINTIFF the total sum of TWO-HUNDRED FIFTEEN THOUSAND DOLLARS (\$215,000). Both BUSHBAKER and SCARCELLI will pay nothing towards the settlement and agree to waive any rights that they may have from any other settled PARTY for fees and/or costs.



The settlement payments expressly include the payment of any and all damages PLAINTIFF may have recovered in the SUBJECT ACTION, including, but not limited to, general damages, special damages, attorneys' fees, expert fees, costs, prejudgment, liens and any and all other damages. PLAINTIFF acknowledges that the settlement funding is being paid by SUNRISE's, IES' and COX's insurers, and SUNRISE, IES, COX and PW JAMES shall not in any way act as a guarantor of any payments that are being funded by its insurer, but that full funding is a condition precedent to this Agreement being binding.

SUNRISE and IES agree that they will cause their insurers to deliver drafts for \$140,000.00 and \$215,000.00, respectively, made payable to "Simone Russo and his attorney, The Law Office of David Sampson, LLC" to RUSSO's counsel within fourteen days of PLAINTIFF'S signing this Agreement. The Law Office of David Sampson's referencing Tax ID No. is 45-3548937. These settlement funds shall then be held in trust until the Stipulation and Order for Dismissal with Prejudice of the SUBJECT ACTION has been signed by PLAINTIFF'S counsel and provided to counsel for DEFENDANTS. The PARTIES agree that none of the consideration for this release is for lost wages or earning capacity whether past, future or present, and that all sums set forth herein constitute damages on account of personal injuries or sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

2. COVENANT NOT TO SUE AND DISMISSAL.

Upon full execution of this Confidential Agreement and receipt of the settlement payments of \$140,000.00, and \$215,000.00, PLAINTIFF shall dismiss his operative Complaint with prejudice as to DEFENDANTS. BUSHBAKER shall dismiss his Cross-Claim against COX and IES with prejudice. The PARTIES also agree that the Court shall retain jurisdiction to ensure that PLAINTIFF receives all settlement proceeds due under this Agreement.

Furthermore, PLAINTIFF covenants and agrees that he has not and that it will not, bring any other claim, action, suit or proceeding against DEFENDANTS (including their insurers except as noted on page 1 paragraph 2) related to the SUBJECT ACTION, except to enforce the terms of this Agreement.

3. WARRANTY AND HOLD HARMLESS REGARDING NON-ASSIGNMENT OF CLAIMS.

Each PARTY to this Agreement hereby represents and warrants to the others that it is a rightful owner of all rights, title, and interest in every claim and other matter which it releases herein and has not heretofore sold, assigned, conveyed or otherwise transferred all or a portion of any interest or any claim which they may have against the others or each of the other's respective parents, affiliates, subsidiaries, predecessors, and each other person, firm, insurer or other entity released and discharged pursuant to this Agreement. The PARTIES upon a proper and timely tender agree to hold each other and each of the other's parents, affiliates, subsidiaries, predecessors, and each other person, firm, insurer or other entity released pursuant to this Agreement harmless from any liabilities, claims, demands, damages, costs, expenses and attorneys' fees incurred as a



result of any person asserting any claim or cause of action based upon any such assignment or transfer.

4. RELEASE.

i) In consideration for the full and timely performance of all terms and conditions of this Agreement in the manner prescribed herein, including, but not limited to, all releases, dismissals, waivers, covenants, warranties, and representations, PLAINTIFF: hereby releases and forever discharges DEFENDANTS and all of their heirs, executors, administrators, insurers, trustors, trustees, beneficiaries, predecessors, successors, assigns, members, partners, partnerships, parents, subsidiaries, affiliates and related entities, and each of the foregoing respective officers, directors, stockholders, controlling persons, principals, agents, servants, employees **EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN OR ANYONE ASSOCIATED OR AFFILIATED WITH THEM INCLUDING ANY ACTUAL OR POTENTIAL INSURER (per the Stipulation, Attached as Exhibit "A")** sureties, attorneys, consultants, and experts, who are or may ever become liable to them, of and from any and all claims, demands, causes of action, obligations, liens, taxes, damages, losses, costs, attorneys' fees, expert fees, costs, interest, and any other expenses of any kind and nature whatsoever, at law or in equity, direct or derivative, known or unknown, fixed, liquidated or contingent, tort, contract, statutory or mixed, by reason of any act or omission, matter, cause or thing arising out of or connected with the SUBJECT ACTION that was or could have been filed, including any representation, misrepresentation or omission in connection with any of the above, any and all claims for incidental, consequential, ensuing, or resulting damage therefrom, including, without limitation, claims for injuries, or any other economic loss or non-economic loss, the prosecution of any complaint or cross-complaint, and the defense, handling or settlement of the actions, as well as any and all matters and issues raised, or which could have been raised, or in the future might have been raised. It is the intention of the PARTIES to hereby fully, finally, and forever settle and release any and all disputes and differences, known or unknown, suspected or unsuspected, as to the released matters.

ii) Nothing in this release shall release, discharge, or in any way impact PLAINTIFF's rights against RICHARD DUSLAK and/or JUSTIN SESMAN in any manner (per the Stipulation attached as Exhibit "A"). Additionally, any rights RICHARD DUSLAK and/or JUSTIN SESMAN have had, currently have, or may have, other than those specifically disposed of by the Court in a prior hearing regarding good faith settlement, shall not be released, discharged or in any way impacted by this release. PLAINTIFF shall retain all rights to pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN, and shall retain all powers to pursue any claims RICHARD DUSLAK and/or JUSTIN SESMAN have had, have, or may have if the same are ever obtained by PLAINTIFF **INCLUDING CLAIMS AGAINST ANY ACTUAL OR POTENTIAL INSURER OF DUSLAK AND/OR SESMAN.** ANY LANGUAGE IN THIS RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY IMPACT PLAINTIFF'S RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN SESMAN, THEIR INSURED, EMPLOYERS, OR ANY OTHER RELATED OR AFFILIATED PERSONS OR ENTITIES OR THE RIGHTS RICHARD DUSLAK and/or JUSTIN SESMAN HAVE HAD, HAVE, OR MAY HAVE AGAINST ANY PERSON OR ENTITY AT ANY TIME (INCLUDING PLAINTIFF'S RIGHTS TO PURSUE THE SAME ON BEHALF OF DUSLAK AND/OR SESMAN) SHALL BE DEEMED NULL AND VOID



iii) In further consideration for the full and timely performance of all terms and conditions of this Agreement in the manner prescribed herein, including, but not limited to, all releases, dismissals, waivers, covenants, warranties, and representations, DEFENDANTS: hereby releases and forever discharge PLAINTIFF and every other DEFENDANT and all of their heirs, executors, administrators, insurers, trustors, trustees, beneficiaries, predecessors, successors, assigns, members, partners, partnerships, parents, subsidiaries, affiliates and related entities, and each of the foregoing respective officers, directors, stockholders, controlling persons, principals, agents, servants, employees, representatives, and all persons, firms, and entities connected with them, including, without limitation, its insurers, sureties, attorneys, consultants, and experts, who are or may ever become liable to them, of and from any and all claims, demands, causes of action, obligations, liens, taxes, damages, losses, costs, attorneys' fees, expert fees, costs, interest, and any other expenses of any kind and nature whatsoever, at law or in equity, direct or derivative, known or unknown, fixed, liquidated or contingent, tort, contract, statutory or mixed, including any and all other potential entitlements that DEFENDANTS ever had, may now have or may hereafter have by reason of any act or omission, matter, cause or thing arising out of or connected with the SUBJECT ACTION that was or could have been filed, including any representation, misrepresentation or omission in connection with any of the above, any and all claims for incidental, consequential, ensuing, or resulting damage therefrom, including, without limitation, claims for injuries, or any other economic loss or non-economic loss, the prosecution of any complaint or cross-complaint, and the defense, handling or settlement of the actions, as well as any and all matters and issues raised, or which could have been raised, or in the future might have been raised. It is the intention of the PARTIES to hereby fully, finally, and forever settle and release any and all disputes and differences, known or unknown, suspected or unsuspected, as to the released matters.

iii) Notwithstanding any provision to the contrary, the PARTIES, and each of them, recognize and acknowledge that this Agreement is not intended to, and shall not, release any of the PARTIES from liability or damages, if any, caused by, or arising out of, the failure or refusal of a PARTY to perform any or all of the acts required on their respective parts to be done, as per the terms and conditions of this Agreement.

5. HANDLING OF SETTLEMENT FUNDS.

PLAINTIFF agrees that he will be solely and completely responsible for any necessary outstanding payments, repayments or reimbursements for treatment, liens (including attorney liens) and/or other types of damages related to the events that are the subject of the SUBJECT ACTION. PLAINTIFF further agrees to, UPON PROPER AND TIMELY TENDER, fully and expressly indemnify, save and hold harmless DEFENDANTS for and against all claims, liens (including attorney liens), demands, causes of action, damages, costs, losses, and liabilities, including, but not limited to, attorneys' fees and other legal costs, if any, arising out of any lien relating to the proceeds of any recovery or any failure to make any outstanding payments or repayments, as referenced above.

6. REPRESENTATION BY COUNSEL.

The PARTIES hereto acknowledge that they have been represented by or had the opportunity to rely upon counsel of their own choosing in the negotiations for the preparation of

this Agreement, that they have read this Agreement, have had its contents fully explained to them or had the opportunity to have the contents fully explained to them by such counsel, and are fully aware of and understand all of its terms and the legal consequences thereof. It is acknowledged that the PARTIES hereto have mutually participated in the preparation of this Agreement.

7. DISPUTED CLAIMS.

This Agreement represents the settlement of disputed claims and does not constitute any admission of liability by any PARTY to any other PARTY. Each PARTY to this Agreement hereby expressly denies any liability to the other PARTIES.

8. FURTHER ASSURANCES.

The PARTIES hereby agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Agreement, including, but not limited to the execution of the stipulation for dismissal with prejudice.

9. NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE IN THIS AGREEMENT.

Each of the PARTIES to this Agreement acknowledges that no other PARTY, nor any agent or attorney of any other PARTY has made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof to induce them to execute this Agreement, and acknowledges that he, she or it has not executed this instrument in reliance on any such promise, representation, or warranty not contained herein, and further acknowledges that there have not been, and are no other, agreements or understandings between the PARTIES relating to this settled litigation except as stated in this Agreement.

10. BENEFIT AND BURDEN.

This Agreement shall be binding upon and inure to the benefit of the PARTIES hereto and their respective heirs, representatives, successors, and assigns.

11. WAIVER AND AMENDMENT.

No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Agreement may be amended only by a written agreement executed by the PARTIES in interest at the time of the modification.

12. CAPTIONS AND INTERPRETATIONS.

Titles or captions contained herein are inserted as a matter of convenience and for reference, and no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Whenever the context hereof shall so require, the singular shall include the plural, and male gender shall include the female gender and the neuter, and vice versa. Furthermore, no

provision in this Agreement is to be interpreted for or against any PARTY because that PARTY or his legal representative drafted such provision.

13. AUTHORITY TO EXECUTE.

Each of the PARTIES represents and warrants that it is competent to enter into this Agreement and has the full right, power and authority to enter into and perform the obligations under this Agreement.

14. INTEGRATION.

This Agreement constitutes the entire, final, and integrated agreement between the PARTIES hereto pertaining to the subject matter hereof, fully supersedes all prior understandings, representations, warranties, and agreements between the PARTIES hereto, or any of them, pertaining to the subject matter hereof, and may be modified only by written agreement signed by all the PARTIES in interest at the time of the modification.

15. SEVERANCE.

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

16. VOLUNTARY AGREEMENT.

The PARTIES hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they signed the same freely and voluntarily.

17. GOVERNING LAW.

This Agreement has been negotiated and entered into in the State of Nevada, and shall be governed by, construed and enforced in accordance with the internal laws of the State of Nevada.

18. COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Additionally, facsimile or scanned copies of signatures shall be considered an original signature.

19. ATTORNEYS' FEES.

i) Attorney's Fees and Costs: All PARTIES to this Agreement agree to bear their own attorneys' fees, expert fees and costs incurred in connection with the defense and prosecution of this action except as otherwise set forth in this Agreement. PLAINTIFF acknowledges that the



settlement payments it shall receive include full payment of all statutory attorney's fees, expert fees and costs that it could be entitled to receive.

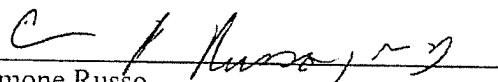
ii) Attorney's Fees For Future Action: Should any PARTY hereto reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Agreement, the prevailing PARTY shall be reimbursed by the losing PARTY for all costs and expenses incurred thereby including, but not limited to, reasonable attorneys' fees, expert fees and costs.



IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO


Simone Russo

Dated: _____

**SUNRISE VILLAS IX HOMEOWNERS'
ASSOCIATION**

Sunrise Villas IX Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: _____

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

COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO

15/
Simone Russo

Dated: _____

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

Marcie J. Hagan-Heinstein
Sunrise Villas IX Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: _____

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

COX Communications Las Vegas, Inc., dba COX Communications

Dated: _____

PW JAMES MANAGEMENT & CONSULTING, LLC

PW James Management & Consulting, LLC

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

**SUNRISE VILLAS IX HOMEOWNERS'
ASSOCIATION**

Sunrise Villas IX Homeowner's Association

Dated: 12/4/19

IES RESIDENTIAL, INC.

Robert W. Weller VP
IES Residential, Inc.

Dated: _____

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

COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

Sunrise Villas IX Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: 1/12/20

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

Stephanie Howe
COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By: 

David Sampson, Esq.
 Law Office of David Sampson, LLC
Attorneys for Plaintiff

Dated: _____

SPRINGEL & FINK, LLP

By: _____

Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas LX Homeowners' Association

Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: 

Chris Turtzo, Esq.
Attorneys for Defendants,
IES Residential, Inc. and COX Communications Las
Vegas, Inc., dba COX Communications

Dated: _____


SGRO & ROGER

By: _____

Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

Dated: 11/22/2019

KEVIN BUSHBAKER



Kevin Bushbaker

Dated: _____

CHRIS SCARCELLI

Chris Scarcelli

SIGNATURES TO FOLLOW ON NEXT PAGE

APPROVED AS TO FORM AND CONTENT:Dated: 11-12-19**LAW OFFICE OF DAVID SAMPSON, LLC**By: 

David Sampson, Esq.
 Law Office of David Sampson, LLC
Attorneys for Plaintiff

Dated: 1/10/20**SPRINGEL & FINK LLP**By: 

Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas IX Homeowners' Association

Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: _____

Chris Turtzo, Esq.
Attorneys for Defendants,
IES Residential, Inc. and COX Communications Las
Vegas, Inc., dba COX Communications

Dated: _____

SGRO & ROGER

By: _____

Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

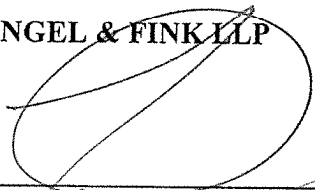
APPROVED AS TO FORM AND CONTENT:

Dated: _____

LAW OFFICE OF DAVID SAMPSON, LLC

By: _____
 David Sampson, Esq.
 Law Office of David Sampson, LLC
Attorneys for Plaintiff

Dated: 1/10/20

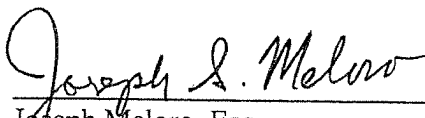
SPRINGEL & FINK LLP

 By: _____
 Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas IX Homeowners' Association

Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: _____
 Chris Turtzo, Esq.
Attorneys for Defendants,
IES Residential, Inc. and COX Communications Las
Vegas, Inc., dba COX Communications

Dated: 12/05/19

SGRO & ROGER

 By: _____
 Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

Dated: _____

LIPSON NEILSON

By: _____
Julie Funai, Esq.
Attorneys for Defendant, Chris Scarcelli

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

**SUNRISE VILLAS IX HOMEOWNERS'
ASSOCIATION**

Sunrise Villas IX Homeowner's Association

Dated: 12/4/19

IES RESIDENTIAL, INC.

Christopher Russo VP
IES Residential, Inc.

Dated: _____

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

COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

**SUNRISE VILLAS IX HOMEOWNERS'
ASSOCIATION**

Sunrise Villas IX Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: 1/2/20

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

Stephen Houe
COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By: 

David Sampson, Esq.
 Law Office of David Sampson, LLC
Attorneys for Plaintiff

Dated: _____

SPRINGEL & FINK LLP

By: _____

Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas IX Homeowners' Association

Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: 

Chris Turtzo, Esq.
Attorneys for Defendants,
IES Residential, Inc. and COX Communications Las
Vegas, Inc., dba COX Communications

Dated: _____


SGRO & ROGER

By: _____

Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

Dated: 11/22/2019

KEVIN BUSHBAKER



Kevin Bushbaker

Dated: _____

CHRIS SCARCELLI

Chris Scarcelli

SIGNATURES TO FOLLOW ON NEXT PAGE

APPROVED AS TO FORM AND CONTENT:

Dated: _____

LAW OFFICE OF DAVID SAMPSON, LLC

By: _____

David Sampson, Esq.
 Law Office of David Sampson, LLC
Attorneys for Plaintiff

Dated: _____

SPRINGEL & FINK LLP

By: _____

Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas IX Homeowners' Association

Dated: _____

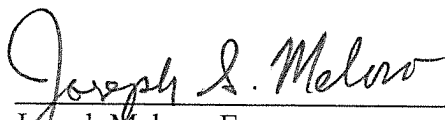
MORRIS, SULLIVAN & LEMKUL

By: _____

Chris Turtzo, Esq.
Attorneys for Defendants,
IES Residential, Inc. and COX Communications Las
Vegas, Inc., dba COX Communications

Dated: 12/05/19**SGRO & ROGER**

By: _____


 Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

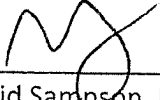
STIPULATION BETWEEN SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION AND SIMONE RUSSO RELATED TO CASE A-17-753606 (SIMONE RUSSO V. COX COMMUNICATIONS LAS VEGAS, INC.).

IT IS HEREBY STIPULATED THAT FOR THE PURPOSES OF THIS LITIGATION AND FOR ANY AND ALL ISSUES RELATED TO SIMONE RUSSO'S CLAIMS AND SETTLEMENT, THAT IN AUGUST 2016 BOTH DEFENDANT RICHARD DUSLAK AND DEFENDANT JUSTIN SESMAN WERE NATURAL PERSONS WHO WERE IN THE SERVICE OF SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION AS INDEPENDENT CONTRACTORS, WHOM SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION COMPENSATED, AND WHOM SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION HAD THE NON-EXCLUSIVE RIGHT TO DIRECT AND CONTROL BY ASSIGNING PROJECTS WHILE DUSLAK AND SESMAN PERFORMED SERVICES FOR SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION.

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By:


 David Sampson, Esq.
 Law Office of David Sampson, LLC
Attorneys for Plaintiff

Dated: _____

SPRINGEL & FINK LLP

By:

 Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas IX Homeowners' Association

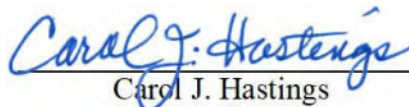
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the below date, I served a true and correct copy of the foregoing:

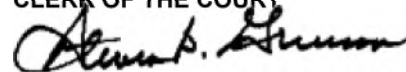
**QBE INSURANCE CORPORATION'S AMENDED MOTION TO INTERVENE and
OPPOSITION TO MOTION TO ASSIGN RIGHTS AGAINST QBE**

on all parties in this action by the Eighth Judicial District Court's CM/ECF Filing System.

DATED: November 17, 2020.


Carol J. Hastings

Electronically Filed
11/25/2020 2:37 PM
Steven D. Grierson
CLERK OF THE COURT


OPP/WDWL

DAVID F. SAMPSON, ESQ.

Nevada Bar No. 6811

LAW OFFICE OF DAVID SAMPSON, LLC.

630 S. 3rd 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.)

Hearing Date: December 10, 2020**Time of Hearing: 9:00 a.m.**

**OPPOSITION TO NON-PARTY QBE INSURANCE CORPORATION'S MOTION TO
INTERVENE AND FORMAL WITHDRAWAL OF PLAINTIFF'S MOTION FOR
JUDICIAL ASSIGNMENT OF CAUSE OF ACTION**

COMES NOW, Plaintiff, SIMONE RUSSO, by and through his attorney of record, and opposes the motion filed by non-party QBE Insurance Corporation ("QBE") to intervene in this matter, and formally withdraws his prior motion for a judicial assignment. This opposition and

withdrawal are made and based upon the pleadings and papers filed herein, the attached Points and Authorities, and upon oral argument at the time of hearing.

OPPOSITION TO MOTION TO INTERVENE

STATEMENT OF FACTS

The court is well aware of the underlying facts of this case as it proceeded to trial twice in the fall of 2019¹. Dr. SIMONE RUSSO was horrifically injured on August 27, 2016 when he fell because of on an exposed cable wire located at 4617 Madreperla in SUNRISE VILLAS IX HOMEOWNERS ASSOCIATON. When SIMONE filed suit in this matter, QBE hired an attorney to defend SUNRISE against SIMONE's claims. From the date SUNRISE answered the complaint in this matter in 2017, QBE was fully aware of what was taking place in this litigation.

Originally SUNRISE advised SIMONE that "J&G LAWN MAINTENANCE" was responsible for lawn maintenance for SUNRISE in August 2016. During the discovery process SUNRISE advised SIMONE that SUNRISE actually did not hire J&G LAWN MAINTENANCE until September 2016. Instead, SUNRISE stated it employed Richard Duslak and Justin Sesman to perform landscaping and maintenance at SUNRISE, and that DUSLAK and SESMAN were responsible for landscaping and maintenance for SUNRISE at the time of the subject incident. Indeed SUBRISE responded in an Interrogatory saying "SUNRISE VILLAS believes it employed Richard Duslak and Justin Sesman for lawn maintenance repair and/or cleaning prior to September 2016 and terminated this contract before retaining J&G LAWN MAINTENANCE on or about September 8, 2016." *See* Exhibit "1" at P. 7 L. 8-10.

¹ The first trial ended in a mistrial as a result of comments made by a potential juror impugning retained expert witnesses.

On November 29, 2017 SIMONE filed a motion in Case No. A-17-753606-C seeking to amend the Complaint in that matter to add DUSLAK and SESMAN as SUNRISE had recently admitted it had employed DUSLAK and SESMAN for the lawn care and maintenance at and they were responsible for the same at SUNRISE in August 2016. *See* Exhibit “2”. The amended complaint identified DUSLAK and SESMAN as Defendants and alleged that Defendants, and each of them (which would include DUSLAK and SESMAN) were responsible for the maintenance and landscaping for SUNRISE when SIMONE was injured. *See* Exhibit “3” at paragraphs 19-20. At the time the Amended Complaint was filed, QBE was actively defending SUNRISE in this action and was fully aware that DUSLAK and SESMAN had been sued in this matter. *Id.*

When QBE became aware of the instant lawsuit, and the fact that DUSLAK and SESMAN had been included as Defendants and that SUNRISE admitted it employed DUSLAK and SESMAN to perform lawn care and maintenance, QBE received actual and/or constructive tender of the claims against DUSLAK and SESMAN. *See, Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d 180 (2018) (citing *United Nat’l Ins. Co. v. Frontier Ins. Co., Inc.*, 120 Nev. 678, 684 (2004) (an insurer . . . bears a duty to defend its insured whenever it ascertains facts which give rise to the potential of liability under the policy.”), *see also Devin v. United Servs. Auto. Ass’n.*, 6 Cal. App. 4th 1149, 1157 (1992) (“The duty to defend arises as long as the facts (either as expressed or implied in the third party’s complaint, ***or as learned from other sources***) give rise to a potentially covered claim”) (citing *Fresno Economy Import Used Cars, Inc. v. United States Fidelity & Guar. Co.*, 76 Cal. App. 3d 272, 279 (1977)) (emphasis added). Indeed courts have specifically held that notice of a claim brought against a

mutual insured (in this case SUNRISE) qualifies as a valid tender of defense. *Millennium Labs., Inc. v. Darwin Select Ins. Co.*, 2014 U.S. Dist. LEXIS 170439 (S.D. Cal. Dec. 9, 2014).

Throughout the litigation process, up to and including this matter proceeding to trial, QBE was kept apprised of what was happening in the instant litigation through counsel it had retained for SUNRISE, and was well aware that DUSLAK and SESMAN had been sued in this matter. Additionally, ***SIMONE notified QBE directly that suit had been filed against DUSLAK and SESMAN, and that a default had been taken against DUSLAK and SESMAN.*** On September 18, 2019 counsel for SIMONE faxed a letter to QBE² (Fax No: 267-757-7434) and emailed the same letter to QBE at email address: hstavakis@cauinsure.com which letter stated:

As you aware, some time ago our office initiated litigation against Justin Sesman, Richard Duslak, as well as PW James Management & Consulting related to the above-noted incident. We write at this time to advise Community Association Underwriters Agency that the Court has entered default against Justin Sesman, Richard Duslak, and PW James Management & Consulting in this matter. We have attached a copy of the defaults for your convenience.

Please contact our office with any questions.

See, Exhibit “4”.

QBE did not defend DUSLAK or SESMAN despite being aware of the lawsuit, and being aware that default had been taken against QBE/CAU’s insureds. On December 17, 2019 the court entered Judgment against DUSLAK and SESMAN in the amount of \$25,000,000.00, which accrues interest at the statutory rate until paid in full. Notice of Entry of the said Judgment was filed on December 17, 2019.

² QBE INSURANCE CORPORATION issued insurance policies, some of which were underwritten by COMMUNITY ASSOCIATION UNDERWRITERS (“CAU”). SIMONE communicated with QBE through CAU regarding this action.

On November 4, 2020 counsel for SIMONE sent another communication to QBE to the same fax number and email address that counsel for SIMONE sent the prior communication to QBE, which stated:

As you aware, some time ago our office initiated litigation against Justin Sesman, Richard Duslak, as well as PW James Management & Consulting related to the above-noted incident. As we informed you over a year ago, the Court entered default against Justin Sesman, Richard Duslak, and PW James Management & Consulting in this matter. In December of 2020 the Court entered Judgment against Justin Sesman, Richard Duslak in the amount of \$25,000,000.00. We have attached a copy of the Judgment against your insureds for your convenience. Please contact our office to make arrangements to satisfy the Judgment against your insureds.

See, Exhibit “5”

QBE filed the instant motion to intervene twelve days after receiving the above communication, and well over eleven months after Judgment was been entered in this matter.

POINTS AND AUTHORITIES

As noted in the QBE’s motion, this court entered Judgment by Default against Defendants DUSLAK and SESMAN on December 17, 2019. QBE’s motion to intervene was filed on November 16, 2020, eleven months *after Judgment was entered*. As noted below, the Supreme Court of the State of Nevada has spoken loud, clear, repeatedly, and recently that *intervention is not permitted after judgment has been entered*. QBE’s motion should therefore be denied.

NRS 12.130 states, “before the trial any person may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both.” The Nevada Supreme Court has held “*The plain language of NRS 12.130 does not permit intervention subsequent to the entry of a final judgment.*” *Lopez v. Merit Insurance Co.*, 853 P.2d 1266, 1268 (1993) (emphasis added).

Dating all the way back to 1938, the Nevada Supreme Court has held that ***intervention cannot be had after a final judgment is entered.*** See, *Ryan v. Landis*, 58 Nev. 253, 75 P.2d 734. (1938). In *Ryan* the Court adopted the holding from a California decision a decade before which held that “***in all cases [intervention] must be made before trial.***” *Id* (citing *Kelly v. Smith* 204 Cal. 496, 268 P. 1057 (1928)). The Nevada Supreme Court has subsequently confirmed “In ***refusing to allow intervention subsequent to the entry of a final judgment***, this court ***has not distinguished between judgments entered following trial and judgments entered by default*** or by agreement of the parties.” *Lopez v. Merit Insurance Co.*, 853 P.2d 1266, 1268 (1993) (emphasis added). In *Lopez* the Court reiterated that “***[i]n all cases***” intervention must be sought before judgment is entered. *Id*.

Indeed the Nevada Supreme Court has detailed its reasoning as to why intervention must “in all cases” be made before judgment is entered, noting “It is not the intention of the statute that one not a party to the record shall be allowed to interpose and open up and renew a controversy which has been settled between the parties to the record, either by verdict, default, or voluntary agreement.” *Ryan v. Landis*, 58 Nev. 253, 260, 75 P.2d 734, 735. (1938) (quoting *Henry Lee & Co. v. Cass County Mill & Elevator Co.*, 42 Iowa 33 (1875)).

In 1956, in the case of *Eckerson v. Rudy*, the Court not only recognized the long standing line of authority from the Nevada Supreme Court mandating that intervention cannot be had after judgment has been entered, but also noted that such a holding is supported by public policy. In that action, just like in the instant action, the appellant claimed that a default judgment was improperly entered, and that the appellant should have been allowed to intervene to set the default judgement aside. The Court held, “This they may not do by intervention

where the controversy is ended and settled to the satisfaction of the parties litigant.” *Eckerson v. Rudy*, 72 Nev. 97, 295 P.2d 399, 400 (1956).

In 1968, in the case of *McLaney v. Fortune Operating Co.*, the Nevada Supreme Court reversed the lower court’s decision to allow intervention after judgment had been entered. The opinion states “The lower court allowed [appellants] to intervene . . . after judgment. ***The motion to intervene came too late and should have been denied.***” *McLaney v. Fortune Operating Co.*, 84 Nev. 491, 499, 444 P.2d 505, 510 (1968).

In 1993, in *Lopez v. Merit Insurance Co.*, 853 P.2d 1266 (1993), the Nevada Supreme Court again confirmed its long held position that “in all cases” intervention must be sought before the entry of judgment. The Court detailed the long and consistent line of authority upholding NRS 12.130 which does not allow intervention after judgment has been entered. The Court discussed case after case after case where appellant after appellant over the course of several decades had asked district courts to allow them to intervene for myriad reasons. Without exception, every time a district court judge found that intervention could not be had after judgment had been entered the district court judge’s decision was upheld. Without exception, every time a district court judge has allowed intervention after judgment was entered the district court judge’s decision was reversed.

The most recent instance in which the Nevada Supreme Court again held that intervention cannot be permitted after Judgment has been entered was in *Nalder v. Eighth Judicial Dist. Ct.*, 136 Nev.Adv.Op. 24 (2020). The *Nalder* Court explained

NRS 12.130 provides that “[b]efore the trial, any person may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both.” (Emphases added.) In *Ryan v. Landis*, in interpreting a nearly identical predecessor to NRS 12.130, we adopted the principle that ***there could be no intervention after judgment, including default judgments*** and judgments rendered by agreement of the parties. 58 Nev. 253, 259, 75 P.2d 734, 735

(1938). We reaffirmed that principle in *Lopez v. Merit Insurance Co.*, 109 Nev. at 556-57, 853 P.2d at 1268. In reversing a lower court's decision allowing an insurance company to intervene after judgment, we reasoned, "**[t]he plain language of NRS 12.130 does not permit intervention subsequent to entry of a final judgment.**" *Id.* at 556, 853 P.2d at 1268. We do not intend today to disturb that well-settled principle that ***intervention may not follow a final judgment***, nor do we intend to undermine the finality and the preclusive effect of final judgments.

Id. at P. 6-7 (emphasis added).

The *Nalder* Court then held:

Nothing permits UAIC to intervene after final judgment to challenge the validity of the judgment itself. *See Ryan*, 58 Nev. at 260, 75 P.2d at 736 (rejecting the interveners argument that intervention was timely because the judgment was void); *see also Eckerson v. C.E. Rudy, Inc.*, 72 Nev. 97, 98-99, 295 P.2d 399, 399 (1956) (holding that third parties attempting to intervene to challenge a default judgment could not do so after judgment had been entered and satisfied). We therefore hold that the district court acted in excess of its authority in granting UAIC's motion to intervene in the 2007 case.

Id. at P. 7-8.

In the instant action a final judgment was entered on December 17, 2019. Even though QBE was well aware of this action long before default judgment was entered, QBE waited until eleven months ***after*** the final judgment had been entered before it moved to intervene. There is no dispute the motion to intervene was filed long after the final judgment was entered. There is also no dispute that Nevada authority holds that ***"in all cases" intervention must be sought before judgment***, and that intervention can never be (and has never been) permitted after a final judgment has been entered. The Nevada Supreme Court has repeatedly held that a district court is required, as a matter of law, to deny such a motion to intervene. This court should follow the core principles of *stare decisis* and deny QBE's motion for intervention as required by the law.

QBE's request for permissive intervention under NRCP 24 attempts an end-run around NRS 12.130 and must not be permitted. In *Nalder* the Supreme Court held that NRCP 24 must be read in harmony with NRS 12.130(1)(a) which mandates that intervention be sought before

judgment is entered. *Id* at P. 10, citing *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 993, 860 P;2d 720, 723 (1993) (“Whenever possible, this court will interpret a rule or statute in harmony with other rules and statutes.”). The requirement in NRCP 24 that a motion to intervene be “timely” must be read in harmony with the requirement that in NRS 120.130 that a motion to intervene be filed before judgment is entered. In any event, QBE’s motion to intervene, having been filed eleven months after judgment was entered, can in no way be deemed “timely” under NRCP 24. As QBE’s motion to intervene was brought eleven months after judgment was entered in this matter, this court should follow the clear precedent from the Nevada Supreme Court and deny the motion to intervene.

Additionally, QBE does not have any claims or defenses in this matter and therefore cannot have and claims or defenses in common with the instant action. QBE was fully advised about this action for years and choose to not defend DUSLAK or SESMAN. QBE cannot seek to intervene eleven months after judgment was entered and take steps it should have taken in 2017.

WITHDRAWAL OF MOTION FOR JUDICIAL ASSIGNMENT

SIMONE IS NO LONGER SEEKING A JUDICIAL ASSIGNMENT AT THIS POINT

Given the pending declaratory relief action wherein issues as to coverage will be adjudicated, SIMONE is no longer seeking a judicial assignment of claims held by DUSLAK and/or SESMAN and has formally withdrawn his motion for the same.³

³ Unfortunately QBE’s motion raised several issues that have nothing to do with whether it can intervene post judgment, or whether SIMONE’s request for a judicial assignment (which SIMONE has withdrawn) should have been granted. To the extent the Court would require any response from SIMONE on any of those matters, SIMONE notes herein that: 1) The Judgment is not void as SESMAN was in fact served (*see*, Exhibit “6”) and SIMONE did in fact enter Default against DUSLAK (*see*, Exhibit “7”); 2) Any alleged stipulation between RUSSO and SUNRISE would not be binding on DUSLAK or SESMAN and would not impact their rights to

CONCLUSION

For the foregoing reasons SIMONE respectfully requests this Court deny QBE's motion to intervene, and that the Court also deny SIMONE's motion for judicial assignment as moot given SIMONE has formally withdrawn the said motion.

DATED this 24th day of November, 2020.

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ David Sampson

DAVID SAMPSON, ESQ.

Nevada Bar No.6811

LAW OFFICE OF DAVID SAMPSON, LLC.

630 S. 3rd St.

Las Vegas NV 89101

Fax No: 888-209-4199

Attorney for Plaintiff

insurance as covered employees of SUNRISE; 3) The release itself plainly states that if any language in the release (such as the alleged stipulation) could be read to impact the rights of DUSLAK and/or SESMAN to coverage then such language is deemed null and void. *See*, Exhibit "C" to QBE's Amended at P. 4 ¶ 4(ii); and 4) all issues related to whether QBE breached any duty(ies) to DUSLAK and/or SESMAN under the applicable insurance contract will be determined in the Declaratory Relief action QBE filed, and are not a part of the instant action.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICE OF DAVID SAMPSON, LLC., and that on this 25th day of November, 2020, I served a copy of the foregoing **OPPOSITION AND WITHDRAWAL OF MOTION** on all the remaining parties in this matter via the court's electronic online filing system and as follows:

RAMIRO MORALES, ESQ.
600 S. Tonopah Dr. Suite 300
Las Vegas NV 89106
Attorneys for Non-Party QBE
Insurance Corporation

And

Via U.S. Mail:
JUSTIN SESMAN
4775 Topaz Street, Apt. 235
Las Vegas, NV 89121

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

/s/ *Amanda Nalder*
An Employee of The LAW OFFICE OF DAVID SAMPSON, LLC.

EXHIBIT “1”

RSPN

LEONARD T. FINK, ESQ.

Nevada Bar No. 6296

JONATHAN C. PATTILLO, ESQ.

Nevada Bar No. 13929

SPRINGEL & FINK LLP

10655 Park Run Drive, Suite 275

Las Vegas, Nevada 89144

Telephone: (702) 804-0706

Facsimile: (702) 804-0798

E-Mail: *lfink@springelfink.com*
jpattillo@springelfink.com

Attorneys for Defendant,
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiffs,

v.

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; AND DOES 1-V, AND ROE)
CORPORATIONS I-V, inclusive)

Defendants

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

) Dept. No.: XVI

) **DEFENDANT SUNRISE VILLAS IX**
) **HOMEOWNERS ASSOCIATION'S SECOND**
) **SUPPLEMENTAL RESPONSES TO**
) **PLAINTIFF'S FIRST SET OF**
) **INTERROGATORIES**

DEFENDANT SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S SECOND
SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

COMES NOW, Defendant SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION ("SUNRISE VILLAS"), by and through its counsel of record, the law firm of Springel & Fink LLP, and hereby submits its Second Supplemental responses to Plaintiff SIMONE RUSSO'S First Set of Interrogatories pursuant to NRCP 33:

PRELIMINARY STATEMENT

SUNRISE VILLAS objects to each and every one of these Interrogatories as to form in nature, boilerplate and “shotgun.”

It should be noted that SUNRISE VILLAS has not fully completed its investigation of the facts relating to this case, has not fully completed discovery in this action, and has not completed preparation for trial. All of the responses contained herein are based only upon such information and documents which are presently available to and specifically known to SUNRISE VILLAS, and disclose only those contentions which presently occur to it. As discovery proceeds, witnesses, facts, and evidence may be discovered which are not set forth herein, but which may have been responsive to an Interrogatory.

Facts and evidence now known may be imperfectly understood, or the relevance or consequence of such facts and evidence may be imperfectly understood and, accordingly, such facts and evidence may, in good faith, not be included in the following responses.

It is anticipated that further discovery, independent investigation, legal research, and analysis will supply additional facts, add meaning to the known facts, as well as establishing entire new factual conclusions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the contentions herein set forth. The following responses are given without prejudice to SUNRISE VILLAS’ right to produce evidence of any subsequently discovered facts or witnesses which it may later recall. SUNRISE VILLAS accordingly reserves the right to change any and all answers herein as additional facts are ascertained, analyses are made, legal research is completed, and contentions are made. The responses contained herein are made in a good faith effort to supply as much factual information and as much specification of legal contentions as is presently known, but should in no way be to the prejudice of SUNRISE VILLAS in relation to further discovery, research or analysis.

SUNRISE VILLAS assumes no obligation to voluntarily supplement or amend these responses to reflect witnesses, facts, and evidence following the filing of these responses other than required under NRCP 26(e) and 16.1. In addition, because some of these responses may have been ascertained by its attorneys and investigators, SUNRISE VILLAS may not have personal knowledge of the information from which these responses are derived.

///

RESPONSES TO INTERROGATORIES**REQUEST NO. 1:**

Please describe in full detail the location of the cable/wire, in the area of the walkway in question prior to the incident that is the subject of this lawsuit, and if in need of repair state the date it became in need of repair and/or removal, why it was in need of repair and/or removal, and the plans of Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION to make repairs and/or removal.

RESPONSE TO REQUEST NO. 1:

Objection. SUNRISE VILLAS objects to this Interrogatory on the grounds that it is vague and overbroad. SUNRISE VILLAS' objection notwithstanding, SUNRISE VILLAS does not have any information responsive to this Interrogatory. It is SUNRISE VILLAS' understanding that the cable/wire where the wire was located is at the base of the driveway near the expansion joint between the driveway and the curb. SUNRISE VILLAS never received notice of the wire, and never received notice for any need for its repair. SUNRISE VILLAS employs a new management company, has a completely new Board, and is unaware of such information.

Discovery is ongoing, and SUNRISE VILLAS reserves the right to supplement its response.

SUPPLEMENTAL RESPONSES TO REQUEST NO. 1:

SUNRISE VILLAS withdraws its objection. SUNRISE VILLAS' response remains unchanged.

SECOND SUPPLEMENTAL RESPONSES TO REQUEST NO. 1

SUNRISE VILLAS consulted with its current management company and the current Board of Directors, including Board President Al Stubblefield, regarding the identity of any employees or Board officers who may have information pertinent to this Interrogatory. After failing to locate any employee or officer with knowledge of the location of the wire or its need of repair, SUNRISE VILLAS determined that it was without knowledge to respond to this Interrogatory.

REQUEST NO. 2:

Please identify each and every employee of Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION who participated in the installation, repair and/or removal of the cable/wire that was positioned across the lawn and/or walkway at 4617 Madreperla Street, Las Vegas, NV 89121 in the area where Plaintiff fell.

RESPONSE TO REQUEST NO. 2:

Objection. SUNRISE VILLAS objects to this Interrogatory on the grounds that it is vague and overbroad as to the meaning of the word “employee.” SUNRISE VILLAS’ objection notwithstanding, SUNRISE VILLAS does not have any information responsive to this Interrogatory. SUNRISE VILLAS employs a new management company, has a completely new Board, and is unaware of such information.

Discovery is ongoing, and SUNRISE VILLAS reserves the right to supplement its response.

SUPPLEMENTAL RESPONSES TO REQUEST NO. 2:

SUNRISE VILLAS withdraws its objection. SUNRISE VILLAS’ response remains unchanged, in that it does not have any information responsive to this request. No employees of SUNRISE VILLAS installed, repaired, or removed the cable wire.

SECOND SUPPLEMENTAL RESPONSE TO REQUEST NO. 2:

SUNRISE VILLAS’ answer remains the same. SUNRISE VILLAS consulted with its current management company and the current Board of Directors, including Board President Al Stubblefield, and could not identify any prior officers or Board members who knew of whether SUNRISE VILLAS installed, repaired or removed the cable wire. SUNRISE VILLAS believe that no such employee exists. SUNRISE VILLAS spoke with some former Board members, but they did not have the information requested.

REQUEST NO. 4:

Please identify all outside contractors who Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION, retained to care for the residences in the neighborhood, including but not limited to 4617 Madreperla Street, Las Vegas, NV 89121. Please provide information sufficient for the service of a subpoena.

RESPONSE TO REQUEST NO. 4:

Objection. SUNRISE VILLAS objects to this Interrogatory on the grounds that it is vague, overbroad, overly burdensome and likely to lead to inadmissible evidence. SUNRISE VILLAS’ objection notwithstanding, SUNRISE VILLAS does not maintain any of the residences on the Property. Regardless, SUNRISE VILLAS employs a new management company, has a completely new Board, and is unaware of such information.

Discovery is ongoing, and SUNRISE VILLAS reserves the right to supplement its response.

SUPPLEMENTAL RESPONSES TO REQUEST NO. 4:

SUNRISE VILLAS withdraws its objection. Please see the previously produced Association Meeting Minutes, Bates Numbers SVHA000557 – SVHA000562 concurrently produced with SUNRISE VILLAS’ Fourth Supplemental Disclosure of Witnesses and Documents, specifically, reference to the firms “Fascia Painting,” “Noble Tree (5967 Harrison Dr., Las Vegas, NV 89120),” and “Pacific View.” This is all the information SUNRISE VILLAS has on these entities at this time.

Discovery is ongoing, and SUNRISE VILLAS reserves the right to supplement its response.

SECOND SUPPLEMENTAL RESPONSES TO REQUEST NO. 4:

SUNRISE VILLAS consulted with its current management company and the current Board of Directors, including Board President Al Stubblefield, and inquired into any prior employees and Board members with this information. After consulting with current board President Al Stubblefield, SUNRISE VILLAS could only identify these contractors.

REQUEST NO. 6:

If anybody reported to Defendant SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION, an incident relating to a cable/wire in the Sunrise Villas IX neighborhood, prior to the incident that is the subject of this lawsuit, please identify each such individual and the facts and circumstances of each incident reported.

RESPONSE TO REQUEST NO. 6:

Objection. SUNRISE VILLAS objects to this Interrogatory on the grounds that it is vague and overbroad as to the meaning of the word “reported.” SUNRISE VILLAS’ objection notwithstanding, SUNRISE VILLAS does not have any information responsive to this request. SUNRISE VILLAS employs a new management company, has a completely new Board, and is unaware of such information.

Discovery is ongoing, and SUNRISE VILLAS reserves the right to supplement its response.

SUPPLEMENTAL RESPONSES TO REQUEST NO. 6:

SUNRISE VILLAS withdraws its objection. SUNRISE VILLAS’ response remains unchanged.

SECOND SUPPLEMENTAL RESPONSE TO REQUEST NO. 6:

SUNRISE VILLAS consulted with its current management company and the current Board of

Directors, including Board President Al Stubblefield, and SUNRISE VILLAS was unable to locate any person or document indicating a warning about the wire before the incident. Thus, SUNRISE VILLAS does not have any information responsive to this request.

REQUEST NO. 8:

Please identify all manuals, policies, procedures, guides or handbooks used by Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION, or any other written documents that address customer/resident safety.

RESPONSE TO REQUEST NO. 8:

Objection. SUNRISE VILLAS objects to this Interrogatory on the grounds that it is vague, overbroad, and likely to lead to the discovery of inadmissible evidence. SUNRISE VILLAS also objects to this Interrogatory, as it is vague and does not define the meaning of the term “resident safety.” SUNRISE VILLAS’ objection notwithstanding, SUNRISE VILLAS does not have any information responsive to this request. SUNRISE VILLAS employs a new management company, has a completely new Board, and is unaware of such information.

Discovery is ongoing, and SUNRISE VILLAS reserves the right to supplement its response.

SUPPLEMENTAL RESPONSES TO REQUEST NO. 8:

SUNRISE VILLAS withdraws its objection. SUNRISE VILLAS’ response remains unchanged.

SECOND SUPPLEMENTAL RESPONSES TO REQUEST NO. 8

SUNRISE VILLAS consulted with its current management company and the current Board of Directors, including Board President Al Stubblefield, SUNRISE VILLAS was unable to locate any manuals, policies, procedures, guides or handbooks pertaining to resident safety in its possession. Thus, SUNRISE VILLAS could not identify any information responsive to this request.

REQUEST NO. 11:

Please identify each and every person and/or entity that performed and/or was responsible for lawn maintenance, repair, and/or cleaning for 4617 Madreperla Street, Las Vegas, NV 89121 and the surrounding homes from January 1, 2016 through September 15, 2016.

RESPONSE TO REQUEST NO. 11:

SUNRISE VILLAS objects to this Interrogatory on the grounds that it is overly broad and overly

burdensome. It also calls for the admission of inadmissible evidence. SUNRISE VILLAS' objection notwithstanding, under the CC&Rs, SUNRISE VILLAS is not responsible for the cleaning of 4617 Madreperla Street. SUNRISE VILLAS employs a new management company, has a completely new Board, and is unaware of such information. SUNRISE VILLAS has the understanding that it retained J&G LAWN MAINTENANCE on or about August 2016.

Discovery is ongoing, and SUNRISE VILLAS reserves the right to supplement its response.

SUPPLEMENTAL RESPONSES TO REQUEST NO. 11:

SUNRISE VILLAS withdraws its objection. SUNRISE VILLAS believes it employed Richard Duslak and Justin Sesman for lawn maintenance repair and/or cleaning prior to September 2016 and terminated this contract before retaining J&G LAWN MAINTENANCE on or about September 8, 2016.

SECOND SUPPLEMENTAL RESPONSES TO REQUEST NO. 12:

SUNRISE VILLAS consulted with its current management company and the current Board of Directors, including Board President Al Stubblefield, SUNRISE VILLAS discovered HOA Board Meeting Minutes from 2016. These documents identified Mr. Sesman and Mr. Duslak who did lawn maintenance prior to the date of September 15, 2016. It is unclear what time they began doing this work for SUNRISE VILLAS, but it was during the time frame specified by PLAINTIFF. The Board terminated Mr. Duslak on or about September 8, 2016. SUNRISE VILLAS reserves the right to supplement its response if it locates any other additional people or entities.

DATED this 2nd day of March, 2018.

SPRINGEL & FINK LLP

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

Attorneys for Defendant,
 SUNRISE VILLAS IX HOMEOWNERS
 ASSOCIATION

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 March 2, 2018, I served the document described as **DEFENDANT SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S SECOND SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** 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.

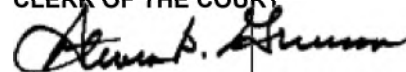
I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of March, 2018 at Las Vegas, Nevada.

By: /s/ Phaedra L. Calaway
 Phaedra L. Calaway

EXHIBIT “2”

Electronically Filed
11/29/2017 1:30 PM
Steven D. Grierson
CLERK OF THE COURT


MOT

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

**EIGHTH JUDICIAL 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., AND DOES I - V,)
and ROE CORPORATIONS I - V,)
inclusive,)

MOTION TO AMEND COMPLAINT

Defendants.)

Date of Hearing: 01/16/18

Time of Hearing: 9:00 AM

COMES NOW, the Plaintiff, SIMONE RUSSO, by and through his attorneys, THE
LAW OFFICE OF DAVID SAMPSON, LLC., and moves for leave to amend the Complaint in
this matter.

///

///

1 This Motion is made and based upon all the papers and pleadings on file herein, the
2 Memorandum of Points and Authorities below, the Exhibits attached hereto, and any oral
3 argument of counsel at any hearing hereon.
4

5 DATED this 29th day of November, 2017

6 LAW OFFICE OF DAVID SAMPSON, LLC.

7
8 BY: /s/ *David Sampson*

9 DAVID SAMPSON, ESQ.

10 Nevada Bar No.6811

11 LAW OFFICE OF DAVID SAMPSON

12 630 S. 3rd Street

13 Las Vegas, Nevada 89101

14 Fax No: 888-209-4199

15 Attorney for Plaintiff
16
17
18
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MEMORANDUM OF POINTS AND AUTHORITIES**I****INTRODUCTION**

On August 27, 2016, Plaintiff, Simone Russo, was very seriously injured when the Defendants placed, caused to be placed, or otherwise installed a cable/wire at 4617 Madreperla Street, Las Vegas, Nevada, or allowed to be placed and/or allowed the same to remain on the subject property. The said cable/wire came out of the front yard of the said premises, remained above the ground and stretched from the yard of the said premises, across the driveway of the said premises, and then was buried under the ground on the opposite side of the driveway adjacent from the yard of the said premises, essentially leaving a snare across the base of the driveway of the subject property, making the driveway hazardous and dangerous. Simone arrived at the property late one night after flying home from New York, got out of a taxicab, stepped onto the driveway and caught his foot on the cable/wire, which then caused Simone to be violently thrown to the ground and seriously injured.

J. Chris Scarcelli was the property manager in charge of 4617 Madreperla Street, Las Vegas, Nevada, at which Plaintiff's fall took place. On November 20, 2017 Mr. Scarecelli gave deposition testimony in which he admitted he had seen the subject exposed cable/wire in the said driveway prior to Dr. and Mrs. Russo moving in. Mr. Scarecelli further testified he never told Dr. or Mrs. Russo, nor any other person or entity about the tripping hazard.

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ARGUMENT

Pursuant to NRCPP 15(a), a party may amend its Complaint by leave of court or by written consent of the adverse party. Under this rule leave shall be freely given when justice so requires. In Stevens v. Southern Nev. Musical Co., 89 Nev. 104, 507 P.2d 138 (1973), the Nevada Supreme Court held that absent of an apparent or declared reason such as undue delay, bad faith or dilatory motive on the part of the movant, leave to amend should be freely given.

A copy of Plaintiff's Proposed Amended Complaint is attached hereto in compliance with EDCR 2.30.

/ / /

1 **CONCLUSION**

2 Plaintiff respectfully requests this Court grant his Motion for Leave to File an Amended
3 Complaint to add J. Chris Scarcelli as a Defendant.

4
5 DATED this 29th day of November, 2017

6 LAW OFFICE OF DAVID SAMPSON, LLC.

7
8
9 BY: /s/ *David Sampson*

10 DAVID SAMPSON, ESQ.

11 Nevada Bar No.6811

12 LAW OFFICE OF DAVID SAMPSON

13 630 S. 3rd Street

14 Las Vegas, Nevada 89101

15 Fax No: 888-209-4199

16 Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of THE LAW OFFICE OF DAVID SAMPSON, L.L.C., and that on this 29th day of November, 2017, I served a copy of the **MOTION TO AMEND COMPLAINT** as follows:

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

RICHARD J. PYATT, ESQ.
PYATT SILVESTTI
701 Bridger Ave., Suite 600
Las Vegas NV 89101
Counsel for Defendant
J&G LAWN SERVICE

ANTHONY SGRO, ESQ.
720 S. Seventh St. 3rd Floor
Las Vegas NV 89101
Attorney for Defendant
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

JONATHAN C. PATTILLO, ESQ.
SPRINGEL & FINK, LLP
10655 Park Run Drive, Suite 275
Las Vegas, Nevada 89144
Attorney for Defendant
SUNRISE VILLAS IX HOA

/s/ Amanda Nalder
An Employee of The LAW OFFICE OF DAVID SAMPSON, LLC.

EXHIBIT “1”

COMP

DAVID F. SAMPSON, ESQ.,
 Nevada Bar No. 6811
 LAW OFFICE OF DAVID SAMPSON
 630 S. 3rd 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 AND DOES I - V, and ROE
 CORPORATIONS I - V, inclusive,

Defendants.

AMENDED COMPLAINT

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

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

1 COMMUNICATIONS ("COX") was a Nevada corporation duly licensed to conduct
2 business in the State of Nevada.

3 2. Upon information and belief, that at all times relevant to this action, the Defendant, IES
4 RESIDENTIAL, INC. was a Nevada corporation duly licensed to conduct business in the
5 State of Nevada.
6

7 3. Upon information and belief, that at all times relevant to this action, the Defendant, J&G
8 LAWN MAINTENANCE, was a Nevada corporation duly licensed to conduct business in
9 the State of Nevada.
10

11 4. Upon information and belief, that at all times relevant to this action, the Defendant,
12 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION was a Nevada corporation
13 duly licensed to conduct business in the State of Nevada.
14

15 5. Upon information and belief, that at all times relevant to this action, the Defendant,
16 PWJAMES MANAGEMENT & CONSULTING, LLC., was a Nevada corporation duly
17 licensed to conduct business in the State of Nevada.

18 6. That Defendant, KEVIN BUSHBAKER, was at all times relevant to this action a resident of
19 the State of Indiana.
20

21 7. That Plaintiff, SIMONE RUSSO, was at all times relevant to this action a resident of the
22 State of Nevada.

23 8. That Defendant, J. CHRIS SCARCELLI, was at all times relevant to this action a resident of
24 the State of Nevada
25

26 9. That the true names and capacities, whether individual, corporate, partnership, associate
27 or otherwise, of Defendants, DOES I through V, are unknown to Plaintiff, who therefore
28 sues said Defendants by such fictitious names. Plaintiff is informed and believes and

1 thereon alleges that each of the Defendants designated herein as DOE is responsible in
2 some manner for the events and happenings referred to and caused damages proximately
3 to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this
4 Complaint to insert the true names and capacities of DOES I through V, when the same
5 have been ascertained, and to join such Defendants in this action.
6

7 10. That upon information and belief, at all times relevant to this action, the Defendant,
8 KEVIN BUSHBAKER was the owner and operated, maintained and controlled those
9 premises located at 4617 Madreperla Street, Las Vegas, Nevada.
10

11 11. That upon information and belief, at all times relevant to this action, the Defendant,
12 PWJAMES MANAGEMENT & CONSULTING, LLC., was the management company
13 and operated, maintained and controlled those premises located at 4617 Madreperla Street,
14 Las Vegas, Nevada.
15

16 12. IES RESIDENTIAL, INC., was and is a corporation doing business in the State of
17 Nevada, and was and is the remover, installer, reinstaller and repairer of that certain cable
18 line, and as such did transport, ship, introduce and/or cause said products to be installed
19 and/or used at 4617 Madreperla Street, Las Vegas, Nevada.
20

21 13. That at all times mentioned herein, Defendant, ROE IV, was and is a corporation doing
22 business in the State of Nevada, with its principal place of business located within the
23 State of Nevada and was and is the designer, manufacturer, producer, packager,
24 distributor, retailer, remover, installer, reinstaller and repairer of that certain door and
25 hinges, and as such did transport, ship, introduce and/or cause said products to be
26 introduced into the State of Nevada for the purpose of their sale, distribution, installation
27 and/or use within the State of Nevada.
28

1 14. The true names or capacities, whether individual, corporate, associate or otherwise, of
2 Defendants DOE I through DOE V, and ROE CORPORATION III through ROE
3 CORPORATION V, are unknown to Plaintiff, who therefore sues said Defendants by
4 such fictitious names; Plaintiff is informed and believes and thereon alleges that each of
5 the Defendants designated herein as DOE and ROE CORPORATION are responsible in
6 some manner for the events and happenings referred to and caused damages proximately
7 to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this
8 complaint, to insert the true names and capacities of DOE I through DOE V and ROE
9 CORPORATION III through ROE CORPORATION V, when the same have been
10 ascertained and to join such Defendants in this action.
11

12
13 15. That on or about the 27th day of August, 2016, and for some time prior thereto, the
14 Defendants, and each of them (by and through their authorized agents, servants, and
15 employees, acting within the course and scope of their employment), negligently and
16 carelessly owned, maintained, operated, occupied, and controlled the said premises,
17 located at 4617 Madreperla Street, Las Vegas, Nevada, so as to cause and allow a
18 cable/wire to be installed by Defendant COX to come out of the front yard of the said
19 premises, to remain above the ground and stretch from the yard of the said premises,
20 across the driveway of the said premises, and to then be buried under the ground on the
21 opposite side of the driveway adjacent from the yard of the said premises, making the
22 driveway hazardous and dangerous. In that they allowed the area to remain in such a
23 manner that it presented a dangerous and hazardous condition in an area intended for the
24 use and commonly and regularly used by residents and invitees of the said premises. In so
25 acting, the Defendants, and each of them, caused the driveway of the said premises to be
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1 hazardous and dangerous to persons walking in the area; and more particularly the
2 Plaintiff, SIMONE RUSSO; and thereafter the Defendants, and each of them, permitted,
3 allowed and caused said unsafe condition to remain even though Defendants knew or,
4 through the exercise of ordinary care and diligence, should have known, that the wore
5 stretched across the driveway and constituted a defective and dangerous condition; that
6 Defendants, and each of them, failed to maintain the aforesaid premises in a reasonably
7 safe condition; and that Defendant, and each of them, negligently, carelessly and
8 recklessly failed to inspect, repair and remedy the said condition, or warn the Plaintiff,
9 SIMONE RUSSO, of the defect therein.
10

11
12 16. At all times herein concerned or relevant to this action, the Defendants, and each of them,
13 acted by and through their duly authorized agents, servants, workmen and/or employees then
14 and there acting within the course of their employment and scope of their authority for the
15 Defendants, and each of them.
16

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

- 22 a) Failure to provide a safe premises for the Plaintiff, SIMONE RUSSO, to walk on
23 the driveway;
- 24 b) Failure to warn the Plaintiff, SIMONE RUSSO, of the dangerous and hazardous
25 condition then and there existing in said premises;
- 26 c) Failure to properly and adequately inspect the said dangerous condition in the
27 driveway to ascertain its hazardous and dangerous condition;
28

1 d) Failure to properly and adequately maintain the driveway;

2 e) Failure to properly warn the Plaintiff, SIMONE RUSSO, of said dangerous
3 condition;

4
5 f) The Defendants, and each of them, had, or should have had, knowledge or notice
6 of the existence of the said dangerous and defective condition which existed on
7 said premises. At all times pertinent hereto, Defendants, and each of them,
8 expressly and/or impliedly warranted that the certain driveway in question was in
9 all respects fit for due purposes and uses for which it was intended and was of
10 merchantable quality.
11

12 18. The Defendants, and each of them, may have violated certain Nevada Revised Statutes
13 and Las Vegas, Nevada, ordinances and Las Vegas building codes, which the Plaintiff
14 prays leave of Court to insert the exact statutes or ordinances or codes at the time of the
15 trial. At all times mentioned herein, Defendants, and each of them, owed a duty to all
16 persons who could reasonably be foreseen to be situated in and around the driveway in
17 question, and such a duty was specifically owed to Plaintiff.
18

19 19. That on or about the 27th day of August, 2016, the Plaintiff, SIMONE RUSSO, while
20 lawfully upon the said premises, as a direct and proximate result of the said negligence and
21 carelessness of the Defendants, and each of them, as alleged herein, was caused to suffer the
22 injuries and damages hereinafter set forth when he caught his foot on the cable/wire, causing
23 him to fall to the ground, proximately causing to him the injuries and damages as hereinafter
24 more particularly alleged.
25

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

1 caused to suffer cervical, thoracic, and lumbar contusions and strains, post-traumatic cervical
2 herniated disc, aggravation of pre-existing cervical arthritis and cervical radiculitis and
3 neurological injuries, and Plaintiff, SIMONE RUSSO, was otherwise injured in and about
4 the head, neck, and back, appendages, and caused to suffer great pain of body and mind, all
5 or some of the same are chronic and may result in permanent disability and are disabling, all
6 to Plaintiff, SIMONE RUSSO, damage in an amount in excess of \$10,000.00 and indeed in
7 excess of the Justice Court jurisdictional limit of \$15,000.00.
8

9
10 21. By reason of the premises, and as a direct and proximate result of the aforesaid negligence
11 and carelessness of the Defendants, and each of them, Plaintiff, SIMONE RUSSO, has been
12 caused to incur expenses in excess of \$50,000.00, and likely in the amount of hundreds of
13 thousands of dollars, for medical expenses, and will in the future be caused to expend monies
14 for medical expenses and additional monies for miscellaneous expenses incidental thereto, in
15 a sum presently unascertainable. The Plaintiff, SIMONE RUSSO, will pray leave of Court
16 to insert the total amount of the medical and miscellaneous expenses when the same have
17 been fully determined at the time of the trial of this action.
18

19 22. Prior to the injuries complained of herein, Plaintiff, SIMONE RUSSO, was an able-bodied
20 male, capable of being gainfully employed and capable of engaging in all other activities for
21 which he was otherwise suited, and at the time of the incident complained of herein, had no
22 disabilities. By reason of the premises, and as a direct and proximate result of the negligence
23 of the said Defendants, and each of them, Plaintiff, SIMONE RUSSO, was caused to be
24 disabled and limited and restricted in Plaintiff's occupations and activities, which caused to
25 Plaintiff a loss of wages in a presently unascertainable amount, the allegations of which
26 Plaintiff prays leave of Court to insert herein when the same shall be fully determined.
27
28

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

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

1. General damages in an amount in excess of \$10,000.00 and indeed in excess of the Justice Court jurisdictional limit of \$15,000.00;
2. Special damages for Plaintiff, SIMONE RUSSO'S medical and miscellaneous expenses, plus future medical expenses and the miscellaneous expenses incidental thereto in a presently unascertainable amount;
3. Special damages for lost wages in a presently unascertainable amount, and/or diminution of Plaintiff's earning capacity, plus possible future loss of earnings and/or diminution of Plaintiff's earning capacity in a presently unascertainable amount.
4. Costs of this suit;
5. Attorney's fees; and
6. For such other and further relief as to the Court may seem just and proper in the premises.

DATED THIS 27 day of Nov, 2017.

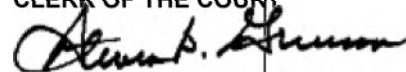
LAW OFFICE OF DAVID SAMPSON, LLC

BY: 

DAVID F. SAMPSON, ESQ.,
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON
630 S. 3rd Street
Las Vegas, NV 89101
Tel: 702-605-1099
Attorney for Plaintiff

EXHIBIT “3”

Electronically Filed
1/16/2018 12:18 PM
Steven D. Grierson
CLERK OF THE COURT


COMP

DAVID F. SAMPSON, ESQ.,
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON
630 S. 3rd 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.

AMENDED COMPLAINT

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

///

///

FIRST CAUSE OF ACTION

- 1
2 1. Upon information and belief, that at all times relevant to this action, the Defendant, COX
3 COMMUNICATIONS LAS VEGAS, INC., doing business as COX
4 COMMUNICATIONS ("COX") was a Nevada corporation duly licensed to conduct
5 business in the State of Nevada.
6
- 7 2. Upon information and belief, that at all times relevant to this action, the Defendant, IES
8 RESIDENTIAL, INC. was a Nevada corporation duly licensed to conduct business in the
9 State of Nevada.
10
- 11 3. Upon information and belief, that at all times relevant to this action, the Defendant, J&G
12 LAWN MAINTENANCE, was a Nevada corporation duly licensed to conduct business in
13 the State of Nevada.
14
- 15 4. Upon information and belief, that at all times relevant to this action, the Defendant,
16 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION was a Nevada corporation
17 duly licensed to conduct business in the State of Nevada.
- 18 5. Upon information and belief, that at all times relevant to this action, the Defendant,
19 PWJAMES MANAGEMENT & CONSULTING, LLC., was a Nevada corporation duly
20 licensed to conduct business in the State of Nevada.
21
- 22 6. That Defendant, KEVIN BUSHBAKER, was at all times relevant to this action a resident of
23 the State of Indiana.
- 24 7. That Plaintiff, SIMONE RUSSO, was at all times relevant to this action a resident of the
25 State of Nevada.
26
- 27 8. That Defendant, J. CHRIS SCARCELLI, was at all times relevant to this action a resident of
28 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 11. That the true names and capacities, whether individual, corporate, partnership, associate
6 or otherwise, of Defendants, DOES I through V, are unknown to Plaintiff, who therefore
7 sues said Defendants by such fictitious names. Plaintiff is informed and believes and
8 thereon alleges that each of the Defendants designated herein as DOE is responsible in
9 some manner for the events and happenings referred to and caused damages proximately
10 to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this
11 Complaint to insert the true names and capacities of DOES I through V, when the same
12 have been ascertained, and to join such Defendants in this action.
- 13 12. That upon information and belief, at all times relevant to this action, the Defendant,
14 KEVIN BUSHBAKER was the owner and operated, maintained and controlled those
15 premises located at 4617 Madreperla Street, Las Vegas, Nevada.
- 16 13. That upon information and belief, at all times relevant to this action, the Defendants,
17 RICHARD DUSLAK and JUSTIN SESMAN, maintained and controlled those premises
18 located at 4617 Madreperla Street, Las Vegas, Nevada.
- 19 14. That upon information and belief, at all times relevant to this action, the Defendant, J.
20 CHRIS SCARCELLI, operated, maintained and controlled those premises located at 4617
21 Madreperla Street, Las Vegas, Nevada.
- 22 15. That upon information and belief, at all times relevant to this action, the Defendant,
23 PWJAMES MANAGEMENT & CONSULTING, LLC., was the management company
24
25
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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.

7
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
16 18. The true names or capacities, whether individual, corporate, associate or otherwise, of
17 Defendants DOE I through DOE V, and ROE CORPORATION III through ROE
18 CORPORATION V, are unknown to Plaintiff, who therefore sues said Defendants by
19 such fictitious names; Plaintiff is informed and believes and thereon alleges that each of
20 the Defendants designated herein as DOE and ROE CORPORATION are responsible in
21 some manner for the events and happenings referred to and caused damages proximately
22 to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this
23 complaint, to insert the true names and capacities of DOE I through DOE V and ROE
24 CORPORATION III through ROE CORPORATION V, when the same have been
25 ascertained and to join such Defendants in this action.
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1 19. That on or about the 27th 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

21 f) The Defendants, and each of them, had, or should have had, knowledge or notice
22 of the existence of the said dangerous and defective condition which existed on
23 said premises. At all times pertinent hereto, Defendants, and each of them,
24 expressly and/or impliedly warranted that the certain driveway in question was in
25 all respects fit for due purposes and uses for which it was intended and was of
26 merchantable quality.
27
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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 27th 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
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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.

DATED THIS 16 day of July, 2017.

LAW OFFICE OF DAVID SAMPSON, LLC

BY: 

DAVID F. SAMPSON, ESQ.,

Nevada Bar No. 6811

LAW OFFICE OF DAVID SAMPSON

630 S. 3rd Street

Las Vegas, NV 89101

Tel: 702-605-1099

Attorney for Plaintiff

EXHIBIT “4”

September 18, 2019

VIA FACSIMILE AND EMAIL

Community Association Underwriters Agency
2 Caufield Place
Newtown, PA 18940
Fax: 267-757-7434
Attn: Harry Stavrakis
Email: hstavrakis@cauinsure.com

Re: Our Client:	Simone Russo
Date of Incident:	08/27/2016
Location:	4617 Madre Perla Street, Las Vegas, NV
Claim No.:	95126

Dear Harry:

As you aware, some time ago our office initiated litigation against Justin Sesman, Richard Duslak, as well as PW James Management & Consulting related to the above-noted incident. We write at this time to advise Community Association Underwriters Agency that the Court has entered default against Justin Sesman, Richard Duslak, and PW James Management & Consulting in this matter. We have attached a copy of the defaults for your convenience.

Please contact our office with any questions.

Very truly yours,
LAW OFFICES OF DAVID SAMPSON

David Sampson

David Sampson, Esq.
DS:an

Attachments

EXHIBIT “5”

November 4, 2020

VIA FACSIMILE AND EMAIL

Community Association Underwriters Agency
2 Caufield Place
Newtown, PA 18940
Fax: 267-757-7434
Attn: Harry Stavrakis
Email: hstavrakis@cauinsure.com

Re: Our Client:	Simone Russo
Date of Incident:	08/27/2016
Location:	4617 Madre Perla Street, Las Vegas, NV
Claim No.:	95126

Dear Harry:

As you aware, some time ago our office initiated litigation against Justin Sesman, Richard Duslak, as well as PW James Management & Consulting related to the above-noted incident. As we informed you over a year ago, the Court entered default against Justin Sesman, Richard Duslak, and PW James Management & Consulting in this matter. In December of 2020 the Court entered Judgment against Justin Sesman, Richard Duslak in the amount of \$25,000,000.00. We have attached a copy of the Judgment against your insureds for your convenience. Please contact our office to make arrangements to satisfy the Judgment against your insureds.

Very truly yours,
LAW OFFICES OF DAVID SAMPSON

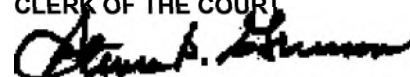
David Sampson

David Sampson, Esq.
DS:an

Attachment

EXHIBIT “6”

Electronically Filed
9/5/2019 1:44 PM
Steven D. Grierson
CLERK OF THE COURT



SUMM

**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.

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW

To THE DEFENDANT(S): A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.

JUSTIN SESMAN

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:

a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.

b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this summons within which to file an answer or other responsive pleading to the complaint.

Issued at the direction of
LAW OFFICE OF DAVID SAMPSON

By:

David F. Sampson, Esq.,

Nevada Bar No: 6811

630 S 3rd Street

Las Vegas, NV 89101

Attorney for Plaintiff



County Courthouse

200 Lewis Avenue

Las Vegas, Nevada 89155

1/17/2018

Date

Shimaya Ladson

NOTE: When service is by publication, add a brief statement of the object of the action. See NRCP 4(b). Revised 03/99/jb

AFFIDAVIT OF SERVICE

Case: A-17-753606-C	Court: District Court	County: Clark, NV	Job: <u>1996386</u>
Plaintiff / Petitioner: Simone Russo		Defendant / Respondent: Cox Communications et al	
Received by: Serve Vegas LLC		For: DAVID F. SAMPSON	
To be served upon: Justin Sesman			

I, Adam Schwartz, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: Lamar Love, 4775 TOPAZ ST APT 235, LAS VEGAS, NV 89121

Manner of Service: Substitute Service - Usual place of abode, Feb 13, 2018, 5:46 pm PST

Documents: Amended complaint, Summons

Additional Comments:

1) Unsuccessful Attempt: Feb 8, 2018, 5:53 pm PST at 4775 TOPAZ ST APT 249, LAS VEGAS, NV 89121
Spoke to Hispanic male who recently moved into unit. He does not recognize defendant's name.

2) Successful Attempt: Feb 13, 2018, 5:46 pm PST at 4775 TOPAZ ST APT 235, LAS VEGAS, NV 89121 received by Co-resident Lamar Love. Age: 35; Ethnicity: African American; Gender: Male; Weight: 230; Height: 6'2"; Hair: Black; Eyes: Brown;

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



02/13/2018

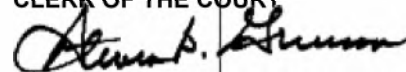
Adam Schwartz
R-088182

Date

Serve Vegas LLC
9811 W. Charleston Blvd 2-732
Las Vegas, NV 89117
702-508-1055

EXHIBIT “7”

Electronically Filed
9/13/2019 3:41 PM
Steven D. Grierson
CLERK OF THE COURT



DFLT

DAVID F. SAMPSON, ESQ.,
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON
630 S. 3rd 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,)

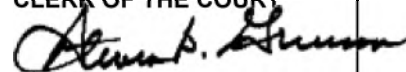
Defendants.)

DEFAULT

It appearing from the files and records in the above entitled action that JUSTIN SESMAN, Defendant herein, being duly served with a copy of the Summons and Amended Complaint on the 13th day of February, 2018; that more than 20 days, exclusive of the day of service, having expired since service upon the Defendant(s); that no answer or other appearance

EIGHTH
JUDICIAL
DISTRICT
9
Michelle A. Harty
Deputy Clerk

Electronically Filed
12/8/2020 3:29 PM
Steven D. Grierson
CLERK OF THE COURT



MFW
RAMIRO MORALES [Bar No.: 7101]
E-mail: rmorales@mfrlegal.com
MORALES, FIERRO & REEVES
600 South Tonopah Drive, Suite 300
Las Vegas, Nevada 89106
Telephone: (702) 699-7822
Facsimile: (702) 699-9455

Attorneys for Proposed Intervenor
QBE INSURANCE CORPORATION

DISTRICT COURT
CLARK COUNTY, NEVADA

SIMONE RUSSO,
Plaintiff,

vs.

COX COMMUNICATIONS LAS VEGAS,
INC., dba COX COMMUNICATIONS; IES
RESIDENTIAL, INC.; SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION; J&G
LAWN MAINTENANCE; KEVIN
BUSHBAKER; PW JAMES MANAGEMENT
& CONSULTING, LLC; J. CHRIS
SCARCELLI, DOE LANDSCAPER;
RICHARD DUSLAK; JUSTIN SESMAN; and
DOES I-IV; and ROE CORPORATIONS I-V,
inclusive,

Defendants.

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

**QBE INSURANCE CORPORATION'S
WITHDRAWAL OF ITS AMENDED
MOTION TO INTERVENE**

Date: December 10, 2020
Time: 9:00 AM

In light of Simone Russo's withdrawal of its motion seeking an assignment of rights against QBE Insurance Corporation ("QBE"), QBE hereby withdraws its motion to intervene in this action (which was expressly filed for the limited purpose of opposing the Russo motion seeking an assignment). In his withdrawal of his motion seeking assignment, Plaintiff makes multiple assertions which QBE contests. Specifically, QBE asserts, contrary to Plaintiff's statements that: (1) QBE did not receive an actual or constructive tender of defense and indemnity with regard to Doslak and Sesman; (2) Plaintiff Russo verified that Doslak and Sesman were independent

1 contractors in the settlement agreement concluding Plaintiff's claims against Sunrise Villas
2 Homeowners Association (see Exhibit A, attached "Stipulation"). To the extent this Court wishes
3 to address issues related to the applicability of the QBE policy to this action, any purported tender,
4 or the terms of the settlement agreement between Russo and Sunrise in this action, QBE will appear
5 to address those issues. However, given the withdrawal of Russo's motion for assignment, QBE
6 will withdraw its motion to intervene, assuming this Court will make no further findings in this
7 case. QBE has filed a declaratory relief action regarding Plaintiff's assertions that Duslak and
8 Sesman were owed obligations under policies issued by QBE to Sunrise Villas Homeowners
9 Association.

10 .
11 DATED: December 8, 2020

MORALES, FIERRO & REEVES

12 By: /s/ Ramiro Morales

13 Ramiro Morales, #7101
14 600 South Tonopah Dr., Suite 300
15 Las Vegas, NV 89106
16 Tel: (702) 699-7822

17 Attorneys for Plaintiff QBE INSURANCE
18 CORPORATION
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EXHIBIT A

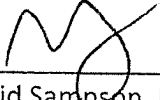
STIPULATION BETWEEN SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION AND SIMONE RUSSO RELATED TO CASE A-17-753606 (SIMONE RUSSO V. COX COMMUNICATIONS LAS VEGAS, INC.).

IT IS HEREBY STIPULATED THAT FOR THE PURPOSES OF THIS LITIGATION AND FOR ANY AND ALL ISSUES RELATED TO SIMONE RUSSO'S CLAIMS AND SETTLEMENT, THAT IN AUGUST 2016 BOTH DEFENDANT RICHARD DUSLAK AND DEFENDANT JUSTIN SESMAN WERE NATURAL PERSONS WHO WERE IN THE SERVICE OF SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION AS INDEPENDENT CONTRACTORS, WHOM SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION COMPENSATED, AND WHOM SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION HAD THE NON-EXCLUSIVE RIGHT TO DIRECT AND CONTROL BY ASSIGNING PROJECTS WHILE DUSLAK AND SESMAN PERFORMED SERVICES FOR SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION.

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By:


 David Sampson, Esq.
 Law Office of David Sampson, LLC
 Attorneys for Plaintiff

Dated: _____

SPRINGEL & FINK LLP

By:

 Leonard T. Fink, Esq.
 Attorneys for Defendant,
 Sunrise Villas IX Homeowners' Association

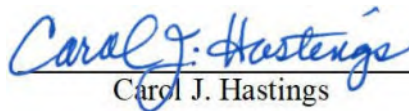
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the below date, I served a true and correct copy of the foregoing:

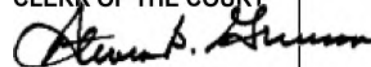
**QBE INSURANCE CORPORATION'S WITHDRAWAL OF ITS AMENDED
MOTION TO INTERVENE**

on all parties in this action by the Eighth Judicial District Court's CM/ECF Filing System.

DATED: December 8, 2020.


Carol J. Hastings

Electronically Filed
1/4/2021 2:44 PM
Steven D. Grierson
CLERK OF THE COURT



MINV
Ramiro Morales
State Bar No.: 7101
William C. Reeves
State Bar No.: 8235
MORALES, FIERRO & REEVES
600 S. Tonopah Drive, Suite 300
Las Vegas, NV 89106
Telephone: 702/699-7822
Facsimile: 702/699-9455

Attorneys for Intervenor
QBE Insurance Corporation

DISTRICT COURT
CLARK COUNTY, NEVADA

SIMONE RUSSO,)	Case No.: A753606
)	Dept: XVI
Plaintiff,)	
)	MOTION TO INTERVENE TO ENFORCE
vs.)	SETTLEMENT
)	
COX COMMUNICATIONS LAS VEGAS,)	DATE:
INC., et al.)	TIME:
)	
Defendants.)	

NOTICE

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD :

Proposed Intervenor QBE Insurance Corporation ("QBE") hereby moves this Court to
intervene to enforce the settlement reached in this case. The hearing for this motion is set for
_____ a.m. on _____, 2021.

As discussed herein, this motion is based on the fact that Plaintiff has asserted allegations
and made claims in a separate coverage suit that are expressly contrary to the terms of the
settlement reached in this case. Specifically, despite the fact that Plaintiff agreed in connection with
a settlement reached in this case that he would limit his claims against Defendants Richard Duslak
("Duslak") and Justin Sesman ("Sesman") to liability solely arising from their as independent
contractors, Plaintiff has alleged that each were employees of Defendant Sunrise Villas IX
Homeowners Association ("Sunrise HOA") at the time of the subject incident. Compare Exhibit 1,

exhibit A thereto with Exhibit 2, 13:1-14:7. As the settlement reached in this case is binding and enforceable, Plaintiff is precluded and barred from alleging that Duslak and Sesman are employees so as to manufacture liability and exposure.

QBE, as the liability insurer for Sunrise HOA, has a direct pecuniary interest in the settlement reached in this case given that QBE funded the settlement and has been sued by Plaintiff in an effort to collect upon a default judgment entered against Duslak and Sesman. Accordingly, pursuant to NRCP 24(a), QBE has the right to intervene to enforce the settlement to protect the interests of itself and its insured. Alternatively, this Court has discretion per NRCP 24(b) to permit for QBE to intervene given that its interests are directly impacted by the settlement reached in this case in light of Plaintiff's change in position.

This motion is based on this Notice along with the accompanying Memorandum of Points and Authorities, the supporting Declaration of William Reeves, this Court's file and any other matter this Court deems appropriate.

Dated: January 4, 2021

MORALES FIERRO & REEVES

By /s/ William C. Reeves
 Ramiro Morales
 William C. Reeves
 600 S. Tonopah Dr., Suite 300
 Las Vegas, NV 89106
 Tel: 702/699-7822
 Attorneys for QBE

MEMORANDUM OF POINTS AND AUTHORITIES

I. Background Facts

This matter arises from an alleged slip and fall involving a coaxial cable wire installed at a residence. In this case, Plaintiff contended that he tripped on the wire so as to sustain bodily injuries. Per Plaintiff, Defendant Sunrise HOA was liable and responsible for Plaintiff's injuries based on alleged maintenance obligations the HOA ostensibly owed in connection with the area adjacent to the wire.

1 A core issue in dispute was the role of Duslak and Sesman in connection with maintenance
 2 work each is alleged to have performed on behalf of the HOA (i.e., lawn mowing). While Sunrise
 3 HOA contended that it was neither liable nor responsible for the conduct of Duslak and Sesman as
 4 each acted as an independent contractor, Plaintiff argued otherwise in contending that Sunrise HOA
 5 exercised control over the conduct of both Duslak and Sesman such that each constituted employees
 6 of the HOA for which the HOA was liable and responsible.

7 During the pendency of a second trial following an initial mistrial, Plaintiff and Sunrise
 8 HOA reached a settlement that resolved any and all claims arising from the alleged slip and fall.
 9 This settlement was memorialized in a written agreement that Plaintiff and counsel each executed -
 10 see Exhibit 1 attached hereto.

11 Based on the fact that neither Duslak nor Sesman were parties to the settlement while
 12 Plaintiff intended to pursue recovery against each by way of a default judgment, a key and central
 13 negotiated term of the settlement was the affirmative representation by both Plaintiff and counsel
 14 that Duslak and Sesman acted as independent contractors such that the HOA faced no further
 15 liability and/or associated with the conduct of each. In furtherance of this agreed-upon term,
 16 counsel for Plaintiff executed the following stipulation that was incorporated into the release
 17 agreement:

18 IT IS HEREBY STIPULATED THAT FOR THE PURPOSES OF
 19 THIS LITIGATION AND FOR ANY AND ALL ISSUES
 20 RELATED TO SIMONE RUSSO'S CLAIMS AND SETTLEMENT,
 21 THAT IN AUGUST 2016 BOTH DEFENDANT RICHARD
 22 DUSLAK AND DEFENDANT JUSTIN SESMAN WERE
 NATURAL PERSONS WHO WERE IN THE SERVICE OF
 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION AS
 INDEPENDENT CONTRACTORS . . .

23 See Exhibit 1, exhibit A thereto.

24 Given that an employer is liable and responsible to indemnify employees, the inclusion of
 25 the stipulation was extremely significant to Sunrise HOA and QBE. See *ETT, Inc. v. Delegado*,
 26 126 Nev. 709 (2010), explaining that employers are generally obligated to indemnify employees.
 27 Stated otherwise, Plaintiff's agreement to not seek recovery from Duslak and Sesman based on the
 28 contention that both were HOA employees was a material term of the settlement.

1 In reliance on this core term, therefore, Sunrise HOA authorized QBE to proceed to fund the
 2 settlement to resolve all claims in exchange for a full and complete release of the HOA. Moreover,
 3 in reliance on this agreed-upon term, Sunrise HOA and QBE each refrained from contesting
 4 Plaintiff's subsequent efforts to obtain default judgment against Duslak and Sesman.

5 Plaintiff, however, is now attempting to disavow this core term. In a separate coverage suit
 6 that Plaintiff is prosecuting against Sunrise HOA's insurer, Plaintiff made the following
 7 contradictory allegations:

8 8. That prior to August 27, 2016 SUNRISE employed DUSLAK and
 9 SESMAN to perform lawn care and maintenance duties for
 10 SUNRISE.

11 9. That during DUSLAK and SESMAN's employment with
 12 SUNRISE, SUNRISE exercised a high degree of control, if not
 13 complete control, over the manner in which DUSLAK and
 14 SESMAN's work was to be performed. . . .

15 10. That DUSLAK and SESMAN, while working as employees for
 16 SUNRISE, did not have any opportunity for profit or loss depending
 17 on their managerial skill, and that DUSLAK and SESMAN were paid
 18 an hourly rate pursuant under their social security numbers for a
 19 wage.

20 11. That DUSLAK and SESMAN, while working as employees for
 21 SUNRISE, did not invest any of their own money in equipment or
 22 materials required for the tasks SUNRISE directed DUSLAK and
 23 SESMAN to perform, and that all such equipment and/or materials
 24 were purchased by and were the property of SUNRISE

25 12. That DUSLAK and SESMAN, while working as employees for
 26 SUNRISE, did not have any ability to employ helpers.

27 13. That DUSLAK and SESMAN, while working as employees for
 28 SUNRISE, were not performing tasks that require any special skill.

14 That DUSLAK and SESMAN, while working as employees for
 15 SUNRISE, had a degree of permanence of the working relationship
 16 with SUNRISE as SUNRISE did not permit DUSLAK or SESMAN
 17 to work for anyone else other than SUNRISE.

See Exhibit 2,

The allegations are in direct conflict with the stipulation incorporated into the release
 agreement. Specifically, per the terms of the agreed-upon release agreement, Plaintiff is precluded
 and barred from alleging that Duslak and Sesman are employees so as to create exposure and
 liability. In asserting that each is an HOA employee in connection with separate coverage litigation,

Efforts to meet and confer regarding this issue have been unsuccessful.¹ While Plaintiff filed an amended pleading, the pleading includes the same core allegations that Duslak and Sesman were HOA employees at the time of the incident. See Exhibit 3, 15:25-18:3.

QBE, therefore, seeks a ruling from this Court that the release agreement is binding and enforceable such that any remaining claims against Duslak and Sesman are based solely on their conduct as independent contractors for which Sunrise HOA is neither liable nor responsible.

A. This Court Is Empowered To Enforce The Settlement.

As a settlement is a written contract, a court retains the right to enforce a settlement under ordinary contract principles. See *May v. Anderson*, 121 Nev. 668 (2005). Accordingly, once the material terms of a settlement are agreed upon and reduced to writing, the terms are valid and enforceable. *Grisham v. Grisham*, 128 Nev. 679 (2012).

Per above, Plaintiff expressly and unequivocally stipulated through counsel that as to any and all issues relating to his claims, Duslak and Sesman were "in the service of Sunrise Villas IX Homeowners Association as independent contractors" at the time of the incident. Exhibit 1, exhibit A thereto. As noted above, this term was core and central to the settlement since the agreement to limit his claims cut off any liability and exposure that Sunrise HOA and/or QBE could otherwise face by virtue of the contention that Duslak and Sesman were HOA employees. Of significance, based on this term, QBE agreed to fund the settlement while both Sunrise HOA and QBE did not object to the default judgment subsequently entered against Duslak and Sesman.

In now alleging that Duslak and Sesman were employees in the separate coverage action, Plaintiff has improperly sought to disavow himself of the settlement. In so doing, Plaintiff improperly seeks to create exposure that was disposed of and resolved per the settlement reached in

¹ While unclear, counsel for Plaintiff appears to rely on a provision included in the release section of the Agreement memorializing the settlement (Section 4) pursuant to which the parties agreed that the release provision would not limit or bar claims Plaintiff may possess as against Duslak or Sesman since neither were parties to the Agreement. As the provision does not permit Plaintiff to disavow material terms of the Agreement itself, however, any reliance on the provision is misplaced, especially since it is readily apparent that “release” section (Section 4) is distinct from the full document which is defined as the Agreement.

1 this case.

2 In efforts to meet and confer regarding this issue, counsel for Plaintiff contends he is not
3 bound by the settlement such that he has the unfettered discretion to disregard his prior agreement
4 and to re-characterize Duslak and Sesman in contravention of the agreement his client signed. As
5 the agreement is binding, counsel's efforts violate the agreement and are therefore misguided.

6 B. By Funding The Settlement, QBE Is Entitled To Intervene.

7 NRCP 24 provides as follows:

8 (a) Intervention of Right. On timely motion, the court must permit
9 anyone to intervene who:

10 . . .

11 (2) claims an interest relating to the property or transaction that is the
12 subject of the action, and is so situated that disposing of the action
13 may as a practical matter impair or impede the movant's ability to
14 protect its interest, unless existing parties adequately represent that
15 interest.

14 (b) Permissive Intervention.

15 (1) In General. On timely motion, the court may permit anyone to
16 intervene who:

17 . . .

18 (B) has a claim or defense that shares with the main action a common
19 question of law or fact.

19 Intervention as a matter of right per NRCP 24(a) exists where the party shows that (1) it has
20 a sufficient interest in the subject matter of the litigation, (2) its ability to protect its interest would
21 be impaired if it does not intervene, (3) its interest is not adequately represented, and (4) its
22 application is timely. *Am. Home Assurance Co. v. Eighth Judicial Dist. Court*, 122 Nev. 1229
23 (2006). Meanwhile, a trial court has substantial discretion to permit for intervention per NRCP
24 24(b) when a proper showing has been made. *Hairr v. First Jud. Dist. Ct.*, 132 Nev. 180 (2016).

25 Where an insurer funds a settlement, the insurer is subrogated to the rights of its insured
26 such that it may properly intervene to enforce a settlement for which it has a pecuniary interest. See
27 *Bearden v. Beeler*, 2006 WL 1980149 (W.D. Kan. 2006); *Edwards v. Holsapple*, 2004 WL 1003736
28 (D. Kan. 2004). In this case, QBE is properly entitled to intervene both as a matter of right and at

1 the discretion of this Court.

2 QBE meets its burden to intervene as a matter of right based on the following:

- 3 • By funding the settlement, QBE has a direct interest in this case
- 4 • QBE's ability to protect itself is impaired if not afforded the opportunity to intervene
- 5 and enforce the settlement
- 6 • By funding the settlement, QBE's interests are separate and distinct from the Sunrise
- 7 HOA (although they do overlap)
- 8 • The instant motion has been filed within days of Plaintiff's filing of the Counterclaim

9 Based on these factors, QBE is entitled to intervene as a matter of right.

10 Regardless of any right to intervene, however, this Court should exercise its discretion to let
11 QBE intervene per NRCP 24(b) given its interest in the settlement.

12 Per the settlement reached in this matter and based on the insistence of Sunrise HOA and
13 QBE, Plaintiff expressly and unequivocally stipulated that if it elected to seek recovery from Duslak
14 and Sesman, it agree that each was "in the service of Sunrise Villas IX Homeowners Association as
15 independent contractors" at the time of the incident. Given that Sunrise HOA would face exposure
16 if Plaintiff continued to argue that each were HOA employees, this term was core and central to the
17 settlement so to cut off any liability and exposure. Based on this term, the HOA and QBE agreed to
18 fund the settlement and not object to the default judgment subsequently entered against Duslak and
19 Sesman.

20 In alleging otherwise, Plaintiff has taken an inconsistent position that is contrary to the terms
21 of the settlement. As the settlement is binding and enforceable, QBE has a direct interest in
22 enforcing it.

23 Conclusion

24 For the reasons set forth herein, request is made that this Court permit QBE to intervene and

25 ///

26 ///

27 ///

28 ///

enter an order enforcing the settlement.

Dated: January 4, 2021

MORALES FIERRO & REEVES

By /s/ William C. Reeves
 Ramiro Morales
 William C. Reeves
 600 S. Tonopah Dr., Suite 300
 Las Vegas, NV 89106
 Tel: 702/699-7822
 Attorneys for QBE

Supporting Declaration

I, William Reeves, declare as follows:

1. I am an attorney with Morales Fierro & Reeves, counsel for QBE.
2. The factual information contained herein is true and correct based on my own personal knowledge.
3. Attached hereto as Exhibit 1 is a true and correct copy of the agreement memorializing the settlement reached in this case.
4. Attached hereto as Exhibit 2 is a copy of the Answer and Counterclaim that Plaintiff has filed in separate coverage litigation.
5. Attached hereto as Exhibit 3 is a copy of the Amended Answer and Counterclaim that Plaintiff has filed in separate coverage litigation.

I declare that the foregoing is true and correct based on my own personal knowledge.
 Executed in Concord, California on the date specified below.

Dated: January 4, 2021



 William C. Reeves

Exhibit 1

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "Agreement") is entered into by and between:

1. Dr. SIMONE RUSSO (hereinafter "PLAINTIFF");
2. SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (hereinafter "SUNRISE") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, insurers (Community Association Underwriters, Inc., QBE Insurance Corporation, Alliant Insurance Services, Inc., DSCM, Inc. and Armour Risk Management, Inc. – but only as it relates to SUNRISE), **EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN OR ANYONE ASSOCIATED OR AFFILIATED WITH THEM, 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;
3. IES RESIDENTIAL, INC. (hereinafter "IES") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, employees, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers;
4. COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX COMMUNICATIONS (hereinafter "COX") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, employees, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers;
5. PW JAMES MANAGEMENT & CONSULTING, LLC (hereinafter "PW JAMES") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, employees, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers (potentially Community Association Underwriters, Inc., QBE Insurance Corporation, Alliant Insurance Services, Inc., DSCM, Inc. and Armour Risk Management, Inc.);
6. KEVIN BUSHBAKER (hereinafter "BUSHBAKER") and his successors, assigns, heirs, and insurers; and
7. CHRIS SCARCELLI (hereinafter "SCARCELLI") and his successors, assigns, heirs, and insurers.



Any of the above-named entities may be referred to as a "PARTY" herein or all of the above-named entities may collectively be referred to as the "PARTIES" herein and/or "SETTLING PARTIES." SUNRISE, IES, COX, PW JAMES, BUSHBAKER and SCARCELLI will also be referred to as "DEFENDANTS."

This Agreement shall be effective as of the date the Agreement is fully executed.

RECITALS

This Agreement is entered into with reference to the following facts:

PLAINTIFF asserts that on or about August 20, 2015 he tripped and fell when exiting a cab in front of the home that he rented from BUSHBAKER. PLAINTIFF subsequently filed a lawsuit entitled *Russo v. Cox Communications Las Vegas, Inc. D/B/A Cox Communications, et al.*, Eighth Judicial District Court Case No. A-17-753606-C, alleging that his injuries were caused by DEFENDANTS' negligence and seeking damages. This action shall be referred to as the "SUBJECT ACTION".

The PARTIES have conducted settlement discussions and direct arms-length negotiations and now wish to settle, dismiss, release, discharge, and terminate any and all claims, demands, controversies, causes of action, damages, rights, liabilities, and obligations between them relating to the SUBJECT ACTION.

The PARTIES hereby acknowledge the following: Under the Medicare Secondary Payer ("MSP") statute, 42 U.S.C. §1395y(b), and its accompanying regulations ("the MSP Provisions"), the Centers for Medicare and Medicaid Services (the "CMS"), in certain circumstances, have an obligation to seek reimbursement of conditional payments made by the Medicare program (Title XVIII of the Social Security Act) (the "Medicare Program") for the claim, items, and services relating to injuries allegedly sustained by PLAINTIFF as a consequence of the SUBJECT ACTION. The PARTIES seek to fully comply with all MSP Provisions as further detailed throughout this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, and subject to District Court's approval, the PARTIES hereto agree to enter into this settlement as follows:

1. SETTLEMENT PAYMENT TERMS AND CONDITIONS.

THE PARTIES hereby agree that in full and complete settlement of the claims in the SUBJECT ACTION, SUNRISE'S insurer will pay PLAINTIFF the total sum of ONE-HUNDRED-FORTY THOUSAND DOLLARS (\$140,000.00) for itself and PW JAMES. IES' insurer, on behalf of IES and COX, will pay PLAINTIFF the total sum of TWO-HUNDRED FIFTEEN THOUSAND DOLLARS (\$215,000). Both BUSHBAKER and SCARCELLI will pay nothing towards the settlement and agree to waive any rights that they may have from any other settled PARTY for fees and/or costs.



The settlement payments expressly include the payment of any and all damages PLAINTIFF may have recovered in the SUBJECT ACTION, including, but not limited to, general damages, special damages, attorneys' fees, expert fees, costs, prejudgment, liens and any and all other damages. PLAINTIFF acknowledges that the settlement funding is being paid by SUNRISE's, IES' and COX's insurers, and SUNRISE, IES, COX and PW JAMES shall not in any way act as a guarantor of any payments that are being funded by its insurer, but that full funding is a condition precedent to this Agreement being binding.

SUNRISE and IES agree that they will cause their insurers to deliver drafts for \$140,000.00 and \$215,000.00, respectively, made payable to "Simone Russo and his attorney, The Law Office of David Sampson, LLC" to RUSSO's counsel within fourteen days of PLAINTIFF'S signing this Agreement. The Law Office of David Sampson's referencing Tax ID No. is 45-3548937. These settlement funds shall then be held in trust until the Stipulation and Order for Dismissal with Prejudice of the SUBJECT ACTION has been signed by PLAINTIFF'S counsel and provided to counsel for DEFENDANTS. The PARTIES agree that none of the consideration for this release is for lost wages or earning capacity whether past, future or present, and that all sums set forth herein constitute damages on account of personal injuries or sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

2. COVENANT NOT TO SUE AND DISMISSAL.

Upon full execution of this Confidential Agreement and receipt of the settlement payments of \$140,000.00, and \$215,000.00, PLAINTIFF shall dismiss his operative Complaint with prejudice as to DEFENDANTS. BUSHBAKER shall dismiss his Cross-Claim against COX and IES with prejudice. The PARTIES also agree that the Court shall retain jurisdiction to ensure that PLAINTIFF receives all settlement proceeds due under this Agreement.

Furthermore, PLAINTIFF covenants and agrees that he has not and that it will not, bring any other claim, action, suit or proceeding against DEFENDANTS (including their insurers except as noted on page 1 paragraph 2) related to the SUBJECT ACTION, except to enforce the terms of this Agreement.

3. WARRANTY AND HOLD HARMLESS REGARDING NON-ASSIGNMENT OF CLAIMS.

Each PARTY to this Agreement hereby represents and warrants to the others that it is a rightful owner of all rights, title, and interest in every claim and other matter which it releases herein and has not heretofore sold, assigned, conveyed or otherwise transferred all or a portion of any interest or any claim which they may have against the others or each of the other's respective parents, affiliates, subsidiaries, predecessors, and each other person, firm, insurer or other entity released and discharged pursuant to this Agreement. The PARTIES upon a proper and timely tender agree to hold each other and each of the other's parents, affiliates, subsidiaries, predecessors, and each other person, firm, insurer or other entity released pursuant to this Agreement harmless from any liabilities, claims, demands, damages, costs, expenses and attorneys' fees incurred as a



result of any person asserting any claim or cause of action based upon any such assignment or transfer.

4. RELEASE.

i) In consideration for the full and timely performance of all terms and conditions of this Agreement in the manner prescribed herein, including, but not limited to, all releases, dismissals, waivers, covenants, warranties, and representations, PLAINTIFF: hereby releases and forever discharges DEFENDANTS and all of their heirs, executors, administrators, insurers, trustors, trustees, beneficiaries, predecessors, successors, assigns, members, partners, partnerships, parents, subsidiaries, affiliates and related entities, and each of the foregoing respective officers, directors, stockholders, controlling persons, principals, agents, servants, employees **EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN OR ANYONE ASSOCIATED OR AFFILIATED WITH THEM INCLUDING ANY ACTUAL OR POTENTIAL INSURER (per the Stipulation, Attached as Exhibit "A")** sureties, attorneys, consultants, and experts, who are or may ever become liable to them, of and from any and all claims, demands, causes of action, obligations, liens, taxes, damages, losses, costs, attorneys' fees, expert fees, costs, interest, and any other expenses of any kind and nature whatsoever, at law or in equity, direct or derivative, known or unknown, fixed, liquidated or contingent, tort, contract, statutory or mixed, by reason of any act or omission, matter, cause or thing arising out of or connected with the SUBJECT ACTION that was or could have been filed, including any representation, misrepresentation or omission in connection with any of the above, any and all claims for incidental, consequential, ensuing, or resulting damage therefrom, including, without limitation, claims for injuries, or any other economic loss or non-economic loss, the prosecution of any complaint or cross-complaint, and the defense, handling or settlement of the actions, as well as any and all matters and issues raised, or which could have been raised, or in the future might have been raised. It is the intention of the PARTIES to hereby fully, finally, and forever settle and release any and all disputes and differences, known or unknown, suspected or unsuspected, as to the released matters.

ii) Nothing in this release shall release, discharge, or in any way impact PLAINTIFF's rights against RICHARD DUSLAK and/or JUSTIN SESMAN in any manner (per the Stipulation attached as Exhibit "A"). Additionally, any rights RICHARD DUSLAK and/or JUSTIN SESMAN have had, currently have, or may have, other than those specifically disposed of by the Court in a prior hearing regarding good faith settlement, shall not be released, discharged or in any way impacted by this release. PLAINTIFF shall retain all rights to pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN, and shall retain all powers to pursue any claims RICHARD DUSLAK and/or JUSTIN SESMAN have had, have, or may have if the same are ever obtained by PLAINTIFF **INCLUDING CLAIMS AGAINST ANY ACTUAL OR POTENTIAL INSURER OF DUSLAK AND/OR SESMAN.** ANY LANGUAGE IN THIS RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY IMPACT PLAINTIFF'S RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN SESMAN, THEIR INSURED, EMPLOYERS, OR ANY OTHER RELATED OR AFFILIATED PERSONS OR ENTITIES OR THE RIGHTS RICHARD DUSLAK and/or JUSTIN SESMAN HAVE HAD, HAVE, OR MAY HAVE AGAINST ANY PERSON OR ENTITY AT ANY TIME (INCLUDING PLAINTIFF'S RIGHTS TO PURSUE THE SAME ON BEHALF OF DUSLAK AND/OR SESMAN) SHALL BE DEEMED NULL AND VOID



iii) In further consideration for the full and timely performance of all terms and conditions of this Agreement in the manner prescribed herein, including, but not limited to, all releases, dismissals, waivers, covenants, warranties, and representations, DEFENDANTS: hereby releases and forever discharge PLAINTIFF and every other DEFENDANT and all of their heirs, executors, administrators, insurers, trustors, trustees, beneficiaries, predecessors, successors, assigns, members, partners, partnerships, parents, subsidiaries, affiliates and related entities, and each of the foregoing respective officers, directors, stockholders, controlling persons, principals, agents, servants, employees, representatives, and all persons, firms, and entities connected with them, including, without limitation, its insurers, sureties, attorneys, consultants, and experts, who are or may ever become liable to them, of and from any and all claims, demands, causes of action, obligations, liens, taxes, damages, losses, costs, attorneys' fees, expert fees, costs, interest, and any other expenses of any kind and nature whatsoever, at law or in equity, direct or derivative, known or unknown, fixed, liquidated or contingent, tort, contract, statutory or mixed, including any and all other potential entitlements that DEFENDANTS ever had, may now have or may hereafter have by reason of any act or omission, matter, cause or thing arising out of or connected with the SUBJECT ACTION that was or could have been filed, including any representation, misrepresentation or omission in connection with any of the above, any and all claims for incidental, consequential, ensuing, or resulting damage therefrom, including, without limitation, claims for injuries, or any other economic loss or non-economic loss, the prosecution of any complaint or cross-complaint, and the defense, handling or settlement of the actions, as well as any and all matters and issues raised, or which could have been raised, or in the future might have been raised. It is the intention of the PARTIES to hereby fully, finally, and forever settle and release any and all disputes and differences, known or unknown, suspected or unsuspected, as to the released matters.

iii) Notwithstanding any provision to the contrary, the PARTIES, and each of them, recognize and acknowledge that this Agreement is not intended to, and shall not, release any of the PARTIES from liability or damages, if any, caused by, or arising out of, the failure or refusal of a PARTY to perform any or all of the acts required on their respective parts to be done, as per the terms and conditions of this Agreement.

5. HANDLING OF SETTLEMENT FUNDS.

PLAINTIFF agrees that he will be solely and completely responsible for any necessary outstanding payments, repayments or reimbursements for treatment, liens (including attorney liens) and/or other types of damages related to the events that are the subject of the SUBJECT ACTION. PLAINTIFF further agrees to, UPON PROPER AND TIMELY TENDER, fully and expressly indemnify, save and hold harmless DEFENDANTS for and against all claims, liens (including attorney liens), demands, causes of action, damages, costs, losses, and liabilities, including, but not limited to, attorneys' fees and other legal costs, if any, arising out of any lien relating to the proceeds of any recovery or any failure to make any outstanding payments or repayments, as referenced above.

6. REPRESENTATION BY COUNSEL.

The PARTIES hereto acknowledge that they have been represented by or had the opportunity to rely upon counsel of their own choosing in the negotiations for the preparation of

this Agreement, that they have read this Agreement, have had its contents fully explained to them or had the opportunity to have the contents fully explained to them by such counsel, and are fully aware of and understand all of its terms and the legal consequences thereof. It is acknowledged that the PARTIES hereto have mutually participated in the preparation of this Agreement.

7. DISPUTED CLAIMS.

This Agreement represents the settlement of disputed claims and does not constitute any admission of liability by any PARTY to any other PARTY. Each PARTY to this Agreement hereby expressly denies any liability to the other PARTIES.

8. FURTHER ASSURANCES.

The PARTIES hereby agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Agreement, including, but not limited to the execution of the stipulation for dismissal with prejudice.

9. NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE IN THIS AGREEMENT.

Each of the PARTIES to this Agreement acknowledges that no other PARTY, nor any agent or attorney of any other PARTY has made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof to induce them to execute this Agreement, and acknowledges that he, she or it has not executed this instrument in reliance on any such promise, representation, or warranty not contained herein, and further acknowledges that there have not been, and are no other, agreements or understandings between the PARTIES relating to this settled litigation except as stated in this Agreement.

10. BENEFIT AND BURDEN.

This Agreement shall be binding upon and inure to the benefit of the PARTIES hereto and their respective heirs, representatives, successors, and assigns.

11. WAIVER AND AMENDMENT.

No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Agreement may be amended only by a written agreement executed by the PARTIES in interest at the time of the modification.

12. CAPTIONS AND INTERPRETATIONS.

Titles or captions contained herein are inserted as a matter of convenience and for reference, and no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Whenever the context hereof shall so require, the singular shall include the plural, and male gender shall include the female gender and the neuter, and vice versa. Furthermore, no

provision in this Agreement is to be interpreted for or against any PARTY because that PARTY or his legal representative drafted such provision.

13. AUTHORITY TO EXECUTE.

Each of the PARTIES represents and warrants that it is competent to enter into this Agreement and has the full right, power and authority to enter into and perform the obligations under this Agreement.

14. INTEGRATION.

This Agreement constitutes the entire, final, and integrated agreement between the PARTIES hereto pertaining to the subject matter hereof, fully supersedes all prior understandings, representations, warranties, and agreements between the PARTIES hereto, or any of them, pertaining to the subject matter hereof, and may be modified only by written agreement signed by all the PARTIES in interest at the time of the modification.

15. SEVERANCE.

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

16. VOLUNTARY AGREEMENT.

The PARTIES hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they signed the same freely and voluntarily.

17. GOVERNING LAW.

This Agreement has been negotiated and entered into in the State of Nevada, and shall be governed by, construed and enforced in accordance with the internal laws of the State of Nevada.

18. COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Additionally, facsimile or scanned copies of signatures shall be considered an original signature.

19. ATTORNEYS' FEES.

i) Attorney's Fees and Costs: All PARTIES to this Agreement agree to bear their own attorneys' fees, expert fees and costs incurred in connection with the defense and prosecution of this action except as otherwise set forth in this Agreement. PLAINTIFF acknowledges that the



settlement payments it shall receive include full payment of all statutory attorney's fees, expert fees and costs that it could be entitled to receive.

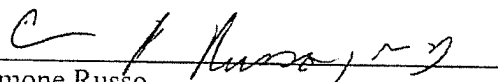
ii) Attorney's Fees For Future Action: Should any PARTY hereto reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Agreement, the prevailing PARTY shall be reimbursed by the losing PARTY for all costs and expenses incurred thereby including, but not limited to, reasonable attorneys' fees, expert fees and costs.



IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO


Simone Russo

Dated: _____

**SUNRISE VILLAS IX HOMEOWNERS'
ASSOCIATION**

Sunrise Villas IX Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: _____

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

COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

marie J. Hudson-Keinstein
Sunrise Villas Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: _____

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

COX Communications Las Vegas, Inc., dba COX Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

**SUNRISE VILLAS IX HOMEOWNERS'
ASSOCIATION**

Sunrise Villas IX Homeowner's Association

Dated: 12/4/19

IES RESIDENTIAL, INC.

Robert W. Weller VP
IES Residential, Inc.

Dated: _____

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

COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

Sunrise Villas IX Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: 1/12/20

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

Stephanie Howe
COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By: 

David Sampson, Esq.
 Law Office of David Sampson, LLC
Attorneys for Plaintiff

Dated: _____

SPRINGEL & FINK, LLP

By: _____

Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas LX Homeowners' Association

Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: 

Chris Turtzo, Esq.
Attorneys for Defendants,
IES Residential, Inc. and COX Communications Las
Vegas, Inc., dba COX Communications

Dated: _____


SGRO & ROGER

By: _____

Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

Dated: 11/22/2019

KEVIN BUSHBAKER



Kevin Bushbaker

Dated: _____

CHRIS SCARCELLI

Chris Scarcelli

SIGNATURES TO FOLLOW ON NEXT PAGE

APPROVED AS TO FORM AND CONTENT:Dated: 11-12-19**LAW OFFICE OF DAVID SAMPSON, LLC**By: 

David Sampson, Esq.
 Law Office of David Sampson, LLC
Attorneys for Plaintiff

Dated: 1/10/20**SPRINGEL & FINK LLP**By: 

Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas IX Homeowners' Association

Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: _____

Chris Turtzo, Esq.
Attorneys for Defendants,
IES Residential, Inc. and COX Communications Las
Vegas, Inc., dba COX Communications

Dated: _____

SGRO & ROGER

By: _____

Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

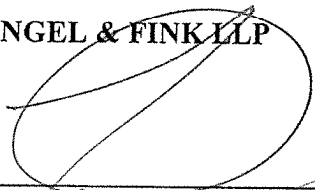
APPROVED AS TO FORM AND CONTENT:

Dated: _____

LAW OFFICE OF DAVID SAMPSON, LLC

By: _____
 David Sampson, Esq.
 Law Office of David Sampson, LLC
Attorneys for Plaintiff

Dated: 1/10/20

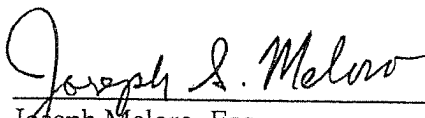
SPRINGEL & FINK LLP

 By: _____
 Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas IX Homeowners' Association

Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: _____
 Chris Turtzo, Esq.
Attorneys for Defendants,
IES Residential, Inc. and COX Communications Las
Vegas, Inc., dba COX Communications

Dated: 12/05/19

SGRO & ROGER

 By: _____
 Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

Dated: _____

LIPSON NEILSON

By: _____
Julie Funai, Esq.
Attorneys for Defendant, Chris Scarcelli

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

Sunrise Villas IX Homeowner's Association

Dated: 12/4/19

IES RESIDENTIAL, INC.

Christopher Villanueva VP
IES Residential, Inc.

Dated: _____

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

COX Communications Las Vegas, Inc., dba COX Communications

Dated: _____

PW JAMES MANAGEMENT & CONSULTING, LLC

PW James Management & Consulting, LLC

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

Sunrise Villas IX Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: 1/2/20

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

Stephen Houe
COX Communications Las Vegas, Inc., dba COX Communications

Dated: _____

PW JAMES MANAGEMENT & CONSULTING, LLC

PW James Management & Consulting, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By: 

David Sampson, Esq.
 Law Office of David Sampson, LLC
Attorneys for Plaintiff

Dated: _____

SPRINGEL & FINK LLP

By: _____

Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas IX Homeowners' Association

Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: 

Chris Turtzo, Esq.
Attorneys for Defendants,
IES Residential, Inc. and COX Communications Las
Vegas, Inc., dba COX Communications

Dated: _____


SGRO & ROGER

By: _____

Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

Dated: 11/22/2019

KEVIN BUSHBAKER



Kevin Bushbaker

Dated: _____

CHRIS SCARCELLI

Chris Scarcelli

SIGNATURES TO FOLLOW ON NEXT PAGE

APPROVED AS TO FORM AND CONTENT:

Dated: _____

LAW OFFICE OF DAVID SAMPSON, LLC

By: _____

David Sampson, Esq.
 Law Office of David Sampson, LLC
Attorneys for Plaintiff

Dated: _____

SPRINGEL & FINK LLP

By: _____

Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas IX Homeowners' Association

Dated: _____

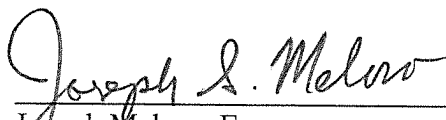
MORRIS, SULLIVAN & LEMKUL

By: _____

Chris Turtzo, Esq.
Attorneys for Defendants,
IES Residential, Inc. and COX Communications Las
Vegas, Inc., dba COX Communications

Dated: 12/05/19**SGRO & ROGER**

By: _____


 Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

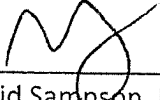
STIPULATION BETWEEN SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION AND SIMONE RUSSO RELATED TO CASE A-17-753606 (SIMONE RUSSO V. COX COMMUNICATIONS LAS VEGAS, INC.).

IT IS HEREBY STIPULATED THAT FOR THE PURPOSES OF THIS LITIGATION AND FOR ANY AND ALL ISSUES RELATED TO SIMONE RUSSO'S CLAIMS AND SETTLEMENT, THAT IN AUGUST 2016 BOTH DEFENDANT RICHARD DUSLAK AND DEFENDANT JUSTIN SESMAN WERE NATURAL PERSONS WHO WERE IN THE SERVICE OF SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION AS INDEPENDENT CONTRACTORS, WHOM SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION COMPENSATED, AND WHOM SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION HAD THE NON-EXCLUSIVE RIGHT TO DIRECT AND CONTROL BY ASSIGNING PROJECTS WHILE DUSLAK AND SESMAN PERFORMED SERVICES FOR SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION.

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By:



David Sampson, Esq.
Law Office of David Sampson, LLC
Attorneys for Plaintiff

Dated: _____

SPRINGEL & FINK LLP

By:

Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas IX Homeowners' Association