

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUNRISE VILLAS IX HOMEOWNERS
ASSOCIATION,

Appellant,

vs.

SIMONE RUSSO,

Respondent.

Case No. 83115 Electronically Filed
Jun 08 2022 02:50 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S APPENDIX
VOLUME 3

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

CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
1.	Complaint	4/6/17	1	1-9
2.	Motion to Amend Complaint	11/29/17	1	10-16
	<u>Exhibit 1</u> : Amended Complaint [November 27, 2017]		1	17-25
3.	Supplement to Motion to Amend Complaint	12/22/17	1	26-31
	<u>Exhibit 1</u> : Amended Complaint		1	32-41
4.	Court Minutes re Plaintiff's Motion to Amend Complaint	1/16/18	1	42
5.	Amended Complaint	1/16/18	1	43-51
6.	Defendant Sunrise Villas IX Homeowners Association's Answer to Plaintiff's Amended Complaint	2/6/18	1	52-59
7.	Order on Plaintiffs' Motion to Amend Complaint	2/7/18	1	60-61
8.	Summons [Richard Duslak]	2/15/18	1	62-63
9.	Defendant Sunrise Villas IX Homeowners Association's Motion for Summary Judgment	7/10/18	1	64-75
	<u>Exhibit A</u> : Affidavit of Al Stubblefield in Support of Sunrise Villas IX Homeowners Association's Motion for Summary Judgment [July 6, 2018]		1	76-78
	<u>Exhibit B</u> : Declaration of Covenants, Conditions and Restrictions for Sunrise Villas IX		1	79-132
	<u>Exhibit C</u> : Amended Complaint [January 16, 2018]		1	133-142

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 9)	<u>Exhibit D</u> : Amendment No. 8 to the CC&Rs of Sunrise Villas IX Homeowners Association		1	143-145
10.	Plaintiff's Opposition to Defendant Sunrise Villas IX HOA's Motion for Summary Judgment	7/27/18	1	146-159
	<u>Exhibit 1</u> : Affidavits of Simone Russo, M.D. and Barbara Russo		1	160-170
	<u>Exhibit 2</u> : Sunrise Villas IX Homeowners Association Inc. Amendments to Covenants, Conditions and Restrictions Approved April 22, 1983 by Action of the Board of Directors		1	171-185
	<u>Exhibit 3</u> : Recorded Interview of J&G Lawn Maintenance Employee, Tom Bastian 11/30/2016		1	186-191
11.	Supplement to Plaintiff's Opposition to Defendant Sunrise Villas IX HOA's Motion for Summary Judgment	7/30/18	1	192-194
	<u>Exhibit 1</u> : Affidavits of Simone Russo, M.D. and Barbara Russo [July 27, 2018]		1	195-205
12.	Defendant Sunrise Villas IX Homeowners Association's Omnibus Reply in Support of its Motion for Summary Judgment	8/10/18	1	206-216
	<u>Exhibit A</u> : Affidavit of Amanda Davis in Support of Sunrise Villas IX Homeowner's Association's Motion for Summary Judgment [August 6, 2018]		1	217-219
13.	Order Denying Defendant's Motion for Summary Judgment	9/26/18	1	220-221
14.	Notice of Entry	9/26/18	1	222-224

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 14)	<u>Exhibit 1</u> : Order Denying Defendant's Motion for Summary Judgment		1	225-227
15.	Amended Order Denying Sunrise Villas IX Homeowners Association's Motion for Summary Judgment	11/20/18	1	228-229
16.	Notice of Entry of Amended Order Denying Sunrise Villas IX Homeowners Association's Motion for Summary Judgment	11/30/18	1	230-232
	<u>Exhibit A</u> : Amended Order Denying Sunrise Villas IX Homeowners Association's Motion for Summary Judgment [November 20, 2018]		1	233-235
17.	Default [Richard Duslak]	9/4/19	1	236-237
18.	Summons [Justin Sesman]	9/5/19	1	238-239
19.	Default [Justin Sesman]	9/13/19	1	240-241
20.	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	10/16/19	2	242-252
	<u>Exhibit 1</u> : Defendant Bushbaker's Answer and Cross-Claim Against Cox Communications [May 17, 2017]		2	253-262
	<u>Exhibit 2</u> : Defendant / Cross-Defendant J. Chris Scarcelli's Answer to Defendant / Cross-Claimant Kevin Bushbaker's Amended Cross-Claim and Cross-Claims Against Cox Communications, Sunrise Villas IX Homeowners Association, J&G Lawn Maintenance and PWJAMES Management & Consulting, LLC		2	263-273

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
21.	Defendant Sunrise Villas IX Homeowners Association's Joinder to Defendants, IES Residential, Inc. and Cox Communications Las Vegas, Inc. dba Cox Communications' Motion for Determination of Good Faith Settlement	10/17/19	2	274-276
22.	Court Minutes re Defendants / Cross-Defendants Cox Communication 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	10/18/19	2	277
23.	Application for Judgment by Default	10/31/19	2	278-282
24.	Notice of Hearing Re: Default	10/31/19	2	283-284
117.*	Plaintiff's Motion to Compel Settlement on Order Shortening Time	11/1/19	17	3751-3770
	<u>Exhibit 1</u> : Email from Fink (Sunrise) Re: proposed release and waiting for carrier to sign off		17	3762-3768
	<u>Exhibit 2</u> : Email from Turtzo (Cox) re: also waiting for approval of the release		17	3769-3770
25.	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	11/7/19	2	285-287

* *Plaintiff's Motion to Compel Settlement on Order Shortening Time* was added to the appendix after the first 17 volumes were complete and already numbered (3,750 pages)

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
26.	Notice of Entry Order Granting Defendant / Cross-Defendant, Cox Communications Las Vegas, Inc. dba Cox Communications and IES Residential, Inc.'s Motion for Determination of Good Faith Settlement	11/8/19	2	288-290
	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 [November 11, 2019]		2	291-293
27.	Court Minutes Re: Plaintiff's Application for Judgment by Default	12/17/19	2	294
28.	Default Judgment	12/17/19	2	295-296
29.	Notice of Entry	12/17/19	2	297-299
	<u>Exhibit 1</u> : Default Judgment [December 17, 2019]		2	300-302
30.	Register of Actions [Minutes Re: Motion for Default Judgment]	12/17/19	2	303-304
31.	Civil Order to Statistically Close Case	5/14/20	2	305
32.	Plaintiff's Motion for Judicial Assignment of Cause of Action	11/2/20	2	306-310
33.	QBE Insurance Corporations Motion to Intervene and Opposition to Motion to Assign Rights Against QBE	11/16/20	2	311-327
	<u>Exhibit A</u> : Complaint for Declaratory Relief [November 16, 2020]		2	328-333

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 33)	<u>Exhibit B</u> : Declaration of Duane Butler in Support of QBE Insurance Corporation's Motion to Intervene and Opposition to Motion to Assign Rights Against QBE [November 16, 2020]		2	334-337
34.	QBE Insurance Corporation's Amended Motion to Intervene and Opposition to Motion to Assign Rights Against QBE	11/17/20	2	338-352
	<u>Exhibit A</u> : Complaint for Declaratory Relief [November 16, 2020]		2	353-358
	<u>Exhibit B</u> : Declaration of Duane Butler in Support of QBE Insurance Corporation's Motion to Intervene and Opposition to Motion to Assign Rights Against QBE [November 16, 2020]		2	359-361
	<u>Exhibit C</u> : Settlement Agreement and Release [November 17, 2020]		2	362-386
35.	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	11/25/20	2	387-397
	<u>Exhibit 1</u> : Defendant Sunrise Villas IX Homeowner Association's Second Supplemental Responses to Plaintiff's First Set of Interrogatories [March 2, 2018]		2	398-406
	<u>Exhibit 2</u> : Motion to Amend Complaint [November 29, 2017]		2	407-423
	<u>Exhibit 3</u> : Amended Complaint [January 16, 2018]		2	424-433

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 35)	<u>Exhibit 4</u> : Letter dated September 18, 2019 notifying QBE that suit had been filed against Duslak and Sesman		2	434-435
	<u>Exhibit 5</u> : Letter dated November 4, 2020 regarding litigation against Sesman, Duslak, and PW James Management & Consulting		2	436-437
	<u>Exhibit 6</u> : Summons for Justin Sesman [January 16, 2018]		2	438-440
	<u>Exhibit 7</u> : Default for Justin Sesman [September 13, 2019]		2	441-443
36.	QBE Insurance Corporation's Withdrawal of its Amended Motion to Intervene	12/8/20	2	444-446
	<u>Exhibit A</u> : Stipulation between Sunrise Villas IX Homeowners Association and Simone Russo Related to Case A-17-753606 (Simone Russo v. Cox Communications Las Vegas, Inc.) [December 8, 2020]		2	447-449
37.	Motion to Intervene to Enforce Settlement	1/4/21	2	450-457
	<u>Exhibit 1</u> : Settlement Agreement and Release		2	458-481
	<u>Exhibit 2</u> : Simone Russo's Answer to Plaintiff's Complaint for Declaratory Relief and Counterclaim [December 22, 2020]		3	482-511
	<u>Exhibit 3</u> : Simone Russo's Answer to Plaintiff's Amended Complaint for Declaratory Relief and Amended Counterclaim [December 30, 2020]		3	512-546

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
38.	Clerk's Notice of Nonconforming Document	1/7/21	3	547-549
39.	Request for Hearing [Motion to Intervene to Enforce Settlement filed by Intervenor QBE on 1/4/21]	1/7/21	3	550-551
40.	Defendant Sunrise Villas IX Homeowners Association's Joinder to Intervenor QBE Insurance Corporation's Motion to Intervene to Enforce Settlement	1/7/21	3	552-554
41.	Notice of Hearing Re: QBE Insurance Corporation's Motion to Intervene to Enforce Settlement	1/8/21	3	555
42.	Opposition to Non-Party QBE Insurance Corporation's Second Motion to Intervene and Motion to "Enforce" Settlement	1/15/21	3	556-580
	<u>Exhibit 1</u> : Defendant Sunrise Villas IX Homeowners Association's Second Supplemental Responses to Plaintiff's First Set of Interrogatories		3	581-589
	<u>Exhibit 2</u> : Letter dated September 18, 2019 notifying QBE that suit had been filed against Duslak and Sesman		3	590-597
	<u>Exhibit 3</u> : Reporter's Transcript of Motions dated October 18, 2019		3	598-634
	<u>Exhibit 4</u> : Settlement Agreement and Release		3	635-658
	<u>Exhibit 5</u> : Notice of Entry		3	659-665
	<u>Exhibit 6</u> : Compliant for Declaratory Relief [November 16, 2020]		3	666-671

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 42)	<u>Exhibit 7</u> : Simone Russo's Answer to Plaintiff's Complaint for Declaratory Relief and Counterclaim [December 22, 2020]		3 4	672-710 711-846
	<u>Exhibit 8</u> : Simone Russo's Answer to Plaintiff's Amended Complaint for Declaratory Relief and Amended Counterclaim [December 30, 2020]		4	847-880
	<u>Exhibit 9</u> : Answer, Counterclaim and Third-Party Complaint [January 4, 2021]		4	881-920
	<u>Exhibit 10</u> : Voluntary Dismissal of Russo's Original Counterclaim and Amended Counterclaim [January 11, 2021]		4	921-922
43.	Amended Certificate of Service [Opposition to Non-Party QBE Insurance Corporation's Second Motion to Intervene and Motion to Enforce Settlement]	1/19/21	4	923-924
44.	Plaintiff's Supplement to Opposition to Non-Party QBE Insurance Corporation's Second Motion to Intervene and Motion to "Enforce" Settlement	1/19/21	4	925-929
45.	Motion to Set Aside and/or Amend Judgment	1/21/21	4	930-941
	<u>Exhibit 1</u> : Reporter's Transcript of Hearing dated October 16, 2019		5	942-968
	<u>Exhibit 2</u> : Reporter's Transcript of Motions dated October 18, 2019		5	969-998
	<u>Exhibit 3</u> : Plaintiff's Motion to Compel Settlement on Order Shortening Time [November 1, 2019]		5	999-1019

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 45)	<u>Exhibit 4</u> : Reporter's Transcript of Hearing dated November 7, 2019		5	1020-1066
	<u>Exhibit 5</u> : November 8, 2019 Email Correspondence		5	1067-1083
	<u>Exhibit 6</u> : Reporter's Transcript of Hearing dated November 8, 2019		5	1084-1116
	<u>Exhibit 7</u> : Settlement Agreement and Release		5	1117-1140
	<u>Exhibit 8</u> : Default Judgment [December 17, 2019]		5	1141-1143
	<u>Exhibit 9</u> : Court Minutes Re: Plaintiff's Application for Judgment by Default [December 17, 2019]		5	1144-1145
	<u>Exhibit 10</u> : Answer, Counterclaim and Third-Party Complaint [January 4, 2021]		5	1146-1185
46.	Joinder to Motion to Set Aside and/or Amend Judgment	1/22/21	5	1186-1189
	<u>Exhibit A</u> : First Amended Complaint for Declaratory Relief [December 23, 2020]		6	1190-1197
	<u>Exhibit B</u> : Simone Russo's Amended Answer to Plaintiff's Amended Complaint for Declaratory Relief		6	1198-1213
47.	Motion to Enforce Settlement	1/22/21	6	1214-1222
	<u>Exhibit 1</u> : Defendant Sunrise Villas IX Homeowners Association's Second Supplemental Responses to Plaintiff's First Set of Interrogatories [March 2, 2018]		6	1223-1231

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 47)	<u>Exhibit 2</u> : Letter dated September 18, 2019 notifying QBE that suit had been filed against Duslak and Sesman		6	1232-1233
	<u>Exhibit 3</u> : Reporter's Transcript of Motions dated October 18, 2019		6	1234-1270
48.	Notice of Hearing Re: Plaintiff's Motion to Enforce Settlement	1/25/21	6	1271
49.	Notice of Hearing Re: Defendant's Motion to Set Aside and/or Amend Judgment	1/25/21	6	1272
50.	Request for Judicial Notice	1/26/21	6	1273-1274
	<u>Exhibit 1</u> : Motion to Dismiss [January 25, 2021]		6	1275-1281
51.	Association of Counsel for Defendant Sunrise Villas IX Homeowners Association	2/1/21	6	1282-1284
52.	Amended Association of Counsel for Defendant Sunrise Villas IX Homeowners Association	2/1/21	6	1285-1287
53.	Plaintiff's Second Supplement to Opposition to Non-Party QBE Insurance Corporation's Second Motion to Intervene and Motion to "Enforce" Settlement	2/1/21	6	1288-1293
	<u>Exhibit 1</u> : Reporter's Transcript of Hearing dated November 7, 2019		6	1294-1340
54.	Opposition to Motion to Set Aside and/or Amend Judgment	2/1/21	6	1341-1363
	<u>Exhibit 1</u> : Reporter's Transcript of Motions dated October 18, 2019		6	1364-1400
	<u>Exhibit 2</u> : Reporter's Transcript of Motions dated November 7, 2019		7	1401-1447

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 54)	<u>Exhibit 3</u> : Settlement Agreement and Release		7	1448-1471
	<u>Exhibit 4</u> : Default Judgment [December 17, 2019]		7	1472-1474
55.	Consolidated Brief Re: QBE's Motion to Intervene to Enforce Settlement and Plaintiff's Motion to Enforce Settlement	2/4/21	7	1475-1485
	<u>Exhibit C</u> : January 27, 2021 Email Correspondence		7	1486-1488
	<u>Exhibit D</u> : January 29, 2021 Email Correspondence		7	1489-1494
56.	Defendant Sunrise HOA Villas IX Homeowners Association's Consolidated Opposition to Plaintiff's Motions to Enforce Settlement and Reply to QBE's Motion to Enforce	2/4/21	7	1495-1512
	Motion to Set Aside and/or Amend Judgment [January 21, 2021]		7	1513-1524
	Plaintiff's Second Supplement To Opposition to Non-Party QBE Insurance Corporation's Second Motion to Intervene and Motion to "Enforce" Settlement [February 1, 2021]		7	1525-1577
	Defendant Sunrise Villas IX Homeowners Association's Second Supplemental Response to Plaintiff's First Set of Interrogatories [March 2, 2018]		7	1578-1585
57.	Errata to Defendant Sunrise HOA Villas IX Homeowners Association's Consolidated Opposition to Plaintiff's Motion to Enforce Settlement and Reply to QBE's Motion to Enforce as to Exhibits Cover Sheets Only	2/4/21	7	1586-1588

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 57)	<u>Exhibit 11</u> : Motion to Set Aside and/or Amend Judgment [January 21, 2021]		7	1589-1601
	<u>Exhibit 12</u> : Plaintiff's Second Supplement to Opposition to Non-Party QBE Insurance Corporation's Second Motion to Intervene and Motion to "Enforce" Settlement [February 1, 2021]		8	1602-1655
	<u>Exhibit 13</u> : Defendant Sunrise Villas IX Homeowners Association's Second Supplemental Responses to Plaintiff's First Set of Interrogatories [March 2, 2018]		8	1656-1664
58.	Suggestion of Death upon the Record of Defendant J. Chris Scarcelli Pursuant to NRCp 25(A)	2/4/21	8	1665-1668
59.	Minute Order Re: Hearing on 2/11/21 at 9:05 a.m.	2/4/21	8	1669-1670
60.	Defendant Sunrise Villas IX Homeowners Association's Joinder to Intervene QBE Insurance Corporation's Consolidated Brief Re: QBE's Motion to Intervene to Enforce Settlement and Plaintiff's Motion to Enforce Settlement	2/5/21	8	1671-1673
61.	Request for Judicial Notice in Support of Consolidated Brief Re: QBE's Motion to Intervene to Enforce Settlement and Plaintiff's Motion to Enforce Settlement	2/9/17	8	1674-1676
	<u>Exhibit 14</u> : Response to Plaintiff's / Counter-Defendant's Motion to Dismiss [February 8, 2021]		8	1677-1821

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
62.	Defendant Sunrise Villas IX Homeowners Association's Joinder to Intervenor QBE Insurance Corporation's Request for Judicial Notice in Support of Consolidated Brief Re: QBE's Motion to Intervene to Enforce Settlement and Plaintiff's Motion to Enforce Settlement	2/9/21	8	1822-1824
63.	First Supplement to Opposition to Motion to Set Aside and/or Amend Judgment	2/10/21	8	1825-1827
64.	Request for Judicial Notice in Support of Opposition to Plaintiff's Motion to Enforce Settlement	2/12/21	8	1828
	<u>Exhibit 15</u> : Reply in Response to Motion to Dismiss [February 12, 2021]		8	1829-1833
65.	Reply to Opposition to Motion to Enforce Settlement	2/17/21	8	1834-1844
66.	Errata to Reply to Opposition to Motion to Enforce Settlement	2/18/21	8	1845-1847
67.	Second Supplement to Opposition to Motion to Set Aside and/or Amend Judgment	2/22/21	9	1848-1853
	<u>Exhibit 1</u> : Declaration of Richard Duslak [February 8, 2021]		9	1854-1855
	<u>Exhibit 2</u> : PW James Management & Consulting, LLC Payroll Check Journal Report		9	1856-1877
	<u>Exhibit 3</u> : Affidavit of Amanda Davis in Support of Sunrise Villas IX Homeowner's Association's Motion for Summary Judgment [August 6, 2018]		9	1878-1880
68.	Minute Order Re: Hearing on 3/3/21 at 1:30 p.m.	2/25/21	9	1881-1882

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
69.	Defendant Sunrise HOA Villas IX Homeowners Association's Reply to Plaintiff's Opposition to Motion to Set Aside and/or Amend Judgment	2/25/21	9	1883-1892
	<u>Exhibit A</u> : Settlement Agreement and Release		9	1893-1916
	<u>Exhibit B</u> : March 28, 2007 article by Julie Sloan for CNN Money regarding AdvanstaffHR		9	1917-1919
	<u>Exhibit C</u> : Webpage for AdvanstaffHR		9	1920-1923
70.	Third Supplement to Opposition to Motion to Set Aside and/or Amend Judgment	2/25/21	9	1924-1927
	<u>Exhibit 1</u> : February 25, 2021 Email Correspondence		9	1928-1930
71.	Fourth Supplement to Opposition to Motion to Set Aside and/or Amend Judgment	2/25/21	9	1931-1934
	<u>Exhibit 1</u> : Opinion, <i>Jane Doe v. La Fuente, Inc.</i> , 137 Nev.Adv.Op 3 (2021)		9	1935-1962
72.	Defendant Sunrise HOA Villas IX Homeowners Association's Reply to Plaintiff's Third and Fourth Supplements to His Opposition to Motion to Set Aside and/or Amend Judgment	3/2/21	9	1963-1968
	<u>Exhibit A</u> : March 1, 2021 Email Correspondence		9	1969-1971
73.	Motion for Substitution of Party	3/4/21	9	1972-1977
74.	Post Hearing Brief on Opposition to Motion to Set Aside and/or Amend Judgment	3/5/21	9	1978-1983

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
75.	Response to Plaintiff's Post Hearing Brief Re: Defendant's Motion to Set Aside the Judgment	3/9/21	9	1984-1988
76.	Opposition to Plaintiff's Motion to Substitute Undersigned Counsel as Representative for Defendant J. Chris Scarcelli	3/11/21	9	1989-1993
77.	Reply to Response to Post Hearing Brief on Opposition to Motion to Set Aside and/or Amend Judgment	3/11/21	9	1994-1999
78.	Reply to Opposition to Motion for Substitution of Party	3/15/21	9	2000-2005
79.	Request for Judicial Notice	3/20/21	9	2006-2007
	<u>Exhibit 20</u> : Emergency Motion to Stay and/or Extend Pretrial Deadlines [March 4, 2021]		9	2008-2024
	<u>Exhibit 21</u> : Third-Party Defendant Sunrise Villas IX Homeowners' Association's Joinder to Plaintiff/Counter-Defendant QBE Insurance Corporation's Emergency Motion to Stay and/or Extend Pretrial Deadlines [March 5, 2021]		9	2025-2029
	<u>Exhibit 22</u> : Opposition to Emergency Motion to Stay and/or Extend Pretrial Deadlines [March 10, 2021]		9	2030-2035
	<u>Exhibit 23</u> : Response to Plaintiff's/Counter-Defendant's Emergency Motion to Stay and/or Extend Pretrial Deadlines [March 10, 2021]		9	2036-2051
	<u>Exhibit 24</u> : Reply to Response to Emergency Motion to Stay and/or Extend Pretrial Deadlines		9	2052-2057
	<u>Exhibit 25</u> : March 18, 2021 email from counsel for Duslak and Sesman		9	2058-2059

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 79)	<u>Exhibit 26</u> : Counterclaimants' Motion to Amend Answer, Counterclaim and Third-Party Complaint		10	2060-2114
80.	Defendant Sunrise Villas IX Homeowners Association's Joinder to Intervenor QBE Insurance Corporation's Request for Judicial Notice	3/22/21	10	2115-2117
81.	Defendant Sunrise Villas IX Homeowners Association's Addendum to its Joinder to Intervenor QBE Insurance Corporation's Request for Judicial Notice in Support of the Pending Motions Re: Setting Aside the Default and Settlement Agreement	3/29/21	10	2118-2122
82.	Reply to Sunrise's Addendum to QBE's Request for Judicial Notice	3/29/21	10	2123-2131
83.	Supplement to Reply to Sunrise's Addendum to QBE's Request for Judicial Notice	3/30/21	10	2132-2136
	<u>Exhibit 1</u> : Errata to Motion to Compel Discovery Responses (Document No. 55)		10	2137-2140
84.	Minute Order Re: Order Denying Intervention	3/31/21	10	2141-2142
85.	Defendant Sunrise Villas IX Homeowners Association's Request for Judicial Notice in Support of the Pending Motions Re Setting Aside the Default and Settlement Agreement	4/13/21	10	2143-2146
	<u>Exhibit A</u> : Third-Party Plaintiff Richard Duslak's Answers to Third-Party Defendant Sunrise Villas IX Homeowners' Association's First Set of Interrogatories [April 2, 2021]		10	2147-2162

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 85)	<u>Exhibit B</u> : Third-Party Plaintiff Justin Sesman's Answers to Third-Party Defendant Sunrise Villas IX Homeowners' Association's First Set of Interrogatories [April 2, 2021]		10	2163-2178
	<u>Exhibit C</u> : Response to Plaintiff's/Counter-Defendant's Motion to Dismiss [February 8, 2021]		10 11	2179-2290 2291-2323
86.	Reply to Sunrise's Latest Request for Judicial Notice	4/15/21	11	2324-2329
	<u>Exhibit 1</u> : Response to Plaintiff's/Counter-Defendant's Motion to Dismiss [February 8, 2021]		11	2330-2474
	<u>Exhibit 2</u> : Reporter's Transcript of Motions dated March 3, 2021		12	2475-2618
87.	Order on Motion to Intervene to Enforce Settlement	4/22/21	12	2619-2630
88.	Order on Motion to Substitute	4/22/21	12	2631-2635
89.	Notice of Entry	4/22/21	12	2636-2638
	<u>Exhibit 1</u> : Order on Motion to Intervene to Enforce Settlement [April 22, 2021]		12	2639-2651
90.	Notice of Entry	4/22/21	12	2652-2654
	<u>Exhibit 1</u> : Order on Motion to Substitute		12	2655-2660
91.	Minute Order: Pending Motions	5/3/21	12	2661-2662
92.	Motion to Amend and/or Modify Order	5/7/21	12	2663-2668
	<u>Exhibit A</u> : Minute Order for March 31, 2021		12	2669-2671
	<u>Exhibit B</u> : April 1, 2021 Email Correspondence		12	2672-2675

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 92)	<u>Exhibit C</u> : April 5, 2021 Email Correspondence		12	2676-2678
	<u>Exhibit D</u> : April 5, 2021 Email Correspondence with a redline version of the Order		12	2679-2687
	<u>Exhibit E</u> : April 22, 2021 Email Correspondence		12	2688-2698
	<u>Exhibit F</u> : Order on Motion to Intervene to Enforce Settlement [April 22, 2021]		12	2699-2711
	<u>Exhibit G</u> : Proposed Order Re: Motion to Intervene to Enforce Settlement, clean version of the redlined Order (Ex. D)		12	2712-2717
93.	Defendant Sunrise Villas IX Homeowners Association's Joinder to Intervenor QBE Insurance Corporation's Motion to Amend and/or Modify Order	5/10/21	12	2718-2720
94.	Opposition to Motion to Amend and/or Modify Order	5/13/21	13	2721-2731
	<u>Exhibit 1</u> : Minute Order for March 31, 2021		13	2732-2734
	<u>Exhibit 2</u> : April 1, 2021 Email Correspondence from Russo's Counsel re proposed Order		13	2735-2736
	<u>Exhibit 3</u> : Order on Motion to Intervene to Enforce Settlement		13	2737-2742
	<u>Exhibit 4</u> : April 1, 2021 Email Correspondence from QBE's Counsel re Order in Word format		13	2743-2746
	<u>Exhibit 5</u> : April 1, 2021 Email Correspondence from Sunrise's Counsel re Order		13	2747-2749
	<u>Exhibit 6</u> : April 5, 2021 Email Correspondence from Russo's Counsel circulating proposed Order		13	2450-2751

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 94)	<u>Exhibit 7</u> : Order on Motion to Intervene to Enforce Settlement		13	2752-2760
	<u>Exhibit 8</u> : April 5, 2021 Email Correspondence from QBE's Counsel re suggested changes to Order		13	2761-2763
	<u>Exhibit 9</u> : April 22, 2021 Email Correspondence from Sunrise's Counsel re "extraneous" facts included in the Order		13	2764-2780
95.	Supplement to Opposition to Motion to Amend and/or Modify Order	5/18/21	13	2781-2784
96.	Defendant Sunrise Villas IX Homeowners Association's Notice of Submission of Competing Order on Defendant's Motion to Set Aside and/or Amend Judgment and Order on Plaintiff's Motion to Enforce Settlement	5/25/21	13	2785-2787
	<u>Exhibit 1</u> : Proposed competing order for Order on Defendant's Motion to Set Aside and/or Amend Judgment and Order on Plaintiff's Motion to Enforce Settlement submitted to the Court for consideration		13	2788-2802
	<u>Exhibit 2</u> : Order on Defendants Motion to Set Aside and/or Amend Judgment and Order on Plaintiff's Motion to Enforce Settlement		13	2803-2816
97.	Order on Defendant's Motion to Set Aside and/or Amend Judgment and Order on Plaintiff's Motion to Enforce Settlement [Denying]	5/26/21	13	2817-2835
98.	Notice of Entry	5/26/21	13	2836-2838

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 98)	Order Defendant's Motion to Set Aside and/or Amend Judgment and Order on Plaintiff's Motion to Enforce Settlement [Denying] [May 26, 2021]		13	2839-2857
99.	Defendant Sunrise Villas IX Homeowners Association's Motion to Release Exhibits from Evidence Vault on Order Shortening Time	6/1/21	13	2858-2864
	<u>Exhibit 1</u> : Court Minutes re Plaintiff's Application for Judgment by Default on December 17, 2019		13	2865-2866
	<u>Exhibit 2</u> : May 17, 2021 Email Correspondence from Shannon Splaine, Esq. to Peggy Ipsom, court reporter		13	2867-2871
100.	Reply to Opposition to Motion to Amend and/or Modify Order	6/1/21	13	2872-2874
101.	Opposition to Sunrise's Motion to Release Exhibits from Evidence Vault on Order Shortening Time	6/2/21	13	2875-2880
	<u>Exhibit 1</u> : Minute Order: Pending Motions on May 3, 2021		13	2881-2883
	<u>Exhibit 2</u> : Notice of Entry for Order on Defendant's Motion to Set Aside and/or Amend Judgment, and Order on Plaintiff's Motion to Enforce Settlement [May 26, 2021]		13	2884-2906
	<u>Exhibit 3</u> : November 7, 2019 Email Correspondence from Sunrise's Counsel re Suslak (sic) And Desman (sic)		13	2907-2908

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
102.	Court Minutes Re: Hearing on Defendant Sunrise Villas IX Homeowners Association's Motion to Release Exhibits from Evidence Vault on Order Shortening Time	6/3/21	13	2909
103.	Order Granting Defendant Sunrise Villas IX Homeowners Association's Motion to Release Exhibits from Evidence Vault on Order Shortening Time	6/7/21	13	2910-2917
104.	Opposition to Motion to Hold Counsel in Contempt and Counter-Motion to Strike the Motion per NRS 41.660	6/7/21	13	2918-2924
	<u>Exhibit A:</u> Minute Order: Pending Motions on May 3, 2021		13	2925-2927
	<u>Exhibit B:</u> Order on Defendant's Motion to Set Aside and/or Amend Judgment, and Order on Plaintiff's Motion to Enforce Settlement [May 26, 2021]		13	2928-2947
	<u>Exhibit C:</u> Stipulation between Sunrise Villas IX Homeowners Association and Simone Russo related to case A-17-753606 (Simone Russo v. Cox Communications Las Vegas, Inc.) [November 12, 2019]		13	2948-2950
105.	Notice of Entry of Order Granting Defendant Sunrise Villas IX Homeowners Association's Motion to Release Exhibits from Evidence Vault on Order Shortening Time	6/8/21	13	2951-2952
	Order Granting Defendant Sunrise Villas IX Homeowners Association's Motion to Release Exhibits from Evidence Vault of Order Shortening Time [June 7, 2021]		13	2953-2960

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
106.	Defendant Sunrise Villas IX Homeowners Association's Notice of Filing Exhibits from the Evidence Vault	6/21/21	13	2961-2963
	Exhibit List		13	2964
	<u>Exhibit 1: Medical Treatment Timeline</u>		13	2965-2968
	<u>Exhibit 2: Medical Summary of Plaintiff Simone Russo</u>		13	2969-2970
	<u>Exhibit 3: Medical Records and Billing Records from Center for Disease & Surgery of the Spine</u>		14	2971-3059
	<u>Exhibit 4: Medical Records and Billing Records Kozmary Center for Pain Management</u>		14 15	3060-3210 3211-3235
	<u>Exhibit 5: Medical Records and Billing Records from Pueblo Medical Imaging</u>		15	3236-3246
	<u>Exhibit 6: Medical Records and Billing Records from Desert Radiology</u>		15	3247-3259
	<u>Exhibit 7: Medical Records and Billing Records from SimonMed Imaging</u>		15	3260-3263
	<u>Exhibit 8: Medical Records and Billing Records from Fyzical Therapy and Balance Centers</u>		15	3264-3285
	<u>Exhibit 9: Surgical Recommendation from Dr. Thalgott</u>		15	3286-2387
107.	Notice of Appeal	6/23/21	15	3288-3290
	<u>Exhibit A: Order on Defendant's Motion to Set Aside and/or Amend Judgment, and Order on Plaintiff's Motion to Enforce Settlement [May 26, 2021]</u>		15	3291-3310

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
<u>TRANSCRIPTS</u>				
110.	Reporter's Transcript of Hearing Re: Settlement	10/16/19	15	3311-3342
111.	Reporter's Transcript of Hearing Re: Settlement	10/18/19	15	3343-3378
112.	Reporter's Transcript of Hearing Re: Motion to Compel Settlement	11/7/19	15	3379-3434
113.	Reporter's Transcript of Hearing (Telephonic Conference) Re: Settlement	11/8/19	16	3435-3474
114.	Reporter's Transcript of Hearing [E-filed November 7, 2019 Hearing Transcript]	1/25/21	16	3475-3520
115.	Reporter's Transcript of Hearing [Telephonic Hearing on February 11, 2019]	2/11/21	16	3521-3607
116.	Reporter's Transcript of Hearing Re: Motions	3/3/21	17	3608-3750
<u>ADDITIONAL DOCUMENTS</u>				
117.	Plaintiff's Motion to Compel Settlement on Order Shortening Time	11/1/19	17	3751-3770
	<u>Exhibit 1</u> : Email from Fink (Sunrise) Re: proposed release and waiting for carrier to sign off		17	3762-3768
	<u>Exhibit 2</u> : Email from Turtzo (Cox) re: also waiting for approval of the release		17	3769-3770

Exhibit 2

DAVID F. SAMPSON, ESQ.
Nevada Bar No. 6811
THE LAW OFFICE OF DAVID SAMPSON, LLC.
630 South 3rd Street
Las Vegas, NV 89101
Tel: (702) 605-1099
Fax: (888) 209-4199
david@davidsampsonlaw.com
Attorneys for Defendant SIMONE RUSSO

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

QBE INSURANCE CORPORATION

Plaintiff,

vs.

SIMONE RUSSO, RICHARD DUSLAK and
JUSTIN SESMAN

Defendants.

Case No. 2:20-cv-02104-RFB-EJY

**SIMONE RUSSO'S ANSWER TO
PLAINTIFF'S COMPLAINT FOR
DECLARATORY RELIEF AND
COUNTERCLAIM**

ANSWER

Defendant SIMONE RUSSO ("RUSSO") by and through his counsel of record DAVID SAMPSON, ESQ., of THE LAW OFFICE OF DAVID SAMPSON, LLC., hereby answers Plaintiff's Complaint for Declaratory Relief (ECF 1) as follows:

PARTIES

1. Answering paragraph 1 of the complaint, RUSSO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations that QBE existed under the laws of Pennsylvania and, on that basis, denies the said allegation contained therein. RUSSO admits that QBE was an insurance company eligible to do

business as an insurer in the State of Nevada. RUSSO admits the remaining allegations in paragraph 1.

2. Answering paragraph 2 of the complaint, RUSSO admits the allegations contained therein.
3. Answering paragraph 3 of the complaint, RUSSO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations that DUSLAK is a resident of Clark County Nevada and, on that basis, denies the said allegation contained therein. RUSSO denies any remaining allegations in paragraph 3.
4. Answering paragraph 4 of the complaint, RUSSO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations that SESMAN is a resident of Clark County Nevada and, on that basis, denies the said allegation contained therein. RUSSO denies any remaining allegations in paragraph 4.

JURISDICTION AND VENUE

5. Answering paragraph 5 of the complaint, RUSSO admits the allegations contained therein.
6. Answering paragraph 6 of the complaint, RUSSO denies that he, DUSLAK, and or SESMAN were “doing business in Nevada”. RUSSO also states he does not have sufficient information to admit or deny that DUSLAK and/or SESMAN were at all relevant times residents of Nevada, and therefore denies the same. RUSSO admits the remaining allegations contained in paragraph 6.

GENERAL ALLEGATIONS

7. Answering paragraph 7 of the complaint, RUSSO admits that it is his understanding and contention that the language in the subject QBE insurance policy covering SUNRISE

VILLAS IV HOA ("SUNRISE"), and the law regarding insurance policies, includes DUSLAK and SESMAN as covered insureds under the said QBE policy. RUSSO is without sufficient information to admit or deny the remaining allegations in paragraph 7 and therefore denies the same.

8. Answering paragraph 8 of the complaint, RUSSO admits that he filed a complaint against SUNRISE and others alleging that a cable wire that was part of the SUNRISE common area, and was the duty of SUNRISE and its employees, among others, to maintain, was negligently maintained and caused RUSSO injuries. RUSSO admits that DUSLAK and SESMAN were not named in the original complaint as SUNRISE initially advised RUSSO that J&G Lawn Maintenance was handling lawn care and maintenance at SUNRISE at the time RUSSO was hurt. RUSSO denies Plaintiff's claim that the initial complaint did not include an alleged connection between J&G Lawn Maintenance and SUNRISE. RUSSO denies any remaining allegations contained in paragraph 8.
9. Answering paragraph 9 of the complaint, RUSSO admits that some time prior to November 29, 2017 SUNRISE advised RUSSO that J&G Lawn Maintenance was not providing lawn and maintenance care for SUNRISE in August 2016, and that J&G Lawn Maintenance did not start providing such services until September 2016. RUSSO denies that J&G lawn maintenance "did not contract with SUNRISE VILLAS HOA", and admits that RUSSO has been informed by SUNRISE that the alleged contract between J&G and SUNRISE did not begin until September 2016. RUSSO further admits that at some point in late 2017 or early 2018 SUNRISE advised RUSSO that DUSLAK and SESMAN were the individuals who were actually performing lawn care and maintenance services in the SUNRISE HOA in August 2016. RUSSO admits he moved

to amend his complaint to replace “Doe Landscaper” defendants because SUNRISE had advised RUSSO that J&G lawn maintenance was not SUNRISE’s landscaper at the time RUSSO was injured, but that DUSLAK and SESMAN were SUNRISE’s landscapers. RUSSO denies any remaining allegations contained in paragraph 9.

10. Answering paragraph 10 of the complaint, RUSSO admits that in late 2017 or early 2018 SUNRISE advised RUSSO that DUSLAK and SESMAN were the individuals who were actually performing lawn care and maintenance services in the SUNRISE HOA in August 2016 and that because of SUNRISE’s admission that DUSLAK and SESMAN were performing the said duties at SUNRISE, Russo amended the complaint to add DUSLAK and SESMAN as Defendants. RUSSO admits that his complaint alleged DUSLAK and SESMAN “maintained and controlled” lawn and maintenance duties at and for SUNRISE. RUSSO denies ever naming DUSLAK and/or SESMAN as “landscaping contractors” in any complaint. *See*, Exhibit 3 to QBE’s Complaint in this matter. RUSSO further admits that on March 2, 2018 SUNRISE answered an interrogatory in the underlying action in which SUNRISE stated, “SUNRISE VILLAS believes it employed Richard Duslak and Justin Sesman for lawn maintenance repair and/or cleaning prior to September 2016 . . .”. *See* Exhibit “A” at P. 7 L. 8-9. Russo denies any remaining allegations contained in paragraph 10.

11. Answering paragraph 11 of the complaint, RUSSO admits QBE issued a policy of insurance to SUNRISE and that QBE provided SUNRISE with a defense in the underlying action. RUSSO denies the remainder of the allegations in paragraph 11 and further specifically denies that RUSSO settled with SUNRISE “for a full and complete release” as the release specifically excluded DUSLAK and SESMAN or anyone

associated or affiliated with them including any actual or potential insurer. *See*, Exhibit “B”.

12. Answering paragraph 12 of the complaint, RUSSO denies the allegations contained therein. It is RUSSO’s understanding and belief that DUSLAK and SESMAN contacted SUNRISE about the underlying action when DUSLAK and SESMAN were served with the same, and SUNRISE advised it had given the matter to SUNRISE’s insurance carrier, and that the carrier was “taking care of it”.
13. Answering paragraph 13 of the complaint, RUSSO denies the allegations contained therein. It is RUSSO’s understanding and belief that DUSLAK and SESMAN have always claimed to be employees of SUNRISE and thus covered by any policy(ies) of insurance SUNRISE had that covered itself and/or its employees, which is consistent with what SUNRISE stated in its interrogatory answer in the underlying matter when SUNRISE said it “employed” DUSLAK and SESMAN. *See*, Exhibit “A”.
14. Answering paragraph 14 of the complaint, RUSSO admits the allegations contained therein. RUSSO further admits that, as QBE did not defend DUSLAK or SESMAN, the court heard evidence in the underlying action and the judge determined that based on that evidence a judgment should be entered in that matter against DUSLAK and SESMAN in the amount of \$25,000,000.00.
15. Answering paragraph 15 of the complaint, RUSSO admits he filed, and later withdrew, a motion for judicial assignment. RUSSO denies the remaining allegations contained in paragraph 15, and specifically denies that November 2, 2020 was “the first time” RUSSO claimed DUSLAK and SESMAN were insured by QBE.

16. Answering paragraph 16 of the complaint, RUSSO admits he has alleged and continues to allege that QBE owed DUSLAK and SESMAN a duty of defense and indemnification, fiduciary duties, and a duty of good faith and fair dealing in connection with the underlying action. RUSSO also admits that he understands and believes that QBE breached those duties and that DUSLAK and SESMAN have actionable claims against QBE. RUSSO denies any remaining allegations contained in paragraph 16 as RUSSO does not possess any claims owned by DUSLAK and/or SESMAN as no assignment has occurred.
17. Answering paragraph 17 of the complaint, RUSSO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in this paragraph, particularly any claims about what “QBE believes” and, on that basis, denies the allegations contained therein.
18. Answering paragraph 18 of the complaint, RUSSO denies the allegations contained therein as he has withdrawn his motion for a judicial assignment and as RUSSO understands and believes that DUSLAK and SESMAN intend to pursue any such claims themselves. RUSSO does admit that he is entitled to any funds recovered by DUSLAK and/or SESMAN up to and including those necessary to satisfy the judgment entered against them, including all interest.
19. Answering paragraph 19 of the complaint, RUSSO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in this paragraph (specifically any allegations as to what QBE denies) and, on that basis, denies the allegations contained therein. RUSSO understands and believes that, as he is

not a party or intended beneficiary to the QBE insurance contract, he has no basis or grounds himself to recover directly against QBE under the contract.

20. Paragraph 20 of the complaint incorporates the preceding paragraphs in the complaint which does not require any admissions or denials by RUSSO. To the extent this paragraph could be construed as calling for a response RUSSO denies all allegations contained therein.

21. Answering paragraph 21 of the complaint, RUSSO admits he believes and alleges that DUSLAK and SESMAN have claims against Plaintiff, that Plaintiff owed DUSLAK and SESMAN a duty to defend and indemnify DUSLAK and SESMAN in connection with the underlying action, that Plaintiff owed additional duties to DUSLAK and SESMAN, and that DUSLAK and SESMAN are entitled to any and all damages arising as a consequence of QBE's breaches of any of those duties, which damages would include, but are not limited to, monies necessary to satisfy the judgment entered in favor of RUSSO against DUSLAK and SESMAN. *See, Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d 180 (2018). RUSSO denies the remainder of the allegations in paragraph 21.

22. Answering paragraph 22 of the complaint, RUSSO denies the allegations contained therein. RUSSO does admit it is his understanding and belief that, as he is not a party or intended beneficiary to the QBE insurance contract, he has no basis or grounds himself to recover directly against QBE, and that DUSLAK and SESMAN would have the right to any and all damages arising as a consequence of QBE's breaches, including monies necessary to satisfy the Judgment entered in favor of RUSSO against DUSLAK and

SESMAN. *See, Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d 180 (2018).

RUSSO denies the remainder of the allegations in paragraph 22.

23. Answering paragraph 23 of the complaint, RUSSO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in this paragraph and, on that basis, denies the allegations contained therein. RUSSO admits it is his understanding and belief that a controversy exists between QBE and Defendants DUSLAK, and SESMAN. RUSSO understands that under Nevada law he is not a party or an intended beneficiary of the subject insurance policy.

24. Answering paragraph 24 of the complaint, RUSSO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in this paragraph and, on that basis, denies the allegations contained therein. RUSSO admits it is his understanding and belief that a controversy exists between QBE and Defendants DUSLAK. RUSSO understands that under Nevada law he is not a party or an intended beneficiary of the subject insurance policy.

25. Plaintiff's prayer for relief immediately following paragraph 24 of the complaint does not contain any factual allegations that would require a response from RUSSO. To the extent the prayer for relief could be construed as calling for a response, RUSSO denies that Plaintiff is entitled to the relief requested therein.

AFFIRMATIVE AND OTHER DEFENSES

RUSSO asserts the following affirmative defenses to plaintiff's complaint.

FIRST DEFENSE

The complaint, and each and every cause of action thereof, fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiff failed to take reasonable steps to avoid the damages, if any, alleged in the complaint, and each and every cause of action contained therein.

THIRD DEFENSE

Any damages sustained by plaintiff by reason of the events alleged in the complaint were proximately caused or contributed to by plaintiff's own breach of the subject insurance contract.

FOURTH DEFENSE

Plaintiff has engaged in acts, omissions and conduct that constitute a breach of Plaintiff's obligations under the subject policy.

FIFTH DEFENSE

Plaintiff has unclean hands in failing and refusing to defend DUSLAK and SESMAN.

SIXTH DEFENSE

QBE's handling of Plaintiff's claim was not correct, was not proper and was not reasonable under the terms of the subject policy.

SEVENTH DEFENSE

At all times and places relevant hereto, QBE failed to act in good faith, and acted without with justification or probable cause and with malice toward its insureds.

EIGHTH DEFENSE

QBE's actions at all times failed to comply with NRS 686A.310.

NINTH DEFENSE

QBE's conduct was malicious, oppressive and/or fraudulent pursuant to NRS 42.010.

TENTH DEFENSE

Plaintiff's cause of action is barred by the doctrine of waiver.

ELEVENTH DEFENSE

Plaintiff's action is barred by the doctrine of estoppel.

TWELFTH DEFENSE

Plaintiff's conduct waived the relief prayed for in the complaint.

THIRTEENTH DEFENSE

Plaintiff failed to properly and fully mitigate, minimize or avoid damages to itself and its insureds.

FOURTEENTH DEFENSE

Plaintiff is not entitled to attorney's fees pursuant to any of the claims alleged in the complaint.

EIGHTEENTH DEFENSE

That the Plaintiff subjected Defendants to duress in forcing Defendant to take certain actions.

NINETENTH DEFENSE

That defense of the underlying matter was constructively tendered to QBE.

TWENTIEH DEFENSE

Pursuant to FRCP 11, as amended, all possible affirmative and other defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this answer, and therefore, Acuity reserves the right to amend this answer to allege additional affirmative defenses if subsequent investigation so warrants.

WHEREFORE, and for the reasons set forth in the counterclaim below, RUSSO prays for judgment as follows:

1. For a declaration and determination that DUSLAK and SESMAN are insureds under the policy between Plaintiff and SUNRISE, and that the defense of the claims against DUSLAK and SESMAN were duly tendered and/or contractively tendered to Plaintiff, that Plaintiff did owe DUSLAK and/or SESMAN a defense, indemnification, fiduciary duties, and good faith and fair dealing for claims arising out of the underlying action. For a declaration that DUSLAK and/or SESMAN are entitled to recover funds from Plaintiff QBE, including all funds necessary to satisfy the judgment against DUSLAK and/or SESMAN in the underlying action, including all interest;
2. For attorney's fees;
3. For costs of suit;
4. For interest;
5. For all other relief the Court deems just and proper.

COUNTERCLAIM

COMES NOW Plaintiff, RUSSO RUSSO individually, by and through his attorney, David Sampson, Esq., of THE LAW OFFICE OF DAVID SAMPSON, LLC., and for his claims for relief against the QBE, and each of them, allege and complain as follows:

PARTIES

1. At all times relevant to this action, Plaintiff was a resident of Clark County, Nevada.
2. At all times relevant to this action, Richard Doslak and Justin Sesman were residents of Clark County, Nevada.
3. At all times relevant to this action, Plaintiff/Counterdefendant, QBE INSURANCE CORPORATION was at all times relevant to this action an insurance company based Pennsylvania and was operating and conducting business in Nevada.

4. At all times relevant to this action, Counter defendant, COMMUNITY ASSOCIATION UNDERWRITERS was at all times relevant to this action an insurance underwriting company based on Pennsylvania and doing business in Nevada.

5. That QBE issued insurance policies, some of which were underwritten by COMMUNITY ASSOCIATION UNDERWRITERS. That each said Defendant is the parent and/or subsidiary of, alter-ego of, doing business as, also known as, and/or otherwise sharing an identity or continuity of interests with each and every other Defendant and, therefore, are contractually, jointly and severally, legally, equitably, and/or otherwise liable for and/or with each other herein, and are herein after individually and collectively referred to as “CAU” and/or “the CAU Defendants”.

6. That the true names and capacities, whether individual, corporate, partnership, associate or otherwise, of Defendants, DOES I through X and ROE BUSINESS ENTITIES I through X, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon allege that each of the Defendants designated herein as DOE and ROE are responsible in some manner for the events and happenings referred to and caused damages proximately to Plaintiff as herein alleged, and that Plaintiff will seek leave of this Court to amend this Complaint to insert the true names and capacities of DOES I through X and ROE BUSINESS ENTITIES I through X, when the same have been ascertained, and to join such Defendants in this action.

GENERAL ALLEGATIONS

7. On and before August 27, 2016 RICHARD DUSLAK (“DUALSAK”) and JUSTIN SESMAN (“SESMAN”) were working for SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (“SUNRISE”) as maintenance personnel and also as landscapers.

8. That prior to August 27, 2016 SUNRISE employed DUSLAK and SESMAN to perform lawn care and maintenance duties for SUNRISE.

9. That during DUSLAK and SESMAN's employment with SUNRISE, SUNRISE exercised a high degree of control, if not complete control, over the manner in which DUSLAK and SESMAN's work was to be performed. That Exhibit "C" at page SVHA0000557 are minutes from the February 17, 2016 SUNRISE Board of Directors Meeting, wherein SUNRISE stated, "The Board reviewed the job descriptions as submitted by *employees* Richard Duslak and Justin Sesman. Secretary Morales [Secretary of SUNRISE] *volunteered to oversee the work performed on property by Mr. Duslak and Mr. Sesman* and will report to the Board regarding progress on maintenance projects. A motion was made by Treasurer Alexis seconded by Secretary Morales for the petty cash to not be maintained by the employees at this time." (Emphasis added). This shows that DUSLAK and SESMAN were in the service of SUNRISE, were compensated by SUNRISE, and that SUNRISE (via Secretary Morales) had, and exercised, the right to direct and control DUSLAK and SESMAN while DUSLAK and SESMAN performed duties for SUNRISE.

10. That DUSLAK and SESMAN, while working as employees for SUNRISE, did not have any opportunity for profit or loss depending on their managerial skill, and that DUSLAK and SESMAN were paid an hourly rate pursuant under their social security numbers for a wage.

11. That DUSLAK and SESMAN, while working as employees for SUNRISE, did not invest any of their own money in equipment or materials required for the tasks SUNRISE directed DUSLAK and SESMAN to perform, and that all such equipment and/or materials were purchased by and were the property of SUNRISE.

12. That DUSLAK and SESMAN, while working as employees for SUNRISE, did not have any ability to employ helpers.

13. That DUSLAK and SESMAN, while working as employees for SUNRISE, were not performing tasks that require any special skill.

14. That DUSLAK and SESMAN, while working as employees for SUNRISE, had a degree of permanence of the working relationship with SUNRISE as SUNRISE did not permit DUSLAK or SESMAN to work for anyone else other than SUNRISE.

15. That lawn care and maintenance is an integral part of SUNRISE's business as an HOA in that an HOA's primary duty is the maintenance of common areas, and that SUNRISE is required by its own CC&R's to maintain common areas and perform lawn care and maintenance.

16. That on March 2, 2018 SUNRISE answered an interrogatory by admitting SUNRISE "employed RICHARD DUSLAK and JUSTIN SESMAN for lawn maintenance repair and/or cleaning prior to September 2016. *See*, Exhibit "A".

17. That DUSLAK and SESMAN, while working as employees for SUNRISE, DUSLAK and SESMAN were paid pursuant to their social security numbers, and that neither DUSLAK or SESMAN possessed Tax ID numbers.

18. That DUSLAK and SESMAN, while working as employees for SUNRISE, were not required to have, and did not have, business licenses.

19. That DUSLAK and SESMAN, while working as employees for SUNRISE, DUSLAK and SESMAN were required to work specific hours each working day as demanded by SUNRISE.

20. On August 27, 2016 RUSSO was injured while on the property at SUNRISE. The injury was a result of the negligence of DUSLAK and SESMAN.

21. On April 6, 2017 RUSSO filed a lawsuit against SUNRISE claiming that SUNRISE, its maintenance personnel and/or landscapers, and other Defendants (including certain DOE and ROE Defendants) had created a hazard on the property of 4617 Madreperla in the SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION, which hazard caused harm to RUSSO. That initially SUNRISE stated that “J&G LAWN MAINTENANCE” handled the maintenance and landscaping at the time RUSSO was injured and, as a result, “J&G LAWN MAINTENANCE” was named as a defendant in the action.

22. That the Plaintiffs, and each of them, including QBE, issued policy number CAU234378-1, covering names insureds and “Covered Employees” as defined in the said policy, which policy insured SUNRISE, “Covered Employees” as defined in the said policy and by law, and others and covered SUNRISE, “Covered Employees”, and others for the losses RUSSO alleged he suffered in Case No. A-17-753606-C. *See* Exhibit “D”. That pursuant to the policy of insurance Defendants, and each of them, retained counsel to defend SUNRISE in Case No. A-17-753606-C.

23. At the time of the August 27, 2016 incident DUSLAK and SESMAN were employees, of SUNRISE and were contractually, legally, equitably, and/or otherwise insureds of the Plaintiffs, and each of them, including QBE.

24. At all times pertinent hereto the said policy of insurance was/were in full force and effect.

25. The incident of August 27, 2016, the aforesaid Case No. A-17-753606-C, and related claims were noticed upon and submitted to DUSLAK, SESMAN, SUNRISE, and QBE.

26. That during the litigation process in Case No. A-17-753606-C SUNRISE informed RUSSO that “J&G LAWN MAINTENANCE” had in fact not been handling maintenance or

landscaping for SUNRISE at the time RUSSO was injured, and that in fact DUSLAK and SESMAN were the ones who were handling maintenance and landscaping for SUNRISE at the time RUSSO was injured.

27. On November 29, 2017 RUSSO filed a motion in Case No. A-17-753606-C seeking to amend the Complaint in that matter to add additional defendants that had theretofore not been identified. 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 RUSSO was injured. At the time the Amended Complaint was filed QBE was actively defending SUNRISE in Case No. A-17-753606-C.

28. That the motion to Amend and the Amended Complaint were provided to QBE as they were provided to counsel for all parties in Case No. A-17-753606-C, which included counsel for SUNRISE which was in a tripartite relationship with SUNRISE and QBE.

29. On December 22, 2017 RUSSO filed a supplement to the motion to amend the complaint. *See* Exhibit “5”. The supplement specified that SUNRISE had indicated “J&G LAWN MAINTENANCE” was not handling landscaping and maintenance for SUNRISE at the time RUSSO was injured, and again sought leave to amend the complaint as set forth in the proposed amended complaint which identified DUSLAK and SESMAN as the actual individuals responsible for landscaping and maintenance at the SUNRISE property. *See*, Exhibit “E”. The proposed amended complaint was provided to QBE as it was provided to counsel for all parties in Case No. A-17-753606-C, which included counsel for SUNRISE which was in a tripartite relationship with SUNRISE and QBE.

30. On February 7, 2018 the Court in Case No. A-17-753606-C entered an Order permitting RUSSO to amend his Complaint and add DUSLAK and SESMAN as Defendants in Case No. A-17-753606-C. *See* Exhibit “F”. The Order was provided to QBE as it was provided to the parties in this action, including QBE via the tripartite relationship it had with its counsel in Case No. A-17-753606-C.

31. That the Amended Complaint in Case No. A-17-753606-C alleged, *inter alia*, negligence against DUSLAK and SESMAN. The amended complaint also 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 RUSSO was injured. At the time the Amended Complaint was filed QBE was actively defending SUNRISE in Case No. A-17-753606-C and was well aware of the Amended Complaint.

32. On February 14, 2018 RUSSO served DUSLAK with the Amended Complaint. On February 13, 2018 RUSSO served SESMAN with the Amended Complaint. Upon information and belief DUSLAK and SESMAN advised SUNRISE of the fact that they had been served. Additionally, as QBE had retained counsel who was actively defending SUNRISE in Case No. A-17-753606-C when the Complaint was amended to add DUSLAK and SESMAN as Defendants, which counsel had a tripartite relationship with SUNRISE and QBE, QBE was well aware of, and was on notice of, the fact that DUSLAK and SESMAN had been sued in Case No. A-17-753606-C at least as of February 14, 2018.

33. That QBE received constructive tender of the action against DUSLAK and SESMAN, Case No. A-17-753606-C. *See, California Shoppers. Inc., v. Royal Globe Ins. Co.*, 175 Cal.App.3d 1, 799 P.2d 1360 (1985); *Millennium Labs., Inc. v. Darwin Select Ins. Co.*, 2014

U.S. Dist. LEXIS 170439 (S.D. Cal. Dec. 9, 2014); *Dearborn Ins. Co. v. International Surplus Lines Ins. Co.*, No. 1-97-0724, 1999 Ill. App. LEXIS 667 (Ill. Ct. App. Sept. 23, 1999); *Gray v. Zurich Ins. Co.*, 65 Cal. 2d 263, 276; *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)).

34. That when QBE became aware of the action against DUSLAK and SESMAN, Case No. A-17-753606-C, QBE was on inquiry notice to investigate the issue of coverage, and failed to do so.

35. That “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, 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)). That when QBE became aware of the Amended Complaint in Case No. A-17-753606-C, QBE ascertained (and reasonably should have ascertained) facts giving rise to the potential of liability under the policy covering DUSLAK and SESMAN. That when QBE became aware of the Amended Complaint in Case No. A-17-753606-C, had QBE performed an investigation it would have ascertained (and reasonably should have ascertained) facts giving rise to the potential of liability under the policy covering DUSLAK and SESMAN.

36. That QBE did not defend nor investigate its duty to defend DUSLAK and/or SESMAN.

37. That “the duty to defend arises when there is a potential for coverage based on the allegations in a complaint.” *See, United Nat’l Ins. Co. v. Frontier Ins. Co., Inc.*, 120 Nev. 678, 684 (2004). That when QBE received the Amended Complaint in Case No. A-17-753606-C,

QBE was aware there was a potential for coverage based on the allegations against DUSLAK and SESMAN in the said Amended Complaint.

38. That the Nevada Supreme Court has held that “where there is potential for coverage based on ‘comparing the allegations of the complaint with the terms of the policy,’ an insurer does have a duty to defend.” *See, Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d 180 (2018).

39. That in *United Nat’l Ins. Co. v. Frontier Ins. Co., Inc.*, 120 Nev. 678, 684 (2004) the Nevada Supreme Court held that an insurer’s duty to defend is triggered when allegations of a complaint, or “other evidence”, suggest that there is a potential for coverage. That on March 2, 2018 SUNRISE answered an interrogatory by stating SUNRISE “employed Richard Duslak and Justin Sesman for lawn maintenance repair and/or cleaning prior to Setpember 2016.” *See* Exhibit “A” at P. 7 L. 8-9. That when SUNRISE provided evidence that DUSLAK and SESMAN were employed by SUNRISE, such evidence triggered QBE’s duty to defend DUSLAK and SESMAN, and certainly triggered QBE’s duty to investigate whether it had a duty to defend.

40. That under the insurance contract with SUNRISE, QBE was obligated to defend and indemnify any “Covered Employee” of SUNRISE as defined by the insurance policy with SUNRISE. *See* Exhibit “D”. The said policy defines a “Covered Employee” as:

(a) Any natural person:

- (1) While in your service (and for 30 days after termination of service);
and
- (2) Whom you compensate directly by salary, wages or commissions; and
- (3) Whom you have the right to direct and control while performing services for you.

See Exhibit “D” at P. SVHA 000018.

41. That on August 27, 2016 DUSLAK and SESMAN were natural people who were in the service of SUNRISE, whom SUNRISE compensated directly by salary, wages, or commissions, and whom SUNRISE had the right to direct and control while DUSLAK and SESMAN performed duties for SUNRISE. *See* Exhibit “C”. That DUSLAK and SESMAN were parties to a contract of insurance with Defendants, and each of them, including QBE and/or were an intended beneficiaries to the same. The said contract carried liability coverage for losses such as those suffered by RUSSO.

42. That Exhibit “C” at page SVHA0000557 are minutes from the February 17, 2016 SUNRISE Board of Directors Meeting, wherein SUNRISE stated, “The Board reviewed the job descriptions as submitted by employees Richard Duslak and Justin Sesman. Secretary Morales [Secretary of SUNRISE] volunteered to oversee the work performed on property by Mr. Duslak and Mr. Sesman and will report to the Board regarding progress on maintenance projects. A motion was made by Treasurer Alexis seconded by Secretary Morales for the petty cash to not be maintained by the employees at this time.” This shows that DUSLAK and SESMAN were in the service of SUNRISE, were compensated by SUNRISE, and that SUNRISE (via Secretary Morales) had, and exercised, the right to direct and control DUSLAK and SESMAN while DUSLAK and SESMAN performed duties for SUNRISE.

43. That Exhibit “C” at page SVHA0000559 are minutes from the July 18, 2016 SUNRISE Board of Directors Meeting, wherein SUNRISE stated under the heading Richard, “the board unanimously agreed to terminate the petty cash for Richard they agreed to give him \$66.00 a month for his cell phone bill.” This shows SUNRISE compensated DUSLAK in addition to providing DUSLAK with compensation in the form of wages, salary, and/or commission.

44. That Exhibit “C” at page SVHA0000561 are minutes from the September 8, 2016 SUNRISE Board of Directors Meeting, wherein SUNRISE stated under the hearing Richard Duslak, “Board unanimously agreed to terminate the position of a onsite maintenance/poll man the board is in agreement that there is no longer a need for this position therefore they are all in agreement to terminate Mr. Duslak.” This shows was employed by SUNRISE on August 27, 2016 and that SUNRISE did not terminate his position, or him as a SUNRISE employee until at least September 8, 2016, which was after August 27, 2016 when RUSSO was injured.

45. That Exhibit “C” at page SVHA0000564 are minutes from the November 16, 2015 SUNRISE Board of Directors Meeting, wherein SUNRISE stated, “It was the consensus of the Board that Richard Dulkas (sic), Justin, and Carson has provided valuable service to the community. The Board agreed to holiday gratuity for \$300 to Richard, \$300 for Carson, and \$100 for Justin and directed the manager to process payment for holiday gratuity through Covenant.” This shows SUNRISE compensated DUSLAK and SESMAN in addition to providing DUSLAK and SESMAN with compensation in the form of wages, salary, and/or commission.

46. That Exhibit “C” at page SVHA0000566 is a record of SUNRISE paying \$100.00 to SESMAN for “Holiday gratuity”. This shows SUNRISE compensated SESMAN in addition to providing SESMAN with compensation in the form of wages, salary, and/or commission.

47. That QBE, having been notified that RUSSO had filed an action against SUNRISE, DUSLAK, and SESMAN in Case No. A-17-753606-C, and given DUSLAK and SESMAN qualified as “Covered Employees” of SUNRISE under Policy No. CAU234378-1, QBE had duty to defend DUSLAK and SESMAN and to at least investigate whether DUSLAK and/or SESMAN were entitled to coverage under Policy No. CAU234378-1, QBE refused to do so.

48. That QBE Defended SUNRISE in Case No. A-17-753606-C, yet, despite having a duty to defend DUSLAK and SESMAN against RUSSO's claim, and despite having knowledge that RUSSO's claim was proceeding against SUNRISE, DUSLAK, and SESMAN, never took any steps to defend or indemnify DUSLAK or SESMAN in Case No. A-17-753606-C.

49. That because QBE never took any steps to defend or indemnify DUSLAK or SESMAN in Case No. A-17-753606-C, the Court entered defaults against DUSLAK and SESMAN in Case No. A-17-753606-C.

50. That in entering a settlement release with RUSSO, QBE and SUNRISE agreed that any settlement would specifically exclude DUSLAK and SESMAN, and anyone associated or affiliated with them. *See*, Exhibit "B" at p. 1. The settlement release included SUNRISE employees, except for DUSLAK and SESMAN or anyone associated or affiliated with them. *Id* at P. 4. The settlement release also specifically stated that, "Nothing in the relase 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". *Id* at P. 4. The release further stated that any language in the release that would be read to in any way impact the rights of DUSLAK and/or SESMAN against any entity (including any insurer) "SHALL BE DEEMED NULL AND VOID." *Id*.

51. That QBE and SUNRISE attempted to undermine rights held by DUSLAK and SESMAN by asking RUSSO to stipulate that DUSLAK and SESMAN were "independent contractors". *Id*. That any stipulation in the release between SUNRISE, QBE, and RUSSO does not impact the rights of DUSLAK and/or SESMAN to coverage as neither QBE, SUNRISE, not RUSSO have any authority to stipulate or otherwise act in any manner to impact the rights of DUSLAK and/or SESMAN to coverage from QBE. Further as the release

specifically stated that any language in the release that would be read to in any way impact the rights of DUSLAK and/or SESMAN against any entity (including any insurer) “SHALL BE DEEMED NULL AND VOID”, any language from the release QBE may now attempt to utilize to impact the rights of DUSLAK and/or SESMAN to coverage are, by virtue of the release itself, null and void. Also, in *Real v. Driscoll Strawberry Assocs., Inc.*, 603 F.2d 748, 755 (9th Cir, 1979) the Ninth Circuit held that, “economic realities, not contractual labels, determine employment status”. (citing *Rutherford Food Corp. v. McComb*, *supra*, 331 U.S. at 729, 67 S.Ct. 1473; *Usery v. Pilgrim Equipment Co.*, 527 F.2d 1308, 1315 (1976).

52. That on September 18, 2019 counsel for RUSSO faxed a letter to QBE (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 “G”.

53. That as no time did QBE contact the office of counsel for RUSSO, nor did QBE at any time deny having received prior notice that Case No. A-17-753606-C included claims against its insureds and “Covered Employees” DUSLAK and SESMAN.

54. At no time did QBE submit, notice, and/or otherwise direct said claim and/or action to any further policy of insurance providing coverage for the same and, in particular, did not submit, notice, and/or direct the same to the attention and consideration of any other policies of general liability insurance.

55. The aforesaid legal action (Case No. A-17-753606-C) against SUNRISE and others was initially defended by QBE under policy number CAU234378-1, through the association of and payment of a defense firm, Springel & Fink.

56. That at no time did QBE defend DUSLAK or SESMAN in Case No. A-17-753606-C, even after being given specific notice that the action was pending against DUSLAK and SESMAN, and even after being notified that defaults had been taken against DUSLAK and SESMAN.

57. The QBE failed to offer, suggest, and/or provide independent *Cumis* counsel to advise DUSLAK and/or SESMAN as to the failure to defend them in Case No. A-17-753606-C, and/or indemnity, or pertinent pleadings and Orders before and by the Court, and of any related matters.

58. That because QBE did not defend DUSLAK or SESMAN despite being aware of the lawsuit, and being aware that default had been taken against QBE's insureds, on December 17, 2019 the court in Case No. A-17-753606-C 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, and that Notice of Entry of the said Judgment was filed on December 17, 2019.

59. That the conduct of Defendants, and each of them, including QBE, in not defending DUSLAK and SESMAN constituted a breach of the duty to defend under the insurance contract that covered DUSLAK and SESMAN as "Covered Employees."

60. That under *Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d 180 (2018) an insurer is liable for all consequential damages arising out of any breach of the duty to defend an insured. Additionally, "an insurer's liability for the breach of the duty to defend is not capped at the policy limits, even in the absence of bad faith." The Nevada Supreme Court subsequently

reiterated that the reasonableness of an insurer's refusal to defend "is irrelevant for determining damages upon a breach of the duty to defend." *Nalder v. United Auto Ins. Co.*, No. 70504, 2019 WL 5260073.

FIRST CAUSE OF ACTION

RUSSO realleges and reasserts each and every statement and allegation contained in the preceding paragraphs as though set forth fully hereunder.

61. At all times pertinent hereto, QBE had a contractual duty to defend and indemnify DUSLAK and/or SESMAN regarding certain claims for negligence and resulting injuries caused by them to include, but not limited to, those brought by RUSSO in District Court Case number A-17-753606-C.
62. The failure of QBE to reasonably and continuously defend and/or indemnify DUSLAK and/or SESMAN under said policy insurance coverage and/or other policies of insurance actually and/or potentially affording coverage to DUSLAK and/or SESMAN as alleged herein constitutes a breach of contract on the part of QBE under the terms and conditions as the policies set forth.
63. That as a direct and proximate result of the aforesaid breaches of contract on the part of DUSLAK and SESMAN have been damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000.00) and are entitled to monies sufficient to satisfy RUSSO's Judgment against them in the amount of \$25,000,000.00 plus all interest, which money is due and owing to RUSSO.
64. DUSLAK and/or SESMAN have satisfied the terms of the contract with QBE and have done everything they are required to do under the insurance policy.

65. That the conduct of QBE in refusing to defend DUSLAK and/or SESMAN for the action brought by RUSSO constituted a breach of the duty to defend.
66. The conduct of QBE alleged in the foregoing paragraphs constitutes a breach of the insurance contract.
67. As a result of the breach by Defendant of the contract, Judgment has been entered against DUSLAK and/or SESMAN in the amount of \$25,000,000.00 with statutory interest accruing thereon, and that RUSSO is entitled to recover funds from DUSLAK and SESMAN in an amount sufficient to satisfy the Judgment of \$25,000,000.00 with statutory interest accruing thereon, which money is due and owing to RUSSO.
68. That RUSSO as a named Defendant in the Declaratory Relief Action has been required to obtain the services of an attorney to prosecute this claim and is therefore entitled to their costs and reasonable attorney's fees incurred.

SECOND CAUSE OF ACTION

69. RUSSO realleges and reasserts each and every statement and allegation contained in the preceding paragraphs as though set forth fully hereunder.
70. The express and/or implied insurance agreement between QBE and DUSLAK and/or SESMAN carries with it a fiduciary duty.
71. The contract of insurance as alleged herein carries with it a fiduciary duty.
72. QBE breached the fiduciary duty by the acts and omissions alleged herein.
73. That as a direct and proximate result of the aforesaid breach of fiduciary duty on the part of QBE, DUSLAK and SESMAN, have been damaged, and that RUSSO is entitled to recover funds from DUSLAK and SESMAN in an amount sufficient to satisfy the

Judgment of \$25,000,000.00 with statutory interest accruing thereon, which money is due and owing to RUSSO.

THIRD CAUSE OF ACTION

74. RUSSO realleges and reasserts each and every statement and allegation contained in the preceding paragraphs as though set forth fully hereunder.
75. QBE is subject to various statutes of the State of Nevada regarding its business practices including, but not limited to, the Nevada Unfair Claims Practices Act.
76. QBE violated numerous aspects of the above mentioned Nevada Unfair Claims Practices Act, including, but not limited to, NRS 686A.310(1)(a-o).
77. That as a direct and proximate result of the aforesaid violations of Nevada statutes on the part of QBE, DUSLAK and SESMAN, have been damaged, and that RUSSO is entitled to recover funds from DUSLAK and SESMAN in an amount sufficient to satisfy the Judgment of \$25,000,000.00 with statutory interest accruing thereon, which money is due and owing to RUSSO.

FOURTH CAUSE OF ACTION

78. RUSSO realleges and reasserts each and every statement and allegation contained in the preceding paragraphs as though set forth fully hereunder.
79. That at all times pertinent hereto QBE undertook to provide insurance coverage, defense, and indemnity of SUNRISE, giving the reasonable and foreseeable expectation to DUSMAN and/or SESLAK that that they were and would be covered, defended, and/or indemnified with respect to the claims and actions against them, but then unilaterally and unreasonably denied coverage, defense, and indemnification to DUSLAK and/or SESMAN.

80. The aforesaid acts and omissions on the part of QBE creates in equity and/or law a promise and agreement by QBE to cover, defend, and/or indemnify DUSLAK and/or SESMAN regarding the aforesaid claims and actions against them, requiring that QBE be estopped from denying and refusing such coverage, defense, and indemnification, and that QBE be mandated and judicially compelled to cover, defend, and/or indemnify DUSLAK and/or SESMAN including, but not limited to, paying any and all damages assessed against DUSLAK and/or SESMAN, made and/or reduced to judgment in favor of RUSSO and against DUSLAK and/or SESMAN, and/or otherwise imposed against DUSLAK and/or SESMAN as related hereto, all in an amount entitling DUSLAK and SESMAN to monetary damages in excess of Fifteen Thousand Dollars (\$15,000.00) and equitable relief to include, but not limited to, Estoppel and/or Mandamus as this honorable court sees just under the premises, and Declaratory Relief in the form of an Order, Judgment, and/or directive otherwise that QBE is liable to DUSLAK, SESMAN, and RUSSO for the full amount of the aforesaid Judgment with all applicable interest entered against DUSLAK and/or SESMAN, interest thereon, incidental and consequential damages, and general and special damages.

WHEREFORE, Plaintiff RUSSO prays for judgment against the QBE as follows:

ON ALL CAUSES OF ACTION

1. That DUSLAK and SESMAN recover general damages in an amount in excess of \$25,000,000.00, which money is due and owing to RUSSO;
2. That DUSLAK and SESMAN recover general damages in an amount in excess of \$15,000.00, which money is due and owing to RUSSO.;

3. For DUSLAK and SESMAN to recover special damages in an amount to be determined at trial, which money is due and owing to RUSSO;
4. For declaratory and equitable relief as pled and as the court sees fit in the premises;
5. Costs of this suit;
6. Attorney's fees; and
7. For such other and further relief as to the Court may seem just and proper in the premises.

DATED THIS 22nd day of December, 2020.

THE LAW OFFICE OF DAVID SAMPSON, LLC.

By: /s/ *David Sampson*

David Sampson, Esq.
Nevada Bar No. 6811
630 South 3rd Street
Las Vegas, NV 89101
Tel: (702) 605-1099
Fax: (888) 209-4199
Email: David@davidsampsonlaw.com
Attorney for RUSSO

Exhibit 3

1 DAVID F. SAMPSON, ESQ.
2 Nevada Bar No. 6811
3 THE LAW OFFICE OF DAVID SAMPSON, LLC.
4 630 South 3rd Street
5 Las Vegas, NV 89101
6 Tel: (702) 605-1099
7 Fax: (888) 209-4199
8 david@davidsampsonlaw.com
9 Attorneys for Defendant SIMONE RUSSO

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 QBE INSURANCE CORPORATION

10 Plaintiff,

11 vs.

12 SIMONE RUSSO, RICHARD DUSLAK and JUSTIN
13 SESMAN

14 Defendants.
15

Case No. 2:20-cv-02104-RFB-EJY

**SIMONE RUSSO'S ANSWER TO
PLAINTIFF'S AMENDED
COMPLAINT FOR DECLARATORY
RELIEF AND AMENDED
COUNTERCLAIM**

16 **ANSWER**

17 Defendant SIMONE RUSSO ("RUSSO") by and through his counsel of record DAVID
18 SAMPSON, ESQ., of THE LAW OFFICE OF DAVID SAMPSON, LLC., hereby answers
19 Plaintiff's Complaint for Declaratory Relief (ECF 1) as follows:
20

21 **PARTIES**

- 22 1. Answering paragraph 1 of the complaint, RUSSO does not have sufficient knowledge or
23 information upon which to base a belief as to the truth of the allegations that QBE
24 existed under the laws of Pennsylvania and, on that basis, denies the said allegation
25 contained therein. RUSSO admits that QBE was an insurance company eligible to do
26
27
28

1 business as an insurer in the State of Nevada. RUSSO admits the remaining allegations
2 in paragraph 1.

3 2. Answering paragraph 2 of the complaint, RUSSO admits the allegations contained
4 therein.

5 3. Answering paragraph 3 of the complaint, RUSSO does not have sufficient knowledge or
6 information upon which to base a belief as to the truth of the allegations that DUSLAK
7 was and is a resident of Clark County Nevada and, on that basis, denies the said
8 allegation contained therein. RUSSO denies any remaining allegations in paragraph 3.

9 4. Answering paragraph 4 of the complaint, RUSSO does not have sufficient knowledge or
10 information upon which to base a belief as to the truth of the allegations that SESMAN
11 was and is a resident of Clark County Nevada and, on that basis, denies the said
12 allegation contained therein. RUSSO denies any remaining allegations in paragraph 4.

13
14
15 **JURISDICTION AND VENUE**

16 5. Answering paragraph 5 of the complaint, RUSSO admits the allegations contained
17 therein.

18 6. Answering paragraph 6 of the complaint, RUSSO denies that he, DUSLAK, and or
19 SESMAN were “doing business in Nevada”. RUSSO also states he does not have
20 sufficient information to admit or deny that DUSLAK and/or SESMAN were at all
21 relevant times residents of Nevada, and therefore denies the same. RUSSO admits the
22 remaining allegations contained in paragraph 6.

23
24
25 **GENERAL ALLEGATIONS**

26 7. Answering paragraph 7 of the complaint, RUSSO admits that it is his understanding and
27 contention that the language in the subject QBE insurance policy covering SUNRISE
28

1 VILLAS IV HOA ("SUNRISE"), and the law regarding insurance policies, includes
2 DUSLAK and SESMAN as covered insureds under the said QBE policy. RUSSO is
3 without sufficient information to admit or deny the remaining allegations in paragraph 7
4 and therefore denies the same.

5
6 8. Answering paragraph 8 of the complaint, RUSSO admits that he filed a complaint
7 against SUNRISE and others alleging that a cable wire that was part of the SUNRISE
8 common area, and was the duty of SUNRISE and its employees, among others, to
9 maintain, was negligently maintained and caused RUSSO injuries. RUSSO admits that
10 DUSLAK and SESMAN were not named in the original complaint as SUNRISE initially
11 advised RUSSO that J&G Lawn Maintenance was handling lawn care and maintenance
12 for SUNRISE at the time RUSSO was hurt. RUSSO denies Plaintiff's claim that the
13 initial complaint included "no alleged connection" between J&G Lawn Maintenance and
14 SUNRISE. RUSSO denies any remaining allegations contained in paragraph 8.

15
16 9. Answering paragraph 9 of the complaint, RUSSO admits that some time prior to
17 November 29, 2017 SUNRISE advised RUSSO that J&G Lawn Maintenance was
18 actually not providing lawn and maintenance care for SUNRISE in August 2016, and
19 that J&G Lawn Maintenance did not start providing such services until September 2016.
20 RUSSO denies that any imputed motives to RUSSO contained in this paragraph, and
21 specifically denies that he requested to amend the complaint "because the original J&G
22 Landscape defendant did not contract with SUNRISE VILLAS HOA" as RUSSO admits
23 that RUSSO has been informed by SUNRISE that the alleged contract between J&G and
24 SUNRISE did not begin until September 2016. RUSSO further admits that at some
25 point in late 2017 or early 2018 SUNRISE advised RUSSO that DUSLAK and
26
27
28

1 SESMAN were the individuals who were actually performing lawn care and
2 maintenance services in the SUNRISE HOA in August 2016. RUSSO admits he moved
3 to amend his complaint to replace “Doe Landscaper” defendants because SUNRISE had
4 advised RUSSO that J&G Lawn Maintenance was not SUNRISE’s landscaper at the
5 time RUSSO was injured, but that DUSLAK and SESMAN were SUNRISE’s
6 landscapers in August 2016. RUSSO denies any remaining allegations contained in
7 paragraph 9.
8

9 10. Answering paragraph 10 of the complaint, RUSSO admits that the underlying Complaint
10 (Plaintiff’s Exhibit “3”) speaks for itself. RUSSO further admits that in late 2017 or
11 early 2018 SUNRISE advised RUSSO that DUSLAK and SESMAN were the
12 individuals who were actually performing lawn care and maintenance services in the
13 SUNRISE HOA in August 2016 and that because of SUNRISE’s admission that
14 DUSLAK and SESMAN were performing the said duties at SUNRISE, Russo amended
15 the complaint to add DUSLAK and SESMAN as Defendants. RUSSO admits that his
16 complaint alleged DUSLAK and SESMAN “maintained and controlled” and performed
17 lawn and maintenance duties at and for SUNRISE. RUSSO denies ever naming
18 DUSLAK and/or SESMAN as “landscaping contractors” in any complaint. *See*, Exhibit
19 3 to QBE’s Complaint in this matter. RUSSO further admits that on March 2, 2018
20 SUNRISE answered an interrogatory in the underlying action in which SUNRISE stated,
21 “SUNRISE VILLAS believes it employed Richard Duslak and Justin Sesman for lawn
22 maintenance repair and/or cleaning prior to September 2016 . . .”. *See* Exhibit “A” at P.
23 7 L. 8-9. Russo denies any remaining allegations contained in paragraph 10.
24
25
26
27
28

1 11. Answering paragraph 11 of the complaint, RUSSO admits QBE issued a policy of
2 insurance to SUNRISE and that QBE provided SUNRISE with a defense in the
3 underlying action. RUSSO is without sufficient information to admit or deny any
4 allegations regarding CAU's relationship with QBE and therefore denies the same.
5 Russo denies the remainder of the allegations in paragraph 11 and further specifically
6 denies that RUSSO settled with SUNRISE "for a full and complete release" as the
7 release specifically excluded DUSLAK and SESMAN or anyone associated or affiliated
8 with them including any actual or potential insurer. *See*, Exhibit "B".
9

10 12. Answering paragraph 12 of the complaint, RUSSO denies the allegations contained
11 therein. It is RUSSO's understanding and belief that DUSLAK and SESMAN contacted
12 SUNRISE about the underlying action when DUSLAK and SESMAN were served with
13 the same, and that SUNRISE advised it had given the matter to SUNRISE's insurance
14 carrier, and that the carrier was "taking care of it".
15

16 13. Answering paragraph 13 of the complaint, RUSSO denies the allegations contained
17 therein. It is RUSSO's understanding and belief that DUSLAK and SESMAN have
18 always claimed to be employees of SUNRISE and thus covered by any policy(ies) of
19 insurance SUNRISE had that covered itself and/or its employees, which is consistent
20 with what SUNRISE stated in its interrogatory answer in the underlying matter when
21 SUNRISE said it "employed" DUSLAK and SESMAN. *See*, Exhibit "A".
22

23 14. Answering paragraph 14 of the complaint, RUSSO admits that the document contained
24 in Exhibit "4" to the Amended Complaint speaks for itself. RUSSO further admits that
25 the agreement between the parties specifically excluded DUSLAK and SESMAN and
26 made it more than clear that DUSLAK and SESMAN were not a part of any settlement
27
28

1 agreement, that RUSSO had every right to continue his action and seek a Judgment
2 against DUSLAK and SESMAN, and that any language in the settlement agreement that
3 could be read to impact DUSLAK and SESMAN's rights to coverage under any
4 applicable insurance (including insurance procured through SUNRISE) was deemed null
5 and void. *See*, Exhibit "4" to the amended complaint. RUSSO denies any and all
6 remaining allegations in paragraph 14 and specifically denies Plaintiff's attempts to
7 know and/or understand what RUSSO's understanding was regarding any issue.
8

9 15. Answering paragraph 15 of the complaint RUSSO admits the allegations contained
10 therein. RUSSO further admits that, as QBE did not defend DUSLAK or SESMAN, the
11 court heard evidence in the underlying action and the judge determined that based on
12 that evidence a judgment should be entered in that matter against DUSLAK and
13 SESMAN in the amount of \$25,000,000.00.
14

15 16. Answering paragraph 16 of the complaint, RUSSO admits he filed, and later withdrew, a
16 motion for judicial assignment. RUSSO denies the remaining allegations contained in
17 paragraph 15, and specifically denies that November 2, 2020 was "the first time"
18 RUSSO claimed DUSLAK and SESMAN were insured by QBE. RUSSO also
19 specifically denies that he withdrew the motion for assignment because QBE sought to
20 oppose the same. RUSSO admits that the November 4, 2020 letter referenced in
21 paragraph 16 speaks for itself.
22

23 17. Answering paragraph 17 of the complaint RUSSO admits that the November 6, 2020
24 email referenced in paragraph 17 speaks for itself. RUSSO admits that the email from
25 counsel for QBE stated:
26

27 Dear Mr. Sampson:
28

1 I represent the Sunrise Villa's insurance carrier, QBE. The insurer has no
2 record of policies issued to Justin Sesman or Richard Duslak? What is the
3 reason for your demand letter to the insurer? Do you have a copy of a
4 tender from Justin Sesman and/or Richard Duslak? Do you now represent
5 Justin Sesman and/or Richard Duslak?

6 The insurer reserves all rights and waives none.

7 Thank you.

8 RUSSO admits the email did not ask RUSSO to "explain the basis for demanding
9 payment of the judgment". RUSSO further denies the remaining allegations in
10 paragraph 17.

11 18. Answering paragraph 18 of the complaint, RUSSO admits that there were no less than
12 eight (8) emails sent between counsel for RUSSO and counsel for QBE on November
13 17, 2020, and that the said emails speak for themselves. RUSSO further admits that
14 when counsel for QBE sent one of the November 17, 2020 emails, wherein counsel for
15 QBE asked, "Why are they insured?", RUSSO's counsel (who did not understand QBE's
16 counsel's question as seeking an exhaustive explanation of any and all basis for any
17 assertion that DUSLAK and/or SESMAN were insureds) responded as follows:

18 The policy defines "Covered Employee" as any natural person while in the
19 service of Sunrise and whom Sunrise compensates and whom Sunrise has
20 the right to control.

21 Both Duslak and Sesman are natural people who in August 2016 where in
22 the service of Sunrise (Board meeting minutes from Sunrise state that
23 Duslak and Sesman were hired in November 2015 and were not terminated
24 until September 2016), where compensated by Sunrise, and whom Sunrise
25 had the right to control (Board meeting minutes from Sunrise state that the
26 Secretary of the Sunrise "Morales" will oversee the work performed by
27 Duslak and Sesman).

28 Why would they not qualify as covered employees under the contract?

Thank you

1 RUSSO also admits that it appears QBE and SUNRISE did not provide RUSSO with a
2 full copy of the QBE policy before asking RUSSO's counsel "Why are they insured?"
3 RUSSO denies any and all remaining allegations in paragraph 18.
4

5 19. Answering paragraph 19 of the complaint RUSSO denies the allegations contained
6 therein.

7 20. Answering paragraph 20 of the complaint RUSSO denies the allegations contained
8 therein.
9

10 21. Answering paragraph 21 of the complaint RUSSO admits that his December 9, 2020
11 letter speaks for itself. RUSSO denies that he "altered" his argument. RUSSO admits
12 that the settlement agreement specifically excluded DUSLAK and SESMAN and made it
13 more than clear that DUSLAK and SESMAN were not a part of any settlement
14 agreement, that RUSSO had every right to continue his action and seek a Judgment
15 against DUSLAK and SESMAN, and that any language in the settlement agreement that
16 could be read to impact the rights of DUSLAK and/or SESMAN rights to coverage
17 under any applicable insurance (including insurance procured through SUNRISE) was
18 deemed null and void. RUSSO denies that "the Stipulation was unenforceable" if any
19 language contained therein could impact the rights of DUSLAK and/or SESMAN to
20 coverage as the agreement states that in the event such language exists that the said
21 language is deemed null and void, not that the stipulation or settlement agreement would
22 be unenforceable. RUSSO also admits that the settlement agreement specifically states
23 that if language therein is deemed invalid the said language is deemed severed and
24 deleted from the agreement and the agreement as a whole shall not be affected. RUSSO
25 also denies that December 9, 2020 was the first time he contended DUSLAK and
26
27
28

1 SESMAN were employees of SUNRISE. RUSSO denies the any remaining allegations
2 contained in paragraph 21.

3 22. Answering paragraph 22 of the complaint, RUSSO does not have sufficient knowledge
4 or information upon which to base a belief as to the truth of the allegations contained in
5 this paragraph, particularly any claims about what QBE believes and, on that basis,
6 denies the allegations contained therein.
7

8 23. Answering paragraph 23 of the complaint RUSSO admits that he has alleged and
9 continues to allege that QBE owed DUSLAK and SESMAN a duty of defense and
10 indemnification, fiduciary duties, and a duty of good faith and fair dealing in connection
11 with the underlying action. RUSSO also admits that he understands and believes that
12 QBE breached those duties and that DUSLAK and SESMAN have actionable claims
13 against QBE. RUSSO denies any remaining allegations contained in paragraph 23 as
14 RUSSO does not possess any claims owned by DUSLAK and/or SESMAN as no
15 assignment has occurred.
16
17

18 24. Answering paragraph 24 of the complaint RUSSO does not have sufficient knowledge as
19 to what QBE believes and therefore denies the allegations contained in paragraph 24.
20 RUSSO understands and believes that, as he is not a party or intended beneficiary to the
21 QBE insurance contract, he has no basis or grounds himself to recover directly against
22 QBE under the contract.
23

24 25. Paragraph 25 of the complaint incorporates the preceding paragraphs in the complaint
25 which does not require any admissions or denials by RUSSO. To the extent this
26 paragraph could be construed as calling for a response RUSSO denies all allegations
27 contained therein.
28

1 26. Answering paragraph 26 of the complaint, RUSSO admits he believes and alleges that
2 DUSLAK and SESMAN have claims against Plaintiff, that Plaintiff owed DUSLAK and
3 SESMAN a duty to defend and indemnify DUSLAK and SESMAN in connection with
4 the underlying action, that Plaintiff owed additional duties to DUSLAK and SESMAN,
5 and that DUSLAK and SESMAN are entitled to any and all damages arising as a
6 consequence of QBE's breaches of any of those duties, which damages would include,
7 but are not limited to, monies necessary to satisfy the judgment entered in favor of
8 RUSSO against DUSLAK and SESMAN. *See, Century Surety v. Andrew*, 134
9 Nev.Adv.Op. 100, 432 P.3d 180 (2018). RUSSO further admits that he is entitled to
10 recover funds from DUSLAK and SESMAN to satisfy the judgment in the underlying
11 matter, and that DUSLAK and SESMAN are entitled to recover said funds from
12 Plaintiff. RUSSO denies the remainder of the allegations in paragraph 26.
13
14

15 27. Answering paragraph 22 of the complaint, RUSSO denies the allegations contained
16 therein. RUSSO does admit it is his understanding and belief that, as he is not a party or
17 intended beneficiary to the QBE insurance contract, he has no basis or grounds himself
18 to recover directly against QBE, and that DUSLAK and SESMAN would have the right
19 to any and all damages arising as a consequence of QBE's breaches, including monies
20 necessary to satisfy the Judgment entered in favor of RUSSO against DUSLAK and
21 SESMAN. *See, Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d 180 (2018).
22 RUSSO denies the remainder of the allegations in paragraph 27.
23
24

25 28. Answering paragraph 25 of the complaint, RUSSO does not have sufficient knowledge
26 or information upon which to base a belief as to the truth of the allegations contain in
27 this paragraph and, on that basis, denies the allegations contained therein. RUSSO
28

1 admits it is his understanding and belief that a controversy exists between QBE and
2 Defendants DUSLAK, and SESMAN. RUSSO understands that under Nevada law he is
3 not a party or an intended beneficiary of the subject insurance policy. RUSSO denies the
4 remainder of the allegations in paragraph 28.

5
6 29. Answering paragraph 29 of the complaint, RUSSO does not have sufficient knowledge
7 or information upon which to base a belief as to the truth of the allegations contained in
8 this paragraph and, on that basis, denies the allegations contained therein. RUSSO
9 admits it is his understanding and belief that a controversy exists between QBE and
10 Defendants DUSLAK and SESMAN. RUSSO understands that under Nevada law he is
11 not a party or an intended beneficiary of the subject insurance policy. RUSSO denies
12 the remainder of the allegations in paragraph 29.

13
14 30. Plaintiff's prayer for relief immediately following paragraph 30 of the complaint does
15 not contain any factual allegations that would require a response from RUSSO. To the
16 extent the prayer for relief could be construed as calling for a response, RUSSO denies
17 that Plaintiff is entitled to the relief requested therein.

18
19 **AFFIRMATIVE AND OTHER DEFENSES**

20 RUSSO asserts the following affirmative defenses to plaintiff's complaint.

21 **FIRST DEFENSE**

22 The complaint, and each and every cause of action thereof, fails to state a claim upon
23 which relief can be granted.

24
25 **SECOND DEFENSE**

26 Plaintiff failed to take reasonable steps to avoid the damages, if any, alleged in the
27 complaint, and each and every cause of action contained therein.

THIRD DEFENSE

Any damages sustained by plaintiff by reason of the events alleged in the complaint were proximately caused or contributed to by plaintiff's own breach of the subject insurance contract.

FOURTH DEFENSE

Plaintiff has engaged in acts, omissions and conduct that constitute a breach of Plaintiff's obligations under the subject policy.

FIFTH DEFENSE

Plaintiff has unclean hands in failing and refusing to defend DUSLAK and SESMAN and attempting to undermine the rights DUSLAK and SESMAN have to coverage.

SIXTH DEFENSE

QBE's handling of Plaintiff's claim was not correct, was not proper and was not reasonable under the terms of the subject policy.

SEVENTH DEFENSE

At all times and places relevant hereto, QBE failed to act in good faith, and acted without with justification or probable cause and with malice toward its insureds.

EIGHTH DEFENSE

QBE's actions at all times failed to comply with NRS 686A.310.

NINTH DEFENSE

QBE's conduct was malicious, oppressive and/or fraudulent pursuant to NRS 42.010.

TENTH DEFENSE

Plaintiff's cause of action is barred by the doctrine of waiver.

ELEVENTH DEFENSE

1 Plaintiff's action is barred by the doctrine of estoppel.

2 **TWELFTH DEFENSE**

3 Plaintiff's conduct waived the relief prayed for in the complaint.

4 **THIRTEENTH DEFENSE**

5 Plaintiff failed to properly and fully mitigate, minimize or avoid damages to itself and its
6 insureds.

7 **FOURTEENTH DEFENSE**

8 Plaintiff is not entitled to attorney's fees pursuant to any of the claims alleged in the
9 complaint.

10 **EIGHTEENTH DEFENSE**

11 That the Plaintiff subjected Defendants to duress in forcing Defendant to take certain
12 actions.

13 **NINETENTH DEFENSE**

14 That defense of the underlying matter was constructively tendered to QBE.

15 **TWENTIEH DEFENSE**

16 Pursuant to FRCP 11, as amended, all possible affirmative and other defenses may not
17 have been alleged herein insofar as sufficient facts were not available after reasonable inquiry
18 upon the filing of this answer, and therefore, Acuity reserves the right to amend this answer to
19 allege additional affirmative defenses if subsequent investigation so warrants.

20 WHEREFORE, and for the reasons set forth in the counterclaim below, RUSSO prays for
21 judgment as follows:

- 22 1. For a declaration and determination that DUSLAK and SESMAN are insureds under the
23 policy between Plaintiff and SUNRISE, and that the defense of the claims against
24
25
26
27
28

1 DUSLAK and SESMAN were duly tendered and/or constructively tendered to Plaintiff,
 2 that Plaintiff did owe DUSLAK and/or SESMAN a defense, indemnification, fiduciary
 3 duties, and good faith and fair dealing for claims arising out of the underlying action. For
 4 a declaration that DUSLAK and/or SESMAN are entitled to recover funds from Plaintiff
 5 QBE, including all funds necessary to satisfy the judgment against DUSLAK and/or
 6 SESMAN in the underlying action, including all interest;

- 7
- 8 2. For attorney's fees;
- 9 3. For costs of suit;
- 10 4. For interest;
- 11 5. For all other relief the Court deems just and proper.
- 12

13 **AMENDED COUNTERCLAIM**

14 COMES NOW Plaintiff, RUSSO individually, by and through his attorney, David
 15 Sampson, Esq., of THE LAW OFFICE OF DAVID SAMPSON, LLC., and for his claims for
 16 relief against the QBE, and each of them, incorporates the allegations set forth in the Answer
 17 above, and further alleges and complains as follows:

18 **PARTIES**

- 19
- 20 1. At all times relevant to this action, Plaintiff was a resident of Clark County, Nevada.
- 21 2. At all times relevant to this action, Richard Duslak and Justin Sesman were residents of
- 22 Clark County, Nevada.
- 23 3. At all times relevant to this action, Plaintiff/Counterdefendant, QBE INSURANCE
- 24 CORPORATION, by its own admission, was at all times relevant to this action an insurance
- 25 company based Pennsylvania and was operating and conducting business in Nevada.
- 26
- 27
- 28

1 4. At all times relevant to this action, Counter defendant, COMMUNITY ASSOCIATION
2 UNDERWRITERS, by its own admission, was at all times relevant to this action an insurance
3 underwriting company based on Pennsylvania and doing business in Nevada.

4 5. That QBE issued insurance policies, some of which were underwritten by COMMUNITY
5 ASSOCIATION UNDERWRITERS. That each said Defendant is the parent and/or subsidiary
6 of, principle and/or agent of alter-ego of, doing business as, also known as, and/or otherwise
7 sharing an identity or continuity of interests with each and every other Defendant and, therefore,
8 are contractually, jointly and severally, legally, equitably, and/or otherwise liable for and/or
9 with each other herein, and are herein after individually and collectively referred to as "CAU"
10 and/or "the CAU Defendants".
11

12 6. That the true names and capacities, whether individual, corporate, partnership, associate
13 or otherwise, of Defendants, DOES I through X and ROE BUSINESS ENTITIES I through X,
14 are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff
15 is informed and believes and thereon allege that each of the Defendants designated herein as
16 DOE and ROE are responsible in some manner for the events and happenings referred to and
17 caused damages proximately to Plaintiff as herein alleged, and that Plaintiff will seek leave of
18 this Court to amend this Complaint to insert the true names and capacities of DOES I through X
19 and ROE BUSINESS ENTITIES I through X, when the same have been ascertained, and to join
20 such Defendants in this action.
21
22
23

24 **GENERAL ALLEGATIONS**

25 7. That on and before August 27, 2016 RICHARD DUSLAK ("DUALSAK") and JUSTIN
26 SESMAN ("SESMAN") were working for SUNRISE VILLAS IX HOMEOWNERS
27 ASSOCIATION ("SUNRISE") as maintenance personnel and also as landscapers. That in
28

1 referring to the relationship between SUNRISE and DUSLAK and SESMAN, SUNRISE stated
2 it “employed” DUSLAK and SESMAN and called DUSLAK and SESMAN its “employees”.

3 8. That, according to SUNRISE, prior to August 27, 2016 SUNRISE employed DUSLAK
4 and SESMAN to perform lawn care and maintenance duties for SUNRISE.

5 9. That during the term of what SUNRISE called DUSLAK and SESMAN’s employment
6 with SUNRISE, SUNRISE exercised a high degree of control, if not complete control, over the
7 manner in which DUSLAK and SESMAN’s work was to be performed. That Exhibit “C” at
8 page SVHA0000557 are minutes from the February 17, 2016 SUNRISE Board of Directors
9 Meeting, wherein SUNRISE stated, “The Board reviewed the job descriptions as submitted by
10 *employees* Richard Duslak and Justin Sesman. Secretary Morales [Secretary of SUNRISE]
11 *volunteered to oversee the work performed on property by Mr. Duslak and Mr. Sesman* and
12 will report to the Board regarding progress on maintenance projects. A motion was made by
13 Treasurer Alexis seconded by Secretary Morales for the petty cash to not be maintained by the
14 *employees* at this time.” (Emphasis added). This shows SUNRISE considered DUSLAK and
15 SESMAN employees, that DUSLAK and SESMAN were in the service of SUNRISE, were
16 compensated by SUNRISE, and that SUNRISE (via Secretary Morales) had, and exercised, the
17 right to direct and control DUSLAK and SESMAN while DUSLAK and SESMAN performed
18 duties for SUNRISE.

19 10. That DUSLAK and SESMAN, while working as what SUNRISE called employees, did
20 not have any opportunity for profit or loss depending on their managerial skill, and that
21 DUSLAK and SESMAN were paid an hourly rate pursuant under their social security numbers
22 for a wage.

1 11. That DUSLAK and SESMAN, while working as what SUNRISE called employees, did
2 not invest any of their own money in equipment or materials required for the tasks SUNRISE
3 directed DUSLAK and SESMAN to perform, and that all such equipment and/or materials were
4 purchased by and were the property of SUNRISE.

5 12. That DUSLAK and SESMAN, while working as what SUNRISE called employees, did
6 not have any ability to employ helpers.

7 13. That DUSLAK and SESMAN, while working as what SUNRISE called employees,
8 were not performing tasks that require any special skill.

9 14. That DUSLAK and SESMAN, while working as what SUNRISE called employees, had
10 a degree of permanence of the working relationship with SUNRISE as SUNRISE did not permit
11 DUSLAK or SESMAN to work for anyone else other than SUNRISE.

12 15. That lawn care and maintenance is an integral part of SUNRISE's business as an HOA
13 in that an HOA's primary duty is the maintenance of common areas, and that SUNRISE is
14 required by its own CC&R's to maintain common areas and perform lawn care and
15 maintenance.

16 16. That on March 2, 2018 SUNRISE answered an interrogatory by admitting SUNRISE
17 "employed RICHARD DUSLAK and JUSTIN SESMAN for lawn maintenance repair and/or
18 cleaning prior to September 2016. *See*, Exhibit "A".

19 17. That DUSLAK and SESMAN, while working as what SUNRISE called employees,
20 DUSLAK and SESMAN were paid pursuant to their social security numbers, and that neither
21 DUSLAK or SESMAN possessed Tax ID numbers.

22 18. That DUSLAK and SESMAN, while working as what SUNRISE called employees,
23 were not required to have, and did not have, business licenses.
24
25
26
27
28

1 19. That DUSLAK and SESMAN, while working as what SUNRISE called employees,
2 DUSLAK and SESMAN were required to work specific hours each working day as demanded
3 by SUNRISE.

4 20. On August 27, 2016 RUSSO was injured while on the property at SUNRISE. The injury
5 was a result of the negligence of DUSLAK and SESMAN.

6
7 21. On April 6, 2017 RUSSO filed a lawsuit against SUNRISE claiming that SUNRISE, its
8 maintenance personnel and/or landscapers, and other Defendants (including certain DOE and
9 ROE Defendant landscapers) had created a hazard on the property of 4617 Madreperla in the
10 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION, which hazard caused harm to
11 RUSSO. That initially SUNRISE stated that "J&G LAWN MAINTENANCE" handled the
12 maintenance and landscaping for SUNRISE at the time RUSSO was injured and, as a result,
13 "J&G LAWN MAINTENANCE" was named as a defendant in the action.

14
15 22. That the Plaintiffs, and each of them, including QBE, issued policy number
16 CAU234378-1, covering named insureds and covered employees as defined in the said policy
17 and/or under the law, which policy insured SUNRISE, covered employees as defined in the said
18 policy and by law, and others and covered SUNRISE's, covered employees, and others for the
19 losses RUSSO alleged he suffered in Case No. A-17-753606-C. *See* Exhibit "D". That
20 pursuant to the policy of insurance Defendants, and each of them, retained counsel to defend
21 SUNRISE in Case No. A-17-753606-C.

22
23
24 23. At the time of the August 27, 2016 incident DUSLAK and SESMAN were working as
25 what SUNRISE called employees of SUNRISE and were contractually, legally, equitably,
26 and/or otherwise insureds of the Plaintiffs, and each of them, including QBE.

1 24. At all times pertinent hereto the said policy of insurance was/were in full force and
2 effect.

3 25. The incident of August 27, 2016, the aforesaid Case No. A-17-753606-C, and related
4 claims were noticed upon and submitted to DUSLAK, SESMAN, SUNRISE, and QBE.

5 26. That during the litigation process in Case No. A-17-753606-C SUNRISE informed
6 RUSSO that “J&G LAWN MAINTENANCE” had in fact not been handling maintenance or
7 landscaping for SUNRISE at the time RUSSO was injured, and that in fact DUSLAK and
8 SESMAN were the ones who were handling maintenance and landscaping for SUNRISE at the
9 time RUSSO was injured.
10

11 27. On November 29, 2017 RUSSO filed a motion in Case No. A-17-753606-C seeking to
12 amend the Complaint in that matter to add additional defendants that had theretofore not been
13 identified or had been misidentified by SUNRISE. The amended complaint identified
14 DUSLAK and SESMAN as Defendant landscapers and alleged that Defendants, and each of
15 them (which would include DUSLAK and SESMAN) were responsible for the maintenance and
16 landscaping for SUNRISE when RUSSO was injured. At the time the Amended Complaint was
17 filed QBE was actively defending SUNRISE in Case No. A-17-753606-C and was made aware
18 of the amended complaint.
19

20 28. That the motion to Amend and the Amended Complaint were provided to QBE as they
21 were provided to counsel for all parties in Case No. A-17-753606-C, which included counsel for
22 SUNRISE which was in a tripartite relationship with SUNRISE and QBE.
23

24 29. On December 22, 2017 RUSSO filed a supplement to the motion to amend the
25 complaint. *See* Exhibit “5” to QBE’s complaint. The supplement specified that SUNRISE had
26 indicated “J&G LAWN MAINTENANCE” was not handling landscaping and maintenance for
27
28

1 SUNRISE at the time RUSSO was injured, and again sought leave to amend the complaint as
2 set forth in the proposed amended complaint which identified DUSLAK and SESMAN as the
3 actual individuals responsible for landscaping and maintenance at the SUNRISE property. *See*,
4 Exhibit “E”. The proposed amended complaint was provided to QBE as it was provided to
5 counsel for all parties in Case No. A-17-753606-C, which included counsel for SUNRISE which
6 was in a tripartite relationship with SUNRISE and QBE.
7

8 30. On February 7, 2018 the Court in Case No. A-17-753606-C entered an Order permitting
9 RUSSO to amend his Complaint and add DUSLAK and SESMAN as Defendants in Case No.
10 A-17-753606-C. *See* Exhibit “F”. The Order was provided to QBE as it was provided to the
11 parties in this action, including QBE via the tripartite relationship it had with its counsel in Case
12 No. A-17-753606-C.
13

14 31. That the Amended Complaint in Case No. A-17-753606-C alleged, *inter alia*, negligence
15 against DUSLAK and SESMAN. The amended complaint also identified DUSLAK and
16 SESMAN as Defendants and alleged that Defendants, and each of them (which would include
17 DUSLAK and SESMAN) were responsible for the maintenance and landscaping for SUNRISE
18 when RUSSO was injured. At the time the Amended Complaint was filed QBE was actively
19 defending SUNRISE in Case No. A-17-753606-C and was well aware of the Amended
20 Complaint.
21

22 32. On February 14, 2018 RUSSO served DUSLAK with the Amended Complaint. On
23 February 13, 2018 RUSSO served SESMAN with the Amended Complaint. Upon information
24 and belief DUSLAK and SESMAN advised SUNRISE of the fact that they had been served.
25 Additionally, as QBE had retained counsel who was actively defending SUNRISE in Case No.
26 A-17-753606-C when the Complaint was amended to add DUSLAK and SESMAN as
27
28

1 Defendants, which counsel had a tripartite relationship with SUNRISE and QBE, QBE was well
2 aware of, and was on notice of, the fact that DUSLAK and SESMAN had been sued in Case No.
3 A-17-753606-C at least as of February 14, 2018.

4 33. That QBE received constructive tender of the action against DUSLAK and SESMAN,
5 Case No. A-17-753606-C. *See, California Shoppers, Inc., v. Royal Globe Ins. Co.*, 175
6 Cal.App.3d 1, 799 P.2d 1360 (1985); *Millennium Labs., Inc. v. Darwin Select Ins. Co.*, 2014
7 U.S. Dist. LEXIS 170439 (S.D. Cal. Dec. 9, 2014); *Dearborn Ins. Co. v. International Surplus*
8 *Lines Ins. Co.*, No. 1-97-0724, 1999 Ill. App. LEXIS 667 (Ill. Ct. App. Sept. 23, 1999); *Gray v.*
9 *Zurich Ins. Co.*, 65 Cal. 2d 263, 276; *Devin v. United Servs. Auto. Ass'n.*, 6 Cal. App. 4th 1149,
10 1157 (1992) (“The duty to defend arises as long as the facts (either as expressed or implied in
11 the third party’s complaint, or as learned from other sources) give rise to a potentially covered
12 claim”) (citing *Fresno Economy Import Used Cars, Inc. v. United States Fidelity & Guar.*
13 *Co.*, 76 Cal. App. 3d 272, 279 (1977)).

14 34. That when QBE became aware of the action against DUSLAK and SESMAN, Case No.
15 A-17-753606-C, QBE was on inquiry notice to investigate the issue of coverage and failed to do
16 so.
17

18 35. That “an insurer . . . bears a duty to defend its insured whenever it ascertains facts which
19 give rise to the potential of liability under the policy.” *See, Century Surety v. Andrew*, 134
20 Nev.Adv.Op. 100, 432 P.3d 180 (2018) (citing *United Nat’l Ins. Co. v. Frontier Ins. Co.,*
21 *Inc.*, 120 Nev. 678, 684 (2004)). That when QBE became aware of the Amended Complaint in
22 Case No. A-17-753606-C, QBE ascertained (and/or reasonably should have ascertained) facts
23 giving rise to the potential of liability under the policy covering DUSLAK and SESMAN. That
24 when QBE became aware of the Amended Complaint in Case No. A-17-753606-C, had QBE
25
26
27
28

1 performed an investigation it would have ascertained (and/or reasonably should have
2 ascertained) facts giving rise to the potential of liability under the policy covering DUSLAK and
3 SESMAN.

4 36. That QBE did not defend or investigate its duty to defend DUSLAK and/or SESMAN.

5 37. That “the duty to defend arises when there is a potential for coverage based on the
6 allegations in a complaint.” *See, United Nat’l Ins. Co. v. Frontier Ins. Co., Inc.*, 120 Nev. 678,
7 684 (2004). That when QBE received the Amended Complaint in Case No. A-17-753606-C,
8 QBE was aware there was a potential for coverage based on the allegations against DUSLAK
9 and SESMAN in the said Amended Complaint.
10

11 38. That the Nevada Supreme Court has held that “where there is potential for coverage
12 based on ‘comparing the allegations of the complaint with the terms of the policy,’ an insurer
13 does have a duty to defend.” *See, Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d
14 180 (2018).
15

16 39. That in *United Nat’l Ins. Co. v. Frontier Ins. Co., Inc.*, 120 Nev. 678, 684 (2004) the
17 Nevada Supreme Court held that an insurer’s duty to defend is triggered when allegations of a
18 complaint, or “other evidence”, suggest that there is a potential for coverage. That on March 2,
19 2018 SUNRISE answered an interrogatory by stating SUNRISE “employed Richard Duslak and
20 Justin Sesman for lawn maintenance repair and/or cleaning prior to Setpember 2016.” *See*
21 Exhibit “A” at P. 7 L. 8-9. That when SUNRISE provided evidence that DUSLAK and
22 SESMAN were employed by SUNRISE, such evidence triggered QBE’s duty to defend
23 DUSLAK and SESMAN, and certainly triggered QBE’s duty to investigate whether it had a
24 duty to defend the individuals SUNRISE stated it employed.
25
26
27
28

1 40. That under the insurance contract with SUNRISE, QBE was obligated to defend and
 2 indemnify any covered employee of SUNRISE as defined by the insurance policy with
 3 SUNRISE. *See* Exhibit “D”. The said policy defines a “Covered Employee” as:

4 (a) Any natural person:

5 (1) While in your service (and for 30 days after termination of service);
 6 and

7 (2) Whom you compensate directly by salary, wages or commissions; and

8 (3) Whom you have the right to direct and control while performing
 9 services for you.

10 *See* Exhibit “D” at P. SVHA 000018.

11 41. That on August 27, 2016 DUSLAK and SESMAN were natural people who were in the
 12 service of SUNRISE (and were working as what SUNRISE called employees), whom
 13 SUNRISE compensated directly by salary, wages, or commissions, and whom SUNRISE had
 14 the right to direct and control while DUSLAK and SESMAN performed duties for SUNRISE.
 15 *See* Exhibit “C”. That DUSLAK and SESMAN were parties to a contract of insurance with
 16 Defendants, and each of them, including QBE and/or were an intended beneficiaries to the
 17 same. The said contract carried liability coverage for losses such as those suffered by RUSSO.
 18

19 42. That Exhibit “C” at page SVHA0000557 are minutes from the February 17, 2016
 20 SUNRISE Board of Directors Meeting, wherein SUNRISE stated, “The Board reviewed the job
 21 descriptions as submitted by *employees* Richard Duslak and Justin Sesman. Secretary Morales
 22 [Secretary of SUNRISE] volunteered to oversee the work performed on property by Mr. Duslak
 23 and Mr. Sesman and will report to the Board regarding progress on maintenance projects. A
 24 motion was made by Treasurer Alexis seconded by Secretary Morales for the petty cash to not
 25 be maintained by the *employees* at this time.” (Emphasis added). This shows that DUSLAK
 26
 27
 28

1 and SESMAN were in the service of what SUNRISE called employees, and were compensated
2 by SUNRISE, and that SUNRISE (via Secretary Morales) had, and exercised, the right to direct
3 and control DUSLAK and SESMAN while DUSLAK and SESMAN performed duties for
4 SUNRISE.

5 43. That Exhibit "C" at page SVHA0000559 are minutes from the July 18, 2016 SUNRISE
6 Board of Directors Meeting, wherein SUNRISE stated under the heading Richard, "the board
7 unanimously agreed to terminate the petty cash for Richard they agreed to give him \$66.00 a
8 month for his cell phone bill." This shows SUNRISE compensated DUSLAK in addition to
9 providing DUSLAK with compensation in the form of wages, salary, and/or commission.
10

11 44. That Exhibit "C" at page SVHA0000561 are minutes from the September 8, 2016
12 SUNRISE Board of Directors Meeting, wherein SUNRISE stated under the heading "Richard
13 Duslak", "Board unanimously agreed to terminate the position of a onsite maintenance/poll man
14 the board is in agreement that there is no longer a need for this position therefore they are all in
15 agreement to terminate Mr. Duslak." This shows was employed by SUNRISE on August 27,
16 2016 and that SUNRISE did not terminate his position, or him as what SUNRISE called a
17 SUNRISE employee, until at least September 8, 2016, which was after August 27, 2016 when
18 RUSSO was injured.
19

20 45. That Exhibit "C" at page SVHA0000564 are minutes from the November 16, 2015
21 SUNRISE Board of Directors Meeting, wherein SUNRISE stated, "It was the consensus of the
22 Board that Richard Dulkas (sic), Justin, and Carson has provided valuable service to the
23 community. The Board agreed to holiday gratuity for \$300 to Richard, \$300 for Carson, and
24 \$100 for Justin and directed the manager to process payment for holiday gratuity through
25 Covenant." This shows SUNRISE compensated DUSLAK and SESMAN in addition to
26
27
28

1 providing DUSLAK and SESMAN with compensation in the form of wages, salary, and/or
2 commission.

3 46. That Exhibit “C” at page SVHA0000566 is a record of SUNRISE paying \$100.00 to
4 SESMAN for “Holiday gratuity”. This shows SUNRISE compensated SESMAN in addition to
5 providing SESMAN with compensation in the form of wages, salary, and/or commission.
6

7 47. That QBE, having been notified that RUSSO had filed an action against SUNRISE,
8 DUSLAK, and SESMAN in Case No. A-17-753606-C, that SUNRISE stated in court
9 documents and elsewhere that is it “employed” DUSLAK and SESMAN, that SUNRISE
10 referred to DUSLAK and SESMAN as “employees”, and given DUSLAK and SESMAN
11 qualified as covered employees of SUNRISE under Policy No. CAU234378-1, and qualified as
12 covered employees under the law, QBE had duty to defend DUSLAK and SESMAN and to at
13 least investigate whether DUSLAK and/or SESMAN were entitled to coverage under Policy No.
14 CAU234378-1, QBE refused to do so.
15

16 48. That QBE Defended SUNRISE in Case No. A-17-753606-C, yet, despite having a duty
17 to defend DUSLAK and SESMAN against RUSSO’s claims, and despite having knowledge that
18 RUSSO’s claims were proceeding against SUNRISE, DUSLAK, and SESMAN, QBE never
19 took any steps to defend or indemnify DUSLAK or SESMAN in Case No. A-17-753606-C.
20

21 49. That because QBE never took any steps to defend or indemnify DUSLAK or SESMAN
22 in Case No. A-17-753606-C, the Court entered defaults against DUSLAK and SESMAN in
23 Case No. A-17-753606-C.
24

25 50. That in entering a settlement release with RUSSO, QBE and SUNRISE agreed that any
26 settlement would specifically exclude DUSLAK and SESMAN, and anyone associated or
27 affiliated with them. *See*, Exhibit “B” at p. 1. The settlement release included SUNRISE
28

1 employees, except for DUSLAK and SESMAN or anyone associated or affiliated with them. *Id*
2 at P. 4. The settlement release also specifically stated that, “Nothing in this release shall release,
3 discharge, or in any way impact PLAINTIFF’S rights against RICHARD DUSLAK and/or
4 JUSTIN SESMAN in any manner”. *Id* at P. 4. The release further stated that any language in
5 the release that could be read to in any way impact the rights of DUSLAK and/or SESMAN
6 against any entity (including any insurer) “SHALL BE DEEMED NULL AND VOID.” *Id*.
7
8 The release further stated that if any language in the release was invalidated, such language is
9 deemed to be severed and deleted from the agreement as a whole, and neither the language nor
10 its severance and deletion shall in any way affect the validity of the remaining provisions of the
11 agreement. *Id*.

12
13 51. That QBE and SUNRISE attempted to undermine rights held by DUSLAK and
14 SESMAN by asking RUSSO to stipulate that DUSLAK and SESMAN were “independent
15 contractors”. *Id*. That the language in any stipulation in the release between SUNRISE, QBE,
16 and RUSSO does not impact the rights of DUSLAK and/or SESMAN to coverage as 1) neither
17 QBE, SUNRISE, nor RUSSO have any authority to stipulate or otherwise act in any manner to
18 impact the rights of DUSLAK and/or SESMAN to coverage from QBE and 2) as the release
19 specifically stated that any language in the release that could be read to in any way impact the
20 rights of DUSLAK and/or SESMAN against any entity (including any insurer) “SHALL BE
21 DEEMED NULL AND VOID”, any language from the release QBE is now attempting to utilize
22 to impact the rights of DUSLAK and/or SESMAN to coverage are, by virtue of the release
23 itself, null and void and is further deemed severed and deleted from the agreement.

24
25
26 52. That any contractual labels in the said stipulation, whether they would have any impact
27 on the rights of DUSLAK and SESMAN to coverage, and whether any said contractual labels
28

1 are deemed null and void by the release or not, are of no consequence as the Ninth Circuit held
2 in *Real v. Driscoll Strawberry Assocs., Inc.*, 603 F.2d 748, 755 (9th Cir, 1979) that, “economic
3 realities, not contractual labels, determine employment status”. (citing *Rutherford Food Corp.*
4 *v. McComb*, *supra*, 331 U.S. at 729, 67 S.Ct. 1473; *Usery v. Pilgrim Equipment Co.*, 527 F.2d
5 1308, 1315 (1976).
6

7 53. That on September 18, 2019 counsel for RUSSO faxed a letter to QBE (Fax No: 267-
8 757-7434) and emailed the same letter to QBE at email address: hstavakis@cauinsure.com
9 which letter stated:

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

16 Please contact our office with any questions.

17 See, Exhibit “G”.

18 54. That at no time in 2019 did QBE contact the office of counsel for RUSSO, nor did QBE
19 at any time deny having received prior notice that Case No. A-17-753606-C included claims
20 against its insureds and DUSLAK and SESMAN whom SUNRISE called its employees.

21 55. At no time did QBE submit, notice, and/or otherwise direct said claim and/or action to
22 any further policy of insurance providing coverage for the same and, in particular, did not
23 submit, notice, and/or direct the same to the attention and consideration of any other policies of
24 general liability insurance.

25 56. The aforesaid legal action (Case No. A-17-753606-C) against SUNRISE and others was
26 initially defended by QBE under policy number CAU234378-1, through the association of and
27 payment of a defense firm, Springel & Fink.
28

1 57. That at no time did QBE defend DUSLAK or SESMAN in Case No. A-17-753606-C,
2 even after being given specific notice that the action was pending against DUSLAK and
3 SESMAN, and even after being notified that defaults had been taken against DUSLAK and
4 SESMAN.

5 58. The QBE failed to offer, suggest, and/or provide independent *Cumis* counsel to advise
6 DUSLAK and/or SESMAN as to the failure to defend them in Case No. A-17-753606-C, and/or
7 indemnify, or pertinent pleadings and Orders before and by the Court, and of any related
8 matters.
9

10 59. That because QBE did not defend DUSLAK or SESMAN despite being aware of the
11 lawsuit, and being aware that default had been taken against QBE's insureds, on December 17,
12 2019 the court in Case No. A-17-753606-C entered Judgment against DUSLAK and SESMAN
13 in the amount of \$25,000,000.00, which accrues interest at the statutory rate until paid in full, and
14 that Notice of Entry of the said Judgment was filed on December 17, 2019.
15

16 60. That the conduct of Defendants, and each of them, including QBE, in not defending
17 DUSLAK and SESMAN constituted a breach of the duty to defend under the insurance contract
18 that covered DUSLAK and SESMAN.
19

20 61. That under *Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d 180 (2018) an
21 insurer is liable for all consequential damages arising out of any breach of the duty to defend an
22 insured. Additionally, "an insurer's liability for the breach of the duty to defend is not capped at
23 the policy limits, even in the absence of bad faith." The Nevada Supreme Court subsequently
24 reiterated that the reasonableness of an insurer's refusal to defend "is irrelevant for determining
25 damages upon a breach of the duty to defend." *Nalder v. United Auto Ins. Co.*, No. 70504, 2019
26 WL 5260073.
27
28

FIRST CAUSE OF ACTION

1
2 RUSSO realleges and reasserts each and every statement and allegation contained in the
3 preceding paragraphs as though set forth fully hereunder.

4 62. At all times pertinent hereto, QBE had a contractual duty to defend and indemnify
5 DUSLAK and/or SESMAN regarding certain claims for negligence and resulting
6 injuries caused by them to include, but not limited to, those brought by RUSSO in
7 District Court Case number A-17-753606-C. That, despite any contractual labels, the
8 economic realities of the relationship between SUNRISE and DUSLAK and SESMAN
9 qualified DUSLAK and SESMAN to coverage under the QBE policy.
10

11 63. The failure of QBE to reasonably and continuously defend and/or indemnify DUSLAK
12 and/or SESMAN under said policy insurance coverage and/or other policies of insurance
13 actually and/or potentially affording coverage to DUSLAK and/or SESMAN as alleged
14 herein, including but not limited to QBE's failure to even investigate the question of
15 coverage, constitutes a breach of contract on the part of QBE under the terms and
16 conditions as the policies set forth.
17

18 64. That as a direct and proximate result of the aforesaid breaches of contract on the part of
19 QBE, DUSLAK and SESMAN have been damaged in an amount in excess of Fifteen
20 Thousand Dollars (\$15,000.00) and are entitled to monies sufficient to satisfy RUSSO's
21 Judgment against them in the amount of \$25,000,000.00 plus all interest, which money
22 is due and owing to RUSSO.
23

24 65. DUSLAK and/or SESMAN have satisfied the terms of the contract with QBE and have
25 done everything they are required to do under the insurance policy.
26
27
28

1 66. That the conduct of QBE in refusing to defend DUSLAK and/or SESMAN for the action
2 brought by RUSSO constituted a breach of the duty to defend.

3 67. The conduct of QBE alleged in the foregoing paragraphs constitutes a breach of the
4 insurance contract.

5 68. As a result of the breach by Defendant of the contract, Judgment has been entered
6 against DUSLAK and/or SESMAN in the amount of \$25,000,000.00 with statutory
7 interest accruing thereon, and that RUSSO is entitled to recover funds from DUSLAK
8 and SESMAN in an amount sufficient to satisfy the Judgment of \$25,000,000.00 with
9 statutory interest accruing thereon, which money is due and owing to RUSSO.
10

11 69. That RUSSO as a named Defendant in the Declaratory Relief Action has been required
12 to obtain the services of an attorney to prosecute this claim and is therefore entitled to
13 their costs and reasonable attorney's fees incurred.
14

15 **SECOND CAUSE OF ACTION**

16 70. RUSSO realleges and reasserts each and every statement and allegation contained in the
17 preceding paragraphs as though set forth fully hereunder.

18 71. The any express and/or implied insurance agreement between QBE and DUSLAK
19 and/or SESMAN carries with it a fiduciary duty.
20

21 72. The contract of insurance as alleged herein carries with it a fiduciary duty.
22

23 73. QBE breached all duties and the fiduciary duty by the acts and omissions alleged herein.

24 74. That as a direct and proximate result of the aforesaid breach of duties, including
25 fiduciary duties, on the part of QBE, DUSLAK and SESMAN, have been damaged, and
26 that RUSSO is entitled to recover funds from DUSLAK and SESMAN in an amount
27
28

1 sufficient to satisfy the Judgment of \$25,000,000.00 with statutory interest accruing
2 thereon, which money is due and owing to RUSSO.

3 **THIRD CAUSE OF ACTION**

4 75. RUSSO realleges and reasserts each and every statement and allegation contained in the
5 preceding paragraphs as though set forth fully hereunder.

6
7 76. QBE is subject to various statutes of the State of Nevada regarding its business practices
8 including, but not limited to, the Nevada Unfair Claims Practices Act.

9 77. QBE violated numerous aspects of the above mentioned Nevada Unfair Claims Practices
10 Act, including, but not limited to, NRS 686A.310(1)(a-o).

11
12 78. That as a direct and proximate result of the aforesaid violations of Nevada statutes on the
13 part of QBE, DUSLAK and SESMAN, have been damaged, and that RUSSO is entitled
14 to recover funds from DUSLAK and SESMAN in an amount sufficient to satisfy the
15 Judgment of \$25,000,000.00 with statutory interest accruing thereon, which money is
16 due and owing to RUSSO.

17 **FOURTH CAUSE OF ACTION**

18
19 79. RUSSO realleges and reasserts each and every statement and allegation contained in the
20 preceding paragraphs as though set forth fully hereunder.

21 80. That at all times pertinent hereto QBE undertook to provide insurance coverage, defense,
22 and indemnity of SUNRISE, giving the reasonable and foreseeable expectation to
23 DUSMAN and/or SESLAK that that they were and would be covered, defended, and/or
24 indemnified with respect to the claims and actions against them, but then unilaterally and
25 unreasonably denied coverage, defense, and indemnification to DUSLAK and/or
26
27 SESMAN.
28

81. The aforesaid acts and omissions on the part of QBE creates in equity and/or law a promise and agreement by QBE to cover, defend, and/or indemnify DUSLAK and/or SESMAN regarding the aforesaid claims and actions against them, requiring that QBE be estopped from denying and refusing such coverage, defense, and indemnification, and that QBE be mandated and judicially compelled to cover, defend, and/or indemnify DUSLAK and/or SESMAN including, but not limited to, paying any and all damages assessed against DUSLAK and/or SESMAN, made and/or reduced to judgment in favor of RUSSO and against DUSLAK and/or SESMAN, and/or otherwise imposed against DUSLAK and/or SESMAN as related hereto, all in an amount entitling DUSLAK and SESMAN to monetary damages in excess of Fifteen Thousand Dollars (\$15,000.00) and equitable relief to include, but not limited to, Estoppel and/or Mandamus as this honorable court sees just under the premises, and Declaratory Relief in the form of an Order, Judgment, and/or directive otherwise that QBE is liable to DUSLAK, and SESMAN, for the full amount of the aforesaid Judgment with all applicable interest entered against DUSLAK and/or SESMAN, interest thereon which DUSLAK and SESMAN owe to RUSSO, as well as incidental and consequential damages, and general and special damages.

WHEREFORE, Plaintiff RUSSO prays for judgment against the QBE as follows:

ON ALL CAUSES OF ACTION

1. That DUSLAK and SESMAN recover general damages in an amount in excess of \$25,000,000.00, which money is due and owing to RUSSO;
2. That DUSLAK and SESMAN recover general damages in an amount in excess of \$15,000.00, which money is due and owing to RUSSO;

3. For DUSLAK and SESMAN to recover special damages in an amount to be determined at trial, which money is due and owing to RUSSO;
4. For declaratory and equitable relief as pled and as the court sees fit in the premises;
5. Costs of this suit;
6. Attorney's fees; and
7. For such other and further relief as to the Court may seem just and proper in the premises.

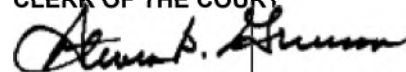
DATED THIS 30th day of December, 2020.

THE LAW OFFICE OF DAVID SAMPSON, LLC.

By: /s/ *David Sampson*

David Sampson, Esq.
Nevada Bar No. 6811
630 South 3rd Street
Las Vegas, NV 89101
Tel: (702) 605-1099
Email: David@davidsampsonlaw.com
Attorney for RUSSO

Electronically Filed
1/7/2021 11:32 AM
Steven D. Grierson
CLERK OF THE COURT



CNND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Simone Russo, Plaintiff(s)

A-17-753606-C

vs.

Department 16

Cox Communications Las Vegas, Inc.,

Defendant(s)

CLERK'S NOTICE OF NONCONFORMING DOCUMENT

Pursuant to Rule 8(b)(2) of the Nevada Electronic Filing and Conversion Rules, notice is hereby provided that the following electronically filed document does not conform to the applicable filing requirements:

Title of Nonconforming Document: Motion to Intervene to Enforce Settlement

Party Submitting Document for Filing: Intervenor QBE Insurance Corporation

Date and Time Submitted for Electronic Filing: 01/04/2021 at 2:44 PM

Reason for Nonconformity Determination:

- ☐ The document filed to commence an action is not a complaint, petition, application, or other document that initiates a civil action. *See* Rule 3 of the Nevada Rules of Civil Procedure. In accordance with Administrative Order 19-5, the submitted document is stricken from the record, this case has been closed and designated as filed in error, and any submitted filing fee has been returned to the filing party.
- ☐ The document initiated a new civil action and the case type designation does not match the cause of action identified in the document.
- ☐ The document initiated a new civil action and a cover sheet was not submitted as required by NRS 3.275.
- ☐ The submitted document initiated a new civil action and was made up of multiple documents submitted together.

☐ The document filed was a court order that did not contain the signature of a judicial officer. In accordance with Administrative Order 19-5, the submitted order has been furnished to the department to which this case is assigned.

☐ Motion does not have a hearing designation per Rule 2.20(b). Motions must include designation “Hearing Requested” or “Hearing Not Requested” in the caption of the first page directly below the Case and Department Number.

Pursuant to Rule 8(b)(2) of the Nevada Electronic Filing and Conversion Rules, a nonconforming document may be cured by submitting a conforming document. All documents submitted for this purpose must use filing code “**Conforming Filing – CONFILE.**” Court filing fees will not be assessed for submitting the conforming document. Processing and convenience fees may still apply.

Dated this: 7th day of January, 2021

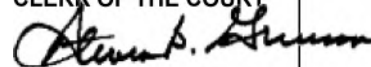
By: /s/ Chaunte Pleasant
Deputy District Court Clerk

CERTIFICATE OF SERVICE

I hereby certify that on January 07, 2021, I concurrently filed and served a copy of the foregoing Clerk's Notice of Nonconforming Document, on the party that submitted the nonconforming document, via the Eighth Judicial District Court's Electronic Filing and Service System.

By: /s/ Chaunte Pleasant
Deputy District Court Clerk

Electronically Filed
1/7/2021 1:58 PM
Steven D. Grierson
CLERK OF THE COURT



1 REQT
2 Ramiro Morales
3 State Bar No.: 7101
4 William C. Reeves
5 State Bar No.: 8235
6 MORALES, FIERRO & REEVES
7 600 S. Tonopah Drive, Suite 300
8 Las Vegas, NV 89106
9 Telephone: 702/699-7822
10 Facsimile: 702/699-9455

11 Attorneys for Intervenor
12 QBE Insurance Corporation

13
14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

11 SIMONE RUSSO,)	Case No.: A753606
12 Plaintiff,)	Dept: XVI
13 vs.)	REQUEST FOR HEARING
14 COX COMMUNICATIONS LAS VEGAS,)	
15 INC., et al.)	
16 Defendants.)	

17 TO THE COURT:

18 Request is made that a hearing be set in connection with the Motion To Intervene To
19 Enforce Settlement filed by proposed Intervenor QBE Insurance Corporation ("QBE") on January 4,
20 2021.

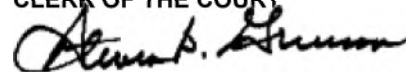
21 Dated: January 7, 2021

22 MORALES FIERRO & REEVES

23
24 By /s/ William C. Reeves
25 Ramiro Morales
26 William C. Reeves
27 600 S. Tonopah Dr., Suite 300
28 Las Vegas, NV 89106
Tel: 702/699-7822
Attorneys for QBE

REQUEST

Electronically Filed
1/7/2021 9:51 AM
Steven D. Grierson
CLERK OF THE COURT


JOIN

LEONARD T. FINK, ESQ.

Nevada Bar No. 6296

SPRINGEL & FINK LLP

9075 W. Diablo Drive, Suite 302

Las Vegas, Nevada 89148

Telephone: (702) 804-0706

Facsimile: (702) 804-0798

E-Mail: *lfink@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 INTERVENOR QBE
INSURANCE CORPORATION'S MOTION
TO INTERVENE TO ENFORCE
SETTLEMENT**

///

///

///

///

///

///

///

///

**DEFENDANT, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S JOINDER TO
INTERVENOR QBE INSURANCE CORPORATION'S MOTION TO INTERVENE TO
ENFORCE SETTLEMENT**

Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION ("SUNRISE VILLAS"), by and through its counsel of record, the law firm of Springel & Fink LLP, hereby joins Intervenor QBE INSURANCE CORPORATION'S Motion to Intervene to Enforce 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 7th day of January, 2021.

SPRINGEL & FINK LLP

/s/ Leonard T. Fink, Esq.

By: _____

LEONARD T. FINK, ESQ.
Nevada Bar No. 6296
9075 W. Diablo Drive, Suite 302
Las Vegas, NV 89148
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 9075 W. Diablo Drive, Suite 302, Las Vegas, Nevada, 89148.

On **January 7, 2021**, I served the document described as **DEFENDANT, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S JOINDER TO INTERVENOR QBE INSURANCE CORPORATION'S MOTION TO INTERVENE TO ENFORCE SETTLEMENT** on the following parties:

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

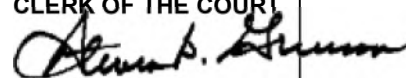
- _____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would 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

Electronically Filed
1/8/2021 8:35 AM
Steven D. Grierson
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 Intervenor QBE Insurance Corporation's Motion to Intervene to Enforce Settlement in the above-entitled matter is set for hearing as follows:

Date: February 11, 2021

Time: 9:10 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

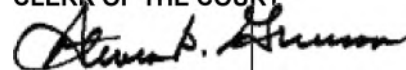
By: /s/ Chaunte Pleasant
Deputy Clerk of the Court

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/ Chaunte Pleasant
Deputy Clerk of the Court

Electronically Filed
1/15/2021 1:43 PM
Steven D. Grierson
CLERK OF THE COURT


OPP

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.)

**OPPOSITION TO NON-PARTY QBE INSURANCE CORPORATION'S SECOND
MOTION TO INTERVENE AND MOTION TO "ENFORCE" SETTLEMENT**

COMES NOW, Plaintiff, SIMONE RUSSO, by and through his attorney of record, and
opposes the motions filed by non-party QBE Insurance Corporation ("QBE"), to intervene in
this matter and "enforce settlement", which were joined by SUNRISE. This opposition is made

1 and based upon the pleadings and papers filed herein, the attached Points and Authorities, and
2 upon oral argument at the time of hearing.

3
4 **STATEMENT OF FACTS**

5 The court is well aware of the underlying facts of this case. Dr. SIMONE RUSSO,
6 M.D., was horrifically injured on August 27, 2016 when he fell because of an exposed cable
7 wire located at 4617 Madreperla in the SUNRISE VILLAS IX HOMEOWNERS
8 ASSOCIATION. SIMONE brought a lawsuit against: COX, the SUNRISE HOA, the
9 landscapers responsible for maintenance in the area where SIMONE fell, the landlord, the
10 property manager for SUNRISE, and the property manager for the landlord. This action
11 proceeded to trial twice in the fall of 2019¹.

12
13 Before litigation commenced SUNRISE told SIMONE that “J&G LAWN
14 MAINTENANCE” was responsible for performing lawn maintenance for SUNRISE at the time
15 SIMONE fell. Subsequently SUNRISE told SIMONE that it employed Richard Duslak and
16 Justin Sesman to perform landscaping and maintenance at SUNRISE, and that DUSLAK and
17 SESMAN were responsible for landscaping and maintenance in SUNRISE at the time SIMONE
18 fell. Indeed, SUNRISE responded in an Interrogatory saying, “SUNRISE VILLAS believes it
19 employed Richard Duslak and Justin Sesman for lawn maintenance repair and/or cleaning prior
20 to September 2016 and terminated this contract before retaining J&G LAWN MAINTENANCE
21 on or about September 8, 2016.” See Exhibit “1” at P. 7 L. 8-10.

22
23
24 After SUNRISE admitted that DUSLAK and SESMAN were handling maintenance for
25 SUNRISE when SIMONE fell, SIMONE amended his Complaint to dismiss J&G LAWN
26

27
28

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

1 MAINTENANCE and include DUSLAK and SESMAN as the subject landscapers. SIMONE
2 served DUSLAK and SESMAN with the lawsuit and advised SUNRISE and its carrier that
3 defaults were entered against DUSLAK and SESMAN when no answer was filed on their
4 behalf. *See*, Exhibit “2”².

6 After SIMONE completed his voir dire of the jury in the second trial, the active parties
7 to the lawsuit at the time agreed to settle this matter as to the said active parties only. On
8 October 18, 2019 the active parties placed the settlement on the record. *See*, Exhibit “3”. In
9 placing the settlement on the record, attorney Leonard Fink, Esq., who was counsel for
10 SUNRISE and was in a tripartite relationship with QBE at the time stated, “Your Honor, we
11 have – as of last night about 4:30, 4:45, we have a global settlement *involving the parties that*
12 *are involved.*” *Id* at P. 5 P. 24-25 (emphasis added). Mr. Fink continued “We still need to have
13 the Court determine the settlement is in good faith - - *because of the further actions Mr.*
14 *Sampson is going to take against the defaulted parties* [DUSLAK and SESMAN].” *Id*, at P. 6
15 L. 4-9 (emphasis added).

18 Mr. Sampson (counsel for SIMONE) then stated, “I wanted to make sure it was on the
19 record that, yes, *it’s against all parties that answered and are currently involved.*” *Id* at P. 6 L.
20 12-14 (emphasis added). The Court then stated, “In this case.”, and Mr. Sampson responded
21 “Well, there are two other parties [DUSLAK and SESMAN] who have been defaulted that
22 we’re still – *this settlement does not affect them*”. *Id* at P. 6 L. 15-19 (emphasis added).
23 Counsel for SUNRISE then agreed the settlement would not include or affect the defaulted
24

27 ² The letter was addressed to Community Association Underwriters Agency, which is a
28 subsidiary of QBE.

1 parties other than “PW James” which was the property management company for SUNRISE. *Id*
2 at P. 6 L. 20.

3 The following colloquy then took place:

4 THE COURT: So as far as the motion of good-faith settlement and reflecting the
5 global settlement *of the parties to this case that have actively litigated*, I'm
6 granting that motion.

7 MR. FINK: That would also be including PW JAMES?

8 THE COURT: Yes, sir.

9 MR. FINK: Thank you, Your Honor.

10 MR. SAMPSON: *Ones that are actively litigated and PW James.*

11 THE COURT: Yes.

12 *Id* at P. 7 L. 19 – P. 8 L. 4 (emphasis added).

13 Counsel for COX then placed the specific terms of the settlement on the record,
14 confirming the following:
15

16 so the settlement payment to the plaintiff is not -- has not changed. That's still the
17 amount that was put on the record \$355 thousand. It's being funded by insurance
18 carriers on behalf of Cox and IES Residential and Sunrise Villas IX. And then
19 additionally *parties receiving a release from the plaintiff include IES*
20 *Residential, Cox Communications, the Sunrise HOA, PW James, and now*
21 *defendant Chris Scarcelli and defendant Kevin Bushbaker* will also be released
as part of that settlement. The plaintiff is releasing his claims *against them*.

22 In addition, *all of the parties that I just named* are releasing any current or future
23 cross-claims for equitable indemnity, contribution, or otherwise. All currently
24 alleged or potential cross-claims *amongst those parties only* are being released as
part of the global settlement.

25 *Id* at P. 8 L. 19 – P. 9 L. 11 (emphasis added).

26 After confirming that the subject settlement only released and impacted IES Residential,
27 Cox Communications, the Sunrise HOA, PW James, Chris Scarcelli and Kevin Bushbaker, the
28 Court asked “Everyone agree?”, whereupon counsel for all active parties, including Mr. Fink as

1 counsel for SUNRISE, placed their agreement on the record. *Id* at P. 9 L. 12-19. Indeed, the
2 Court specifically commended counsel for COX for accurately conveying that the settlement
3 only involved SIMONE's claims against IES Residential, Cox Communications, the Sunrise
4 HOA, PW James, Chris Scarcelli and defendant Kevin Bushbaker. *Id* at P. 9 L. 20.

6 Counsel for the various parties then discussed reducing the settlement to writing,
7 whereupon Mr. Sampson confirmed that in drafting any release or the like related to the
8 settlement:

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

18 *Id* at P. 10 L. 24 – P. 11 L. 12 (emphasis added).

19 After Mr. Sampson asked to make it clear that no releases or any other settlement
20 documents would affect any rights SIMONE may have against the defaulted parties (DUSLAK
21 and SESMAN), *Mr. Fink agreed that no releases or settlement documents would affect any*
22 *rights SIMONE may have against DUSLAK and/or SESMAN.* *Id* at P. 11 L. 21.

23 In reducing the agreed upon settlement to writing, the release to which SUNRISE and
24 QBE agreed stated that "PLAINTIFF", "Dr. SIMONE RUSSO" was releasing SUNRISE and
25 QBE **"EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN OR ANYONE**
26 **ASSOCIATED OR AFFILIATED WITH THEM, INCLUDING ANY ACTUAL OR**
27 **POTENTIAL INSURER"**. *See*, Exhibit "4" at P. 1 (emphasis in original).

28 To further confirm that the release and any accompanying documentation did not affect
any rights Dr. RUSSO may have against DUSLAK and/or SESMAN in any manner, the release

1 to which SUNRISE and QBE agreed further stated, “PLAINTIFF [RUSSO] shall retain *all*
 2 *rights* to pursue *any claims* against RICHARD DUSLAK and/or JUSTIN SESMAN”. *See*
 3 Exhibit “4” at P. 4 (emphasis added). The release further confirmed, “ANY LANGUAGE IN
 4 THIS RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC
 5 PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO *IN ANY WAY*
 6 IMPACT PLAINTIFF’S RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN
 7 SESMAN . . . SHALL BE DEEMED NULL AND VOID.” *Id* (emphasis added).
 8

9
 10 After the release was signed by all involved parties, and given the release specifically
 11 recognized that SIMONE retained “all rights” to pursue “any and all claims against DUSLAK
 12 and SESMAN”, SIMONE sought and procured a default Judgment against DUSLAK and
 13 SESMAN on December 12, 2019. *See*, Exhibit “5”. On November 16, 2020 QBE filed a
 14 declaratory relief action in federal court asking that the court declare that DUSLAK and
 15 SESMAN do not qualify for coverage under the applicable insurance contract. *See* Exhibit “6”.
 16

17 On January 4, 2021, well over a year after Judgment had been entered against DUSLAK
 18 and SESMAN in the instant matter, QBE filed the instant motion to intervene.
 19

20 **POINTS AND AUTHORITIES IN OPPOSITION** 21 **TO MOTION TO INTERVENE**

22 **I. Under NRS 12.130, Intervention Is Never Permitted After Judgment Has 23 Been Entered.**

24 This court entered Judgment by Default against Defendants DUSLAK and SESMAN on
 25 December 17, 2019. *See*, Exhibit “5”. QBE’s motion to intervene was filed on January 4,
 26 2021, *well over a year after Judgment was entered*. As noted below, the Supreme Court of the
 27 State of Nevada has spoken loud, clear, repeatedly, and recently that *intervention is never*
 28 *permitted after judgment has been entered*. QBE’s motion should therefore be denied.

1 NRS 12.130 states, “before the trial any person may intervene in an action or
2 proceeding, who has an interest in the matter in litigation, in the success of either of the parties,
3 or an interest against both.” The Nevada Supreme Court has held “***The plain language of NRS***
4 ***12.130 does not permit intervention subsequent to the entry of a final judgment.***” *Lopez v.*
5 *Merit Insurance Co.*, 853 P.2d 1266, 1268 (1993) (emphasis added).
6

7 Dating all the way back to 1938, the Nevada Supreme Court has held that ***intervention***
8 ***cannot be had after a final judgment is entered.*** See, *Ryan v. Landis*, 58 Nev. 253, 75 P.2d
9 734. (1938). In *Ryan* the Court adopted the holding from a California decision a decade before
10 which held that “***in all cases [intervention] must be made before trial.***” *Id* (citing *Kelly v.*
11 *Smith* 204 Cal. 496, 268 P. 1057 (1928). The Nevada Supreme Court has subsequently
12 confirmed “In refusing to allow intervention subsequent to the entry of a final judgment, ***this***
13 ***court has not distinguished between judgments entered following trial and judgments entered***
14 ***by default*** or by agreement of the parties.” *Lopez v. Merit Insurance Co.*, 853 P.2d 1266, 1268
15 (1993) (emphasis added). In *Lopez* the Court reiterated that “***[i]n all cases***” intervention must
16 be sought before judgment is entered. *Id.*
17
18

19 In 1968, in the case of *McLaney v. Fortune Operating Co.*, the Nevada Supreme Court
20 reversed the lower court’s decision to allow intervention after judgment had been entered. The
21 opinion states “The lower court allowed [appellants] to intervene . . . after judgment. ***The***
22 ***motion to intervene came too late and should have been denied.***” *McLaney v. Fortune*
23 *Operating Co.*, 84 Nev. 491, 499, 444 P.2d 505, 510 (1968).
24

25 In 1993, in *Lopez v. Merit Insurance Co.*, 853 P.2d 1266 (1993), the Nevada Supreme
26 Court again confirmed its long-held position that “in all cases” intervention must be sought
27 before the entry of judgment. The Court detailed the long and consistent line of authority
28

1 detailing how intervention is not allowed after judgment has been entered. The Court discussed
 2 case after case after case where appellant after appellant over the course of several decades had
 3 asked district courts to allow them to intervene after judgment for myriad reasons. Without
 4 exception, every time a district court judge found that intervention could not be had after
 5 judgment had been entered the district court judge's decision was upheld. Without exception,
 6 every time a district court judge has allowed intervention after judgment was entered the district
 7 court judge's decision was reversed.

8
 9 The most recent instance in which the Nevada Supreme Court again held that
 10 intervention cannot be permitted after judgment has been entered was in *Nalder v. Eighth*
 11 *Judicial Dist. Ct.*, 136 Nev.Adv.Op. 24 (2020). The *Nalder* Court explained:

12
 13 NRS 12.130 provides that "***b***efore the trial, any person may intervene in an action
 14 or proceeding, who has an interest in the matter in litigation, in the success of either
 15 of the parties, or an interest against both." (Emphases added.) In *Ryan v. Landis*, in
 16 interpreting a nearly identical predecessor to NRS 12.130, we adopted the principle
 17 that ***there could be no intervention after judgment, including default judgments*** and
 18 judgments rendered by agreement of the parties. 58 Nev. 253, 259, 75 P.2d 734, 735
 19 (1938). We reaffirmed that principle in *Lopez v. Merit Insurance Co.*, 109 Nev. at
 20 556-57, 853 P.2d at 1268. In reversing a lower court's decision allowing an insurance
 21 company to intervene after judgment, we reasoned, "***[t]he plain language of NRS***
 22 ***12.130 does not permit intervention subsequent to entry of a final judgment.***" *Id.* at
 23 556, 853 P.2d at 1268. ***We do not intend today to disturb that well-settled principle***
 24 ***that intervention may not follow a final judgment***, nor do we intend to undermine
 25 the finality and the preclusive effect of final judgments.

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

27 In the instant action a final judgment was entered on December 17, 2019. Even though
 28 QBE was well aware of this action and was aware that defaults had been taken against
 DUSLAK and SESMAN long before default judgment was entered, QBE waited until well over
 a year ***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

1 also no dispute that Nevada authority holds that “*in all cases*” *intervention must be sought*
2 *before judgment*, and that intervention can never be (and has never been) permitted after a final
3 judgment has been entered. The Nevada Supreme Court has repeatedly held that a district court
4 is required, as a matter of law, to deny such a motion to intervene. This court should follow the
5 core principles of *stare decisis* and deny QBE’s motion for intervention as required by the law.
6

7 Indeed, the Nevada Supreme Court held in *Aetna Life & Cas. Co. v. Rowan*, 107 Nev.
8 362, 812 P.2d 350 (1991) that an order denying a motion to intervene is not substantively
9 appealable. The *Aetna* Court held that “a proposed intervenor does not become a party to a
10 lawsuit unless and until the district court grants a motion to intervene.” The Court then noted,
11 “NRAP 3A confers a right to appeal only upon a party aggrieved by a judgment of a district
12 court. Therefore, we conclude that an appeal cannot lie from an order of a district court that
13 denies a motion to intervene.” *Id* at 363, 350-351.
14

15 SUNRISE joinder to the motion to intervene is also improper. Default Judgment was
16 entered on December 12, 2019. This case was closed on May 14, 2020 and there have been no
17 active parties to this matter since that time. Intervention cannot be had as Judgment was entered
18 in this matter.
19

20 **II. Intervention Post Judgment Is Not Permitted For Any Purpose.**

21 While not addressed in its motion, QBE has claimed in communications with SIMONE
22 that *Nalder* permits a court to allow intervention post judgment to contest a settlement. Such is
23 not at all the case.³ In *Nalder* the underlying plaintiff filed an action against the underlying
24 defendant in 2007. The underlying plaintiff then filed an additional action against the
25
26

27 ³ As QBE did not address *Nalder* in its motion, it would be patently unfair and improper for QBE
28 to make any claims based on *Nalder* in any reply brief. Any reference to *Nalder* in the reply
should therefore be stricken.

1 underlying defendant in 2018. The 2007 case resulted in a judgment. The 2018 case resulted in
2 an agreed upon settlement and did not proceed to judgment. In 2018 UAIC, the carrier for the
3 underlying defendant, sought to intervene in both the 2007 action and the 2018 action. The
4 lower court granted UAIC's motions to intervene in both actions.
5

6 In reversing the lower court's decision to grant the motion to intervene in the 2007
7 action, the Nevada Supreme Court held that "nothing permits" an insurance carrier to intervene
8 after judgment is entered. The Court reversed the lower court's decision to permit UAIC's
9 intervention in the 2007 action as a judgment had previously been entered in the 2007 matter.
10 In so ruling the Court recognized the "well-settled principle that intervention may not follow a
11 final judgment". *Nalder v. Eighth Jud. Dist.*, 135 Nev.Adv.Op 24 (2020) ("We do not intend
12 today to disturb the well-settled principle that intervention may not follow a final judgment, nor
13 do we intend to undermine the finality and the preclusive effect of final judgments.").

14
15 The underlying plaintiff in *Nalder* also sought to prevent the UAIC from intervening in the
16 2018 matter as the 2018 matter had been resolved by a stipulated settlement but had not gone to
17 final judgment. The Nevada Supreme Court stated, "We do not intend to state that a settlement
18 agreement on its own stands in the place of a judgment". *Id.* (citing *Ryan v. Landis*, 58 Nev. 253,
19 260, 75 P.2d at 734, 753 (1938)). The *Nalder* Court held "***it is the judgment that bars intervention***,
20 not the agreement itself reached by the parties." *Id.* (emphasis added).
21

22 In permitting UAIC to intervene in the 2018 action as judgment had not been entered in the
23 2018 matter, and in holding that a stipulated settlement is not sufficient to prevent intervention prior
24 to a final judgment being entered, the *Nalder* Court was more than clear that intervention can never
25 be permitted after a judgment is entered. *Id.* In the instant matter, as SIMONE procured a final
26 judgment in December 2019, QBE cannot be permitted to intervene in January of 2021.
27
28

1 QBE has also made assertions in communications with counsel for RUSSO that *Nalder*
2 allows intervention post judgment if the intervention seeks to contest a settlement agreement.
3 Again, *Nalder* makes no such holding. *Nalder* in fact states the exact opposite in recognizing the
4 “well-settled principle that intervention may not follow a final judgment”. While *Nalder* does refer
5 to *United States v. Alisal Water Corp*, 370 F.3d 915, 922 (2004) which holds that “Intervention,
6 however, has been granted after settlement agreements were reached in cases where the applicants
7 had no means of knowing that the proposed settlement was contrary to their interests”, the *Nalder*
8 Court made it clear that such an intervention must be made before judgment is entered. *See, Nalder*.

10 Additionally, in this matter QBE was involved in the construction of the settlement
11 agreement and knew full well and agreed that the settlement did not “release, discharge or in any
12 way impact RUSSO’s rights against DUSLAK and/or SESMAN in any manner”. QBE also
13 knew that the settlement agreement stated, “ANY LANGUAGE THAT WOULD BE READ
14 TO IN ANY WAY IMPACT [RUSSO’S] RIGHTS AGAINST RICHARD DUSLAK and/or
15 JUSTIN SESMAN [OR] THEIR INSURED . . . SHALL BE DEEMED NULL AND VOID.”
16 *See*, Exhibit “4” at P. 4. QBE cannot claim (and does not claim in its motion)⁴ that it had no
17 means of knowing that the proposed settlement was contrary to its interests as QBE participated
18 in the drafting of the settlement documents and agreed to the same. This coupled with the fact
19 that QBE’s motion to intervene was brought after judgment was entered in this matter,
20 mandates that the motion to intervene be denied.

23 ///

25 ///

27 ⁴ Again, as QBE did not make any claims in its initial motion that it had no means of knowing
28 that the proposed settlement was contrary to its interests, QBE must not be permitted to raise
any such argument(s) for the first time in any reply brief.

III. NRCP 24 Does Not Permit Intervention After Judgment Has Been Entered.

QBE's request for permissive intervention under NRCP 24 attempts an end-run around NRS 12.130 and must not be permitted. First of all QBE's motion to intervene under NRCP 24(a) and (b) must be denied as NRCP 24(a) and (b) only permit intervention when the party seeking intervention "is given an unconditional (or under (b) a conditional) right to intervene by state or federal statute." The only applicable statute that could possibly give QBE a right to intervene would be NRS 12.130, which, as noted above, cannot be permitted after judgment has been entered. *See, Nalder*. Intervention likewise is not permitted under NRCP 24(b)(1)(B) as there are no common questions of law or fact shared between QBE and any party to the main action of *Russo v. Cox*, which was a trip and fall negligence action.

Further, 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 12.130 that a motion to intervene be filed before judgment is entered.

Additionally, the Nevada Supreme Court held in *Nalder*, "Nothing permits [an insurance carrier] to intervene after judgment". *Id* at P. 7. The Court's use of the words "Nothing permits" clearly mean nothing, not NRS 12.130, not NRCP 24, ***nothing*** permits an insurance carrier to intervene after judgment. This court should not ignore the clear instructions from the Supreme Court in *Lopez* (holding that "in all cases" intervention must be sought before judgment is entered) and *Nalder* (holding that "nothing permits" an insurance carrier to

1 intervene after judgment is entered and recognizing the “well-settled principle that intervention
2 may not follow a final judgment”) as QBE requests.

3 QBE’s motion to intervene, having been filed over a year after judgment was entered,
4 can in no way be deemed “timely” under NRCP 24. As QBE’s motion to intervene was brought
5 eleven months after judgment was entered in this matter, this court should follow the clear
6 precedent from the Nevada Supreme Court and deny the motion to intervene.
7

8 Additionally, QBE does not have any claims or defenses in this matter and therefore
9 cannot have and claims or defenses in common with the instant action. QBE was fully advised
10 about this action for years and choose to not defend DUSLAK or SESMAN. QBE cannot seek
11 to intervene over a year after judgment was entered and take steps it should have taken in 2017.
12

13 **IV. The Court Should Consider Sanctions Against QBE.**

14 As noted above, it has been well established in Nevada for over 80 years that
15 intervention is not permitted after judgment is entered. The fact that the Nevada Supreme Court
16 has recognized the “well-settled principle that intervention may not follow a final judgment”
17 (*Nalder*) and the fact that the Court has declared that “in all cases [intervention] must be made
18 before trial” (*Ryan*), renders QBE’s motion to intervene over a year after Judgment was entered
19 in this matter entirely frivolous. The court should consider sanctions against QBE for filing a
20 motion that is so clearly in violation of Nevada law. At a minimum SIMONE should be
21 awarded attorney fees for having to oppose such an improper motion.
22
23

24 **POINTS AND AUTHORITIES IN OPPOSITION TO** 25 **THE MOTION TO “ENFORCE” SETTLEMENT**

26 As Nevada State law does not permit intervention after judgment has been entered, this
27 Court should refuse to hear the motion to “enforce” settlement as QBE is not permitted to
28

1 intervene and bring the said motion before the Court. Should the Court hear the said motion to
2 “enforce” the settlement, SIMONE hereby sets forth his opposition thereto.

3 **I. The Plain Language Of The Agreement Allows SIMONE To Retain “All**
4 **Rights To Pursue Any Claims Against DUSLAK and/or SESMAN”.**

5 As noted in the Statement of Facts set forth above, SIMONE and his counsel made it
6 very clear at every step of the settlement process that the settlement did not, and would not,
7 affect any of SIMONE’s rights to pursue his claims against DUSLAK and/or SESMAN in any
8 manner. In the October 18, 2020 hearing where the terms of the settlement were placed on the
9 record by all involved parties, all counsel involved, including counsel for SUNRISE itself,
10 which counsel was in a tripartite relationship with QBE, recognized and openly acknowledged
11 that the settlement only involved the active parties in the lawsuit who had answered the
12 complaint, and “PW JAMES”. *See* Exhibit “3”. Indeed Mr. Fink himself confirmed that he,
13 SUNRISE, SUNRISE’s carrier, and the parties involved were well aware that there were further
14 actions “Mr. Sampson is going to take against the defaulted parties [DUSLAK and SESMAN]”,
15 and that the settlement would not impact SIMONE’s rights to pursue any of those claims. *See*,
16 Exhibit “3”, at P. 6 L. 4-9.

17 All of the parties to the settlement confirmed that the settlement did not affect any of
18 SIMONE’s rights against DUSLAK or SESMAN, with Mr. Sampson making it clear, and all
19 parties agreeing, that “this settlement does not affect them”. *Id* at P. 6 L. 15-19. The Court
20 itself confirmed that the settlement only applies to “the parties to this case that have actively
21 litigated” and “PW JAMES”. *Id* at P. 7 L. 19 – P. 8 L. 4. Counsel for COX confirmed, and all
22 represented parties present agreed, that the only parties released to any degree would be “IES
23 Residential, Cox Communications, the Sunrise HOA, PW James, and now defendant Chris
24 Scarcelli and defendant Kevin Bushbaker”. *Id* at P. 8 L. 19 – P. 9 L. 19. Counsel for Russo, in
25
26
27
28

1 discussing any settlement documentation that would be subsequently signed, insisted that there
2 be “no new terms” and “most of all that nothing in any of these releases or any of the settlement
3 affects any rights Dr. Russo may have against any person or entity related to the claims of the
4 two individuals who have been defaulted” and made sure “we’re clear on all of that”, to which
5 *all parties present agreed. Id* at P. 10 L. 24 – P. 11 L. 21.

7 In addition to it being made abundantly clear on the record that the settlement did not
8 affect SIMONE’s rights against DUSLAK and/or SESMAN, the settlement documentation that
9 followed the hearing was abundantly explicit and left no room for confusion or doubt that it did
10 not apply to DUSLAK or SESMAN and did not impact any rights SIMONE had against
11 DUSLAK and/or SESMAN. The documentation repeatedly noted, often in all capital letters,
12 that the settlement was clearly “EXCLUDING RICHARD DUSLAK and/or JUSTIN
13 SESMAN”. *See*, Exhibit “4” at P. 4. The documentation further directed that “PLAINTIFF
14 shall retain *all rights* to pursue *any claims* against RICHARD DUSLAK and/or JUSTIN
15 SESMAN”. *See* Exhibit “4” at P. 4 (emphasis added).

18 To prepare for the possibility any party might try to slip in language anywhere in any of
19 the settlement documents that could be remotely read to impact any of SIMONE’s rights against
20 DUSLAK and/or SESMAN, the release had SUNRISE and QBE confirm and agree (in all
21 capital letters no less) that “ANY LANGUAGE IN THIS RELEASE THAT IS CONTRARY
22 TO THE LANGUAGE OF THIS SPECIFIC PARAGRAPH, AND/OR *ANY LANGUAGE*
23 THAT WOULD BE READ TO IN ANY WAY IMPACT PLAINTIFF’S RIGHTS AGAINST
24 RICHARD DUSLAK and/or JUSTIN SESMAN . . . SHALL BE DEMED NULL AND VOID.”

1 *Id* (emphasis added).⁵ Thus even if SUNRISE, its carrier, or anyone else placed language
2 anywhere in any of the settlement documents that would impact SIMONE's rights against
3 DUSLAK and/or SESMAN, such language is null and void.
4

5 What has taken place is as follows: 1) At the October 18, 2019 hearing where the
6 settlement was confirmed on the record every party attending the same agreed that the
7 settlement "does not affect" DUSLAK and SESMAN; 2) At the said hearing every party
8 attending the same agreed that the settlement only related to the parties that had answered and
9 PW James; 3) At the said hearing every party attending the same agreed that there would be no
10 new terms added to the settlement documents other than what was confirmed that day on the
11 record and that, most of all, nothing in any of the releases or any of the settlement documents
12 would affect any rights SIMONE may have against DUSLAK, SESMAN, or any person or
13 entity related to them, with all parties attending confirming "we're clear on all of that"; 4) The
14 settlement documents confirmed that the settlement excluded DUSLAK and SESMAN; 5) The
15 settlement documents further confirmed that SIMONE retained all rights to pursue any claims
16 against DUSLAK and SESMAN; 6) The settlement documents also confirmed that if there was
17 any language in any of the settlement documents that could be read in any way to impact
18 SIMONE's rights against DUSLAK and/or SESMAN, such language shall be deemed null and
19 void; and 7) QBE apparently slipped the words "independent contractors" into an exhibit which
20 QBE now asks the Court to utilize to undo the multiple and clear confirmations on the record
21 and in the settlement documents where it was repeatedly confirmed that the settlement did not
22
23
24
25

26 ⁵ The Release also contains a "Severance" clause which states that if any provision(s) of the
27 settlement is/are invalid or unenforceable, said provision(s) "shall be deemed to be severed and
28 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." See
Exhibit "4" at P. 7.

1 and would not impact SIMONE's rights against DUSLAK and SESMAN. Such must not be
2 permitted.

3 If SUNRISE, or its carrier QBE believed that the settlement would have any impact on
4 SIMONE's rights to proceed in any manner against DUSLAK and SESMAN, then SUNRISE
5 and/or its carrier should have spoken up at the October 18, 2019 hearing when the settlement
6 was placed on the record. SUNRISE and/or QBE should have disagreed with SIMONE's
7 counsel when he said, "nothing in any of the releases or any of the settlement documents would
8 affect any rights SIMONE may have against DUSLAK, SESMAN". Instead, counsel agreed
9 and confirmed "we're all clear on that." SUNRISE and/or QBE certainly should not have
10 allowed language to remain in the settlement documents that said SIMONE shall retain all
11 rights to pursue any claims against DUSLAK and/or SESMAN if SUNRISE and/or QBE
12 believed the settlement somehow prevented SIMONE from retaining all rights to pursue any
13 claims against DUSLAK and SESMAN. The time for SUNRISE and/or QBE to claim that
14 SIMONE's rights were impacted by the settlement was in October 2019, not over a year
15 afterwards.

16 QBE's motion asks that this Court permit QBE to utilize the settlement to impact
17 SIMONE's rights against DUSLAK and/or SESMAN. The motion is not seeking to "enforce"
18 the settlement, but to dramatically change it in a manner that is explicitly not allowed by the
19 settlement itself. It is unfathomable that QBE and/or SUNRISE would ask the Court to utilize
20 the settlement agreement to restrict or otherwise limit SIMONE's rights against DUSLAK
21 and/or SESMAN, when QBE and SUNRISE agreed in the settlement that SIMONE "shall retain
22 *all rights* to pursue *any claims* against RICHARD DUSLAK and/or JUSTIN SESMAN". See
23 Exhibit "4" at P. 4 (emphasis added). QBE's claim that the agreement somehow limits
24
25
26
27
28

1 SIMONE's rights against DUSLAK and/or SESMAN flies in the face of this very plain
2 language.

3 Contrary to the claims in QBE's motion, SIMONE never agreed to "not seek recovery
4 from DUSLAK and SESMAN based on the contention that both were HOA employees". See
5 QBE's motion at P. 3 L. 27-28. Quite the opposite. In the agreement the parties involved
6 clearly expressed that SIMONE would "retain *all rights* to pursue *any claims* against
7 RICHARD DUSLAK and/or JUSTIN SESMAN". See Exhibit "4" at P. 4 (emphasis added).
8

9 QBE's motion directs this Court to an exhibit in the release. QBE then claims that the
10 exhibit includes language that would impact SIMONE's rights against DUSLAK and
11 SESMAN. What QBE ignores however is the fact that the exhibit was specifically incorporated
12 into the release, and that the release states that any language that would in any way impact
13 SIMONE's rights against DUSLAK and/or SESMAN is "DEEMED NULL AND VOID",
14 which would nullify the very language upon which QBE seeks to rely.
15
16

17 Incorporation by reference is the act of including a second document within another
18 document by only mentioning the second document. See, Bryan A. Garner, ed. (2001), *Black's*
19 *Law Dictionary* (2nd pocket ed.). St. Paul, MN: West Group. p. 341. ISBN 0-314-25791-8.
20 When a document is mentioned in a main document, the entire second document is made a part
21 of the main document. *Id.* When a document is referenced in a contract, the referenced
22 document becomes a part of the contract for all purposes. *Lincoln Welding Works, Inc. v.*
23 *Ramirez*, 98 Nev. 342, 647 P.2d 381 (1982). The Nevada Supreme Court has held that "where
24 two instruments were executed together as one transaction they constituted but one instrument
25 or contract, although written on different pieces of paper." *Haspray v. Pasarelli*, 79 Nev. 203,
26 207-208, 380 P.2d 919, (1963).
27
28

1 The *Haspray* Court went on to say:

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

7 *Id.*

8 In this matter the said exhibit was specifically referenced in the release on multiple
9 occasions. See Exhibit “4” at P. 1-4. Indeed, the exhibit is specifically mentioned and
10 referenced in the very paragraph which states that, “ANY LANGUAGE THAT WOULD BE
11 READ TO IN ANY WAY IMPACT PLAINTIFF’S RIGHTS AGAINAST RICHARD
12 DUSLAK and/or JUSTIN SESMAN . . . SHALL BE DEMED NULL AND VOID.” *Id* at P. 4.
13 As the exhibit was specifically incorporated into the release by the references and thus is
14 considered included in the release, to the extent the exhibit contains any language that would
15 impact SIMONE’s rights against DUSLAK and/or SESMAN, the said language is deemed null
16 and void by the express terms of the release itself. QBE cannot be allowed to slip words into an
17 exhibit to the release and thereby undermine one of the most clearly delineated and fundamental
18 terms of the entire settlement.
19

20 As QBE’s motion concedes, once the material terms of a settlement are agreed upon and
21 reduced to writing, the terms are valid and enforceable. *Grisham v. Grisham*, 128 Nev. 679
22 (2012). Additionally, under EDCR 7.50 the agreement that was placed on the record on
23 October 18, 2021, which specifically agreed that SIMONE’s rights against DUSLAK and/or
24 SESMAN are not affected, is enforceable as well. SIMONE has the right to enforce the terms
25 of the settlement that specifically permit him to retain and pursue “*all rights* to pursue *any*
26 *claims* against RICHARD DUSLAK and/or JUSTIN SESMAN”. *Id* at P. 4 (emphasis added).
27
28

SIMONE has the right to enforce the terms that were agreed upon on the record by all parties that, when it comes to DUSLAK and/or SESMAN whom all parties involved knew had been defaulted, “this settlement does not affect them”. *Id* at P. 6 L. 15-19. Any motion to “enforce” the settlement in a manner that would affect DUSLAK and/or SESMAN, and any motion to “enforce” the settlement in a manner that would not allow SIMONE to retain, “all rights to pursue any claims” against DUSLAK and/or SESMAN needs to be denied so that SIMONE may retain the benefit of the bargain and pursue claims clearly retained by the plain language of the agreement.

II. The Court Must Enforce The Agreement Placed On The Record October 18, 2019 Which Would Control Any Subsequent Agreement(s).

Under EDCR 7.50 agreements that are placed on the record are enforceable. In the instant matter the agreement that was placed on the record on October 18, 2019, and was agreed to by all parties present, included an agreement that *“nothing in any of these releases or any of the settlement affects any rights Dr. Russo may have against any person or entity related to the claims of the two individuals who have been defaulted”*. See, Exhibit “3” at P. 10 L. 24 – P. 11 L. 21. This agreement is enforceable under EDCR 7.50. QBE’s claim over a year later that the settlement documents somehow affected Dr. Russo’s rights against the two individuals who had been defaulted (DUSLAK and SESMAN) is an apparent admission that QBE attempted to violate the agreement between the parties that was placed on the record on October 18, 2019 and is enforceable under EDCR 7.50. That agreement plainly included the fact that the settlement documents would not affect any rights Dr, Russo may have against DUSLAK and/or SESMAN. The Court should not permit such a violation of the enforceable agreement.

QBE’s apparent attempt to violate the agreement that was placed on the record October 18, 2019 must be rectified by this Court holding that any language in any settlement documents

1 that would affect SIMONE's rights against DUSLAK and SESMAN is invalid as such language
2 would be in clear violation of the agreement that was placed on the record October 18, 2019
3 which was that nothing in any of the releases of settlement documents would affect SIMONE's
4 rights against DUSLAK and/or SESMAN.
5

6 **III. SIMONE Is Not Prosecuting Any Suit Against QBE Or SUNSRISE**

7 QBE's motion inaccurately claims that SIMONE is prosecuting a suit against QBE. In
8 November 2020 it was QBE that chose to file and prosecute a declaratory relief action in federal
9 court which asked the court to declare that DUSLAK and SESMAN do not qualify for coverage
10 under the applicable insurance contract. *See* Exhibit "6". The question of whether DUSLAK
11 and/or SESMAN qualify for coverage under the QBE insurance policy is a dispute between
12 QBE, DUSLAK, and SESMAN as SIMONE is not a party to the said contract.
13

14 For reasons known only to QBE, QBE chose to include SIMONE as a party to the
15 declaratory relief. *Id.* SIMONE therefore answered the QBE lawsuit and initially filed a
16 counterclaim. *See* Exhibit "7". SIMONE's counterclaim however does not ask QBE to pay any
17 money to SIMONE. *Id.* at P. 29. The counterclaim asks only that, should the federal court
18 resolve QBE's dispute between DUSLAK and SESMAN by declaring that DUSLAK and
19 SESMAN are covered under the QBE policy, that SIMONE receive the funds from DUSLAK
20 and/or SESMAN in an amount necessary to satisfy the Judgment SIMONE has against them.
21
22 *Id.*
23

24 After SIMONE filed the answer to the declaratory relief action, counsel for QBE
25 claimed that certain assertions in the counterclaim violated the "stipulation" that was a part of
26 the release and agreement to settle the instant matter. Counsel for SIMONE advised that
27 because the release itself deemed any language impacting SIMONE's rights against DUSLAK
28

1 and/or SESMAN to be “NULL AND VOID”, and because the settlement agreement specifically
2 stated SIMONE would “retain *all rights* to pursue *any claims* against RICHARD DUSLAK
3 and/or JUSTIN SESMAN”, there did not seem to be a conflict between the settlement and the
4 answer.
5

6 QBE then filed an amended complaint in the declaratory relief action. In filing his
7 answer to the same SIMONE, in an abundance of caution, withdrew any assertions of DUSLAK
8 and/or SESMAN being employees and instead included the fact that SUNRISE had stated
9 DUSLAK and SESMAN were employees, which SUNRISE did on multiple occasions. *See*,
10 Exhibit “8”.⁶ The amended counterclaim, just like the original counterclaim, asked only that if
11 DUSLAK and/or SESMAN recover from QBE that those funds be paid to SIMONE.
12

13 On January 4, 2021 DUSLAK and SESMAN, through their own counsel, filed their
14 answer to QBE’s declaratory relief action, and filed their own counterclaims. *See*, Exhibit “9”.
15 As DUSLAK and SESMAN chose to pursue their claims against QBE, and as under the law any
16 funds DUSLAK and/or SESMAN recover from QBE are due and owing to SIMONE, SIMONE
17 withdrew his original and amended counterclaim on January 11, 2021. *See* Exhibit “10”.
18

19 SIMONE is defending the declaratory relief action QBE chose to file. Even when
20 SIMONE filed a counterclaim he did not seek relief from QBE, but instead sought that
21 DUSLAK and SESMAN pay any monies they recover to SIMONE as necessary to satisfy the
22 Judgment SIMONE has against DUSLAK and SESMAN. In any event, as SIMONE has
23 withdrawn the counterclaims, at present SIMONE is not prosecuting any action against QBE or
24 SUNRISE at all. As SIMONE is not prosecuting any action against QBE or SUNRISE, there is
25
26

27 ⁶ It is unclear why QBE’s motion referred the Court to assertions made in the original
28 counterclaim when SIMONE had already amended that counterclaim and amended the said
assertions.

nothing to “enforce”. In any event, any “enforcement” of the agreement that would affect any of SIMONE’s rights to pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN, as specifically agreed by QBE and SUNRISE should be denied.

IV. The Motion To “Enforce” Seeks To Strip DUSLAK And SESMAN Of All Due Process Rights.

DUSLAK and/or SESMAN either qualify for coverage under the QBE policy or they do not. The issue of whether DUSLAK and/or SESMAN qualify for coverage needs to be determined by the federal court judge in applying the “economic realities” test. *See Real v. Driscoll Strawberry Assocs., Inc.*, 603 F.2d 748, 755 (9th Cir, 1979) (“economic realities, not contractual labels, determine employment status”) (citing *Rutherford Food Corp. v. McComb*, *supra*, 67 S.Ct. 1473; *Usery v. Pilgrim Equipment Co.*, 527 F.2d 1308, 1315 (1976). QBE’s motion seems to ask that this Court declare that SIMONE is only permitted to recover funds against DUSLAK and/or SESMAN out of DUSLAK and SESMAN’s own pockets. What is worse is that the instant motion asks this court to adjudicate DUSLAK and SESMAN’s rights to coverage without giving any due process to DUSLAK or SESMAN to be heard on the matter. Such must not be permitted.

SIMONE, with the full knowledge of QBE and SUNRISE, procured a judgment against DUSLAK and SESMAN. DUSLAK and SESMAN owe that money to SIMONE. DUSLAK and SESMAN must be allowed a fair opportunity to be heard and argue their rights to indemnification in the QBE declaratory relief action. There is nothing in the agreement between SUNRISE and SIMONE that would prevent DUSLAK and/or SESMAN from being heard in the declaratory relief action and having their rights to coverage (if any) adjudicated on the merits.

For the foregoing reasons SIMONE respectfully requests this Court deny QBE's motion to intervene and deny the motion to "enforce" the settlement as well. The Court should further hold that the 2019 settlement of this matter did not affect any rights SIMONE may have against DUSLAK and/or SESMAN as agreed on the record by all active parties on October 18, 2019, and further find that SIMONE retains all rights to pursue any claims against DUSLAK and/or SESMAN as specifically set forth on the record and in the subsequent settlement documents.

LAW OFFICE OF DAVID SAMPSON, LLC.

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

s/ Amanda Nalder

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

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

EXHIBIT “1”



1 **RSPN**

2 LEONARD T. FINK, ESQ.

3 Nevada Bar No. 6296

4 JONATHAN C. PATTILLO, ESQ.

5 Nevada Bar No. 13929

6 **SPRINGEL & FINK LLP**

7 10655 Park Run Drive, Suite 275

8 Las Vegas, Nevada 89144

9 Telephone: (702) 804-0706

10 Facsimile: (702) 804-0798

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

12 *jpattillo@springelfink.com*

13 Attorneys for Defendant,

14 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 ***

18 SIMONE RUSSO,

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

) Dept. No.: XVI

19 Plaintiffs,

20 v.

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

21 COX COMMUNICATIONS LAS VEGAS, INC.)
22 D/B/A COX COMMUNICATIONS; IES)
23 RESIDENTIAL, INC.; SUNRISE VILLAS IX)
24 HOMEOWNERS ASSOCIATION; J&G LAWN)
25 MAINTENANCE; KEVIN BUSHBAKER; PW)
26 JAMES MANAGEMENT & CONSULTING,)
27 LLC; AND DOES 1-V, AND ROE)
28 CORPORATIONS I-V, inclusive)

Defendants)

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

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

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

4 **REQUEST NO. 8:**

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

8 **RESPONSE TO REQUEST NO. 8:**

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

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

16 **SUPPLEMENTAL RESPONSES TO REQUEST NO. 8:**

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

18 **SECOND SUPPLEMENTAL RESPONSES TO REQUEST NO. 8**

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

23 **REQUEST NO. 11:**

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

27 **RESPONSE TO REQUEST NO. 11:**

28 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

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

EXHIBIT “2”





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.

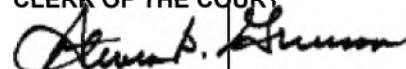
Very truly yours,
LAW OFFICES OF DAVID SAMPSON

David Sampson

David Sampson, Esq.
DS:an

Attachments

Electronically Filed
9/4/2019 11:21 AM
Steven D. Grierson
CLERK OF THE COURT



1 **DFLT**

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

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

10 SIMONE RUSSO,)

11 Plaintiff,)

12 vs.)

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

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

25 Defendants.)

26 **DEFAULT**

27 It appearing from the files and records in the above entitled action that RICHARD
28 DUSLAK, Defendant herein, being duly served with a copy of the Summons and Amended
Complaint on the 18th 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

1 having been filed and no further time having been granted, the default of the above-named
2 Defendant(s) for failing to answer or otherwise plead to Plaintiff's Complaint is hereby entered.

3 STEVEN D. GRIERSON

4 CLERK OF COURT

5
6 By:  9/4/2019

7 Deputy Clerk

8 Michelle McCarthy A-17-753606-C

9 LAW OFFICE OF DAVID SAMPSON, LLC.

10 BY: 

11 DAVID SAMPSON, ESQ.

12 Nevada Bar No. 6811

13 LAW OFFICE OF DAVID SAMPSON

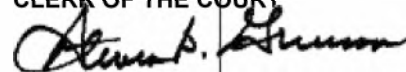
14 630 S. 3rd Street

15 Las Vegas, Nevada 89101

16 Fax No: 888-209-4199

17 Attorney for Plaintiff

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

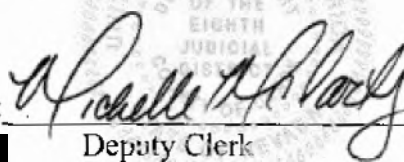
It appearing from the files and records in the above entitled action that JUSTIN
SESMAN, Defendant herein, being duly served with a copy of the Summons and Amended
Complaint on the 13th day of February, 2018; that more than 20 days, exclusive of the day
of service, having expired since service upon the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

1 having been filed and no further time having been granted, the default of the above-named
2 Defendant(s) for failing to answer or otherwise plead to Plaintiff's Complaint is hereby entered.

3 STEVEN D. GRIERSON

4 CLERK OF COURT

5
6 By:



9/16/2019

Deputy Clerk

Michelle McCarthy A-1

11 DAVID SAMPSON, ESQ.
12 Nevada Bar No.6811
13 LAW OFFICE OF DAVID SAMPSON
14 630 S. 3rd Street
15 Las Vegas, Nevada 89101
16 Fax No: 888-209-4199
17 Attorney for Plaintiff
18
19
20
21
22
23
24
25
26
27
28



David Sampson <davidsampsonlaw@gmail.com>

(no subject)

1 message

David Sampson <davidsampsonlaw@gmail.com>
To: 2677577434@rcfax.com, hstavrakis@cauinsure.com

Wed, Sep 18, 2019 at 2:17 PM

--

David Sampson, Esq.**Certified Personal Injury Specialist** (Nevada Justice Association, State Bar of Nevada)**Trial Lawyer of the Year** (Nevada Reptile Trial Lawyers 2017)

The Law Office of David Sampson, LLC.

630 S. 3rd St.

Las Vegas NV 89101

Phone: (702) 605-1099

Fax: (888) 209-4199

The sender of this confidential communication intends it to be privileged pursuant to applicable law. This email message, including any attachments, may contain material that is confidential, privileged, attorney work product and/or otherwise exempt from disclosure under applicable law, and is intended for the sole use of the intended recipient, regardless of whom it is addressed to. Any receipt, review, reliance, distribution, forwarding, copying, dissemination or other use of this communication by any party other than the intended recipient or its employees, officers and/or agents, without the express permission of the sender is strictly prohibited. If you are not the intended recipient and have received this message, please immediately contact the sender and destroy any and all contents.

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

Thank you.

4 attachments**2019 09 18 L to CAU_Russo.pdf**
110K**10. Default PWJames FILED.pdf**
175K**534. Default Sesman FILED.pdf**
141K**533. Default Duslak FILED.pdf**
90K



David Sampson <davidsampsonlaw@gmail.com>

Fax Message Transmission Result to +1 (267) 7577434 - Sent

1 message

RingCentral <service@ringcentral.com>

Wed, Sep 18, 2019 at 2:21 PM

To: David Sampson <davidsampsonlaw@gmail.com>

**Fax Transmission Result**

Here are the results of the 7-page fax you sent from your phone number **(888) 209-4199**

Name	Phone Number	Date and Time	Result
	+1 (267) 7577434	Wednesday, September 18, 2019 at 2:21 PM	Sent

Your fax(es) included the following file(s), which were rendered into fax format for transmission:

File Name	Result
2019 09 18 L to CAU_Russo.pdf	Success
10. Default PWJames FILED.pdf	Success
534. Default Sesman FILED.pdf	Success
533. Default Duslak FILED.pdf	Success

View this message on your [RingCentral app](#).

Thank you for using RingCentral!

Glip - your online destination for teams to work, share, track projects and communicate. **Get started**

By subscribing to and/or using RingCentral, you acknowledge agreement to our [Terms of Use](#).

Copyright 2019 RingCentral, Inc. All rights reserved. RingCentral is a registered trademark of RingCentral, Inc., [20 Davis Drive](#), Belmont, CA [94002, USA](#).

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

EXHIBIT “3”



OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 1

1 CASE NO. A-17-753606-C

2 DOCKET U

3 DEPT. XVI

4

5

6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

* * * * *

9 SIMONE RUSSO,)

10 Plaintiff,)

11 vs.)

12 COX COMMUNICATIONS LAS VEGAS,)

13 Defendant.)

14

REPORTER'S TRANSCRIPT
OF
MOTIONS

15

16

17 BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

18

DISTRICT COURT JUDGE

19

20 DATED FRIDAY, OCTOBER 18, 2019

21

22

23

24

25 REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

Peggy Isom, CCR 541, RMR

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 2

1 APPEARANCES:

2 FOR THE PLAINTIFF RUSSO:

3

DAVID SAMPSON, LLC

4

BY: DAVID F. SAMPSON, ESQ.

5

200 W. CHARLESTON BOULEVARD

6

LAS VEGAS, NV 89106

7

(702) 605-1099

8

(702) 888-209-4199

9

DAVIDS@INJURYHELPNOW.COM

10

11

12 FOR THE DEFENDANT IES RESIDENTIAL:

13

14

MORRIS SULLIVAN LEMKUL & PITEGOFF

15

BY: CHRISTOPHER A. TURTZO, ESQ.

16

3770 HOWARD HUGHES PARKWAY

17

SUITE 170

18

LAS VEGAS, NV 89169

19

(702) 405-8100

20

TURTZO@MORRISULLIVANLAW.COM

21

22

23

24

25

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 3

1 APPEARANCES CONTINUED:

2 FOR THE DEFENDANT CHRIS SCARCELLI:

3 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

4 BY: DAVID CLARK, ESQ.

5 BY: JULIE FUNAI, ESQ.

6 9900 COVINGTON CROSS DRIVE

7 SUITE 120

8 LAS VEGAS, NV 89144

9 (702) 382-1500

10 DCLARK@LIPSONNEILSON.COM

12

13

14 FOR THE DEFENDANT SUNRISE VILLAS IX HOA:

15 SPRINGEL & FINK, LLP

16 BY: LEONARD FINK, ESQ.

17 10655 PARK RUN DRIVE

18 SUITE 275

19 LAS VEGAS, NEVADA 89144

20 (702) 804-0706

21 (702) 804-0798 Fax

22 LFINK@SPRINGELFINK.COM

23

24

25

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 4

1 APPEARANCES CONTINUED:

2 FOR KEVIN BUSHBAKER:

3

4 SGRO & ROGER

5 BY: JOSPEH MELORO, ESQ.

6 720 SOUTH SEVENTH STREET

7 SUITE #300

8 LAS VEGAS, NV 89101

9 (702) 384-9800

10 (702) 665-4120 Fax

11 JMELORO@SGROANDROGER.COM

12

13

14 * * * * *

15

16

17

18

19

20

21

22

23

24

25

Peggy Isom, CCR 541, RMR

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 5

1 LAS VEGAS, NEVADA; FRIDAY, OCTOBER 18, 2019

2 9:09 A.M.

3 P R O C E E D I N G S

4 * * * * *

5

6 THE COURT: All right. Good morning. Let's

7 go ahead and place our appearances for the record.

8 MS. SAMPSON: David Sampson for Dr. Russo.

9 MR. FINK: Good morning, your Honor. Leonard

09:09:55 10 Fink for Sunrise Villas IX HOA.

11 MR. TURTZO: Good morning, your Honor.

12 Christopher Turtzo for IES Residential and Cox

13 Communications Las Vegas.

14 MR. MELORIO: Good morning, your Honor.

09:10:04 15 Joseph Meloro for Kevin Bushbaker.

16 MS. FUNAI: Good morning, your Honor. Julie

17 Funai on behalf of the defendant Chris Scarcelli.

18 MR. CLARK: And good morning, your Honor.

19 David Clark on behalf of the defendant Chris Scarcelli.

09:10:16 20 THE COURT: All right. Once again good

21 morning. I see there's one matter on calendar this

22 morning. But did we come to some sort of resolution

23 that would make the issue moot; do we know?

24 MR. FINK: Your Honor, we have -- as of last

09:10:26 25 night about 4:30 4:45, we have a global settlement

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 6

09:10:30 1 involving all the parties that are involved.

2 THE COURT: All right. That makes it moot;
3 right?

4 MR. FINK: Well, we still need to have the
09:10:35 5 Court determine the settlement is in good-faith --

6 THE COURT: I understand.

7 MR. FINK: -- because of the further actions
8 Mr. Sampson is going to take against the defaulted
9 parties.

09:10:42 10 THE COURT: I know you agree.

11 MS. SAMPSON: I do. And I think Mr. Fink said
12 it correctly, but I wanted to make sure it was on the
13 record that, yes, it's against all parties that
14 answered and are currently involved.

09:10:49 15 THE COURT: In this case.

16 MS. SAMPSON: Well, there are two other
17 parties in this case who have been defaulted that we're
18 still -- **this settlement does not affect them**, which is
19 the purpose of the good faith.

09:10:56 20 MR. FINK: And it will also include PW James.

21 MS. SAMPSON: Correct. That is correct.

22 MR. CLARK: I guess --

23 THE COURT: Mr. Clark, sir.

24 MR. CLARK: I guess for the record, your

09:11:06 25 Honor, we would join in the global settlement. I would

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 7

09:11:09 1 make an oral motion as a joinder to the motion for
2 good-faith settlement.

3 THE COURT: Okay. Mr. Meloro.

4 MR. MELORIO: We join as well for the
09:11:17 5 good-faith settlement.

6 THE COURT: Okay. And I just want to make
7 sure the record is very clear in this regard. I've had
8 an opportunity to review the motion for good-faith
9 settlement. And notwithstanding the fact there's no
09:11:31 10 opposition, based upon the current status of Nevada
11 law, and NRS 17.245, all the case law specifically
12 interpreting the statute including Velsicol, MGM
13 factors, and the like, it clearly meets that.

14 I also included -- I also considered the
09:11:58 15 liability permutations. I think that's in Velsicol and
16 so on. And especially under the facts of this case,
17 there's no question this is good faith. I can say that
18 with no doubt.

19 So as far as the motion of good-faith
09:12:12 20 settlement and reflecting the global settlement of the
21 parties to this case that have actively litigated, I'm
22 granting that motion.

23 MR. FINK: That would also be including PW
24 James?

09:12:23 25 THE COURT: Yes, sir.

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 8

09:12:24 1 MR. FINK: Thank you, your Honor.

2 MS. SAMPSON: Ones that are actively litigated
3 and PW James.

4 THE COURT: Yes.

09:12:30 5 MR. TURTZO: Maybe out of the abundance of
6 caution given how long --

7 THE COURT: Mr. Turtzo, go ahead.

8 MR. TURTZO: -- it's taken to get to this
9 point, I think we ought to make sure we have a clear
09:12:40 10 record of we put material terms of the partial
11 settlement on the record on Wednesday. Now we've got
12 some two additional parties joining in. I think unless
13 anybody disagrees, it would be good to just
14 re-kind-of-confirm exactly what the additional
09:12:57 15 settlement terms are.

16 MR. FINK: Agreed.

17 MR. TURTZO: Okay.

18 MS. SAMPSON: No objection.

19 MR. TURTZO: As far as I understand it, so the
09:13:04 20 settlement payment to the plaintiff is not -- has not
21 changed. That's still the amount that was put on the
22 record \$355 thousand. It's being funded by insurance
23 carriers on behalf of Cox and IES Residential and
24 Sunrise Villas IX.

09:13:21 25 And then additionally parties receiving a

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 9

09:13:24 1 release from the plaintiff include IES Residential, Cox
2 Communications, the Sunrise HOA, PW James, and now
3 defendant Chris Scarcelli and defendant Kevin Bushbaker
4 will also be released as part of that settlement. The
09:13:42 5 plaintiff is releasing his claims against them.

6 In addition, all of the parties that I just
7 named are releasing any current or future cross-claims
8 for equitable indemnity, contribution, or otherwise.
9 All currently alleged or potential cross-claims amongst
09:14:03 10 those parties only are being released as part of the
11 global settlement.

12 MR. FINK: Including any current claims for
13 fees and costs by anyone that's currently involved in
14 the case.

09:14:14 15 MR. CLARK: That's the part I was going to
16 say.

17 THE COURT: Everyone agree.

18 MR. CLARK: Agreed.

19 MR. MELORIO: Yes, your Honor.

09:14:22 20 THE COURT: Great job, Mr. Turtzo.

21 MR. TURTZO: And as before, the settlement
22 will be reduced to a settlement agreement and release.
23 One thing that we didn't state on Wednesday is the
24 plaintiff will be responsible for satisfaction of any
09:14:32 25 liens as typical in settlement of any personal injury

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 10

09:14:35 1 action.

2 THE COURT: I understand.

3 Is that correct, Mr. Sampson?

4 MS. SAMPSON: That's correct. And that's the
09:14:38 5 only other thing I would ask is again that the
6 agreement, any document that's generated: One, I'd
7 like to have that document generated as soon as
8 possible. I recommended perhaps next Tuesday since
9 everyone seemed to have their schedule booked out today
09:14:55 10 and Monday for trial, we ought to have plenty of time
11 to draft a release. But whatever documents they want
12 drafted, if I could have that the sooner the better. I
13 don't want to wait two, three weeks for it. Because
14 one of the -- one of the things I was able to utilize
09:15:10 15 to -- for and my client relied upon to agree to the
16 settlement was that he would get his money in
17 relatively short order. I think we talked about two
18 weeks from when he signs the documentation.

19 I certainly wouldn't hold it as a material
09:15:24 20 term if it took three weeks, but I don't want to wait
21 three weeks for the release and then three more weeks
22 for the check. That kind of thing. So I just want to
23 get it done in short order.

24 And then that the terms of whatever documents
09:15:35 25 we sign or that my client has asked to sign comport

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 11

09:15:39 1 with what was discussed Wednesday, and what's being
2 discussed today, and no new terms, and those types of
3 things. And, I guess, most of all that nothing in any
4 of these releases or any of the settlement effects -- I
09:15:52 5 apologize.

6 THE MARSHAL: That's all right.

7 MS. SAMPSON: Affects any rights Dr. Russo may
8 have against any person or entity related to the claims
9 of the two individuals who have been defaulted, and any
09:16:04 10 claims that they may have against anybody would not be
11 affected by this settlement. So as long as we're clear
12 on all of that.

13 MR. FINK: I'm sorry. The last clause, that
14 they would have...

09:16:13 15 MS. SAMPSON: That they would have against --

16 MR. FINK: Not against --

17 MS. SAMPSON: Obviously, not for contribution
18 against a party.

19 THE COURT: And/or equitable indemnity.

09:16:19 20 MR. CLARK: Right.

21 MR. FINK: Right.

22 MR. TURTZO: Right.

23 MR. FINK: Between Mr. Turtzo and I, we'll
24 work out getting the settlement agreement done.

09:16:26 25 MR. TURTZO: Yes.

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 12

09:16:26 1 THE COURT: And I think they understand,
2 Mr. Sampson, time is of the essence. In fact, it's
3 okay if you turn your phones on again.

4 Anyway, is there anything else I can help you
09:16:37 5 with?

6 MR. FINK: No, Judge. I know that we were
7 waiting, obviously, to have a jury come in, and so we
8 could dismiss the jury. My only question is we had one
9 juror who wasn't going to be here until I think 10:30
09:16:48 10 or 11:00 o'clock because of, I think, a dental --

11 MR. CLARK: Doctor's appointment.

12 THE COURT: Doctor's appointment.

13 MR. FINK: Doctor's appointment.

14 THE COURT: And we'll deal with him. You
09:16:53 15 don't have to wait for him.

16 MR. FINK: We don't have to wait for them.

17 THE COURT: No, no, no. You don't have to
18 wait for them.

19 And just as important too, if you want to
09:16:59 20 wait, you probably should because we're going to bring
21 the panel in. I'm going to explain to them the impact
22 of service, and it doesn't always result in a verdict;
23 right? For example, if they didn't come down here
24 today, this case would not be resolved, and served;
09:17:13 25 right?

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 13

09:17:13 1 MR. FINK: Right.

2 THE COURT: I mean, really. That's just kind
3 of how it is. It is all part of the process. And I
4 want to explain to them because I don't want them to
09:17:21 5 walk away with a bad taste saying they wasted their
6 time coming down to the courthouse. They didn't. And
7 the days they've spent, what was it five days? Is it
8 five days? Four days?

9 MR. FINK: It's been a week.

09:17:32 10 THE COURT: Yeah. I mean, that's as important
11 as sitting through October 31 because ultimately it
12 resulted in a resolution. And I'll explain all that to
13 them.

14 MR. FINK: And in these circumstances I
09:17:44 15 usually like to be around to offer any answer to any
16 questions about the process we're doing. So that's
17 something I think that's important for us.

18 THE COURT: You can stay here. If they want
19 to talk, some of them will talk. I'm going to tell you
09:17:53 20 this, I anticipate they'll be very pleased.

21 MR. FINK: I think.

22 MS. SAMPSON: Ms. Erickson will be very
23 pleased.

24 THE COURT: Yes. They'll be very pleased.

09:18:00 25 But, yeah, that's what we'll do. And so we

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 14

09:18:02 1 won't tell them anything.

2 And at 9:30, line them up, Mr. Marshal.

3 THE MARSHAL: Yes, your Honor.

4 THE COURT: We'll bring them in. And I'll
09:18:10 5 talk to them for a little bit and explain to them what
6 happened. And I'll explain how that's part of the
7 process. And let them know. And there's no question
8 about this, if they wouldn't have served, I mean,
9 people aren't willing to serve, we can't have trials.

09:18:26 10 We can't have resolution. And this is actually a
11 better resolution because there's no appeals. It's
12 final; right?

13 MS. SAMPSON: That's right.

14 THE COURT: So anyway...

09:18:35 15 MR. TURTZO: We will submit -- I guess, we're
16 still on the record; correct?

17 THE COURT: Yes.

18 MR. TURTZO: To be clear on the motion for
19 good-faith settlement, Mr. Scarcelli and Mr. Bushbaker
09:18:44 20 orally join in the motion; correct?

21 MR. CLARK: Correct.

22 MR. TURTZO: And so when we submit the order
23 to the Court what we will do is we will reflect the
24 relief -- if it's acceptable to the Court we will --
09:18:55 25 the order will not include the summary judgment request

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 15

09:18:59 1 or dismissal of cross-claims. It will instead indicate
2 the parties have agreed to release all such claims, and
3 it will simply be a standard good-faith settlement
4 determination including Mr. Scarcelli and Mr. Bushbaker
09:19:13 5 as well if that's acceptable.

6 THE COURT: There's acceptable. Because, I
7 mean, those are the facts.

8 MR. TURTZO: And we will circulate that order
9 to everybody, obviously, to get input.

09:19:24 10 MR. CLARK: Yes.

11 MR. TURTZO: We will have it ready. And we'll
12 submit. But I just want to make sure in terms of the
13 good-faith settlement it will include those parties as
14 well, and we'll amend the proposed relief accordingly.

09:19:33 15 THE COURT: And, Mr. Turtzo, I appreciate the
16 details because details do matter as you know.

17 And last, but not least, as far as that's
18 concerned I'm going to be here all next week. So just
19 like the order shortening time, you're not --

09:19:46 20 MS. SAMPSON: I'd like to know. We'd like to
21 do a request to get our default prove-up set against
22 with the defaulted parties as quickly as we can. So
23 that's one thing I was thinking.

24 THE COURT: Here's the thing, you have to
09:19:57 25 understand this, I can't circumvent due process.

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 16

09:20:00 1 MS. SAMPSON: No.

2 THE COURT: So you have to do the application
3 and prove up. And there is a reason for that. Because
4 at the end of the day what it does, it saves people a
09:20:06 5 lot of time. It does. Because one of -- I mean, I
6 don't mind differences of opinions in this regard where
7 I might decide an issue on the merits, and the Supreme
8 Court might disagree with the merits of whatever
9 decision I make.

09:20:23 10 However, I'm not going to get reversed based
11 upon due process issue and notice issue. It's not
12 going to happen. It just isn't. Because that's so
13 obvious. You can take care of that before it occurs.

14 Because you have to go through the steps, you
09:20:42 15 know. And that's part of the process. And I have a
16 lot of faith in the process. I really and truly do.

17 THE COURT CLERK: Your Honor.

18 THE COURT: All I'm saying is this, if you get
19 that to me Monday, I'll be here. You get it to me
09:20:55 20 Tuesday, I'll be here. I'm here all next week. And
21 just like I was here last night waiting for the order
22 shortening time to come through.

23 MR. TURTZO: Yes, I want to say on the record
24 we really appreciate that to the Court and all the --

09:21:07 25 THE COURT: Right.

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 17

09:21:07 1 MR. TURTZO: -- all the members of the
2 department who assisted us with that. Very much
3 appreciated.

4 THE COURT: Still consider myself a lawyer at
09:21:16 5 heart, I mean.

6 So what we'll do, we'll break. And as soon as
7 they're ready, we will bring them in. And we will talk
8 to them for a little bit. And you can talk to them.
9 But I'll let them know specifically what happened. I
09:21:26 10 mean, I won't tell them the details and all that, but
11 I'll let them know there's a resolution, you know. And
12 I'll let them know how that happens. And I'll just be
13 candid with them and say that's some of the things the
14 lawyers were talking about yesterday.

09:21:38 15 And it's much better to be done on October 18
16 versus October 31.

17 MR. TURTZO: That's right.

18 THE COURT: That's right.

19 MR. FINK: Really.

09:21:45 20 MS. SAMPSON: For all of us.

21 MR. FINK: For all of us.

22 THE COURT: For everybody. All right.

23 IN UNISON: Thank you, Judge.

24 THE COURT: Once again, congratulations.

09:43:10 25 (brief pause in proceedings.)

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 18

09:43:10 1 (The prospective jurors enter the
2 courtroom.)

3 THE COURT: All right. Do the parties
4 stipulate to the presence of the jury?

09:45:17 5 IN UNISON: Yes, your Honor.

6 THE COURT: Okay. Ladies and gentlemen of the
7 panel, good morning. How you doing today?

8 IN UNISON: Good morning.

9 THE COURT: We got started a little closer on
09:45:26 10 time. I just want to thank all of you for coming down.
11 I do have some news for you. The case is settled. I
12 just want to let you know that. It has.

13 THE MARSHAL: It was like Christmas.

14 THE COURT: And here's the thing, and I think
09:45:39 15 it's important for you to truly understand how the
16 process works.

17 And there's no question a lot of things as you
18 can now see get done outside of your presence; right?
19 So there were a lot of legal issues that had to be
09:45:55 20 resolved. And they were resolved. And so the parties
21 got closer and closer.

22 And so we took yesterday off in order to give
23 them an opportunity to potentially finalize the
24 resolution of the case. So I can't tell you what's
09:46:10 25 going on, right, but -- and we kind of, we've talked

Peggy Isom, CCR 541, RMR

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 19

09:46:12 1 about this, and, really and truly, it's about having
2 faith in the process, right?

3 Because understand this, and I want everyone
4 to know this, and this is of paramount importance for
09:46:25 5 me, the fact that this case resolved, resolved because
6 of your willingness to come down and serve.

7 You have to understand that. Because I think
8 some of the panel members talked about serving and the
9 case settled during trial, and that sometimes happens.
09:46:44 10 It doesn't happen all the time, but the only way a case
11 can ultimately resolve is when you have the potential
12 for finality, right?

13 And that's done by having a trial date. And
14 that's done by having the lawyers willing to come to
09:47:01 15 trial, the parties willing to have their cases
16 litigated. But more importantly, We the People willing
17 to serve. Right?

18 And so the fact that you didn't hear all the
19 evidence and arrive at a verdict, is not really what's
09:47:19 20 most important. The fact that you came down willing to
21 do that is what matters. And it really does matter.
22 Because I -- we've talked about this. And I really do
23 feel that when you look at the Preamble to the
24 Constitution of the United States of America, and if
09:47:37 25 the first concern raised by the founders of this nation

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 20

09:47:43 1 was justice. Because they wanted a justice system
2 where a judge didn't decide the outcome. And I know
3 many times people -- you know, we forget that I don't
4 decide the case, right? And lawyers don't decide the
09:48:00 5 cases. The governor doesn't decide it. The presidents
6 don't decide it. Senators they don't decide it, you
7 know.

8 Just the average person that's truly the most
9 important cog in this whole democracy comes down and
09:48:19 10 decides it, right? And, I mean, really.

11 And just as important too, you can look at it
12 through this lens and think about this for a second.
13 Because from time to time, and we hope this never
14 happens, but we get -- if you get involved in civil
09:48:34 15 litigation of some sort that has to be heard and
16 decided, wouldn't you want We the People to decide
17 versus some political appointee, right? You know.
18 Think -- and so that's what really -- and that's the
19 great unknown. And you look at the -- in the
09:48:58 20 Constitution, and this is often overlooked, but, and no
21 one talks about the Seventh Amendment too much, right?
22 It's right there. You got a right to a jury trial in a
23 civil case.

24 You know. And from a historical perspective,
09:49:12 25 think about it from this, from this standpoint. If you

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 21

09:49:15 1 go back to the middle ages, and they used to have some
2 concept called trial by ordeal. Anybody ever hear
3 about that? You know, where they tried to decide
4 whether the person is telling the truth or not. They
09:49:32 5 do -- and you see it in some movies but this is how
6 that concept works. There was many ways to determine
7 what the ordeal was, but one was this, they'd have a
8 vat of boiling oil, and have a rock or pebble in it.
9 And if you can reach down and pull it out without
09:49:47 10 screaming, you were telling the truth, you know. Think
11 about it, you know. And then because we've come a long
12 way. We have.

13 And there was a time in this country where
14 sometimes disputes were decided by dueling; right? You
09:50:03 15 remember that and reading about it.

16 And so, you know, whether we agree or disagree
17 politically on a lot of different issues, but I think
18 our justice system -- and I think you really appreciate
19 it if you serve; right? You come down, and you see it.
09:50:18 20 And it's a great system.

21 And I realize, I feel very strongly about this
22 too. Because I say -- I try to frame points for
23 different reasons. But no doubt it's been
24 inconvenient. I get that. It has. But when you think
09:50:32 25 about it, what's convenient about a democracy; right?

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 22

09:50:35 1 And this is -- this is one of the most important
2 aspects of the democracy we just don't talk about.

3 And, for example, I'm on the Eighth Judicial
4 District Court Jury Commission. And right now we're
09:50:52 5 looking at ways we can make service easier. But it's
6 tough. It is. We're just trying to figure out -- we'd
7 love to make it -- if it was up to me, they would pay
8 more money for jury service, you know. I would. I
9 mean, I think if you're going to come down and serve,
09:51:07 10 at a minimum when you're here, they should pay you \$20,
11 \$25 an hour; something like that, right? But I'm not
12 in charge.

13 But and I get it. But the bottom line is
14 this, and I think the lawyers want to talk to you just
09:51:20 15 very briefly afterwards. Everyone that came down here,
16 I just want to thank you for your service, you know. I
17 do.

18 I would have, of course, loved to have had
19 this case resolved in a way where you participate in
09:51:35 20 deliberations, but, you know what, and here's what's
21 great about case resolution by the parties, there's no
22 appeals. It's final. They've agreed.

23 Because even after jury trial, you have to
24 understand, sometimes there is appeals, right? And
09:51:49 25 it's not -- it doesn't happen often, but sometimes

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 23

09:51:52 1 cases have to be re-tried, you know.

2 And so, anyway, on behalf of the parties, you
3 know, to this litigation, counsel, my staff, hopefully
4 they've been -- they've helped, been helpful, I just
09:52:07 5 want to thank each and every one of you for coming down
6 and participating in our civil and criminal justice
7 system as a member of Clark County and the battle born
8 great state of Nevada. I just want to thank each and
9 every one of you.

09:52:28 10 So with that in mind, Mr. Marshal, it's my
11 understanding we have -- their checks are ready to go.

12 THE MARSHAL: Yes, sir. It's pay day.

13 THE COURT: It's pay day. And fortunately,
14 it's not 10:00 o'clock; right? You can be done. It's
09:52:40 15 Friday. And you're done. Don't have to bother about
16 next week. I did promise we'd get done by October 31.
17 You didn't think it would be this early; right? And so
18 and that's how it goes sometimes.

19 And, I guess, when you look back on it and you
09:52:56 20 reflect, and I know it's like -- remember the combat
21 war vet. He said I'm used to hurry up and wait. I
22 think that's so true when it comes to jury service. It
23 just is. But now you can kind of see. And I know
24 you're probably frustrated. But at the end of the day
09:53:12 25 maybe the wait was worth it because we've -- now you're

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 24

09:53:15 1 going to be gone today. You don't have to worry about
2 being here to the 31st potentially. And its over. And
3 you don't have to worry about getting a summons in the
4 mail for quite a while. How about that? Because
09:53:27 5 you've served.

6 Once again, I just want to thank everyone.

7 Mr. Marshal.

8 THE MARSHAL: Yes, your Honor. All rise.

9 THE COURT: If you -- if the lawyers, they
09:53:35 10 might have questions for you. And, you know, they
11 probably just want to thank you for coming down and
12 serving.

13 So they're in you're control, sir.

14 THE MARSHAL: Thank you, your Honor.

09:53:44 15 Everybody if you could wait for me outside, I will
16 disburse your checks and I'll have some words for you.
17 And starting with you, sir.

18 THE COURT: And everyone, enjoy your weekend.

19 IN UNISON: Thank you.

12:08:03 20 (The prospective jury exits the
21 courtroom.)

22 THE COURT: All right, counsel. Okay. It's
23 been a pleasure.

24 IN UNISON: Thank you, your Honor.

09:54:55 25 THE COURT: Enjoy your weekend. Oh, trial

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 25

09:54:59 1 exhibits, seven boxes; what do you want us to do with
2 them?

3 MR. TURTZO: We'll --

4 MR. FINK: Can we handle it, hang on until
09:55:08 5 Monday?

6 THE COURT: Yeah. That's fine. They can come
7 get them Monday.

8 MR. TURTZO: We'll send over -- Allison from
9 my office will coordinate.

09:55:13 10 THE COURT CLERK: Absolutely.

11 MR. TURTZO: And we'll have somebody come pick
12 them up along with everything else that we brought
13 over.

14 MS. SAMPSON: I think I have some in your ante
09:55:20 15 room. If I left my dolly, I'll bring them right now if
16 I can get let in.

17 THE COURT: Okay. We'll --

18 MS. SAMPSON: Otherwise, I'll come back.

19 THE COURT: Mr. Sampson, we'll do that for
09:55:29 20 you.

21 MS. SAMPSON: Thank you very much.

22 THE COURT: And, you know, I was thinking
23 about this case. And what I -- I feel very -- I feel
24 this is an very important issue. And this is one of
09:55:37 25 the things I try to do is get out of the way, you know.

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 26

09:55:40 1 And I was talking to my law clerk, Chris, and I was
2 talking to CJ. And it could have been handled many
3 different ways. Some judges would have said, no, you
4 be ready to go to trial tomorrow and continue on and
09:55:53 5 on, but I actually have faith in the process. I do.
6 And I know when lawyers are talking, I get out of the
7 way. Good things, typically, happen. Not always, but
8 they do. Right?

9 MR. FINK: Appreciate that. I think that --
09:56:04 10 we were talking about I think most judges would have
11 had us continue on with the jury selection.

12 THE COURT: No, no, no.

13 MR. FINK: Most judges would have.

14 THE COURT: Yeah. I know everyone here.
09:56:11 15 You've appeared in front of me many times. And I just
16 I had confidence in you saying, Look, Judge, maybe...
17 I'm going to listen. And I'm going to do what I think
18 is best. If we lost a day, so be it. But I thought
19 there was an -- it was more likely true than not.

09:56:28 20 MR. FINK: That's the theme.

21 THE COURT: A greater probability, right? And
22 so I went with that. Because I feel it's very
23 important in this regard. I consider, we talk about
24 trials and trial days. I think trials are actually
09:56:41 25 the -- they're very, very important. But it's much

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 27

09:56:46 1 better to have the case resolved by settlement. It
2 really and truly is. So I don't -- I'm not -- I used
3 to be concerned about my trial days. I'm not concerned
4 anymore. I'm more concerned about closing. You know,
09:56:56 5 because I think it's better to be a closer as a trial
6 judge versus having cases settled. It's like Glengarry
7 and Glen Ross. You ever see that movie? I love that
8 movie, you know. Coffee's for closers, right?

9 That's a great movie. It just is. The
09:57:12 10 staff -- I mean, the actors are just unbelievable in
11 that movie.

12 MR. TURTZO: First prize is a Cadillac.
13 Second prize is a set of steak knives. Third prize is
14 you're fired.

09:57:23 15 THE COURT: You're fired. I love that. And
16 Baldwin is amazing in that movie, right?

17 MR. TURTZO: Yes.

18 THE COURT: Jack Lemon. That's one of his
19 last movies. I mean, it's a great staff. Al Pacino --
09:57:33 20 I mean, a great cast of actors. Oh my God, it's a
21 great movie.

22 MR. TURTZO: Yes, it is.

23 THE COURT: Yes.

24 MR. TURTZO: Thank you, your Honor.

09:57:45 25 MR. FINK: Thank you, Judge.

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 28

09:57:47

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

MS. FUNAI: Thank you, your Honor.

(Proceedings were concluded.)

* * * * *

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 29

REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
AND UNDER MY DIRECTION AND SUPERVISION AND THE
FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
NEVADA.

PEGGY ISOM, RMR, CCR 541

Peggy Isom, CCR 541, RMR

IN UNISON: [5] 17/23 18/5 18/8 24/19 24/24 MR. CLARK: [9] 5/18 6/22 6/24 9/15 9/18 11/20 12/11 14/21 15/10 MR. FINK: [27] 5/9 5/24 6/4 6/7 6/20 7/23 8/1 8/16 9/12 11/13 11/16 11/21 11/23 12/6 12/13 12/16 13/1 13/9 13/14 13/21 17/19 17/21 25/4 26/9 26/13 26/20 27/25 MR. MELORIO: [3] 5/14 7/4 9/19 MR. TURTZO: [23] 5/11 8/5 8/8 8/17 8/19 9/21 11/22 11/25 14/15 14/18 14/22 15/8 15/11 16/23 17/1 17/17 25/3 25/8 25/11 27/12 27/17 27/22 27/24 MS. FUNAI: [2] 5/16 28/1 MS. SAMPSON: [18] 5/8 6/11 6/16 6/21 8/2 8/18 10/4 11/7 11/15 11/17 13/22 14/13 15/20 16/1 17/20 25/14 25/18 25/21 THE COURT CLERK: [2] 16/17 25/10 THE COURT: [56] THE MARSHAL: [6] 11/6 14/3 18/13 23/12 24/8 24/14 \$ \$20 [1] 22/10 \$25 [1] 22/11 \$355 [1] 8/22 0 0706 [1] 3/20 0798 [1] 3/21 1 10655 [1] 3/17	1099 [1] 2/7 10:00 [1] 23/14 10:30 [1] 12/9 11:00 [1] 12/10 120 [1] 3/7 1500 [1] 3/9 17.245 [1] 7/11 170 [1] 2/17 18 [3] 1/20 5/1 17/15 2 200 [1] 2/5 2019 [2] 1/20 5/1 275 [1] 3/18 3 300 [1] 4/7 31 [3] 13/11 17/16 23/16 31st [1] 24/2 3770 [1] 2/16 382-1500 [1] 3/9 384-9800 [1] 4/9 4 405-8100 [1] 2/19 4120 [1] 4/10 4199 [1] 2/8 4:30 [1] 5/25 4:45 [1] 5/25 5 541 [2] 1/25 29/17 6 605-1099 [1] 2/7 665-4120 [1] 4/10 7 702 [8] 2/7 2/8 2/19 3/9 3/20 3/21 4/9 4/10 720 [1] 4/6 8 804-0706 [1] 3/20 804-0798 [1] 3/21 8100 [1] 2/19 888-209-4199 [1] 2/8 89101 [1] 4/8 89106 [1] 2/6 89144 [2] 3/8 3/19 89169 [1] 2/18 9 9800 [1] 4/9 9900 [1] 3/6	9:09 [1] 5/2 9:30 [1] 14/2 : :SS [1] 29/2 A A.M [1] 5/2 ABILITY [1] 29/11 able [1] 10/14 about [29] 5/25 10/17 13/16 14/8 17/14 19/1 19/1 19/8 19/22 20/12 20/21 20/25 21/3 21/11 21/15 21/21 21/25 21/25 22/2 22/21 23/15 24/1 24/3 24/4 25/23 26/10 26/23 27/3 27/4 Absolutely [1] 25/10 abundance [1] 8/5 acceptable [3] 14/24 15/5 15/6 accordingly [1] 15/14 ACCURATE [1] 29/11 action [1] 10/1 actions [1] 6/7 actively [2] 7/21 8/2 actors [2] 27/10 27/20 actually [3] 14/10 26/5 26/24 addition [1] 9/6 additional [2] 8/12 8/14 additionally [1] 8/25 affect [1] 6/18 affected [1] 11/11 Affects [1] 11/7 after [1] 22/23 afterwards [1] 22/15 again [5] 5/20 10/5 12/3 17/24 24/6 against [9] 6/8 6/13 9/5 11/8 11/10 11/15 11/16 11/18 15/21 ages [1] 21/1 agree [4] 6/10 9/17 10/15 21/16 agreed [4] 8/16	9/18 15/2 22/22 agreement [3] 9/22 10/6 11/24 ahead [2] 5/7 8/7 AI [1] 27/19 all [30] alleged [1] 9/9 Allison [1] 25/8 along [1] 25/12 also [5] 6/20 7/14 7/14 7/23 9/4 always [2] 12/22 26/7 amazing [1] 27/16 amend [1] 15/14 Amendment [1] 20/21 America [1] 19/24 amongst [1] 9/9 amount [1] 8/21 answer [1] 13/15 answered [1] 6/14 ante [1] 25/14 anticipate [1] 13/20 any [12] 9/7 9/12 9/24 9/25 10/6 11/3 11/4 11/7 11/8 11/9 13/15 13/15 anybody [3] 8/13 11/10 21/2 anymore [1] 27/4 anyone [1] 9/13 anything [2] 12/4 14/1 anyway [3] 12/4 14/14 23/2 apologize [1] 11/5 appeals [3] 14/11 22/22 22/24 appearances [4] 2/1 2/20 3/23 5/7 appeared [1] 26/15 application [1] 16/2 appointee [1] 20/17 appointment [3] 12/11 12/12 12/13 appreciate [4] 15/15 16/24 21/18 26/9 appreciated [1] 17/3 are [12] 6/1 6/14 6/16 8/2 8/15 9/7 9/10 15/7 23/11	26/6 26/24 27/10 aren't [1] 14/9 around [1] 13/15 arrive [1] 19/19 as [32] ask [1] 10/5 asked [1] 10/25 aspects [1] 22/2 assisted [1] 17/2 at [12] 14/2 16/4 17/4 19/19 19/23 20/11 20/19 22/5 22/10 23/24 29/6 29/8 average [1] 20/8 away [1] 13/5 B back [3] 21/1 23/19 25/18 bad [1] 13/5 Baldwin [1] 27/16 based [2] 7/10 16/10 battle [1] 23/7 be [29] 7/23 8/13 9/4 9/22 9/24 11/10 12/9 12/24 13/15 13/20 13/22 13/24 14/18 15/3 15/18 16/19 16/20 17/12 17/15 18/19 20/15 23/1 23/14 23/17 24/1 26/4 26/18 27/3 27/5 because [26] 6/7 10/13 12/10 12/20 13/4 13/11 14/11 15/6 15/16 16/3 16/5 16/12 16/14 19/3 19/5 19/7 19/22 20/1 20/13 21/11 21/22 22/23 23/25 24/4 26/22 27/5 been [8] 6/17 11/9 13/9 21/23 23/4 23/4 24/23 26/2 before [4] 1/17 9/21 16/13 29/6 BEFORE-ENTITLED [1] 29/6 behalf [4] 5/17 5/19 8/23 23/2 being [4] 8/22 9/10 11/1 24/2 best [2] 26/18 29/11 better [5] 10/12
--	---	--	---	---

Peggy Isom, CCR 541, RMR

(1) IN UNISON: - better

B better... [4] 14/11 17/15 27/1 27/5 Between [1] 11/23 bit [2] 14/5 17/8 boiling [1] 21/8 booked [1] 10/9 born [1] 23/7 bother [1] 23/15 bottom [1] 22/13 BOULEVARD [1] 2/5 boxes [1] 25/1 break [1] 17/6 brief [1] 17/25 briefly [1] 22/15 bring [4] 12/20 14/4 17/7 25/15 brought [1] 25/12 BUSHBAKER [5] 4/2 5/15 9/3 14/19 15/4 but [31]	CERTIFY [1] 29/5 changed [1] 8/21 charge [1] 22/12 CHARLESTON [1] 2/5 check [1] 10/22 checks [2] 23/11 24/16 CHRIS [5] 3/2 5/17 5/19 9/3 26/1 Christmas [1] 18/13 CHRISTOPHER [2] 2/15 5/12 circulate [1] 15/8 circumstances [1] 13/14 circumvent [1] 15/25 civil [3] 20/14 20/23 23/6 CJ [1] 26/2 claims [8] 9/5 9/7 9/9 9/12 11/8 11/10 15/1 15/2 CLARK [7] 1/7 3/4 5/19 6/23 23/7 29/3 29/14 clause [1] 11/13 clear [4] 7/7 8/9 11/11 14/18 clearly [1] 7/13 clerk [1] 26/1 client [2] 10/15 10/25 closer [4] 18/9 18/21 18/21 27/5 closers [1] 27/8 closing [1] 27/4 Coffee's [1] 27/8 cog [1] 20/9 COLE [1] 3/3 combat [1] 23/20 come [12] 5/22 12/7 12/23 16/22 19/6 19/14 21/11 21/19 22/9 25/6 25/11 25/18 comes [2] 20/9 23/22 coming [4] 13/6 18/10 23/5 24/11 Commission [1] 22/4 COMMUNICATION S [3] 1/12 5/13 9/2 comport [1] 10/25 concept [2] 21/2	21/6 concern [1] 19/25 concerned [4] 15/18 27/3 27/3 27/4 concluded [1] 28/3 confidence [1] 26/16 confirm [1] 8/14 congratulations [1] 17/24 consider [2] 17/4 26/23 considered [1] 7/14 CONSTITUTES [1] 29/10 Constitution [2] 19/24 20/20 continue [2] 26/4 26/11 CONTINUED [2] 3/1 4/1 contribution [2] 9/8 11/17 control [1] 24/13 convenient [1] 21/25 coordinate [1] 25/9 correct [7] 6/21 6/21 10/3 10/4 14/16 14/20 14/21 correctly [1] 6/12 costs [1] 9/13 could [4] 10/12 12/8 24/15 26/2 counsel [2] 23/3 24/22 country [1] 21/13 COUNTY [4] 1/7 23/7 29/3 29/14 course [1] 22/18 COURT [8] 1/6 1/18 6/5 14/23 14/24 16/8 16/24 22/4 courthouse [1] 13/6 courtroom [2] 18/2 24/21 COVINGTON [1] 3/6 COX [4] 1/12 5/12 8/23 9/1 criminal [1] 23/6 cross [4] 3/6 9/7 9/9 15/1	cross-claims [3] 9/7 9/9 15/1 current [3] 7/10 9/7 9/12 currently [3] 6/14 9/9 9/13 D date [1] 19/13 DATED [1] 1/20 DAVID [5] 2/3 2/4 3/4 5/8 5/19 DAVIDS [1] 2/9 day [5] 16/4 23/12 23/13 23/24 26/18 days [6] 13/7 13/7 13/8 13/8 26/24 27/3 DCLARK [1] 3/10 deal [1] 12/14 decide [9] 16/7 20/2 20/4 20/4 20/5 20/6 20/6 20/16 21/3 decided [2] 20/16 21/14 decides [1] 20/10 decision [1] 16/9 default [1] 15/21 defaulted [4] 6/8 6/17 11/9 15/22 defendant [8] 1/13 2/12 3/2 3/14 5/17 5/19 9/3 9/3 deliberations [1] 22/20 democracy [3] 20/9 21/25 22/2 dental [1] 12/10 department [1] 17/2 DEPT [1] 1/3 details [3] 15/16 15/16 17/10 determination [1] 15/4 determine [2] 6/5 21/6 did [2] 5/22 23/16 didn't [6] 9/23 12/23 13/6 19/18 20/2 23/17 differences [1] 16/6 different [3] 21/17 21/23 26/3 DIRECTION [1] 29/9 disagree [2] 16/8	21/16 disagrees [1] 8/13 disburse [1] 24/16 discussed [2] 11/1 11/2 dismiss [1] 12/8 dismissal [1] 15/1 disputes [1] 21/14 DISTRICT [3] 1/6 1/18 22/4 do [23] 5/23 6/11 13/25 14/23 15/16 15/21 16/2 16/16 17/6 18/3 18/11 19/21 19/22 21/5 22/17 25/1 25/1 25/19 25/25 26/5 26/8 26/17 29/4 DOCKET [1] 1/2 Doctor's [3] 12/11 12/12 12/13 document [2] 10/6 10/7 documentation [1] 10/18 documents [2] 10/11 10/24 does [4] 6/18 16/4 16/5 19/21 doesn't [4] 12/22 19/10 20/5 22/25 doing [2] 13/16 18/7 dolly [1] 25/15 don't [16] 10/13 10/20 12/15 12/16 12/17 13/4 16/6 20/3 20/4 20/6 20/6 22/2 23/15 24/1 24/3 27/2 done [9] 10/23 11/24 17/15 18/18 19/13 19/14 23/14 23/15 23/16 doubt [2] 7/18 21/23 down [13] 12/23 13/6 18/10 19/6 19/20 20/9 21/9 21/19 22/9 22/15 23/5 24/11 29/5 Dr. [2] 5/8 11/7 Dr. Russo [2] 5/8 11/7 draft [1] 10/11 drafted [1] 10/12 DRIVE [2] 3/6 3/17 due [2] 15/25
---	--	--	---	--

D	feel [5] 19/23 21/21 25/23 25/23 26/22 fees [1] 9/13 figure [1] 22/6 final [2] 14/12 22/22 finality [1] 19/12 finalize [1] 18/23 fine [1] 25/6 FINK [4] 3/15 3/16 5/10 6/11 fired [2] 27/14 27/15 first [2] 19/25 27/12 five [2] 13/7 13/8 FOREGOING [1] 29/10 forget [1] 20/3 fortunately [1] 23/13 founders [1] 19/25 Four [1] 13/8 frame [1] 21/22 FRIDAY [3] 1/20 5/1 23/15 front [1] 26/15 frustrated [1] 23/24 FULL [1] 29/10 FUNAI [2] 3/5 5/17 funded [1] 8/22 further [1] 6/7 future [1] 9/7	26/4 God [1] 27/20 goes [1] 23/18 going [14] 6/8 9/15 12/9 12/20 12/21 13/19 15/18 16/10 16/12 18/25 22/9 24/1 26/17 26/17 gone [1] 24/1 good [21] 5/6 5/9 5/11 5/14 5/16 5/18 5/20 6/5 6/19 7/2 7/5 7/8 7/17 7/19 8/13 14/19 15/3 15/13 18/7 18/8 26/7 good-faith [8] 6/5 7/2 7/5 7/8 7/19 14/19 15/3 15/13 got [4] 8/11 18/9 18/21 20/22 governor [1] 20/5 granting [1] 7/22 great [9] 9/20 20/19 21/20 22/21 23/8 27/9 27/19 27/20 27/21 greater [1] 26/21 guess [5] 6/22 6/24 11/3 14/15 23/19	helpful [1] 23/4 here [12] 12/9 12/23 13/18 15/18 16/19 16/20 16/20 16/21 22/10 22/15 24/2 26/14 here's [3] 15/24 18/14 22/20 HEREBY [1] 29/5 HEREUNTO [1] 29/13 him [2] 12/14 12/15 his [3] 9/5 10/16 27/18 historical [1] 20/24 HOA [3] 3/14 5/10 9/2 hold [1] 10/19 Honor [17] 5/9 5/11 5/14 5/16 5/18 5/24 6/25 8/1 9/19 14/3 16/17 18/5 24/8 24/14 24/24 27/24 28/1 HONORABLE [1] 1/17 hope [1] 20/13 hopefully [1] 23/3 hour [1] 22/11 how [9] 8/6 13/3 14/6 17/12 18/7 18/15 21/5 23/18 24/4 HOWARD [1] 2/16 However [1] 16/10 HUGHES [1] 2/16 hurry [1] 23/21	15/5 16/18 19/24 20/14 20/25 21/9 21/19 22/7 22/9 24/9 24/9 24/15 25/15 25/15 26/18 impact [1] 12/21 importance [1] 19/4 important [11] 12/19 13/10 13/17 18/15 19/20 20/9 20/11 22/1 25/24 26/23 26/25 importantly [1] 19/16 in [55] include [4] 6/20 9/1 14/25 15/13 included [1] 7/14 including [4] 7/12 7/23 9/12 15/4 inconvenient [1] 21/24 indemnity [2] 9/8 11/19 indicate [1] 15/1 INDICATED [1] 29/7 individuals [1] 11/9 injury [1] 9/25 INJURYHELPNOW.COM [1] 2/9 input [1] 15/9 instead [1] 15/1 insurance [1] 8/22 interpreting [1] 7/12 INTO [1] 29/8 involved [4] 6/1 6/14 9/13 20/14 involving [1] 6/1 is [46] isn't [1] 16/12 ISOM [3] 1/25 29/4 29/17 issue [5] 5/23 16/7 16/11 16/11 25/24 issues [2] 18/19 21/17 it [64] it's [30] its [1] 24/2 IX [3] 3/14 5/10 8/24
E	each [2] 23/5 23/8 early [1] 23/17 easier [1] 22/5 effects [1] 11/4 Eighth [1] 22/3 else [2] 12/4 25/12 end [2] 16/4 23/24 enjoy [2] 24/18 24/25 enter [1] 18/1 ENTITLED [1] 29/6 entity [1] 11/8 equitable [2] 9/8 11/19 Erickson [1] 13/22 especially [1] 7/16 ESQ [6] 2/4 2/15 3/4 3/5 3/16 4/5 essence [1] 12/2 even [1] 22/23 ever [2] 21/2 27/7 every [2] 23/5 23/9 everybody [3] 15/9 17/22 24/15 everyone [7] 9/17 10/9 19/3 22/15 24/6 24/18 26/14 everything [1] 25/12 evidence [1] 19/19 exactly [1] 8/14 example [2] 12/23 22/3 exhibits [1] 25/1 exits [1] 24/20 explain [5] 12/21 13/4 13/12 14/5 14/6	had [8] 7/7 12/8 18/19 22/18 26/11 26/16 29/6 29/12 handle [1] 25/4 handled [1] 26/2 hang [1] 25/4 happen [4] 16/12 19/10 22/25 26/7 happened [2] 14/6 17/9 happens [3] 17/12 19/9 20/14 has [5] 8/20 10/25 18/12 20/15 21/24 have [55] having [4] 19/1 19/13 19/14 27/6 he [3] 10/16 10/18 23/21 hear [2] 19/18 21/2 heard [1] 20/15 heart [1] 17/5 help [1] 12/4 helped [1] 23/4	I I'd [2] 10/6 15/20 I'll [12] 13/12 14/4 14/6 16/19 16/20 17/9 17/11 17/12 17/12 24/16 25/15 25/18 I'm [16] 7/21 11/13 12/21 13/19 15/18 16/10 16/18 16/20 22/3 22/11 23/21 26/17 26/17 27/2 27/3 27/4 I've [1] 7/7 IES [4] 2/12 5/12 8/23 9/1 if [23] 10/12 10/20 12/3 12/19 12/23 13/18 14/8 14/24	J Jack [1] 27/18 James [4] 6/20
F	fact [5] 7/9 12/2 19/5 19/18 19/20 factors [1] 7/13 facts [2] 7/16 15/7 faith [13] 6/5 6/19 7/2 7/5 7/8 7/17 7/19 14/19 15/3 15/13 16/16 19/2 26/5 far [3] 7/19 8/19 15/17 Fax [2] 3/21 4/10	G GARIN [1] 3/3 generated [2] 10/6 10/7 gentlemen [1] 18/6 get [18] 8/8 10/16 10/23 15/9 15/21 16/10 16/18 16/19 18/18 20/14 20/14 21/24 22/13 23/16 25/7 25/16 25/25 26/6 getting [2] 11/24 24/3 give [1] 18/22 given [1] 8/6 Glen [1] 27/7 Glengarry [1] 27/6 global [4] 5/25 6/25 7/20 9/11 go [6] 5/7 8/7 16/14 21/1 23/11		

(4) James... - one

O one... [13] 10/6 10/14 10/14 12/8 15/23 16/5 20/21 21/7 22/1 23/5 23/9 25/24 27/18 Ones [1] 8/2 only [4] 9/10 10/5 12/8 19/10 opinions [1] 16/6 opportunity [2] 7/8 18/23 opposition [1] 7/10 or [12] 9/7 9/8 9/9 10/25 11/4 11/8 11/19 12/10 15/1 21/4 21/8 21/16 oral [1] 7/1 orally [1] 14/20 ordeal [2] 21/2 21/7 order [8] 10/17 10/23 14/22 14/25 15/8 15/19 16/21 18/22 other [2] 6/16 10/5 otherwise [2] 9/8 25/18 ought [2] 8/9 10/10 our [4] 5/7 15/21 21/18 23/6 out [7] 8/5 10/9 11/24 21/9 22/6 25/25 26/6 outcome [1] 20/2 outside [2] 18/18 24/15 over [3] 24/2 25/8 25/13 overlooked [1] 20/20	22/19 participating [1] 23/6 parties [17] 6/1 6/9 6/13 6/17 7/21 8/12 8/25 9/6 9/10 15/2 15/13 15/22 18/3 18/20 19/15 22/21 23/2 party [1] 11/18 pause [1] 17/25 pay [4] 22/7 22/10 23/12 23/13 payment [1] 8/20 pebble [1] 21/8 PEGGY [3] 1/25 29/4 29/17 people [5] 14/9 16/4 19/16 20/3 20/16 perhaps [1] 10/8 permutations [1] 7/15 person [3] 11/8 20/8 21/4 personal [1] 9/25 perspective [1] 20/24 phones [1] 12/3 pick [1] 25/11 PITEGOFF [1] 2/14 place [2] 5/7 29/7 plaintiff [6] 1/10 2/2 8/20 9/1 9/5 9/24 pleased [3] 13/20 13/23 13/24 pleasure [1] 24/23 plenty [1] 10/10 point [1] 8/9 points [1] 21/22 political [1] 20/17 politically [1] 21/17 possible [1] 10/8 potential [2] 9/9 19/11 potentially [2] 18/23 24/2 Preamble [1] 19/23 presence [2] 18/4 18/18 presidents [1] 20/5 price [1] 27/13 prize [2] 27/12 27/13	probability [1] 26/21 probably [3] 12/20 23/24 24/11 proceedings [4] 17/25 28/3 29/6 29/12 process [10] 13/3 13/16 14/7 15/25 16/11 16/15 16/16 18/16 19/2 26/5 promise [1] 23/16 proposed [1] 15/14 prospective [2] 18/1 24/20 prove [2] 15/21 16/3 prove-up [1] 15/21 pull [1] 21/9 purpose [1] 6/19 put [2] 8/10 8/21 PW [4] 6/20 7/23 8/3 9/2	reflecting [1] 7/20 regard [3] 7/7 16/6 26/23 related [1] 11/8 relatively [1] 10/17 release [5] 9/1 9/22 10/11 10/21 15/2 released [2] 9/4 9/10 releases [1] 11/4 releasing [2] 9/5 9/7 relied [1] 10/15 relief [2] 14/24 15/14 remember [2] 21/15 23/20 REPORTED [1] 1/25 REPORTER [1] 29/4 REPORTER'S [2] 1/14 28/6 request [2] 14/25 15/21 RESIDENTIAL [4] 2/12 5/12 8/23 9/1 resolution [7] 5/22 13/12 14/10 14/11 17/11 18/24 22/21 resolve [1] 19/11 resolved [7] 12/24 18/20 18/20 19/5 19/5 22/19 27/1 responsible [1] 9/24 result [1] 12/22 resulted [1] 13/12 reversed [1] 16/10 review [1] 7/8 right [43] rights [1] 11/7 rise [1] 24/8 RMR [2] 1/25 29/17 rock [1] 21/8 ROGER [1] 4/4 room [1] 25/15 Ross [1] 27/7 RUN [1] 3/17 RUSSO [4] 1/9 2/2 5/8 11/7	2/4 5/8 6/8 10/3 12/2 25/19 satisfaction [1] 9/24 saves [1] 16/4 say [5] 7/17 9/16 16/23 17/13 21/22 saying [3] 13/5 16/18 26/16 SCARCELLI [6] 3/2 5/17 5/19 9/3 14/19 15/4 schedule [1] 10/9 screaming [1] 21/10 second [2] 20/12 27/13 see [6] 5/21 18/18 21/5 21/19 23/23 27/7 seemed [1] 10/9 selection [1] 26/11 SELTZER [1] 3/3 Senators [1] 20/6 send [1] 25/8 serve [5] 14/9 19/6 19/17 21/19 22/9 served [3] 12/24 14/8 24/5 service [5] 12/22 22/5 22/8 22/16 23/22 serving [2] 19/8 24/12 set [2] 15/21 27/13 settled [3] 18/11 19/9 27/6 settlement [25] 5/25 6/5 6/18 6/25 7/2 7/5 7/9 7/20 7/20 8/11 8/15 8/20 9/4 9/11 9/21 9/22 9/25 10/16 11/4 11/11 11/24 14/19 15/3 15/13 27/1 seven [1] 25/1 SEVENTH [2] 4/6 20/21 SGRO [1] 4/4 SGROANDROGER. COM [1] 4/11 short [2] 10/17 10/23 shortening [2] 15/19 16/22 SHORTHAND [1] 29/4 should [2] 12/20
---	--	---	---	--

S	submit [3] 14/15 14/22 15/12 SUBSCRIBED [1] 29/13 such [1] 15/2 SUITE [4] 2/17 3/7 3/18 4/7 SULLIVAN [1] 2/14 summary [1] 14/25 summons [1] 24/3 SUNRISE [4] 3/14 5/10 8/24 9/2 SUPERVISION [1] 29/9 Supreme [1] 16/7 sure [4] 6/12 7/7 8/9 15/12 system [4] 20/1 21/18 21/20 23/7	17/7 17/8 17/8 17/9 17/10 17/11 17/12 17/13 18/23 25/2 25/7 25/12 25/15 theme [1] 26/20 then [4] 8/25 10/21 10/24 21/11 there [9] 6/16 12/4 16/3 18/19 20/22 21/6 21/13 22/24 26/19 there's [9] 5/21 7/9 7/17 14/7 14/11 15/6 17/11 18/17 22/21 THEREAFTER [1] 29/7 these [2] 11/4 13/14 they [22] 10/11 11/10 11/14 11/15 12/1 12/23 13/5 13/6 13/18 14/8 18/20 20/1 20/6 21/1 21/3 21/4 22/7 22/10 24/9 24/10 25/6 26/8 they'd [1] 21/7 they'll [2] 13/20 13/24 they're [3] 17/7 24/13 26/25 they've [4] 13/7 22/22 23/4 23/4 thing [6] 9/23 10/5 10/22 15/23 15/24 18/14 things [6] 10/14 11/3 17/13 18/17 25/25 26/7 think [29] 6/11 7/15 8/9 8/12 10/17 12/1 12/9 12/10 13/17 13/21 18/14 19/7 20/12 20/18 20/25 21/10 21/17 21/18 21/24 22/9 22/14 23/17 23/22 25/14 26/9 26/10 26/17 26/24 27/5 thinking [2] 15/23 25/22 Third [1] 27/13 this [45] those [4] 9/10 11/2 15/7 15/13 thought [1] 26/18 thousand [1] 8/22	three [4] 10/13 10/20 10/21 10/21 through [4] 13/11 16/14 16/22 20/12 time [12] 10/10 12/2 13/6 15/19 16/5 16/22 18/10 19/10 20/13 20/13 21/13 29/7 times [2] 20/3 26/15 TIMOTHY [1] 1/17 today [5] 10/9 11/2 12/24 18/7 24/1 tomorrow [1] 26/4 too [4] 12/19 20/11 20/21 21/22 took [3] 10/20 18/22 29/5 tough [1] 22/6 TRANSCRIBED [1] 29/8 TRANSCRIPT [2] 1/14 29/10 trial [12] 10/10 19/9 19/13 19/15 20/22 21/2 22/23 24/25 26/4 26/24 27/3 27/5 trials [3] 14/9 26/24 26/24 tried [2] 21/3 23/1 true [3] 23/22 26/19 29/10 truly [5] 16/16 18/15 19/1 20/8 27/2 truth [2] 21/4 21/10 try [2] 21/22 25/25 trying [1] 22/6 Tuesday [2] 10/8 16/20 turn [1] 12/3 TURTZO [7] 2/15 2/20 5/12 8/7 9/20 11/23 15/15 two [5] 6/16 8/12 10/13 10/17 11/9 types [1] 11/2 TYPEWRITING [1] 29/8 typical [1] 9/25 typically [1] 26/7	unbelievable [1] 27/10 under [2] 7/16 29/9 understand [9] 6/6 8/19 10/2 12/1 15/25 18/15 19/3 19/7 22/24 understanding [1] 23/11 United [1] 19/24 unknown [1] 20/19 unless [1] 8/12 until [2] 12/9 25/4 up [6] 14/2 15/21 16/3 22/7 23/21 25/12 upon [3] 7/10 10/15 16/11 us [6] 13/17 17/2 17/20 17/21 25/1 26/11 used [3] 21/1 23/21 27/2 usually [1] 13/15 utilize [1] 10/14
should... [1] 22/10 sign [2] 10/25 10/25 signs [1] 10/18 SIMONE [1] 1/9 simply [1] 15/3 since [1] 10/8 sir [5] 6/23 7/25 23/12 24/13 24/17 sitting [1] 13/11 so [30] some [13] 5/22 8/12 13/19 17/13 18/11 19/8 20/15 20/17 21/1 21/5 24/16 25/14 26/3 somebody [1] 25/11 something [2] 13/17 22/11 sometimes [5] 19/9 21/14 22/24 22/25 23/18 soon [2] 10/7 17/6 sooner [1] 10/12 sorry [1] 11/13 sort [2] 5/22 20/15 SOUTH [1] 4/6 specifically [2] 7/11 17/9 spent [1] 13/7 SPRINGEL [1] 3/15 SPRINGELFINK.CO M [1] 3/22 staff [3] 23/3 27/10 27/19 standard [1] 15/3 standpoint [1] 20/25 started [1] 18/9 starting [1] 24/17 state [4] 9/23 23/8 29/2 29/14 States [1] 19/24 status [1] 7/10 statute [1] 7/12 stay [1] 13/18 steak [1] 27/13 STENOTYPE [2] 29/5 29/8 steps [1] 16/14 still [5] 6/4 6/18 8/21 14/16 17/4 stipulate [1] 18/4 STREET [1] 4/6 strongly [1] 21/21	T take [2] 6/8 16/13 taken [1] 8/8 talk [8] 13/19 13/19 14/5 17/7 17/8 22/2 22/14 26/23 talked [4] 10/17 18/25 19/8 19/22 talking [5] 17/14 26/1 26/2 26/6 26/10 talks [1] 20/21 taste [1] 13/5 tell [4] 13/19 14/1 17/10 18/24 telling [2] 21/4 21/10 term [1] 10/20 terms [5] 8/10 8/15 10/24 11/2 15/12 than [1] 26/19 thank [15] 8/1 17/23 18/10 22/16 23/5 23/8 24/6 24/11 24/14 24/19 24/24 25/21 27/24 27/25 28/1 that [71] that's [34] their [4] 10/9 13/5 19/15 23/11 them [28] 6/18 9/5 12/16 12/18 12/21 13/4 13/4 13/13 13/19 14/1 14/2 14/4 14/5 14/5 14/7	U ultimately [2] 13/11 19/11	V vat [1] 21/8 VEGAS [8] 1/12 2/6 2/18 3/8 3/19 4/8 5/1 5/13 Velsicol [2] 7/12 7/15 verdict [2] 12/22 19/19 versus [3] 17/16 20/17 27/6 very [13] 7/7 13/20 13/22 13/24 17/2 21/21 22/15 25/21 25/23 25/24 26/22 26/25 26/25 vet [1] 23/21 VILLAS [3] 3/14 5/10 8/24	
			W wait [9] 10/13 10/20 12/15 12/16 12/18 12/20 23/21 23/25 24/15 waiting [2] 12/7 16/21 walk [1] 13/5 want [22] 7/6 10/11 10/13 10/20 10/22 12/19 13/4	

W	17/6 17/9 19/21 20/18 21/7 22/20 25/1 25/23 26/17 what's [5] 11/1 18/24 19/19 21/25 22/20 whatever [3] 10/11 10/24 16/8 when [9] 10/18 14/22 19/11 19/23 21/24 22/10 23/19 23/22 26/6 where [5] 16/6 20/2 21/3 21/13 22/19 WHEREOF [1] 29/13 whether [2] 21/4 21/16 which [1] 6/18 while [1] 24/4 who [4] 6/17 11/9 12/9 17/2 whole [1] 20/9 will [20] 6/20 9/4 9/22 9/24 13/19 13/22 14/15 14/23 14/23 14/24 14/25 15/1 15/3 15/8 15/11 15/13 17/7 17/7 24/15 25/9 WILLIAMS [1] 1/17 willing [5] 14/9 19/14 19/15 19/16 19/20 willingness [1] 19/6 without [1] 21/9 WITNESS [1] 29/13 won't [2] 14/1 17/10 words [1] 24/16 work [1] 11/24 works [2] 18/16 21/6 worry [2] 24/1 24/3 worth [1] 23/25 would [18] 5/23 6/25 6/25 7/23 8/13 10/5 10/16 11/10 11/14 11/15 12/24 22/7 22/8 22/18 23/17 26/3 26/10 26/13 wouldn't [3] 10/19	14/8 20/16 X XVI [1] 1/3 Y yeah [4] 13/10 13/25 25/6 26/14 yes [16] 6/13 7/25 8/4 9/19 11/25 13/24 14/3 14/17 15/10 16/23 18/5 23/12 24/8 27/17 27/22 27/23 yesterday [2] 17/14 18/22 you [98] you're [9] 15/19 22/9 22/10 23/15 23/24 23/25 24/13 27/14 27/15 you've [2] 24/5 26/15 your [25] 5/9 5/11 5/14 5/16 5/18 5/24 6/24 8/1 9/19 12/3 14/3 16/17 18/5 18/18 19/6 22/16 24/8 24/14 24/16 24/18 24/24 24/25 25/14 27/24 28/1		
----------	---	---	--	--

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

EXHIBIT “4”



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

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: 1/2/20

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

Stephane 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: _____

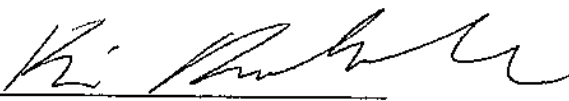
SGRO & ROGER

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: 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 L. Meloro
 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.

Christina Villan 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 Hou
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: _____

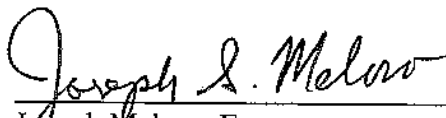
MORRIS, SULLIVAN & LEMKUL

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

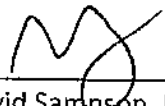
STIPULATION BETWEEN SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION AND SIMONE RUSSO RELATED TO CASE A-17-753606 (SIMONE RUSSO V. COX COMMUNICATIONS LAS VEGAS, INC.).

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:

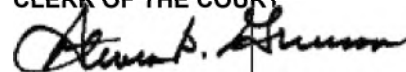
 Leonard T. Fink, Esq.
 Attorneys for Defendant,
 Sunrise Villas IX Homeowners' Association

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

EXHIBIT “5”



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.)

CASE NO: A-17-753606-C

DEPT. NO: XVI

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

Defendants.)

NOTICE OF ENTRY

TO: All Defendants

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

///

///

1 a copy of which is attached hereto.

2 DATED THIS 17th day of December, 2019.

3 LAW OFFICE OF DAVID SAMPSON, LLC.

4 BY: /s/ *David Sampson*

5 DAVID SAMPSON, ESQ.

6 Nevada Bar No.6811

7 LAW OFFICE OF DAVID SAMPSON

8 630 S. 3rd Street

9 Las Vegas, Nevada 89101

10 Fax No: 888-209-4199

11 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

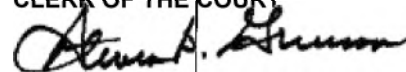
/s/ Amanda Nalder

An Employee of The LAW OFFICE OF DAVID SAMPSON, LLC

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

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

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

EXHIBIT “6”



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

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

EXHIBIT “7”



1 DAVID F. SAMPSON, ESQ.
2 Nevada Bar No. 6811
3 THE LAW OFFICE OF DAVID SAMPSON, LLC.
4 630 South 3rd Street
5 Las Vegas, NV 89101
6 Tel: (702) 605-1099
7 Fax: (888) 209-4199
8 david@davidsampsonlaw.com
9 Attorneys for Defendant SIMONE RUSSO

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 QBE INSURANCE CORPORATION

10 Plaintiff,

11 vs.

12 SIMONE RUSSO, RICHARD DUSLAK and
13 JUSTIN SESMAN

14 Defendants.
15

Case No. 2:20-cv-02104-RFB-EJY

**SIMONE RUSSO'S ANSWER TO
PLAINTIFF'S COMPLAINT FOR
DECLARATORY RELIEF AND
COUNTERCLAIM**

16 **ANSWER**

17 Defendant SIMONE RUSSO ("RUSSO") by and through his counsel of record DAVID
18 SAMPSON, ESQ., of THE LAW OFFICE OF DAVID SAMPSON, LLC., hereby answers
19 Plaintiff's Complaint for Declaratory Relief (ECF 1) as follows:
20

21 **PARTIES**

- 22 1. Answering paragraph 1 of the complaint, RUSSO does not have sufficient knowledge or
23 information upon which to base a belief as to the truth of the allegations that QBE
24 existed under the laws of Pennsylvania and, on that basis, denies the said allegation
25 contained therein. RUSSO admits that QBE was an insurance company eligible to do
26
27
28

1 business as an insurer in the State of Nevada. RUSSO admits the remaining allegations
2 in paragraph 1.

3 2. Answering paragraph 2 of the complaint, RUSSO admits the allegations contained
4 therein.

5 3. Answering paragraph 3 of the complaint, RUSSO does not have sufficient knowledge or
6 information upon which to base a belief as to the truth of the allegations that DUSLAK
7 is a resident of Clark County Nevada and, on that basis, denies the said allegation
8 contained therein. RUSSO denies any remaining allegations in paragraph 3.

9 4. Answering paragraph 4 of the complaint, RUSSO does not have sufficient knowledge or
10 information upon which to base a belief as to the truth of the allegations that SESMAN
11 is a resident of Clark County Nevada and, on that basis, denies the said allegation
12 contained therein. RUSSO denies any remaining allegations in paragraph 4.

13
14
15 **JURISDICTION AND VENUE**

16 5. Answering paragraph 5 of the complaint, RUSSO admits the allegations contained
17 therein.

18 6. Answering paragraph 6 of the complaint, RUSSO denies that he, DUSLAK, and or
19 SESMAN were “doing business in Nevada”. RUSSO also states he does not have
20 sufficient information to admit or deny that DUSLAK and/or SESMAN were at all
21 relevant times residents of Nevada, and therefore denies the same. RUSSO admits the
22 remaining allegations contained in paragraph 6.

23
24
25 **GENERAL ALLEGATIONS**

26 7. Answering paragraph 7 of the complaint, RUSSO admits that it is his understanding and
27 contention that the language in the subject QBE insurance policy covering SUNRISE
28

1 VILLAS IV HOA ("SUNRISE"), and the law regarding insurance policies, includes
2 DUSLAK and SESMAN as covered insureds under the said QBE policy. RUSSO is
3 without sufficient information to admit or deny the remaining allegations in paragraph 7
4 and therefore denies the same.

5
6 8. Answering paragraph 8 of the complaint, RUSSO admits that he filed a complaint
7 against SUNRISE and others alleging that a cable wire that was part of the SUNRISE
8 common area, and was the duty of SUNRISE and its employees, among others, to
9 maintain, was negligently maintained and caused RUSSO injuries. RUSSO admits that
10 DUSLAK and SESMAN were not named in the original complaint as SUNRISE initially
11 advised RUSSO that J&G Lawn Maintenance was handling lawn care and maintenance
12 at SUNRISE at the time RUSSO was hurt. RUSSO denies Plaintiff's claim that the
13 initial complaint did not include an alleged connection between J&G Lawn Maintenance
14 and SUNRISE. RUSSO denies any remaining allegations contained in paragraph 8.

15
16 9. Answering paragraph 9 of the complaint, RUSSO admits that some time prior to
17 November 29, 2017 SUNRISE advised RUSSO that J&G Lawn Maintenance was not
18 providing lawn and maintenance care for SUNRISE in August 2016, and that J&G Lawn
19 Maintenance did not start providing such services until September 2016. RUSSO denies
20 that J&G lawn maintenance "did not contract with SUNRISE VILLAS HOA", and
21 admits that RUSSO has been informed by SUNRISE that the alleged contract between
22 J&G and SUNRISE did not begin until September 2016. RUSSO further admits that at
23 some point in late 2017 or early 2018 SUNRISE advised RUSSO that DUSLAK and
24 SESMAN were the individuals who were actually performing lawn care and
25 maintenance services in the SUNRISE HOA in August 2016. RUSSO admits he moved
26
27
28

1 to amend his complaint to replace “Doe Landscaper” defendants because SUNRISE had
2 advised RUSSO that J&G lawn maintenance was not SUNRISE’s landscaper at the time
3 RUSSO was injured, but that DUSLAK and SESMAN were SUNRISE’s landscapers.
4 RUSSO denies any remaining allegations contained in paragraph 9.

5
6 10. Answering paragraph 10 of the complaint, RUSSO admits that in late 2017 or early 2018
7 SUNRISE advised RUSSO that DUSLAK and SESMAN were the individuals who were
8 actually performing lawn care and maintenance services in the SUNRISE HOA in
9 August 2016 and that because of SUNRISE’s admission that DUSLAK and SESMAN
10 were performing the said duties at SUNRISE, Russo amended the complaint to add
11 DUSLAK and SESMAN as Defendants. RUSSO admits that his complaint alleged
12 DUSLAK and SESMAN “maintained and controlled” lawn and maintenance duties at
13 and for SUNRISE. RUSSO denies ever naming DUSLAK and/or SESMAN as
14 “landscaping contractors” in any complaint. *See*, Exhibit 3 to QBE’s Complaint in this
15 matter. RUSSO further admits that on March 2, 2018 SUNRISE answered an
16 interrogatory in the underlying action in which SUNRISE stated, “SUNRISE VILLAS
17 believes it employed Richard Duslak and Justin Sesman for lawn maintenance repair
18 and/or cleaning prior to September 2016 . . .”. *See* Exhibit “A” at P. 7 L. 8-9. Russo
19 denies any remaining allegations contained in paragraph 10.

20
21
22 11. Answering paragraph 11 of the complaint, RUSSO admits QBE issued a policy of
23 insurance to SUNRISE and that QBE provided SUNRISE with a defense in the
24 underlying action. RUSSO denies the remainder of the allegations in paragraph 11 and
25 further specifically denies that RUSSO settled with SUNRISE “for a full and complete
26 release” as the release specifically excluded DUSLAK and SESMAN or anyone
27
28

1 associated or affiliated with them including any actual or potential insurer. *See*, Exhibit
2 “B”.

3 12. Answering paragraph 12 of the complaint, RUSSO denies the allegations contained
4 therein. It is RUSSO’s understanding and belief that DUSLAK and SESMAN contacted
5 SUNRISE about the underlying action when DUSLAK and SESMAN were served with
6 the same, and SUNRISE advised it had given the matter to SUNRISE’s insurance
7 carrier, and that the carrier was “taking care of it”.

8
9 13. Answering paragraph 13 of the complaint, RUSSO denies the allegations contained
10 therein. It is RUSSO’s understanding and belief that DUSLAK and SESMAN have
11 always claimed to be employees of SUNRISE and thus covered by any policy(ies) of
12 insurance SUNRISE had that covered itself and/or its employees, which is consistent
13 with what SUNRISE stated in its interrogatory answer in the underlying matter when
14 SUNRISE said it “employed” DUSLAK and SESMAN. *See*, Exhibit “A”.

15
16 14. Answering paragraph 14 of the complaint, RUSSO admits the allegations contained
17 therein. RUSSO further admits that, as QBE did not defend DUSLAK or SESMAN, the
18 court heard evidence in the underlying action and the judge determined that based on
19 that evidence a judgment should be entered in that matter against DUSLAK and
20 SESMAN in the amount of \$25,000,000.00.

21
22 15. Answering paragraph 15 of the complaint, RUSSO admits he filed, and later withdrew, a
23 motion for judicial assignment. RUSSO denies the remaining allegations contained in
24 paragraph 15, and specifically denies that November 2, 2020 was “the first time”
25 RUSSO claimed DUSLAK and SESMAN were insured by QBE.
26
27
28

1 16. Answering paragraph 16 of the complaint, RUSSO admits he has alleged and continues
2 to allege that QBE owed DUSLAK and SESMAN a duty of defense and
3 indemnification, fiduciary duties, and a duty of good faith and fair dealing in connection
4 with the underlying action. RUSSO also admits that he understands and believes that
5 QBE breached those duties and that DUSLAK and SESMAN have actionable claims
6 against QBE. RUSSO denies any remaining allegations contained in paragraph 16 as
7 RUSSO does not possess any claims owned by DUSLAK and/or SESMAN as no
8 assignment has occurred.
9

10 17. Answering paragraph 17 of the complaint, RUSSO does not have sufficient knowledge
11 or information upon which to base a belief as to the truth of the allegations contained in
12 this paragraph, particularly any claims about what “QBE believes” and, on that basis,
13 denies the allegations contained therein.
14

15 18. Answering paragraph 18 of the complaint, RUSSO denies the allegations contained
16 therein as he has withdrawn his motion for a judicial assignment and as RUSSO
17 understands and believes that DUSLAK and SESMAN intend to pursue any such claims
18 themselves. RUSSO does admit that he is entitled to any funds recovered by DUSLAK
19 and/or SESMAN up to and including those necessary to satisfy the judgment entered
20 against them, including all interest.
21

22 19. Answering paragraph 19 of the complaint, RUSSO does not have sufficient knowledge
23 or information upon which to base a belief as to the truth of the allegations contain in
24 this paragraph (specifically any allegations as to what QBE denies) and, on that basis,
25 denies the allegations contained therein. RUSSO understands and believes that, as he is
26
27
28

1 not a party or intended beneficiary to the QBE insurance contract, he has no basis or
2 grounds himself to recover directly against QBE under the contract.

3 20. Paragraph 20 of the complaint incorporates the preceding paragraphs in the complaint
4 which does not require any admissions or denials by RUSSO. To the extent this
5 paragraph could be construed as calling for a response RUSSO denies all allegations
6 contained therein.
7

8 21. Answering paragraph 21 of the complaint, RUSSO admits he believes and alleges that
9 DUSLAK and SESMAN have claims against Plaintiff, that Plaintiff owed DUSLAK and
10 SESMAN a duty to defend and indemnify DUSLAK and SESMAN in connection with
11 the underlying action, that Plaintiff owed additional duties to DUSLAK and SESMAN,
12 and that DUSLAK and SESMAN are entitled to any and all damages arising as a
13 consequence of QBE's breaches of any of those duties, which damages would include,
14 but are not limited to, monies necessary to satisfy the judgment entered in favor of
15 RUSSO against DUSLAK and SESMAN. *See, Century Surety v. Andrew*, 134
16 Nev.Adv.Op. 100, 432 P.3d 180 (2018). RUSSO denies the remainder of the allegations
17 in paragraph 21.
18
19

20 22. Answering paragraph 22 of the complaint, RUSSO denies the allegations contained
21 therein. RUSSO does admit it is his understanding and belief that, as he is not a party or
22 intended beneficiary to the QBE insurance contract, he has no basis or grounds himself
23 to recover directly against QBE, and that DUSLAK and SESMAN would have the right
24 to any and all damages arising as a consequence of QBE's breaches, including monies
25 necessary to satisfy the Judgment entered in favor of RUSSO against DUSLAK and
26
27
28

1 SESMAN. *See, Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d 180 (2018).

2 RUSSO denies the remainder of the allegations in paragraph 22.

3 23. Answering paragraph 23 of the complaint, RUSSO does not have sufficient knowledge
4 or information upon which to base a belief as to the truth of the allegations contain in
5 this paragraph and, on that basis, denies the allegations contained therein. RUSSO
6 admits it is his understanding and belief that a controversy exists between QBE and
7 Defendants DUSLAK, and SESMAN. RUSSO understands that under Nevada law he is
8 not a party or an intended beneficiary of the subject insurance policy.
9

10 24. Answering paragraph 24 of the complaint, RUSSO does not have sufficient knowledge
11 or information upon which to base a belief as to the truth of the allegations contained in
12 this paragraph and, on that basis, denies the allegations contained therein. RUSSO
13 admits it is his understanding and belief that a controversy exists between QBE and
14 Defendants DUSLAK. RUSSO understands that under Nevada law he is not a party or
15 an intended beneficiary of the subject insurance policy.
16

17 25. Plaintiff's prayer for relief immediately following paragraph 24 of the complaint does
18 not contain any factual allegations that would require a response from RUSSO. To the
19 extent the prayer for relief could be construed as calling for a response, RUSSO denies
20 that Plaintiff is entitled to the relief requested therein.
21

22 **AFFIRMATIVE AND OTHER DEFENSES**

23
24 RUSSO asserts the following affirmative defenses to plaintiff's complaint.

25 **FIRST DEFENSE**

26 The complaint, and each and every cause of action thereof, fails to state a claim upon
27 which relief can be granted.
28

SECOND DEFENSE

Plaintiff failed to take reasonable steps to avoid the damages, if any, alleged in the complaint, and each and every cause of action contained therein.

THIRD DEFENSE

Any damages sustained by plaintiff by reason of the events alleged in the complaint were proximately caused or contributed to by plaintiff's own breach of the subject insurance contract.

FOURTH DEFENSE

Plaintiff has engaged in acts, omissions and conduct that constitute a breach of Plaintiff's obligations under the subject policy.

FIFTH DEFENSE

Plaintiff has unclean hands in failing and refusing to defend DUSLAK and SESMAN.

SIXTH DEFENSE

QBE's handling of Plaintiff's claim was not correct, was not proper and was not reasonable under the terms of the subject policy.

SEVENTH DEFENSE

At all times and places relevant hereto, QBE failed to act in good faith, and acted without with justification or probable cause and with malice toward its insureds.

EIGHTH DEFENSE

QBE's actions at all times failed to comply with NRS 686A.310.

NINTH DEFENSE

QBE's conduct was malicious, oppressive and/or fraudulent pursuant to NRS 42.010.

TENTH DEFENSE

1 Plaintiff's cause of action is barred by the doctrine of waiver.

2 **ELEVENTH DEFENSE**

3 Plaintiff's action is barred by the doctrine of estoppel.

4 **TWELFTH DEFENSE**

5 Plaintiff's conduct waived the relief prayed for in the complaint.

6 **THIRTEENTH DEFENSE**

7
8 Plaintiff failed to properly and fully mitigate, minimize or avoid damages to itself and its
9 insureds.

10 **FOURTEENTH DEFENSE**

11 Plaintiff is not entitled to attorney's fees pursuant to any of the claims alleged in the
12 complaint.
13

14 **EIGHTEENTH DEFENSE**

15 That the Plaintiff subjected Defendants to duress in forcing Defendant to take certain
16 actions.
17

18 **NINETENTH DEFENSE**

19 That defense of the underlying matter was constructively tendered to QBE.

20 **TWENTIEH DEFENSE**

21 Pursuant to FRCP 11, as amended, all possible affirmative and other defenses may not
22 have been alleged herein insofar as sufficient facts were not available after reasonable inquiry
23 upon the filing of this answer, and therefore, Acuity reserves the right to amend this answer to
24 allege additional affirmative defenses if subsequent investigation so warrants.
25

26 WHEREFORE, and for the reasons set forth in the counterclaim below, RUSSO prays for
27 judgment as follows:
28

1. For a declaration and determination that DUSLAK and SESMAN are insureds under the policy between Plaintiff and SUNRISE, and that the defense of the claims against DUSLAK and SESMAN were duly tendered and/or contractively tendered to Plaintiff, that Plaintiff did owe DUSLAK and/or SESMAN a defense, indemnification, fiduciary duties, and good faith and fair dealing for claims arising out of the underlying action. For a declaration that DUSLAK and/or SESMAN are entitled to recover funds from Plaintiff QBE, including all funds necessary to satisfy the judgment against DUSLAK and/or SESMAN in the underlying action, including all interest;
2. For attorney's fees;
3. For costs of suit;
4. For interest;
5. For all other relief the Court deems just and proper.

COUNTERCLAIM

COMES NOW Plaintiff, RUSSO RUSSO individually, by and through his attorney, David Sampson, Esq., of THE LAW OFFICE OF DAVID SAMPSON, LLC., and for his claims for relief against the QBE, and each of them, allege and complain as follows:

PARTIES

1. At all times relevant to this action, Plaintiff was a resident of Clark County, Nevada.
2. At all times relevant to this action, Richard Duslak and Justin Sesman were residents of Clark County, Nevada.
3. At all times relevant to this action, Plaintiff/Counterdefendant, QBE INSURANCE CORPORATION was at all times relevant to this action an insurance company based Pennsylvania and was operating and conducting business in Nevada.

1 4. At all times relevant to this action, Counter defendant, COMMUNITY ASSOCIATION
2 UNDERWRITERS was at all times relevant to this action an insurance underwriting company
3 based on Pennsylvania and doing business in Nevada.

4 5. That QBE issued insurance policies, some of which were underwritten by COMMUNITY
5 ASSOCIATION UNDERWRITERS. That each said Defendant is the parent and/or subsidiary
6 of, alter-ego of, doing business as, also known as, and/or otherwise sharing an identity or
7 continuity of interests with each and every other Defendant and, therefore, are contractually,
8 jointly and severally, legally, equitably, and/or otherwise liable for and/or with each other
9 herein, and are herein after individually and collectively referred to as "CAU" and/or "the CAU
10 Defendants".
11

12 6. That the true names and capacities, whether individual, corporate, partnership, associate
13 or otherwise, of Defendants, DOES I through X and ROE BUSINESS ENTITIES I through X,
14 are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff
15 is informed and believes and thereon allege that each of the Defendants designated herein as
16 DOE and ROE are responsible in some manner for the events and happenings referred to and
17 caused damages proximately to Plaintiff as herein alleged, and that Plaintiff will seek leave of
18 this Court to amend this Complaint to insert the true names and capacities of DOES I through X
19 and ROE BUSINESS ENTITIES I through X, when the same have been ascertained, and to join
20 such Defendants in this action.
21
22

23 GENERAL ALLEGATIONS

24 7. On and before August 27, 2016 RICHARD DUSLAK ("DUALSAK") and JUSTIN
25 SESMAN ("SESMAN") were working for SUNRISE VILLAS IX HOMEOWNERS
26 ASSOCIATION ("SUNRISE") as maintenance personnel and also as landscapers.
27
28

1 8. That prior to August 27, 2016 SUNRISE employed DUSLAK and SESMAN to perform
2 lawn care and maintenance duties for SUNRISE.

3 9. That during DUSLAK and SESMAN's employment with SUNRISE, SUNRISE exercised
4 a high degree of control, if not complete control, over the manner in which DUSLAK and
5 SESMAN's work was to be performed. That Exhibit "C" at page SVHA0000557 are minutes
6 from the February 17, 2016 SUNRISE Board of Directors Meeting, wherein SUNRISE stated,
7 "The Board reviewed the job descriptions as submitted by *employees* Richard Duslak and Justin
8 Sesman. Secretary Morales [Secretary of SUNRISE] *volunteered to oversee the work*
9 *performed on property by Mr. Duslak and Mr. Sesman* and will report to the Board regarding
10 progress on maintenance projects. A motion was made by Treasurer Alexis seconded by
11 Secretary Morales for the petty cash to not be maintained by the employees at this time."
12 (Emphasis added). This shows that DUSLAK and SESMAN were in the service of SUNRISE,
13 were compensated by SUNRISE, and that SUNRISE (via Secretary Morales) had, and
14 exercised, the right to direct and control DUSLAK and SESMAN while DUSLAK and
15 SESMAN performed duties for SUNRISE.
16
17
18

19 10. That DUSLAK and SESMAN, while working as employees for SUNRISE, did not have
20 any opportunity for profit or loss depending on their managerial skill, and that DUSLAK and
21 SESMAN were paid an hourly rate pursuant under their social security numbers for a wage.

22 11. That DUSLAK and SESMAN, while working as employees for SUNRISE, did not
23 invest any of their own money in equipment or materials required for the tasks SUNRISE
24 directed DUSLAK and SESMAN to perform, and that all such equipment and/or materials were
25 purchased by and were the property of SUNRISE.
26
27
28

1 12. That DUSLAK and SESMAN, while working as employees for SUNRISE, did not have
2 any ability to employ helpers.

3 13. That DUSLAK and SESMAN, while working as employees for SUNRISE, were not
4 performing tasks that require any special skill.

5 14. That DUSLAK and SESMAN, while working as employees for SUNRISE, had a degree
6 of permanence of the working relationship with SUNRISE as SUNRISE did not permit
7 DUSLAK or SESMAN to work for anyone else other than SUNRISE.

8 15. That lawn care and maintenance is an integral part of SUNRISE's business as an HOA
9 in that an HOA's primary duty is the maintenance of common areas, and that SUNRISE is
10 required by its own CC&R's to maintain common areas and perform lawn care and maintenance.

11 16. That on March 2, 2018 SUNRISE answered an interrogatory by admitting SUNRISE
12 "employed RICHARD DUSLAK and JUSTIN SESMAN for lawn maintenance repair and/or
13 cleaning prior to September 2016. *See*, Exhibit "A".

14 17. That DUSLAK and SESMAN, while working as employees for SUNRISE, DUSLAK
15 and SESMAN were paid pursuant to their social security numbers, and that neither DUSLAK or
16 SESMAN possessed Tax ID numbers.

17 18. That DUSLAK and SESMAN, while working as employees for SUNRISE, were not
18 required to have, and did not have, business licenses.

19 19. That DUSLAK and SESMAN, while working as employees for SUNRISE, DUSLAK
20 and SESMAN were required to work specific hours each working day as demanded by
21 SUNRISE.

22 20. On August 27, 2016 RUSSO was injured while on the property at SUNRISE. The injury
23 was a result of the negligence of DUSLAK and SESMAN.
24
25
26
27
28

1 21. On April 6, 2017 RUSSO filed a lawsuit against SUNRISE claiming that SUNRISE, its
2 maintenance personnel and/or landscapers, and other Defendants (including certain DOE and
3 ROE Defendants) had created a hazard on the property of 4617 Madreperla in the SUNRISE
4 VILLAS IX HOMEOWNERS ASSOCIATION, which hazard caused harm to RUSSO. That
5 initially SUNRISE stated that “J&G LAWN MAINTENANCE” handled the maintenance and
6 landscaping at the time RUSSO was injured and, as a result, “J&G LAWN MAINTENANCE”
7 was named as a defendant in the action.
8

9 22. That the Plaintiffs, and each of them, including QBE, issued policy number
10 CAU234378-1, covering names insureds and “Covered Employees” as defined in the said
11 policy, which policy insured SUNRISE, “Covered Employees” as defined in the said policy and
12 by law, and others and covered SUNRISE, “Covered Employees”, and others for the losses
13 RUSSO alleged he suffered in Case No. A-17-753606-C. *See* Exhibit “D”. That pursuant to the
14 policy of insurance Defendants, and each of them, retained counsel to defend SUNRISE in Case
15 No. A-17-753606-C.
16
17

18 23. At the time of the August 27, 2016 incident DUSLAK and SESMAN were employees,
19 of SUNRISE and were contractually, legally, equitably, and/or otherwise insureds of the
20 Plaintiffs, and each of them, including QBE.

21 24. At all times pertinent hereto the said policy of insurance was/were in full force and
22 effect.
23

24 25. The incident of August 27, 2016, the aforesaid Case No. A-17-753606-C, and related
25 claims were noticed upon and submitted to DUSLAK, SESMAN, SUNRISE, and QBE.

26 26. That during the litigation process in Case No. A-17-753606-C SUNRISE informed
27 RUSSO that “J&G LAWN MAINTENANCE” had in fact not been handling maintenance or
28

1 landscaping for SUNRISE at the time RUSSO was injured, and that in fact DUSLAK and
2 SESMAN were the ones who were handling maintenance and landscaping for SUNRISE at the
3 time RUSSO was injured.

4 27. On November 29, 2017 RUSSO filed a motion in Case No. A-17-753606-C seeking to
5 amend the Complaint in that matter to add additional defendants that had theretofore not been
6 identified. The amended complaint identified DUSLAK and SESMAN as Defendants and
7 alleged that Defendants, and each of them (which would include DUSLAK and SESMAN) were
8 responsible for the maintenance and landscaping for SUNRISE when RUSSO was injured. At
9 the time the Amended Complaint was filed QBE was actively defending SUNRISE in Case No.
10 A-17-753606-C.
11

12 28. That the motion to Amend and the Amended Complaint were provided to QBE as they
13 were provided to counsel for all parties in Case No. A-17-753606-C, which included counsel for
14 SUNRISE which was in a tripartite relationship with SUNRISE and QBE.
15

16 29. On December 22, 2017 RUSSO filed a supplement to the motion to amend the
17 complaint. *See* Exhibit “5”. The supplement specified that SUNRISE had indicated “J&G
18 LAWN MAINTENANCE” was not handling landscaping and maintenance for SUNRISE at the
19 time RUSSO was injured, and again sought leave to amend the complaint as set forth in the
20 proposed amended complaint which identified DUSLAK and SESMAN as the actual
21 individuals responsible for landscaping and maintenance at the SUNRISE property. *See*,
22 Exhibit “E”. The proposed amended complaint was provided to QBE as it was provided to
23 counsel for all parties in Case No. A-17-753606-C, which included counsel for SUNRISE which
24 was in a tripartite relationship with SUNRISE and QBE.
25
26
27
28

1 30. On February 7, 2018 the Court in Case No. A-17-753606-C entered an Order permitting
2 RUSSO to amend his Complaint and add DUSLAK and SESMAN as Defendants in Case No.
3 A-17-753606-C. *See* Exhibit “F”. The Order was provided to QBE as it was provided to the
4 parties in this action, including QBE via the tripartite relationship it had with its counsel in Case
5 No. A-17-753606-C.

6
7 31. That the Amended Complaint in Case No. A-17-753606-C alleged, *inter alia*, negligence
8 against DUSLAK and SESMAN. The amended complaint also identified DUSLAK and
9 SESMAN as Defendants and alleged that Defendants, and each of them (which would include
10 DUSLAK and SESMAN) were responsible for the maintenance and landscaping for SUNRISE
11 when RUSSO was injured. At the time the Amended Complaint was filed QBE was actively
12 defending SUNRISE in Case No. A-17-753606-C and was well aware of the Amended
13 Complaint.
14

15 32. On February 14, 2018 RUSSO served DUSLAK with the Amended Complaint. On
16 February 13, 2018 RUSSO served SESMAN with the Amended Complaint. Upon information
17 and belief DUSLAK and SESMAN advised SUNRISE of the fact that they had been served.
18 Additionally, as QBE had retained counsel who was actively defending SUNRISE in Case No.
19 A-17-753606-C when the Complaint was amended to add DUSLAK and SESMAN as
20 Defendants, which counsel had a tripartite relationship with SUNRISE and QBE, QBE was well
21 aware of, and was on notice of, the fact that DUSLAK and SESMAN had been sued in Case No.
22 A-17-753606-C at least as of February 14, 2018.
23
24

25 33. That QBE received constructive tender of the action against DUSLAK and SESMAN,
26 Case No. A-17-753606-C. *See, California Shoppers, Inc., v. Royal Globe Ins. Co.*, 175
27 Cal.App.3d 1, 799 P.2d 1360 (1985); *Millennium Labs., Inc. v. Darwin Select Ins. Co.*, 2014
28

1 U.S. Dist. LEXIS 170439 (S.D. Cal. Dec. 9, 2014); *Dearborn Ins. Co. v. International Surplus*
 2 *Lines Ins. Co.*, No. 1-97-0724, 1999 Ill. App. LEXIS 667 (Ill. Ct. App. Sept. 23, 1999); *Gray v.*
 3 *Zurich Ins. Co.*, 65 Cal. 2d 263, 276; *Devin v. United Servs. Auto. Ass'n.*, 6 Cal. App. 4th 1149,
 4 1157 (1992) (“The duty to defend arises as long as the facts (either as expressed or implied in
 5 the third party’s complaint, or as learned from other sources) give rise to a potentially covered
 6 claim”) (citing *Fresno Economy Import Used Cars, Inc. v. United States Fidelity & Guar.*
 7 *Co.*, 76 Cal. App. 3d 272, 279 (1977)).

9 34. That when QBE became aware of the action against DUSLAK and SESMAN, Case No.
 10 A-17-753606-C, QBE was on inquiry notice to investigate the issue of coverage, and failed to
 11 do so.

13 35. That “an insurer . . . bears a duty to defend its insured whenever it ascertains facts which
 14 give rise to the potential of liability under the policy.” *See, Century Surety v. Andrew*, 134
 15 Nev.Adv.Op. 100, 432 P.3d 180 (2018) (citing *United Nat’l Ins. Co. v. Frontier Ins. Co.*,
 16 *Inc.*, 120 Nev. 678, 684 (2004)). That when QBE became aware of the Amended Complaint in
 17 Case No. A-17-753606-C, QBE ascertained (and reasonably should have ascertained) facts
 18 giving rise to the potential of liability under the policy covering DUSLAK and SESMAN. That
 19 when QBE became aware of the Amended Complaint in Case No. A-17-753606-C, had QBE
 20 performed an investigation it would have ascertained (and reasonably should have ascertained)
 21 facts giving rise to the potential of liability under the policy covering DUSLAK and SESMAN.

24 36. That QBE did not defend nor investigate its duty to defend DUSLAK and/or SESMAN.

25 37. That “the duty to defend arises when there is a potential for coverage based on the
 26 allegations in a complaint.” *See, United Nat’l Ins. Co. v. Frontier Ins. Co., Inc.*, 120 Nev. 678,
 27 684 (2004). That when QBE received the Amended Complaint in Case No. A-17-753606-C,
 28

1 QBE was aware there was a potential for coverage based on the allegations against DUSLAK
2 and SESMAN in the said Amended Complaint.

3 38. That the Nevada Supreme Court has held that “where there is potential for coverage
4 based on ‘comparing the allegations of the complaint with the terms of the policy,’ an insurer
5 does have a duty to defend.” *See, Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d
6 180 (2018).

7
8 39. That in *United Nat’l Ins. Co. v. Frontier Ins. Co., Inc.*, 120 Nev. 678, 684 (2004) the
9 Nevada Supreme Court held that an insurer’s duty to defend is triggered when allegations of a
10 complaint, or “other evidence”, suggest that there is a potential for coverage. That on March 2,
11 2018 SUNRISE answered an interrogatory by stating SUNRISE “employed Richard Duslak and
12 Justin Sesman for lawn maintenance repair and/or cleaning prior to Setpember 2016.” *See*
13 Exhibit “A” at P. 7 L. 8-9. That when SUNRISE provided evidence that DUSLAK and
14 SESMAN were employed by SUNRISE, such evidence triggered QBE’s duty to defend
15 DUSLAK and SESMAN, and certainly triggered QBE’s duty to investigate whether it had a
16 duty to defend.
17
18

19 40. That under the insurance contract with SUNRISE, QBE was obligated to defend and
20 indemnify any “Covered Employee” of SUNRISE as defined by the insurance policy with
21 SUNRISE. *See* Exhibit “D”. The said policy defines a “Covered Employee” as:

22 (a) Any natural person:

- 23
24 (1) While in your service (and for 30 days after termination of service);
25 and
26 (2) Whom you compensate directly by salary, wages or commissions; and
27 (3) Whom you have the right to direct and control while performing
28 services for you.

1 *See* Exhibit “D” at P. SVHA 000018.

2 41. That on August 27, 2016 DUSLAK and SESMAN were natural people who were in the
3 service of SUNRISE, whom SUNRISE compensated directly by salary, wages, or commissions,
4 and whom SUNRISE had the right to direct and control while DUSLAK and SESMAN
5 performed duties for SUNRISE. *See* Exhibit “C”. That DUSLAK and SESMAN were parties
6 to a contract of insurance with Defendants, and each of them, including QBE and/or were an
7 intended beneficiaries to the same. The said contract carried liability coverage for losses such as
8 those suffered by RUSSO.

10 42. That Exhibit “C” at page SVHA0000557 are minutes from the February 17, 2016
11 SUNRISE Board of Directors Meeting, wherein SUNRISE stated, “The Board reviewed the job
12 descriptions as submitted by employees Richard Duslak and Justin Sesman. Secretary Morales
13 [Secretary of SUNRISE] volunteered to oversee the work performed on property by Mr. Duslak
14 and Mr. Sesman and will report to the Board regarding progress on maintenance projects. A
15 motion was made by Treasurer Alexis seconded by Secretary Morales for the petty cash to not
16 be maintained by the employees at this time.” This shows that DUSLAK and SESMAN were in
17 the service of SUNRISE, were compensated by SUNRISE, and that SUNRISE (via Secretary
18 Morales) had, and exercised, the right to direct and control DUSLAK and SESMAN while
19 DUSLAK and SESMAN performed duties for SUNRISE.

22 43. That Exhibit “C” at page SVHA0000559 are minutes from the July 18, 2016 SUNRISE
23 Board of Directors Meeting, wherein SUNRISE stated under the heading Richard, “the board
24 unanimously agreed to terminate the petty cash for Richard they agreed to give him \$66.00 a
25 month for his cell phone bill.” This shows SUNRISE compensated DUSLAK in addition to
26 providing DUSLAK with compensation in the form of wages, salary, and/or commission.
27
28

1 44. That Exhibit “C” at page SVHA0000561 are minutes from the September 8, 2016
2 SUNRISE Board of Directors Meeting, wherein SUNRISE stated under the hearing Richard
3 Duslak, “Board unanimously agreed to terminate the position of a onsite maintenance/poll man
4 the board is in agreement that there is no longer a need for this position therefore they are all in
5 agreement to terminate Mr. Duslak.” This shows was employed by SUNRISE on August 27,
6 2016 and that SUNRISE did not terminate his position, or him as a SUNRISE employee until at
7 least September 8, 2016, which was after August 27, 2016 when RUSSO was injured.
8

9 45. That Exhibit “C” at page SVHA0000564 are minutes from the November 16, 2015
10 SUNRISE Board of Directors Meeting, wherein SUNRISE stated, “It was the consensus of the
11 Board that Richard Dulkas (sic), Justin, and Carson has provided valuable service to the
12 community. The Board agreed to holiday gratuity for \$300 to Richard, \$300 for Carson, and
13 \$100 for Justin and directed the manager to process payment for holiday gratuity through
14 Covenant.” This shows SUNRISE compensated DUSLAK and SESMAN in addition to
15 providing DUSLAK and SESMAN with compensation in the form of wages, salary, and/or
16 commission.
17
18

19 46. That Exhibit “C” at page SVHA0000566 is a record of SUNRISE paying \$100.00 to
20 SESMAN for “Holiday gratuity”. This shows SUNRISE compensated SESMAN in addition to
21 providing SESMAN with compensation in the form of wages, salary, and/or commission.
22

23 47. That QBE, having been notified that RUSSO had filed an action against SUNRISE,
24 DUSLAK, and SESMAN in Case No. A-17-753606-C, and given DUSLAK and SESMAN
25 qualified as “Covered Employees” of SUNRISE under Policy No. CAU234378-1, QBE had
26 duty to defend DUSLAK and SESMAN and to at least investigate whether DUSLAK and/or
27 SESMAN were entitled to coverage under Policy No. CAU234378-1, QBE refused to do so.
28

1 48. That QBE Defended SUNRISE in Case No. A-17-753606-C, yet, despite having a duty
2 to defend DUSLAK and SESMAN against RUSSO's claim, and despite having knowledge that
3 RUSSO's claim was proceeding against SUNRISE, DUSLAK, and SESMAN, never took any
4 steps to defend or indemnify DUSLAK or SESMAN in Case No. A-17-753606-C.

5 49. That because QBE never took any steps to defend or indemnify DUSLAK or SESMAN
6 in Case No. A-17-753606-C, the Court entered defaults against DUSLAK and SESMAN in
7 Case No. A-17-753606-C.

9 50. That in entering a settlement release with RUSSO, QBE and SUNRISE agreed that any
10 settlement would specifically exclude DUSLAK and SESMAN, and anyone associated or
11 affiliated with them. *See*, Exhibit "B" at p. 1. The settlement release included SUNRISE
12 employees, except for DUSLAK and SESMAN or anyone associated or affiliated with them. *Id*
13 at P. 4. The settlement release also specifically stated that, "Nothing in the relase Nothing in
14 this release shall release, discharge, or in any way impact PLAINTIFF'S rights against
15 RICHARD DUSLAK and/or JUSTIN SESMAN in any manner". *Id* at P. 4. The release further
16 stated that any language in the release that would be read to in any way impact the rights of
17 DUSLAK and/or SESMAN against any entity (including any insurer) "SHALL BE DEEMED
18 NULL AND VOID." *Id*.

21 51. That QBE and SUNRISE attempted to undermine rights held by DUSLAK and
22 SESMAN by asking RUSSO to stipulate that DUSLAK and SESMAN were "independent
23 contractors". *Id*. That any stipulation in the release between SUNRISE, QBE, and RUSSO
24 does not impact the rights of DUSLAK and/or SESMAN to coverage as neither QBE,
25 SUNRISE, not RUSSO have any authority to stipulate or otherwise act in any manner to impact
26 the rights of DUSLAK and/or SESMAN to coverage from QBE. Further as the release
27
28

specifically stated that any language in the release that would be read to in any way impact the rights of DUSLAK and/or SESMAN against any entity (including any insurer) “SHALL BE DEEMED NULL AND VOID”, any language from the release QBE may now attempt to utilize to impact the rights of DUSLAK and/or SESMAN to coverage are, by virtue of the release itself, null and void. Also, in *Real v. Driscoll Strawberry Assocs., Inc.*, 603 F.2d 748, 755 (9th Cir, 1979) the Ninth Circuit held that, “economic realities, not contractual labels, determine employment status”. (citing *Rutherford Food Corp. v. McComb*, *supra*, 331 U.S. at 729, 67 S.Ct. 1473; *Usery v. Pilgrim Equipment Co.*, 527 F.2d 1308, 1315 (1976).

52. That on September 18, 2019 counsel for RUSSO faxed a letter to QBE (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 “G”.

53. That as no time did QBE contact the office of counsel for RUSSO, nor did QBE at any time deny having received prior notice that Case No. A-17-753606-C included claims against its insureds and “Covered Employees” DUSLAK and SESMAN.

54. At no time did QBE submit, notice, and/or otherwise direct said claim and/or action to any further policy of insurance providing coverage for the same and, in particular, did not submit, notice, and/or direct the same to the attention and consideration of any other policies of general liability insurance.

1 55. The aforesaid legal action (Case No. A-17-753606-C) against SUNRISE and others was
2 initially defended by QBE under policy number CAU234378-1, through the association of and
3 payment of a defense firm, Springel & Fink.

4 56. That at no time did QBE defend DUSLAK or SESMAN in Case No. A-17-753606-C,
5 even after being given specific notice that the action was pending against DUSLAK and
6 SESMAN, and even after being notified that defaults had been taken against DUSLAK and
7 SESMAN.
8

9 57. The QBE failed to offer, suggest, and/or provide independent *Cumis* counsel to advise
10 DUSLAK and/or SESMAN as to the failure to defend them in Case No. A-17-753606-C, and/or
11 indemnity, or pertinent pleadings and Orders before and by the Court, and of any related
12 matters.
13

14 58. That because QBE did not defend DUSLAK or SESMAN despite being aware of the
15 lawsuit, and being aware that default had been taken against QBE's insureds, on December 17,
16 2019 the court in Case No. A-17-753606-C entered Judgment against DUSLAK and SESMAN
17 in the amount of \$25,000,000.00, which accrues interest at the statutory rate until paid in full, and
18 that Notice of Entry of the said Judgment was filed on December 17, 2019.
19

20 59. That the conduct of Defendants, and each of them, including QBE, in not defending
21 DUSLAK and SESMAN constituted a breach of the duty to defend under the insurance contract
22 that covered DUSLAK and SESMAN as "Covered Employees."
23

24 60. That under *Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d 180 (2018) an
25 insurer is liable for all consequential damages arising out of any breach of the duty to defend an
26 insured. Additionally, "an insurer's liability for the breach of the duty to defend is not capped at
27 the policy limits, even in the absence of bad faith." The Nevada Supreme Court subsequently
28

1 reiterated that the reasonableness of an insurer's refusal to defend "is irrelevant for determining
 2 damages upon a breach of the duty to defend." *Nalder v. United Auto Ins. Co.*, No. 70504, 2019
 3 WL 5260073.

4 **FIRST CAUSE OF ACTION**

5
 6 RUSSO realleges and reasserts each and every statement and allegation contained in the
 7 preceding paragraphs as though set forth fully hereunder.

8 61. At all times pertinent hereto, QBE had a contractual duty to defend and indemnify
 9 DUSLAK and/or SESMAN regarding certain claims for negligence and resulting
 10 injuries caused by them to include, but not limited to, those brought by RUSSO in
 11 District Court Case number A-17-753606-C.

12
 13 62. The failure of QBE to reasonably and continuously defend and/or indemnify DUSLAK
 14 and/or SESMAN under said policy insurance coverage and/or other policies of insurance
 15 actually and/or potentially affording coverage to DUSLAK and/or SESMAN as alleged
 16 herein constitutes a breach of contract on the part of QBE under the terms and conditions
 17 as the policies set forth.

18
 19 63. That as a direct and proximate result of the aforesaid breaches of contract on the part of
 20 DUSLAK and SESMAN have been damaged in an amount in excess of Fifteen
 21 Thousand Dollars (\$15,000.00) and are entitled to monies sufficient to satisfy RUSSO's
 22 Judgment against them in the amount of \$25,000,000.00 plus all interest, which money
 23 is due and owing to RUSSO.

24
 25 64. DUSLAK and/or SESMAN have satisfied the terms of the contract with QBE and have
 26 done everything they are required to do under the insurance policy.
 27
 28

1 65. That the conduct of QBE in refusing to defend DUSLAK and/or SESMAN for the action
2 brought by RUSSO constituted a breach of the duty to defend.

3 66. The conduct of QBE alleged in the foregoing paragraphs constitutes a breach of the
4 insurance contract.

5 67. As a result of the breach by Defendant of the contract, Judgment has been entered
6 against DUSLAK and/or SESMAN in the amount of \$25,000,000.00 with statutory
7 interest accruing thereon, and that RUSSO is entitled to recover funds from DUSLAK
8 and SESMAN in an amount sufficient to satisfy the Judgment of \$25,000,000.00 with
9 statutory interest accruing thereon, which money is due and owing to RUSSO.
10

11 68. That RUSSO as a named Defendant in the Declaratory Relief Action has been required
12 to obtain the services of an attorney to prosecute this claim and is therefore entitled to
13 their costs and reasonable attorney's fees incurred.
14

15 SECOND CAUSE OF ACTION

16 69. RUSSO realleges and reasserts each and every statement and allegation contained in the
17 preceding paragraphs as though set forth fully hereunder.

18 70. The express and/or implied insurance agreement between QBE and DUSLAK and/or
19 SESMAN carries with it a fiduciary duty.
20

21 71. The contract of insurance as alleged herein carries with it a fiduciary duty.

22 72. QBE breached the fiduciary duty by the acts and omissions alleged herein.

23 73. That as a direct and proximate result of the aforesaid breach of fiduciary duty on the part
24 of QBE, DUSLAK and SESMAN, have been damaged, and that RUSSO is entitled to
25 recover funds from DUSLAK and SESMAN in an amount sufficient to satisfy the
26
27
28

1 Judgment of \$25,000,000.00 with statutory interest accruing thereon, which money is
2 due and owing to RUSSO.

3 **THIRD CAUSE OF ACTION**

4 74. RUSSO realleges and reasserts each and every statement and allegation contained in the
5 preceding paragraphs as though set forth fully hereunder.

6
7 75. QBE is subject to various statutes of the State of Nevada regarding its business practices
8 including, but not limited to, the Nevada Unfair Claims Practices Act.

9 76. QBE violated numerous aspects of the above mentioned Nevada Unfair Claims Practices
10 Act, including, but not limited to, NRS 686A.310(1)(a-o).

11
12 77. That as a direct and proximate result of the aforesaid violations of Nevada statutes on the
13 part of QBE, DUSLAK and SESMAN, have been damaged, and that RUSSO is entitled
14 to recover funds from DUSLAK and SESMAN in an amount sufficient to satisfy the
15 Judgment of \$25,000,000.00 with statutory interest accruing thereon, which money is
16 due and owing to RUSSO.

17
18 **FOURTH CAUSE OF ACTION**

19 78. RUSSO realleges and reasserts each and every statement and allegation contained in the
20 preceding paragraphs as though set forth fully hereunder.

21 79. That at all times pertinent hereto QBE undertook to provide insurance coverage, defense,
22 and indemnity of SUNRISE, giving the reasonable and foreseeable expectation to
23 DUSMAN and/or SESLAK that that they were and would be covered, defended, and/or
24 indemnified with respect to the claims and actions against them, but then unilaterally and
25 unreasonably denied coverage, defense, and indemnification to DUSLAK and/or
26
27 SESMAN.
28

1 80. The aforesaid acts and omissions on the part of QBE creates in equity and/or law a
2 promise and agreement by QBE to cover, defend, and/or indemnify DUSLAK and/or
3 SESMAN regarding the aforesaid claims and actions against them, requiring that QBE
4 be estopped from denying and refusing such coverage, defense, and indemnification, and
5 that QBE be mandated and judicially compelled to cover, defend, and/or indemnify
6 DUSLAK and/or SESMAN including, but not limited to, paying any and all damages
7 assessed against DUSLAK and/or SESMAN, made and/or reduced to judgment in
8 favor of RUSSO and against DUSLAK and/or SESMAN, and/or otherwise imposed
9 against DUSLAK and/or SESMAN as related hereto, all in an amount entitling
10 DUSLAK and SESMAN to monetary damages in excess of Fifteen Thousand Dollars
11 (\$15,000.00) and equitable relief to include, but not limited to, Estoppel and/or
12 Mandamus as this honorable court sees just under the premises, and Declaratory Relief
13 in the form of an Order, Judgment, and/or directive otherwise that QBE is liable to
14 DUSLAK, SESMAN, and RUSSO for the full amount of the aforesaid Judgment with all
15 applicable interest entered against DUSLAK and/or SESMAN, interest thereon,
16 incidental and consequential damages, and general and special damages.
17
18

19 **WHEREFORE**, Plaintiff RUSSO prays for judgment against the QBE as follows:
20

21 **ON ALL CAUSES OF ACTION**
22

- 23 1. That DUSLAK and SESMAN recover general damages in an amount in excess of
24 \$25,000,000.00, which money is due and owing to RUSSO;
- 25 2. That DUSLAK and SESMAN recover general damages in an amount in excess of
26 \$15,000.00, which money is due and owing to RUSSO.;
- 27
28

- 1 3. For DUSLAK and SESMAN to recover special damages in an amount to be
- 2 determined at trial, which money is due and owing to RUSSO;
- 3 4. For declaratory and equitable relief as pled and as the court sees fit in the premises;
- 4 5. Costs of this suit;
- 5 6. Attorney's fees; and
- 6 7. For such other and further relief as to the Court may seem just and proper in the
- 7 premises.
- 8

9 DATED THIS 22nd day of December, 2020.

10 THE LAW OFFICE OF DAVID SAMPSON, LLC.

11 By: /s/ David Sampson

12 David Sampson, Esq.
13 Nevada Bar No. 6811
14 630 South 3rd Street
15 Las Vegas, NV 89101
16 Tel: (702) 605-1099
17 Fax: (888) 209-4199
18 Email: David@davidsampsonlaw.com
19 Attorney for RUSSO
20
21
22
23
24
25
26
27
28

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

EXHIBIT “A”



1 **RSPN**

2 LEONARD T. FINK, ESQ.

3 Nevada Bar No. 6296

4 JONATHAN C. PATTILLO, ESQ.

5 Nevada Bar No. 13929

6 **SPRINGEL & FINK LLP**

7 10655 Park Run Drive, Suite 275

8 Las Vegas, Nevada 89144

9 Telephone: (702) 804-0706

10 Facsimile: (702) 804-0798

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

12 *jpattillo@springelfink.com*

13 Attorneys for Defendant,

14 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 ***

18 SIMONE RUSSO,

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

) Dept. No.: XVI

19 Plaintiffs,

20 v.

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

21 COX COMMUNICATIONS LAS VEGAS, INC.)
22 D/B/A COX COMMUNICATIONS; IES)
23 RESIDENTIAL, INC.; SUNRISE VILLAS IX)
24 HOMEOWNERS ASSOCIATION; J&G LAWN)
25 MAINTENANCE; KEVIN BUSHBAKER; PW)
26 JAMES MANAGEMENT & CONSULTING,)
27 LLC; AND DOES 1-V, AND ROE)
28 CORPORATIONS I-V, inclusive)

Defendants)

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

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

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

4 **REQUEST NO. 8:**

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

8 **RESPONSE TO REQUEST NO. 8:**

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

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

16 **SUPPLEMENTAL RESPONSES TO REQUEST NO. 8:**

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

18 **SECOND SUPPLEMENTAL RESPONSES TO REQUEST NO. 8**

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

23 **REQUEST NO. 11:**

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

27 **RESPONSE TO REQUEST NO. 11:**

28 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